

Maryland Office of the Public Defender

Caseloads Initiative

**Status of OPD Attorney Caseload Under
New Maryland-Specific Caseload Standards
and Status of Panel Attorney List**

**Report to the Joint Chairman
Senate Budget and Taxation Committee
House Appropriations Committee**

November 2006

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This report is submitted in response to the following committee narrative appearing page of the Joint Chairman's Report – Operating Budget, April 2006:

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

Status of Maryland's Statewide Panel Attorney List: The Office of the Public Defender (OPD) shall submit a report to the budget committees on the status of the statewide panel attorney list. The report shall include measurable outcomes such as the size of each district's panel attorney list and improved efficiency among district public defenders.

The General Assembly's long-standing support for adequate funding of the Office of the Public Defender, and in particular, the strong advocacy of the budget committees makes it a pleasure to provide this update on the new Maryland-specific caseload standards as part of the OPD's Caseloads Initiative. The progress documented in this report would not have been possible without the collaborative efforts of the Department of Budget and Management, Governor Ehrlich and his staff, and especially the unwavering and vocal support of the members of the Maryland General Assembly.

Executive Summary

It is a pleasure to report to the Maryland General Assembly and the budget committees on the continued progress of the Caseloads Initiative and on the status of the Office of the Public Defender (OPD) panel attorneys. The following report demonstrates that with the long-standing support of the General Assembly and Governor Ehrlich, the OPD has been able to significantly reduce caseloads and ease the crisis in finding qualified panel attorneys to handle conflict cases.

In the 2006 legislative session, the Governor and General Assembly funded the final year of the Caseloads Initiative, adding 22 attorney positions to the OPD in an effort to continue to reduce excessive caseloads statewide. Equally important, funding was provided to increase fees paid to those private attorneys who the agency must rely upon to represent those indigent accused that OPD attorneys cannot ethically represent. This funding allowed the office to raise fees paid to panel attorneys from a paltry \$30 per hour for out-of-court work and \$35 per hour for in-court work, to a flat \$50 per hour fee. While this minimal increase does not eliminate the extreme difficulty the office has in recruiting and retaining qualified panel attorneys, it has reduced those problems. Importantly, it has also demonstrated to those members of the private bar willing to do panel work for the OPD, that the office acknowledges the important role these attorneys play in our criminal justice system.

This report shows that Year Four of the Caseloads Initiative¹ has successfully further reduced caseloads statewide in Circuit, District and Juvenile Court cases. It also shows the first use of Maryland-specific caseload standards developed in 2005 by the National Center for State Courts in their report titled, Maryland Attorney and Staff Workload Assessment, 2005. The budget committees have directed the OPD to incorporate these standards into the Managing For Results (MFR) program strategic planning and operating policies. The OPD has done so and has submitted its fiscal 2008 budget request using these Maryland-specific standards to staff its statewide divisions.² Using these new standards, the OPD has requested 23 new positions to address the needs of its statewide divisions.

¹ The Initiative was originally on track to be completed in three years; however, due to state budgetary limitations, it was stretched to four years.

² At its inception, the Caseloads Initiative did not contemplate staffing OPD statewide divisions.

Introduction

For years, the Maryland General Assembly expressed concern about chronic under-funding, under-staffing and growing caseloads at the Maryland Office of the Public Defender. Finally, the legislature requested a joint performance audit of the Department of Budget and Management and the Office of the Public Defender; this 2001 audit found the effects of chronic under-funding: lack of caseload standards or workload measures, deficient information technology and related problems with complete and accurate data collection. The audit recommended adoption of caseload standards, acquisition of adequate IT hardware and case management software, and funding based upon documented staffing and operational needs. The General Assembly's budget committees responded to the audit by asking the Office of the Public Defender and the Department of Budget and Management to report what funding was required to bring public defender caseloads into compliance with American Bar Association caseload standards.

In response, the Office of the Public Defender launched the Caseloads Initiative. It was immediately adopted by the incoming Ehrlich administration, and whole-heartedly embraced by the Maryland General Assembly, as well as Maryland's Judiciary. It was developed in partnership with the budget and policy analysts at both the Department of Budget and Management and the Department of Legislative Services. It was designed to provide immediate relief from excessive caseloads statewide and to maintain compliance with caseload standards over the long run. It was divided into several phases to ensure immediate progress while minimizing the impact on the State's operating budget.

To achieve these ends, the Caseloads Initiative has these components:

- I. Reduce Excessive Caseloads;
- II. Caseload-based budgeting based on accepted, state-specific caseload standards;
- III. Accurate caseload data and efficient case management with an effective case management system.

The Office is proud to report on the continued progress of the Caseloads Initiative and the implementation of the Maryland-specific caseloads standards as developed by the National Center for State Courts.

I. Status of Attorney Caseloads under New Maryland Standards

The OPD has made steady and significant progress in reducing attorney caseloads through the four-year implementation of the Caseloads Initiative. As of the end of fiscal 2006, the OPD received a total of 97 new attorney positions and 93 new support staff positions. The final 22 attorney positions, postponed from fiscal 2006, were allocated in fiscal 2007.

The positions appropriated to the OPD for fiscal 2006 also came with 40% turnover. Accordingly, those positions could not be filled until the second half of fiscal 2006 (which is the first half of calendar 2006). Because of time requirements for the OPD to validate and finalize the actual number of cases opened in any given year, the best available statistics for this report are the number of cases and attorneys as of December 31, 2005, reported as calendar year 2005 statistics. Accordingly, in this report the OPD reports on the caseload reductions from the first two full installments of the new positions: fiscal 2004 and fiscal 2005.

Caseloads Initiative	Attorney Positions	Support Staff Positions	Total Positions
FY2004	35	23.5	58.5
FY2005	38	30.5	68.5
FY2006	24	39	63
FY2007	22	N/A	22

During the fiscal year 2005, the OPD reported to DBM and to both budget subcommittees on the status of the Maryland-specific caseload standards as developed by the National Center for State Courts in their report titled, *Maryland Attorney and Staff Workload Assessment, 2005*. As a result of those briefings, the General Assembly concluded that these standards are adequate to insure effective assistance of counsel in Maryland and directed the OPD to incorporate those standards into its Managing for Results (MFR) program and to use those standards when determining and assessing staffing levels. The General Assembly added the following language to the budget bill:

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

The Maryland-specific caseload standards were developed to address differing practices within the various regions of the State as well as within the various case types. The final caseload standards define “case weights,” which are the average amount of time needed to complete the case within each of the three geographic regions: urban, suburban and rural. The cases types represent the three general areas of OPD legal practice: Circuit Court/ Felony, District Court/Misdemeanor and Juvenile Court. The cases types and their comparison to the ABA standards are as follows:

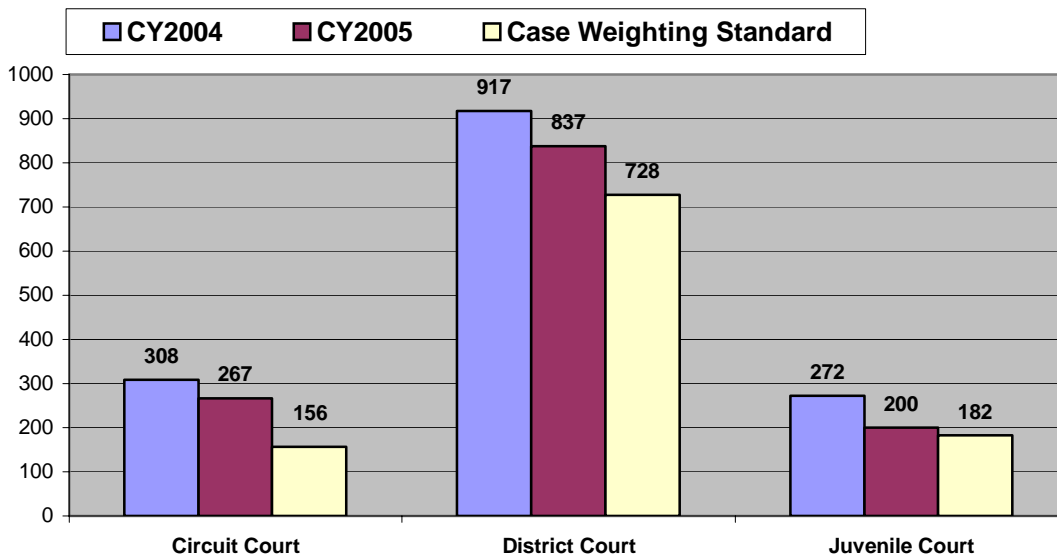
	Final Case Weighting Study Recommended Caseloads			Previous Standards	
	Rural	Suburban	Urban	ABA	OPD/MFR
Felony	191	140	156	150	180
Misdemeanor	630	705	728	400	480
Juvenile	271	238	182	200	240

This is the first year that the OPD is monitoring the caseloads using the new Maryland-specific caseload standards. Additionally, 2005 represents the first full year of uniform case-tracking data for all of the OPD, including the statewide Divisions.

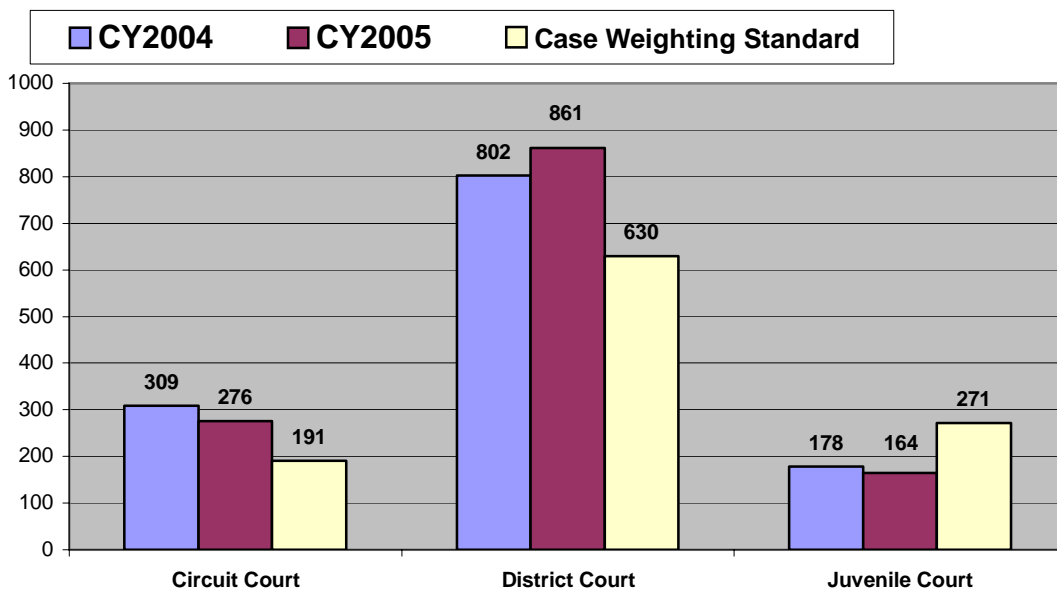
The following charts demonstrate the decrease in caseloads as a result of the Caseloads Initiative and the proximity of the calendar year 2005 average annual caseloads to the new Maryland-specific Case Weighting Study standards. Three factors should be kept in mind when reviewing the difference between 2005 caseloads and the Maryland-specific standards:

1. Calendar year caseloads only reflect the first two years of new attorney positions. Seventy-three new attorneys, about 60%, of the total Caseloads Initiative positions were in place by the end of 2005, with 46 attorneys, about 40%, remaining to be accounted for in future calculations.
2. The Caseloads Initiative’s initial projected need for additional attorneys was based on the ABA standards, prior to the development of the Case Weighting Study.
3. The Caseloads Initiative’s initial projected need for additional attorneys was based on fiscal year 2002 caseloads and do not account for the subsequent increasing number of cases opened. Without any increase on the number of cases since 2003, the current caseloads in District operations are close to compliance with the ABA standards.

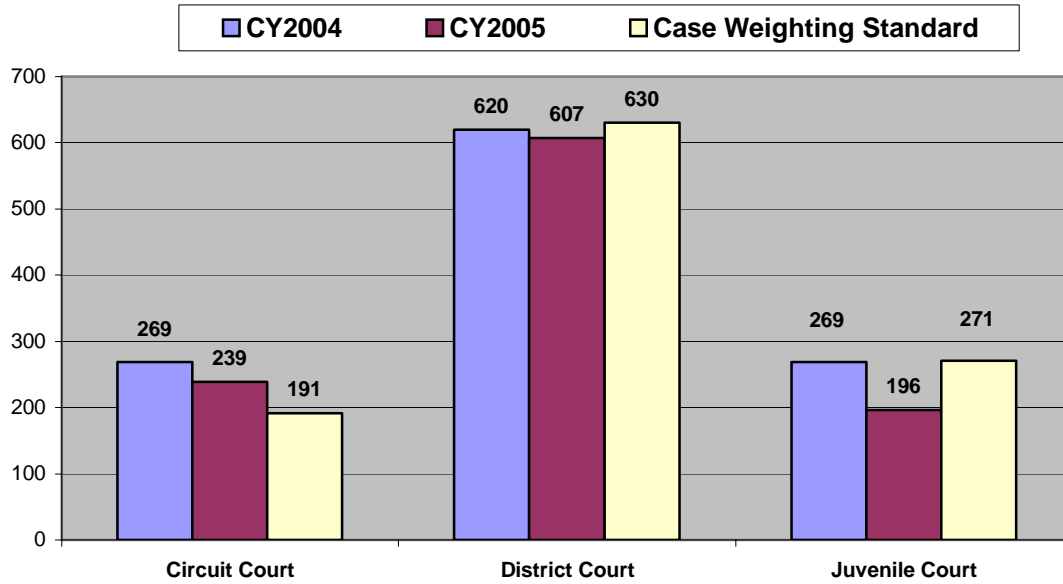
**DISTRICT ONE - BALTIMORE CITY
CASELOAD COMPARISONS 2004 -2005**



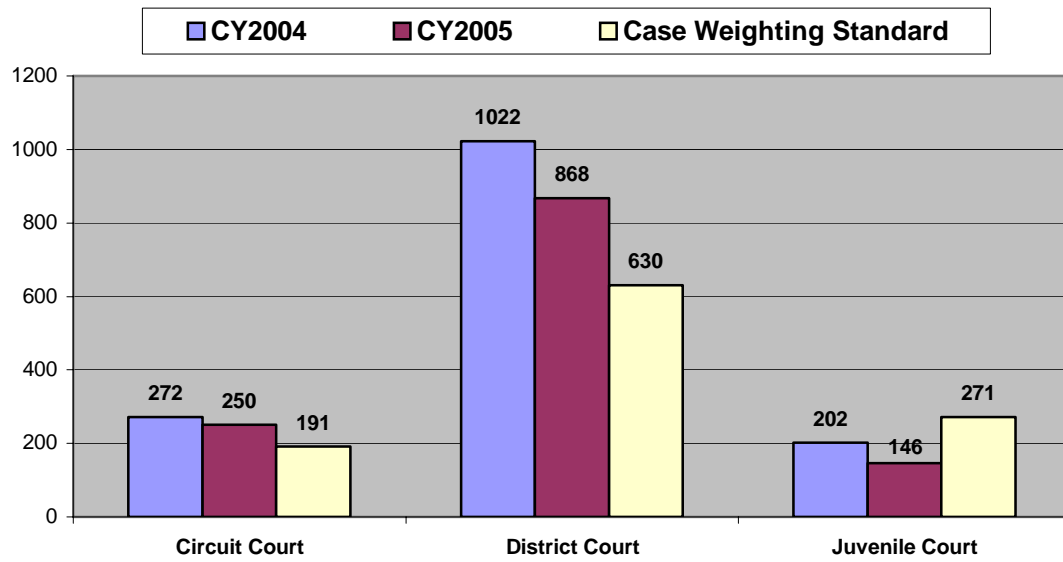
**DISTRICT TWO - LOWER SHORE
CASELOAD COMPARISONS 2004 - 2005**



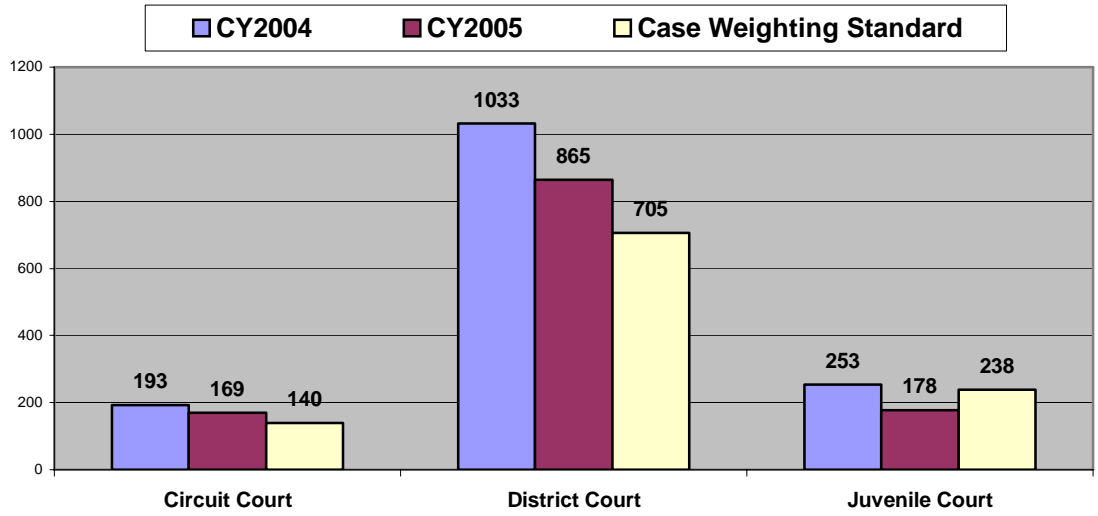
**DISTRICT THREE - UPPER SHORE
CASELOAD COMPARISONS 2004 - 2005**



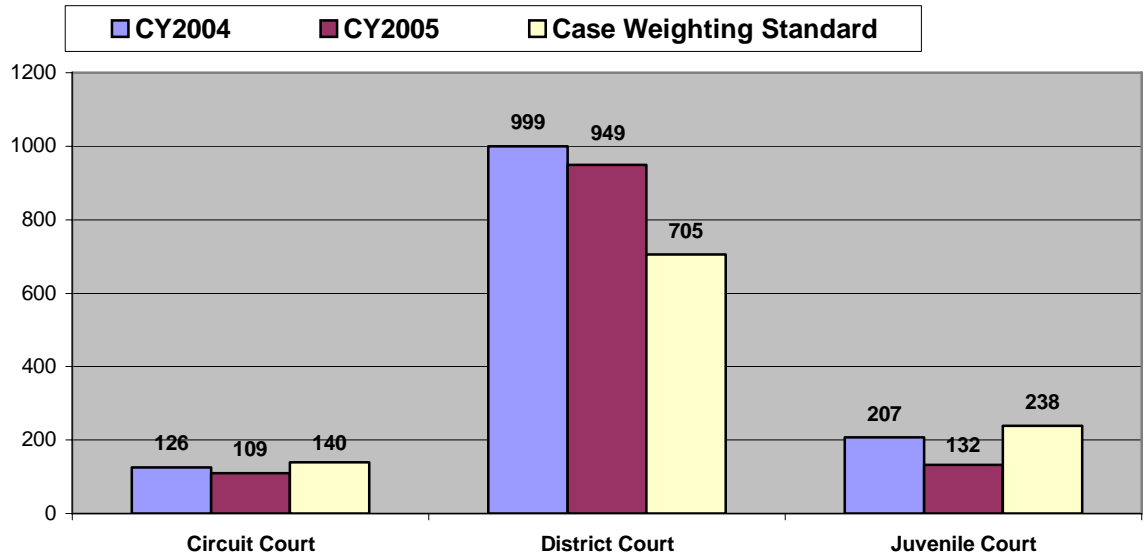
**DISTRICT FOUR - SOUTHERN MARYLAND
CASELOAD COMPARISONS 2004 - 2005**



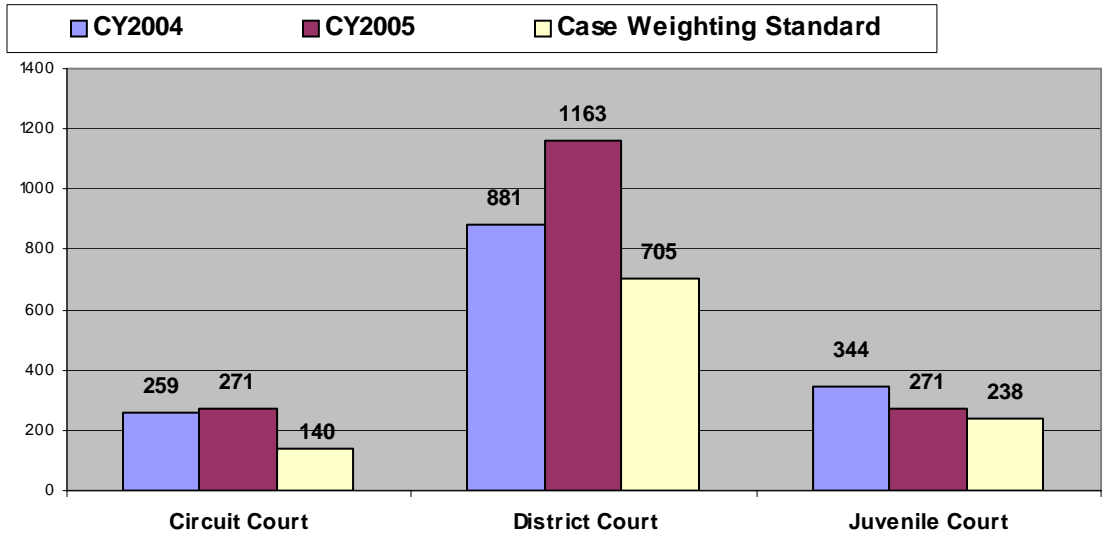
**DISTRICT FIVE - PRINCE GEORGE'S COUNTY
CASELOAD COMPARISONS 2004 - 2005**



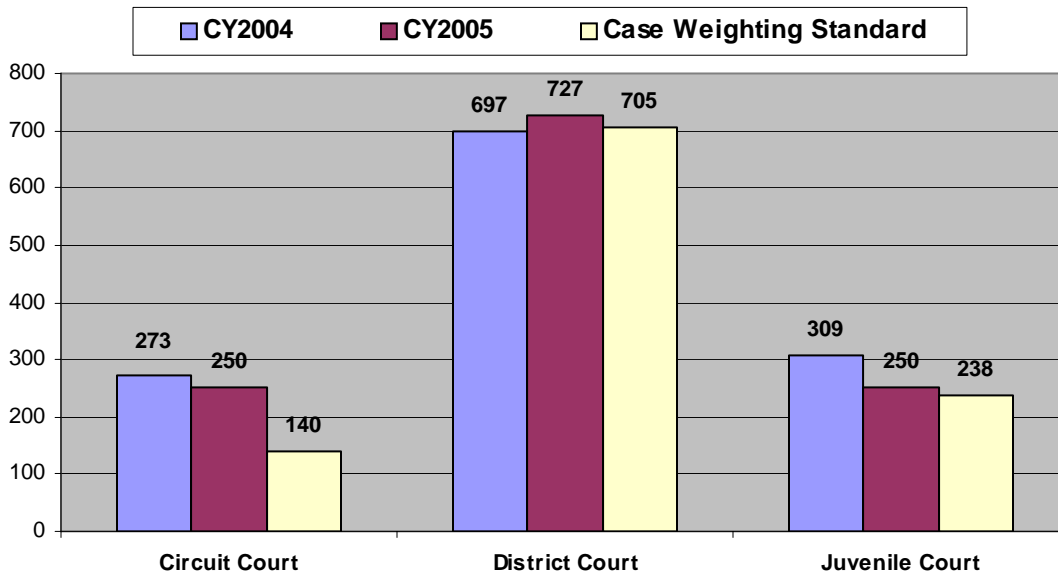
**DISTRICT SIX - MONTGOMERY COUNTY
CASELOAD COMPARISONS 2004 - 2005**



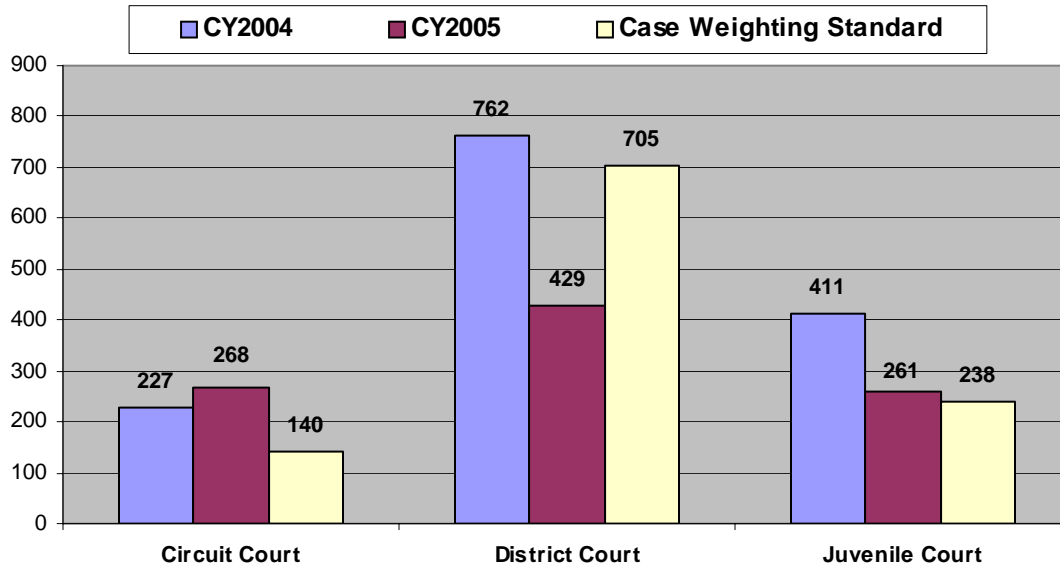
**DISTRICT SEVEN - ANNE ARUNDEL COUNTY
CASELOAD COMPARISONS 2004 - 2005**



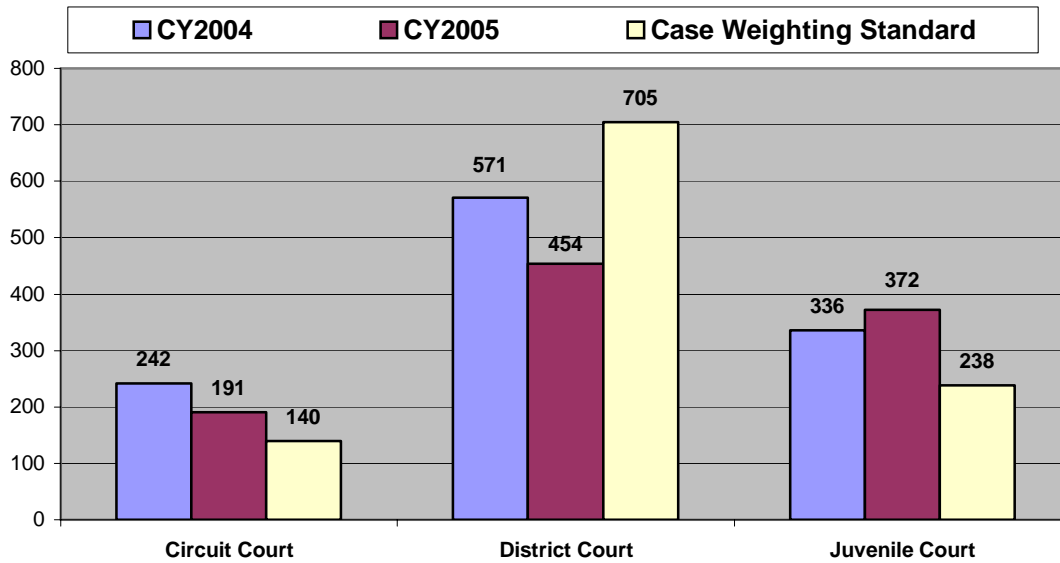
**DISTRICT EIGHT - BALTIMORE COUNTY
CASELOAD COMPARISONS 2004 - 2005**



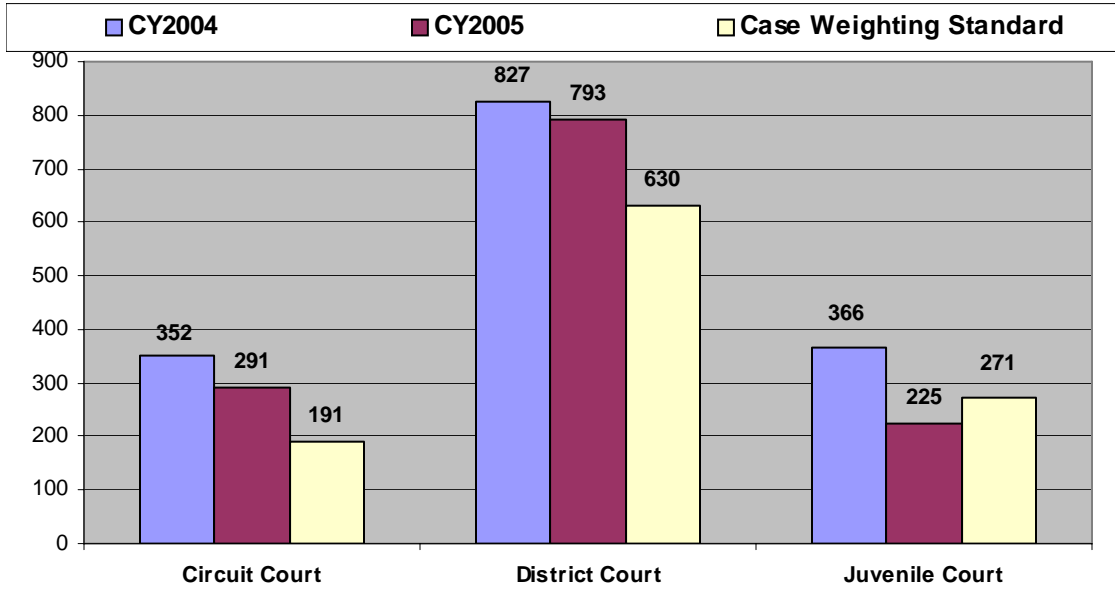
**DISTRICT NINE - HARFORD COUNTY
CASELOAD COMPARISONS 2004 - 2005**



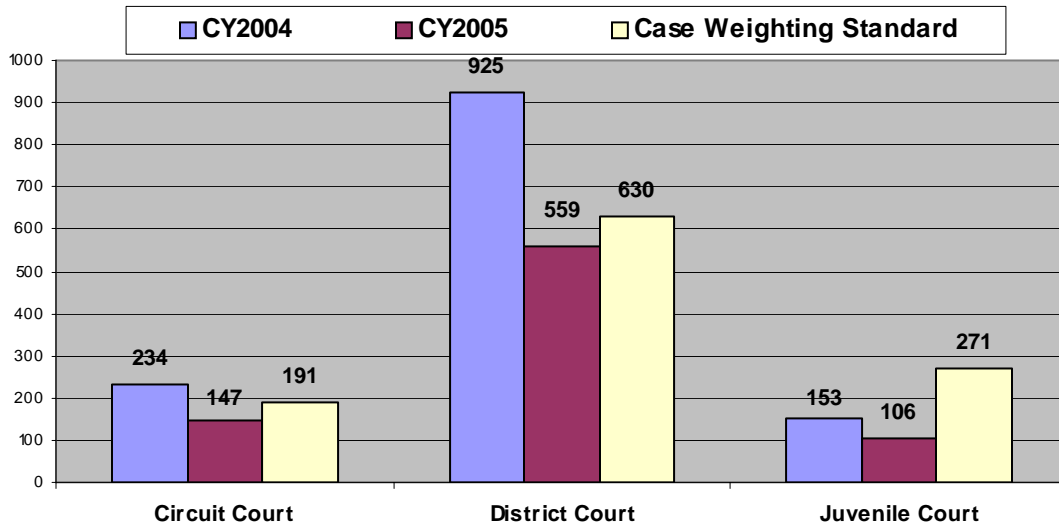
**DISTRICT TEN - CARROLL & HOWARD COUNTIES
CASELOAD COMPARISONS 2004 - 2005**



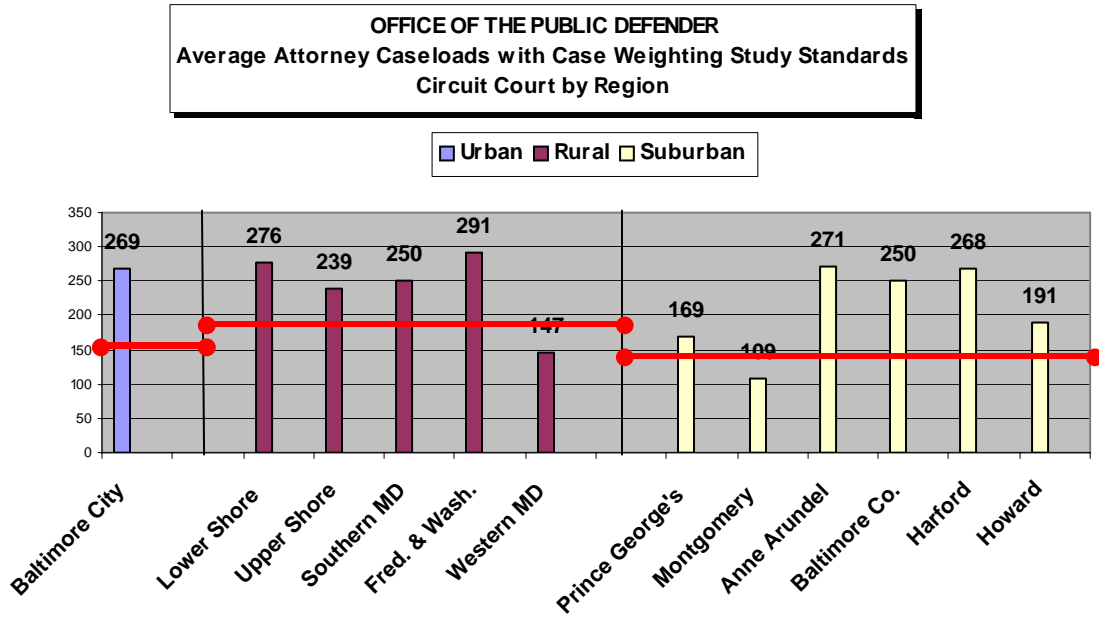
**DISTRICT ELEVEN - FREDERICK & WASHINGTON COUNTIES
CASELOAD COMPARISONS 2004 - 2005**



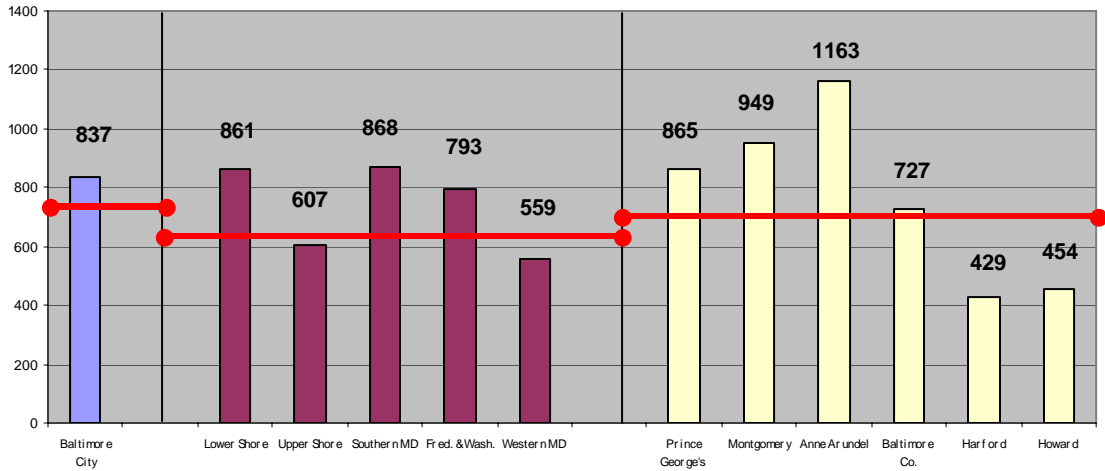
**DISTRICT TWELVE - WESTERN MARYLAND
CASELOAD COMPARISONS 2004 - 2005**



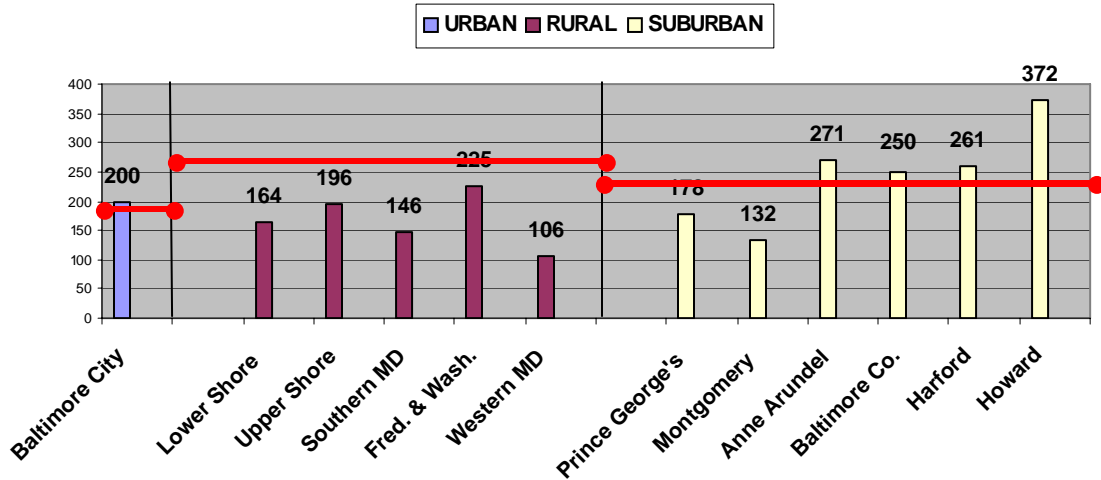
Shown differently, the compliance within each area of law is shown by region in the following charts. As reported in the OPD MFR, the compliance rate for Districts meeting the new Case Weighting Study standards in Circuit Court is 17%, 33% for District Court and 56% for the Juvenile Courts.



OFFICE OF THE PUBLIC DEFENDER
Average Attorney Caseloads with Case Weighting Study Standards
District Court by Region



OFFICE OF THE PUBLIC DEFENDER
Average Attorney Caseloads with Case Weighting Study Standards
Juvenile Court by Region



A. OPD's Projected Staffing Needs under New Maryland Standards

District Operations

As shown in the preceding charts and reported in the MFR plan, the OPD has made significant progress in reducing the average annual attorney caseload in almost every District. In fact, our western Maryland district meets the Maryland-specific standards in every category. In the Juvenile Court, which is a high priority of the Public Defender, the agency has met the standards in over half of its districts and is close to meeting it in the remaining districts.

Although the percentages are less for Circuit Court and District Court caseload compliance, there continues to be progress in spite of an increasing number of cases opened since the inception of the Caseloads Initiative in 2002. Further, the OPD has yet to fully realize the effect of the last 22 positions that were delayed until fiscal 2007. The full effect of all new attorney positions will not be fully evident in the caseload statistics until calendar year 2008.

Because the OPD has not yet realized the full benefit of all of the new positions received through the Caseloads Initiative, OPD has not requested any additional positions for District Operations this year. Also, OPD believes that it will take another few years to assess the adequacy of the new caseload standards and the consistency of any growth in cases opened. Any future requests will be based on OPD experiences using the new caseload standards and, at least, a three year trend in the number of cases opened.

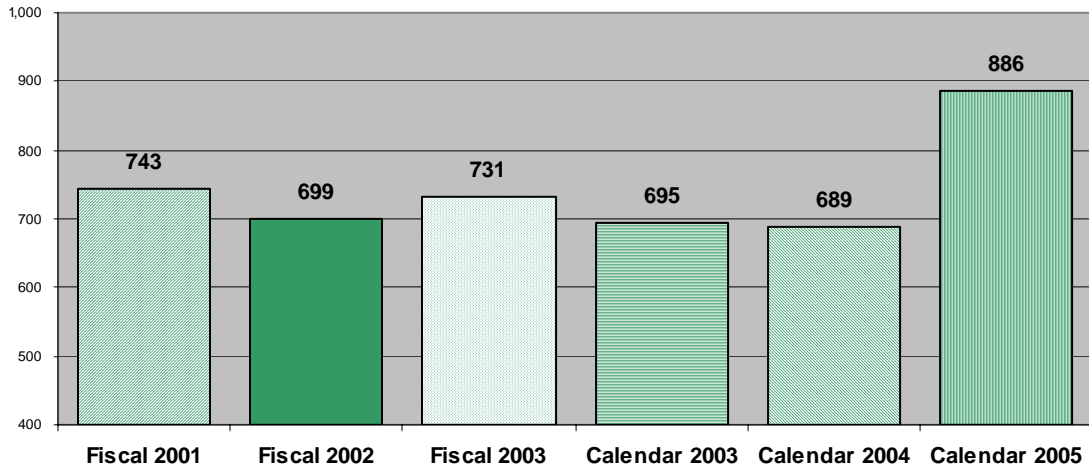
The Statewide Divisions

The Caseloads Initiative was developed to address the overwhelming caseload averages that existed in the trial level districts of the OPD. The request, approval and allocation of the Caseloads Initiative positions have only addressed the needs of the OPD's district operations and not the Statewide Divisions. The Statewide Divisions were not included, in part, because the ABA does not have adequate standards for the types of cases handled by the OPD Divisions: appellate, collateral review, mental health and CINA.

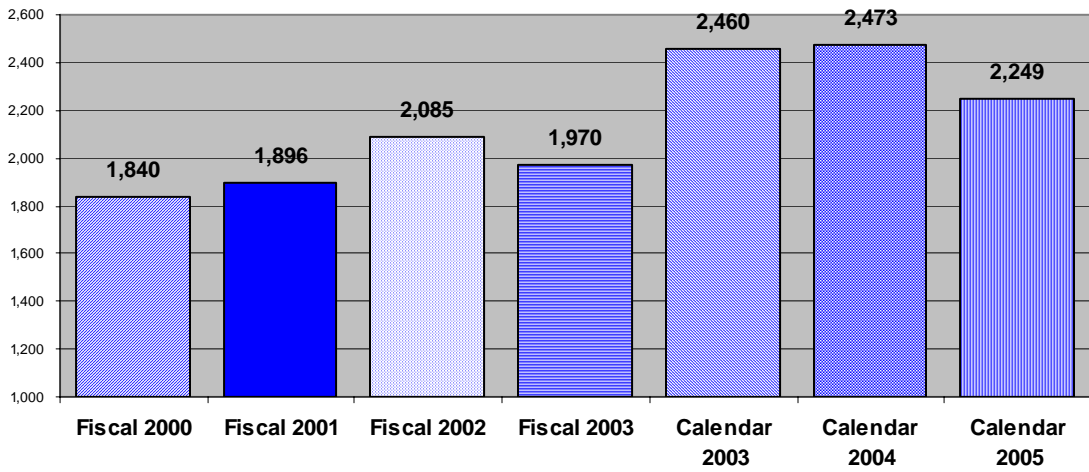
OPD is addressing this need by reporting Division caseload data in the FY2008 MFR plan and by submitting a request for allocation of positions specifically for the divisions in its FY 2008 budget submission. Since the new Case Weighting Study standards address the case types within the divisions, these new standards have been applied to the growing number of open cases within each Division.

The following charts show the growth in the number of cases opened with the OPD Divisions since 2000. The Appellate Division has seen a 19% growth in cases; the Collateral Review Division shows a 22% growth in cases opened; while the Mental Health Division has experienced a 10% growth in cases opened.

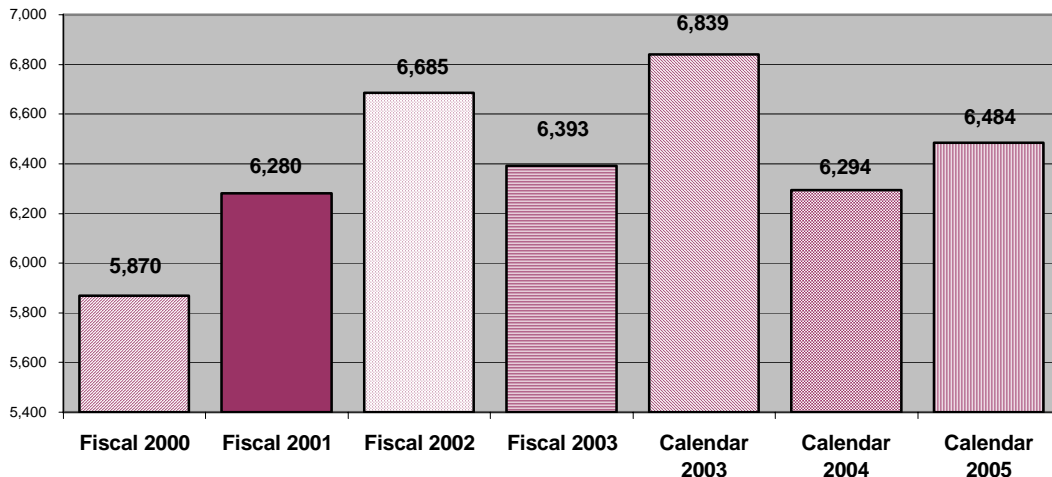
OFFICE OF THE PUBLIC DEFENDER
Appellate Division
19% Growth in Cases Opened



OFFICE OF THE PUBLIC DEFENDER
Collateral Review Division
22% Growth in Cases Opened



OFFICE OF THE PUBLIC DEFENDER
Mental Health Division
10% Growth in Cases Opened



The Case Weighting Study standards for the Divisions are: 30 cases per attorney per year for Appellate, 111 cases per attorney per year for Collateral Review and 843 cases per attorney per year for the Mental Health Division.

Using these standards, the resulting need is for 6 new attorney positions in the Appellate Division, 3 new attorney positions for the Collateral Review Division and 3 new attorney positions for the Mental Health Division.

The OPD has submitted an “over the target request” for 23 new positions in its FY 2008 budget submission. This includes the 12 needed attorney positions to meet Maryland-specific standards in our Divisions and the 11 corresponding needed support staff for those Divisions.

II. Status of Maryland’s Statewide Panel Attorney List.

For years, the Office of the Public Defender (OPD) has sought to attract and retain competent panel attorneys who are willing to invest the necessary time, resources and preparation in the zealous defense of indigent clients. Panel attorneys are private practitioners who represent indigent defendants when the agency is barred from doing so by a legal conflict of interest. In 2003, the OPD Panel Attorney Committee was charged with reviewing the adequacy of panel attorney compensation in the State of Maryland. The Panel Committee polled agency panel attorneys, conducted research into the cost of office overhead statewide, compared Maryland compensation rates to those of other states and polled District Public Defenders.

All of the information gathered by the committee indicated that competent panel attorneys were taking fewer cases and in some cases, left the agency’s panel list

completely due to inadequate compensation. Those panel attorneys who continued to take agency cases did so with reluctance and took fewer cases than they otherwise would due to significant financial loss. In addition, District Public Defenders reported that although they each maintain a master list of panel attorneys, only a handful of these attorneys would actually take cases when asked. District Public Defenders reported that they had to “beg” panel attorneys to take cases and often resorted to requesting personal favors to obtain competent counsel. Thus, the low compensation rate had a direct effect on their ability to efficiently, reliably panel cases to competent attorneys. Likewise, the low compensation rate was directly related to District Public Defenders reporting court continuances for paneled cases, complaints by panel attorneys about their fees and client complaints about panel attorney counsel. Finally, and most significantly, maintaining an inadequate panel list, due to lack of adequate funding, jeopardized the State’s ability to ensure effective assistance of counsel.

Until fiscal 2006, the rate of compensation for panel attorneys had not increased in over sixteen years. Panel attorneys were paid \$30.00 per hour for out-of-court work and \$35.00 per hour for in-court work. Panel attorneys reported that average office overhead costs ranged from \$50.00 to \$150.00 per hour thus exceeding the panel attorney rate of \$30.00 to \$35.00 per hour. Most of the agency’s panel attorneys operate small law offices or are solo practitioners, and cannot afford to lose money on panel cases.

In fiscal 2006, the Governor and the General Assembly approved funding to increase panel attorney rates to \$50.00 per hour. This rate increase was the first step of a three-year proposal to restore parity with Federal standards. When Maryland panel attorney rates were first established at \$35.00 per hour, they were comparable to the Federal rate at the time, which was \$40.00 per hour. Since then, the Federal rate has increased to keep pace with inflation and the cost of living, while the Maryland rate has remained stagnate. The Federal rate is set annually after a review of relevant economic indicators including the surveys of small and large firm economics and court ordered attorneys fees awards. The Federal rate is now \$92.00 per hour for felony cases and \$163.00 per hour for capital cases.

In order to report on the status of the Statewide Panel Attorney list, it is important to understand and define what constitutes “the list”:

The Annotated Code of Maryland, Article 27A, Section 6 (a) states:

“Maintenance of lists; classification pursuant to qualification criteria. – Each district public defender, subject to the authority and supervision of the Public Defender, shall maintain a confidential list of private attorneys-at-law who shall be available to serve as counsel to indigent persons eligible for legal representation under this article.”

Likewise, the Code of Maryland Regulations (COMAR) 14.06.02.04 D. states:

“Each district public defender, subject to the authority and supervision of the Public Defender, shall maintain a confidential list of private attorneys who are eligible to provide legal representation under Article 27A, Annotated Code of Maryland. The qualification criteria for the panel attorneys shall be set forth by the Public Defender.”

The Annotated Code of Maryland and COMAR both recognize that the list of panel attorneys shall be maintained by each *individual* District Public Defender. These provisions are significant because they recognize that there is no “master” Statewide Panel list. Each District maintains its own roster of panel attorneys who are willing to take panel cases in that particular District. Some panel attorneys are willing to take cases out of the jurisdiction where they practice, particularly if they reside in a different jurisdiction. Additionally, some panel attorneys are willing to travel to take panel cases regardless of where they work or reside. Thus the lists are not combined and panel attorney names often appear on more than one District list. Therefore, all reported data reflects each individual District’s list as opposed to one general Statewide Panel list.

Another important distinction when discussing the Statewide District panel lists is to define what is meant by the “size” of each list. The list of names represents each panel attorney who has applied to take panel cases in the particular District subject to the approval of the District Public Defender. The “size” of each District list cannot be determined simply by counting the number of panel attorneys on each list. The number of bodies does not necessarily represent the actual number of panel attorneys that are available, willing and competent to take panel cases of different levels of complexity in each District at any given time.

In response to the JCR inquiry, District Public Defenders were sent a survey in July 2006, and asked to report on each panel attorney on their list. The questions asked included (1) the type of cases that each panel attorney was qualified to handle, (2) the general availability of each panel attorney on the list and (3) whether any panel attorneys on the list who were not accepting cases at \$30.00 or \$35.00 per hour are now accepting cases at \$50.00 per hour.

Type of Cases

Prior to enactment of the new COMAR regulations, The Code of Maryland Regulations (COMAR) Former 14.06.02.05 B. stated:

“B. Classification of Panel Attorneys. Pursuant to Article 27A, Section 6(a), Annotated Code of Maryland, the following classes of panel attorneys are established and defined:

- (1) Panel A shall be comprised of licensed attorneys whose members are qualified to provide legal representation for an accused charged with a capital offense.

- (2) Panel B shall be comprised of licensed attorneys whose members are qualified to provide legal representation to an accused in a non-capital circuit court proceeding.
- (3) Panel C shall be comprised of licensed attorneys whose members are qualified to provide legal representation for an accused in the District Court of Maryland.
- (4) Panel D shall be comprised of licensed attorneys whose members are qualified to provide legal representation for a juvenile in a juvenile proceeding.”

The Panel Committee felt this list was too limited and did not effectively differentiate between the less complicated felony cases and various levels of complex litigation. The Panel Committee listed seven case types in the District survey that are more representative of the broad range of cases handled in the Districts:

- (1) District Court cases;
- (2) Routine Juvenile cases;
- (3) Complex Juvenile cases, including waivers;
- (4) Minor Felony cases;
- (5) Major Felony cases;
- (6) Life Penalty Felony cases; and
- (7) Capital cases.

All twelve District offices and the five statewide Division offices responded to the survey. Eight of the twelve (approximately two-thirds) Districts providing trial level representation statewide reported having fewer than five attorneys available to represent clients in serious felony cases, including major felonies, life penalty felonies and capital cases. This affects 17 out of 24, or seventy percent, of our local jurisdictions, implicating over half of our paneled circuit court cases.

Districts Report on Panel Attorneys/Serious Felonies

District Reporting Five or Fewer Attorneys	Circuit Court Cases Paneled in 2005	Number of Counties Per District
*District 2: Dorchester, Somerset, Wicomico, Worcester	273	4
*District 3: Caroline, Cecil, Kent, Queen Anne’s, Talbot	158	5
District 5: Prince George’s	196	1
District 6: Montgomery	278	1
District 7: Anne Arundel	22	1

District 9: Harford	72	1
*District 11: Frederick, Washington	263	2
*District 12: Allegany, Garrett	247	2
Total cases/counties implicated	1509	17
As percentage	52%	71%

* Indicates a rural jurisdiction.

Panel Attorney Availability

The same survey asked each District Public Defender to characterize the availability of each panel attorney to accept cases when contacted. The responses provided were:

- (1) Always available;
- (2) Sometimes available;
- (3) Rarely available;
- (4) Only available if District Public Defender “begs & pleads”; or
- (5) Never available

District Public Defenders were asked to identify panel attorneys’ availability for each level of case complexity represented in the seven categories previously set forth. For serious felony cases, District Public Defenders reported that approximately half of the panel attorneys on their lists are rarely or never available to handle serious felony cases, including major felonies, life penalty felonies and capital cases.

Panel Attorneys Accepting Cases at \$50.00/Hour

The survey asked each District Public Defender to indicate, in his or her opinion, whether each panel attorney on his or her list would accept panel cases now that the rates were raised from \$30.00/\$35.00 per hour to \$50.00 per hour. District Public Defenders reported that 25.6% of panel attorneys who would not take panel cases at \$30.00/\$35.00 per hour are now willing to accept cases for \$50.00 per hour.

A. Improved Efficiency Among District Public Defenders Since July 2005 – Panel Fees Raised to \$50.00 Per Hour

In order to answer this question, the Panel Committee conducted two separate District surveys.

1. Budget Request Survey

In April 2006, all District Public Defenders were asked, as part of the internal budget preparation procedure, to provide a brief summary of the effect of the \$50.00 per hour increase of panel fees on the quality and availability of panel attorneys in each District. Below is a sampling of results from the District surveys:

District 1: Baltimore City

“The \$50.00 panel fee increase helped to increase both the availability and quality of attorneys. Less experienced attorneys are willing to attend training to be eligible to take more serious cases, demonstrating more accountability and professionalism. The fee

increase will reinforce this progress. Failure to provide a realistic wage for panel attorneys will result in an ever-eroding base of reliable attorneys. An increase will attract attorneys who might not consider it cost effective to take cases at the current rate.”

District 2: Dorchester, Somerset, Wicomico and Worcester

“The \$50.00 rate has increased panel participation at the District and Juvenile Court levels. However, it has had little or no effect at the Circuit Court, Felony level. Need for the \$75.00 increase - we desperately need to retain panel attorneys we have while at the same time increasing the size of the eligible pool.”

District 3: Caroline, Cecil, Kent, Queen Anne’s and Talbot

“The \$50.00 increase will help find new panel attorneys for felonies, juvenile and even district court.”

District 4: Charles, Calvert and St. Mary’s

“The \$50.00 raise did not attract additional qualified attorneys but the \$75.00 increase may attract sufficient quality panel attorneys.”

District 5: Prince George’s

“The quality of panel participants is improved by the new rate; fewer attorneys decline to assist us at the current \$50.00 rate and additional increases should have a substantially similar effect.”

District 7: Anne Arundel

“With the \$50.00 rate, quality attorneys are willing to take cases making the process more efficient for the office and the clients; able to find experienced attorney within days rather than weeks. The \$75.00 rate will open more doors for quality attorneys and more attorneys have signed on since the initial increase, knowing that OPD is trying to garner a rate that is commensurate with quality representation.”

District 9: Harford

“The list of panel attorneys has grown slightly due to the \$50.00 rate increase. Panel attorneys decline to take cases because they cannot do anymore at the current rate. An increase to \$75.00 would allow them to handle a larger portion of their caseload as panel attorneys and it would also increase the number of attorneys who will do panel cases at all.”

District 10: Howard and Carroll

“Quality is good, increase to \$75.00 will ensure continued availability to panel especially in very serious felony cases.”

District 12: Allegany and Garrett

“The district was nearing a crisis situation as conflicts abound in small rural areas. When the fees were increased to \$50.00, there was more success in finding attorneys in the private sector to accept representation in conflict cases. There is a dearth of new attorneys coming into the two western counties as those who are now getting their private practices into gear, they will be willing to do less panel work. If the rate increases to \$75.00, the district might still keep the same crisis as previously existed at bay.”

Appellate

“Each increase in compensation has resulted in an increased commitment to panel work and improved quality of that work.”

Capital Defense

“The need for the increase to \$75.00 is critical in capital defense work. OPD is competing for the same limited qualified attorneys that the Feds are utilizing on their capital cases. The Feds pay \$163.00/hour, compared to our \$50.00/hour. The pool of attorneys with capital experience is extremely small. Low rate will result in loss of experienced attorneys. Qualified attorneys cannot afford to continue to accept these extremely complex, demanding and protracted cases and operate at a loss. It is essential to have a qualified pool of attorneys available that the agency can reasonably compensate.”

Overall, the Districts report that the increase to \$50.00 has made it easier to panel cases and to maintain available and qualified panel attorneys on their lists. However, over half of the Districts indicated that panel attorneys are aware of the agency’s efforts to continue with the three-year plan and are expecting the fees to be raised to \$75.00 and \$90.00. These panel attorneys are continuing to take cases in good faith in anticipation of future increases in panel fees. In addition, the rural jurisdictions, i.e., District 2, District 3, District 4, District 9, District 11 and District 12, traditionally have had and still continue to have a more difficult time than the urban jurisdictions when attempting to panel cases. This is due to the small number of private practitioners in these counties who already have thriving practices without the need to take any OPD panel cases. Thus, more incentive is needed to entice them to take or continue to take panel cases.

2. Follow Up District Survey

In October 2006, the District Public Defenders were presented with a follow up survey to address the following four outcome measures:

- (1) The status of court continuances for paneled cases;
- (2) The status of having to “beg” panel attorneys to accept cases;
- (3) The status of responding to client complaints about panel attorney counsel.

Less Continuances

All seventeen District offices responded to the survey. Only six offices (35%) reported that there are less court continuances for panel cases since the fees were raised to \$50.00 per hour. Although four offices (24%) indicated that court continuances for panel cases were not a problem even at \$30.00/\$35.00 per hour, seven offices or 41% indicated that this is and continues to be an issue in their Districts. The CINA Division survey noted that securing panel attorneys for CINA cases is still a problem in rural areas, especially in Southern Maryland, Western Maryland and on the Eastern Shore. These are areas that have only a few private practitioners who do not take panel cases since they have enough business with their private practice.

Less “Begging”

Twelve out of seventeen (71%) of the Districts report that since the \$50.00 per hour fee increase they are spending less time “begging” panel attorneys to accept cases. This is a tremendous increase over the sixteen Districts (94%) who reported in 2003 that “begging & pleading” was often the only way that District Public Defenders could get panel attorneys to accept cases. Thus, the \$50.00/hour increase has had an impact and this outcome can clearly be measured simply by comparing the numbers. Some additional comments from the survey are worth noting:

District 6: Montgomery

“The increase to \$50.00/hour was a tremendous help in assigning quality panel attorneys. Serious cases are easier to place and more qualified attorneys are now willing to take cases. However, we are still competing with the Federal system for panel attorneys.”

Collateral Review

“The fee increase makes the attorneys more willing to take more complicated cases or cases involving extensive travel.”

Capital Defense

“Though it is still difficult to convince an attorney to accept a death penalty case which is necessarily going to require an extraordinary number of hours to adequately prepare, it has definitely helped that the rate has be increased to \$50.00. Further increases in compensation are necessary to ensure that competent, qualified counsel will be willing to accept appointments in these very difficult and time consuming cases.”

Less Complaints About Panel Attorneys

Finally, seven of the Districts (41%) indicated that it is rare to receive client complaints about panel attorney counsel. However, for 35%, or six Districts, this problem still exists.

The results of the follow-up District survey demonstrate that the increase in panel attorney fees from \$30.00/\$35.00 per hour to \$50.00 per hour has improved participation in OPD panel cases by the private bar. It has also helped retain panel attorneys who otherwise may have stopped doing panel work. There is still a need, however, for competent, qualified panel attorneys who are willing to handle serious felonies in rural jurisdiction cases. The increase to \$75.00 and \$90.00 per hour can help the OPD compete with Federal panel cases and ensure quality representation for OPD clients.

B. Additional Measurable Outcomes

The Panel Committee concluded that a useful way to measure additional outcomes of the effect of the panel rate increase would be to survey panel attorneys themselves and receive their direct feedback on the issue. As a result, in June 2006, the committee surveyed approximately 135 current and former panel attorneys. The surveys indicate that for over two-thirds of those responding, office overhead alone exceeds \$50.00 per hour. Thus the current rate does not cover the office overhead costs, much less provide compensation for work performed. In addition, 98% of these respondents charge \$100.00 per hour or more for their services. The current rate of \$50.00 per hour means that nearly all OPD panel attorneys are losing \$50.00 per hour when they accept a panel case rather than accept a private case. Finally, all of the responding panel attorneys practice in offices with less than ten attorneys. Two-thirds of respondents are solo practitioners. Therefore, they are less able to absorb losses associated with inadequate compensation.

More importantly, panel attorneys surveyed indicated that poor compensation reduces their participation in accepting panel cases. This is evident from the data generated:

- (1) 25% of respondents took no panel cases last year;
- (2) 60% of respondents took ten or fewer cases;
- (3) 80% of respondents stated that they do not take more cases because compensation is so poor;
- (4) 56% of respondents stated that an increase to \$75.00/hour would increase the number of cases they would accept; and
- (5) 83% of respondents stated that they would accept more cases or more complex cases if they were adequately compensated for their work.

The surveys confirm our surmise that low panel rates exploit the good will of our most devoted panel attorneys. Most panel attorneys (71%) take OPD cases because they

are committed to our clients and/or because of their personal friendship with District Public Defenders or Assistant Public Defenders in their Districts.

The individual panel attorney surveys confirm the Panel Attorney Committee's conclusion that the main obstacle to recruiting an adequate panel list still remains inadequate compensation.

Conclusion

Article 27A requires the agency to maintain a list of qualified panel attorneys for each of its case types available to accept panel cases. It has been difficult for the agency to maintain this list due to low compensation rates for panel attorneys. The agency is especially vulnerable with serious felony cases and in its rural districts. Neither the agency nor the state can compel an attorney in private practice to take a panel case. Private attorneys must be willing and available to accept a panel case. In addition, the agency/State of Maryland is obligated to compensate attorneys who do so. The constitutional standard for adequate compensation is the reasonable cost of office overhead plus reasonable value for work performed. Funding the second phase and raising panel fees to \$75.00 per hour will comply with Article 27A, Federal standards and the constitutional mandate to compensate vendors for fair services rendered to state government.