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**Maryland Office of the Public Defender  
Fiscal Year 2024 Operating Budget**

**House Appropriations Committee  
Public Safety and Administration Subcommittee  
Delegate Antonio Bridges, Chair  
March 1, 2023**

**Senate Budget & Taxation Committee  
Public Safety, Transportation, and Environment Subcommittee  
Senator Sarah Elfreth, Chair  
March 2, 2023**

Thank you for this opportunity to discuss the FY24 Budget for the Office of the Public Defender (OPD) and to respond to the Department of Legislative Services' Fiscal Year 2024 budget analysis. We wish to recognize our DLS budget analyst, Jacob Pollicove, for his thorough and insightful analysis.

OPD serves an essential role for the State, providing constitutionally-mandated representation to every person eligible for our services across Maryland. Our criminal and juvenile practices have at least one office in every county in Maryland, with a total of 52 offices statewide. We also have nine statewide divisions: parental defense, mental health, post-conviction, appellate, social work, juvenile protection, immigration, forensics, and forensic mental health. Our attorneys are specialized experts who, in addition to their direct client work, collaborate with local partners on addressing systemic concerns, sharing their unique expertise with stakeholders, and connecting OPD clients with appropriate community-based service providers.

OPD provides cogent value on investment that reaches far beyond the courtroom. For example, our Post-Conviction Division and Decarceration Initiative have saved clients from years of needless incarceration and, in doing so, have saved the state millions of dollars in prison costs; our Social Work Division provides multidisciplinary expertise that informs culpability, sentencing options, and long-term client wellbeing and recidivism; our Parental Defense Division keeps families together, reducing foster care and related state costs; and our partnership with the University of Baltimore School of Law Innocence Project Clinic helps prepare the next generation of attorneys for criminal law practice and service.

**FY2024 Request**

OPD's worth in Maryland warrants significant investment, beyond what has been provided in prior years. OPD attorneys carry an excessively high volume of cases that are increasingly more time intensive, and require greater levels of legal expertise, administrative

support, and external services. Excessive workloads reverberate through issues of recruitment, retention, compensation and morale. While OPD has successfully advocated for 27 new attorney positions for FY24 after years of effort, this number represents only an initial phase for meeting staffing requirements.

Our secretaries, paralegals, administrative officers, intake staff, and social workers are the lifeblood of OPD. These core staff members perform essential tasks, but insufficient numbers of permanent positions have required us to rely on contractual employees for extended periods, beyond state norms. The efficiency and effectiveness of our operations are dependent on the level of staffing, expertise and retention of qualified Core Staff and social workers, without whom attorneys are required to perform administrative tasks that further adversely affect workloads. Just as with our attorneys, OPD is working to restructure our Core Staff organization and compensation to reflect their critical experience and impact more accurately, and to support quality recruitment and retention of these valued employees. To that end, OPD seeks to convert contractual employees (i.e. social workers, paralegals, secretaries, and administrative officers) who have been with the agency for more than two years to permanent employees. These contractual employees have worked diligently and have proven critical to OPD attorneys and administrative operations.

Finally, OPD seeks parity with investments made elsewhere in the system. OPD representation in proceedings, such as involuntary commitment cases of our Mental Health Division, and the other demands created by recent and proposed legislation further strain OPD's limited resources. Proposed increases in the Judiciary (judges and staff) and state prosecutorial entities would require approximately 80 additional staff positions (i.e., attorneys, secretaries, paralegals) in FY24 for OPD to meet workload standards for current practice.

### **FY24 Budget Allowance Analysis**

#### *Juvenile Justice and Mental Health Collaboration Program*

OPD has received several federal grants over the past few years and we are always mindful of the sustainability challenges, particularly for personnel funding. OPD does not acquire permanent grant-funded positions. Grant staff are in contractual positions that require permanent funding to continue when the funding is depleted or the grant period ends.

Access to treatment is a significant challenge for OPD clients generally, and especially difficult for young people in rural regions. The Juvenile Justice and Mental Health Collaboration Program (JJMCHP) is a relatively small-scale grant that provides funding for one contractual social worker at OPD and subcontracts most of the remaining funds to a private mental health provider for treatment services to eligible juvenile clients in Wicomico and Somerset counties. The JJMCHP project has successfully expanded the available mental health services for justice-involved youth on the lower Shore and improved our ability to connect appropriate clients with these needed services. The project population focuses on young clients in DJS custody, and these services are often part of a plan to secure their release from detention and/or required for them to remain at home. The continuation of services after the grant end date (September 30, 2023) will require additional funding for the social worker position.

## *Vacancies*

OPD is incorporating a multi-faceted approach to filling our existing vacancies. While heightened recruitment efforts continues, we are already seeing the fruits of our efforts. In FY22, OPD lost 79 attorneys. As of this writing, OPD has 67 attorney vacancies – a net gain of 12 positions filled.

The new Recruiting Director, hired in October 2022, has restarted the pipeline interrupted by COVID. Under her leadership, we are actively engaging law schools and lawyer membership organizations, such as the Maryland State Bar Association and the National Association of Public Defenders, to advertise positions, host informational sessions, and attend job fairs. We also work creatively to address specific barriers for particular attorney positions, such as offering locality pay differentials for the more difficult to recruit rural counties. We currently have 12 active recruitments for various attorney grades (APD I to DPD) posted on various State and private websites, social media, and with 30 legal organizations. In addition to recruiting existing attorneys, OPD also invests in recruiting law school students to create a pipeline for future hires.

The ASR will address the retention issues that have exacerbated excessive workloads and fed into the recruitment and vacancy challenges. In FY22, we lost 26.3 % of our attorney workforce, with 33 of those positions being our most seasoned Assistant Public Defender III (APD III) level attorneys. APD IIIs handle the most serious felony cases, such as murder and sexual assault, and require prior criminal defense experience. Without sufficient advancement opportunities, APD IIIs leave OPD for more lucrative positions. Attorneys are trained over time to be able to handle the complex cases assigned to APD IIIs, and often reach the end of their upward career path within 5 years. The ASR will allow for OPD to promote existing staff into higher paid positions, while also filing vacancies with entry level APDs hires who are easier to recruit.

A definitive timeline for filling positions to reduce vacancies is impossible to provide, due to the barriers and timeliness of attorney recruitment. Employment with OPD is contingent on applicants successfully passing the bar to meet the minimum qualifications for a position. The number of experienced and qualified attorneys seeking employment in indigent defense fluctuates. In addition, a prospect must be willing to accept a starting salary that is not competitive to those in the surrounding areas. The ASR positions, also provide salary increases bringing OPD staff to closer pay parity with surrounding public defense offices and other governmental lawyers.

The new ASR positions represent a strategic investment which will allow for promotion from within the agency. These new positions differ from existing positions as they establish a higher grade of trial attorney, Senior APD III, and expand career pathing which does not currently exist for non-managerial circuit court attorneys. The succession of internal promotions resulting from the new positions will allow for greater retention of seasoned attorneys and focused recruitment on entry level attorneys.

### *Staff Redistribution*

OPD's Human Resources Department is very adept at deployment of all open staff positions in district operations (district, juvenile and circuit court) according to geography, areas of law, experience, workload trends. Specialty Division vacancies (Post Conviction, Parental Defense, Appellate and Mental Health) are deployed from current resources wherever possible, but require different skill sets from criminal and juvenile trial practice.

OPD is assessed on aggregate headcount and vacancies, but this breakdown does not accurately reflect OPD's 52 office locations across the State. Existing personnel cannot fill a need anywhere in the state. A staff member who lives in Hagerstown, for example, cannot be redeployed to fill a need in Salisbury. Efforts to reallocate vacant positions to areas where the current workload is disproportionately higher than comparative areas are similarly difficult for some geographic areas and for some areas of practice.

OPD's high workloads and noncompetitive pay have further delayed our ability to address some of the reallocation efforts. We have few, if any, areas where we are adequately staffed. Therefore, transferring current insufficient resources from one location to another often only results in increasing areas in crisis.

The conversion of 20 contractual personnel to permanent employees will allow for redeployment of contractual personnel to areas of need and alleviate administrative workloads for attorneys. The national workload standards to be released this year will also inform deployment decisions.

### *Hiring Practices*

Hiring practices are not dispositive or reflective of OPD's vacancy rate. Our recruitment and retention challenges directly correlate to workload and pay. Of the 109 attorney job offers made in FY22, 21 were rejected or withdrawn, mainly because of salary. Likewise, excessive workloads have led to attorney turnover, which has been further exacerbated by COVID and the "Great Resignation."

Until we are able to reduce workloads with additional positions and increased salaries for current and future staff, we will remain in this crisis situation. OPD must have the opportunity to be competitive. Even after a couple of years of attorney salary increases, OPD's salary structure remains not competitive to recruit and retain the staff necessary to provide quality representation to our clients. Our attorneys acquire valuable trial experience, which makes them highly desirable to other public and private legal firms where they can earn more money and maintain a smaller workload. OPD salaries lag those offered by other State agencies, private firms, neighboring states' public defender offices, and the federal government.

OPD needs human capital and resources. Additional resources serve to meet the day-to-day challenges and volume of work OPD faces on behalf of our constituents in the State, to keep pace with the changing legal environment across the State, and to mirror the resources and efforts allocated to other entities that affect public defense in the State. We must adequately compensate our attorneys and Core Staff for the work performed, in order to recruit, retain and

promote them. Our employees have earned this. Our clients deserve this. Value on investment in OPD is ensuring “Justice, Fairness and Dignity for All.”