

## Staffing Needs Report

The Office of the Public Defender has experienced a significant increase in staff attorney vacancy rates over the last few fiscal years from an average of 6.37% in FY 2019 to over 11.5% in FY 2022. OPD began FY 2023 with 99 vacant positions (79 attorneys and 20 Core Staff).

	FY 2019	FY 2020	FY 2021	FY 2022
Attorney	6.37%	5.53%	7.32%	11.56%
Core Staff	12.03%	10.64%	11.04%	7.79%

Prior to these unprecedented attorney vacancy rates, OPD hired attorneys twice each year for classes in the Spring and Fall. Now, OPD is in a constant state of recruitment for attorney, Core Staff and contractual positions to stem the ongoing flow of staffing losses occurring each month. OPD has also experienced an increase in retirements which further depletes the institutional knowledge base. The following chart indicates the number of staff departures for each of the 14 months ending in June 2022:

May 21	Jun 21	Jul 21	Aug 21	Sep 21	Oct 21	Nov 21	Dec 21	Jan 22	Feb 22	Mar 22	Apr 22	May 22	Jun 22
11	16	16	14	9	7	8	21	13	9	15	8	6	13

## Staffing Ratio of Fulltime Core Staff per Attorney by District

The chart on the following page indicates the authorized number of fulltime attorneys and Core Staff as of June 30, 2022, by district and division with the standard Core Staff to attorney ratios from the *Maryland Attorney and Staff Workload Assessment (2005)*. As noted above, due to vacancies throughout the year, the number of authorized attorneys and core staff are higher than the number of actual attorneys and core staff. It is also important to note the age of the standards in use. A consortium of the leading national experts on public defender workloads – including the American Bar Association, the RAND Corporation, and the National Center for State Courts -- is developing national attorney workload standards that can be individualized for each state. These standards are expected to be published in late CY2022.

OPD is understaffed for secretaries in all districts except rural Districts 2, 3, 11 and 12 and the Mental Health division which is severely understaffed with attorneys. Rural district offices serve multiple counties and require a secretary assigned to each office for full support.

OPD is understaffed for paralegals in 13 of 16 district and division offices, six of which have no paralegals on staff.

In 2012, OPD investigator positions were abolished in all offices, but the two Eastern Shore districts and the Mental Health division. The rest of the districts and divisions have effectively used contract investigators for the past ten years.

OPD currently has 26 Social Workers on staff, which is 25 below the standard required for the proper ratio to attorneys. No OPD districts or divisions, except the Mental Health Division, which is severely understaffed for attorneys, are within the standard of 8 attorneys per social worker.

OPD must supplement the current staffing with social work contractors which does not ensure a well-trained, reliable or stable source of support, because most contract social workers have multiple client agencies and there is significant turnover in the ranks of those who will accept contact work.

Staffing Ratio of Fulltime OPD Core Staff Per Attorney By District/Division											
Standard per Attorney	Number of Full time Staff At June 30, 2022						Ratio of Fulltime Core Staff to Attorneys				
	Attorney	Secretary	Paralegal	Investigator	Social Worker	Intake	3	11	10	8	
							Secretary	Paralegal	Investigator	Social Worker	
District 1	106.5	15	11	0	6	34	7.1	9.7	0.0	17.8	
District 2	23	6.5	0	3	1	7	3.5	0.0	7.7	23.0	
District 3	24	11	4	4	1	0	2.2	6.0	6.0	24.0	
District 4	27	5	0	0	1	8	5.4	0.0	0.0	27.0	
District 5	55	10	1	0	3	14	5.5	55.0	0.0	18.3	
District 6	35	8	0.5	0	3	9	4.4	70.0	0.0	11.7	
District 7	34	7	2	0	3	7	4.9	17.0	0.0	11.3	
District 8	53	7	3	0	2	8	7.6	17.7	0.0	26.5	
District 9	17	3	0	0	1	4	5.7	0.0	0.0	17.0	
District 10	22	4	0	0	2	4	5.5	0.0	0.0	11.0	
District 11	27	9	1	0	1	3	3.0	27.0	0.0	27.0	
District 12	12	3.5	0	0	0	3	3.4	0.0	0.0	0.0	
Appellate	28	3	1	0	0	0	9.3	28.0	0.0	0.0	
Mental Health	11	6	0	1	2	2	1.8	0.0	11.0	5.5	
Post-Conviction	24	3	1	0	1	0	8.0	24.0	0.0	24.0	
Parental Defense	35	5	5	0	0	1	7.0	7.0	0.0	0.0	

District Offices:

- District 1 – Baltimore City
- District 2 – Dorchester, Somerset, Wicomico, Worcester counties
- District 3 – Caroline, Cecil, Kent, Queen Anne’s, Talbot counties
- District 4 – St. Mary’s, Calvert, Charles counties
- District 5 – Prince George’s County
- District 6 – Montgomery County
- District 7 – Anne Arundel County
- District 8 – Baltimore County
- District 9 – Harford County
- District 10 – Carroll, Howard counties
- District 11 – Frederick, Washington counties
- District 12 – Allegany, Garrett counties

### Average Attorney Caseloads by District for Juvenile, District and Circuit Matters

In the past, OPD has used only new matters as a proxy for caseload, which has been particularly inapplicable in recent years. While the number of new matters has declined, the number of matters that remained pending from prior fiscal years is notably higher. The suspension of jury trials and the reduction in court dockets in FY2020 and FY2021 created a significant backlog. As a result, OPD attorneys were required to significantly expand their pretrial practice, particularly for clients who remained incarcerated for months without resolution to their cases. In this report and future reports, we use the term “caseloads” to represent new matters created that year while “workloads” represent all active matters.

The following Table shows the number of matters per attorney, both for new matters assigned during FY2022 and for all matters that were active<sup>1</sup> at some point during FY2022 for juvenile, district court and circuit court matters by district.

DISTRICT	Juvenile		District		Circuit	
	New Matters	Active Matters	New Matters	Active Matters	New Matters	Active Matters
1	44	<b>134</b>	245	<b>380</b>	70	<b>150</b>
2	110	<b>366</b>	656	<b>1135</b>	119	<b>280</b>
3	136	<b>298</b>	357	<b>644</b>	258	<b>614</b>
4	69	<b>196</b>	595	<b>941</b>	60	<b>144</b>
5	77	<b>239</b>	290	<b>568</b>	69	<b>155</b>
6	60	<b>176</b>	210	<b>477</b>	64	<b>197</b>
7	49	<b>103</b>	589	<b>1087</b>	79	<b>182</b>
8	76	<b>157</b>	798	<b>1145</b>	118	<b>171</b>
9	100	<b>217</b>	391	<b>625</b>	83	<b>206</b>
10	90	<b>310</b>	248	<b>388</b>	98	<b>253</b>
11	93	<b>495</b>	378	<b>707</b>	77	<b>246</b>
12	55	<b>223</b>	279	<b>650</b>	167	<b>502</b>

Standard caseloads established in the *Maryland Attorney and Staff Workload Assessment (2005)* for urban (District1), suburban (Districts 5, 6, 7, 8) and rural (Districts 2, 3, 4, 9, 10, 11, 12) jurisdictions are as follows:

	Urban	Suburban	Rural
Juvenile	182	238	271
District	728	705	630
Circuit	156	140	191

While the number of new matters are generally within standards, the actual workloads are much higher when accounting for matters that began in prior years but remained open. The Work Reduction Program (WRPP) which was initiated in FY2019 helped alleviate the excessive workloads in district court. WRPP funding supports the paneling of district court traffic dockets which significantly lightens the workload for these attorneys.

<sup>1</sup> Active matters are matters in which, during the fiscal year, there was at least one entry in OPD’s case management system other than an entry (a) closing the matter, (b) deeming the client ineligible for public defender services, or (c) assigning a panel attorney.

It is important to note that the American Bar Association (ABA), RAND Corporation, and National Center for State Courts are expected to collectively release new nationwide attorney workload standards in the fourth quarter of CY2022. These standards were developed based on a review of time studies for attorney work across the country that account for advanced forensics, DNA and video evidence which are not accounted for in the outdated Maryland standards currently in use.

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### Statewide Average Attorney Caseloads by Division

The following Table shows the average and standard workloads (from the 2005 *Maryland Attorney and Staff Workload Assessment*) by attorney for the Appellate, Post-Conviction (PCD), Mental Health (MH), Parental Defense (PDD) and Forensics (no standard) divisions as of June 30, 2022.

	New Matters	Active Matters	Standard
Appellate	15	54	32.5
PCD	56	147	70
MH	963	963	833
PDD	33	136	151
Forensics	80	80	n/a

Consistent with the districts, when factoring in all active matters, the statewide division workloads are often above workload standards, with the Mental Health Division and Post-Conviction Division having the greatest disparity. Parental Defense Division standards do not factor in additional hearings for some proceedings that were mandated after the 2005 standards were established.

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**Total Spending on Contractual Employees by Position Classification from 2012 to 2022**

Presented below is the total spending by position classification for contractual employees from FY2012 through FY2022. In addition to the amounts shown, health insurance costs amounting to \$27,672 and \$124,722 were paid for contractual employees in FY2021 and FY2022, respectively.

<b>FY</b>	<b>Secretary</b>	<b>Intake</b>	<b>Admin</b>	<b>Paralegal</b>	<b>Investigator</b>	<b>Social Work</b>	<b>Attorney</b>	<b>Total</b>
<b>2012</b>	14,202	128,267	59,807				34,607	236,883
<b>2013</b>	4,467	49,739	69,556				820	124,582
<b>2014</b>	13,147	77,471	35,428					126,046
<b>2015</b>		54,723	43,843					98,566
<b>2016</b>	21,582	65,230	49,250					136,062
<b>2017</b>	11,292	41,285	34,915					87,492
<b>2018</b>	431,493	163,087	668,816	43,773	23,073			1,330,242
<b>2019</b>	380,675	227,756	670,272	76,844	47,781	41,452		1,444,780
<b>2020</b>	538,871	284,188	680,424	86,639	21,793	11,862		1,623,777
<b>2021</b>	570,899	201,088	603,406	85,743		110,856		1,571,992
<b>2022</b>	631,585	176,267	735,594	118,364	7,008	403,266	36,104	2,108,188

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**Total Spending on Panel Attorneys Assigned to Non-Conflict Matters from 2012 to 2022**

Presented below are the amounts spent on panel attorneys for Parental Defense and Mental Health matters, non-WRPP per diem docket coverage and grants from FY2012 through FY2022. WRPP accounts for an addition \$1.7 million in FY2019 and recently restarted after COVID and budget constraints.

2012 - \$58,652  
2013- \$25,562  
2014 - \$25,993  
2015 - \$96,306  
2016 - \$189,699  
2017 - \$208,162  
2018 - \$243,358  
2019 - \$231,270  
2020 - \$231,270  
2021 - \$366,000  
2022 - \$577,842

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Both the outdated caseload standards and the anticipated national workload standards are efforts to measure how OPD can meet its mandated constitutional government functions. The analysis above indicates that we are significantly understaffed to meet our current workloads. OPD has identified its most pressing needs as circuit court and mental health attorneys, paralegals, social workers, and administrative staff.