



NATASHA DARTIGUE
PUBLIC DEFENDER
KEITH LOTRIDGE
DEPUTY PUBLIC DEFENDER

**Maryland Office of the Public Defender
Fiscal Year 2025 Operating Budget**

**House Appropriations Committee
Public Safety and Administration Subcommittee
Delegate Jazz M. Lewis, Chair
February 14, 2024**

**Senate Budget & Taxation Committee
Public Safety, Transportation, and Environment Subcommittee
Senator Sarah K. Elfreth, Chair
February 16, 2024**

Thank you for this opportunity to discuss the FY25 Budget for the Office of the Public Defender (OPD) and to respond to the Department of Legislative Services' Fiscal Year 2025 budget analysis. We wish to recognize, Jacob Pollicove, OPD's DLS budget analyst, for his expertise and thorough, insightful analysis.

For the past 19 years, since the 2005 Maryland Work-study Standards were published for the Agency, OPD has been reporting on the growing crisis of excessive workloads for our attorneys and Core Staff and advocating for additional staff. Over the past decade, while the number of our staff attorneys has remained relatively static and Core Staff positions in the districts have been eliminated, time commitments for client representation have exploded due to new investigative technologies, expansion of electronic and DNA evidence, and resource growth for policing and judiciary. OPD has fallen behind year after year in terms of resources and the ability to affect excessive workloads.

As indicated in last year's budget presentation, The [National Public Defense Workload Study](#) (National Study) was released on September 12, 2023. The National Study establishes guidelines for how many cases a public defender should handle, based on the number of hours a specific category of cases requires. The National Study stresses the need to maintain manageable workloads and ensure lawyers devote sufficient time to each of their clients. The study was led by a team of attorneys and researchers from nationally known organizations, including the RAND Corporation, the National Center for State Courts, the Law Office of Lawyer Hanlon, and the American Bar Association Standing Committee on Legal Aid and Indigent Defense.

The National Study focuses exclusively on attorneys providing adult criminal trial representation. As a result, it does not address OPD's entire practice of law (appellate, juvenile, mental health, parental defense, and post-conviction), nor do it account for non-attorney needs (secretaries, clerks, social workers, paralegals, intake, investigators). By its nature, the National

Study is not tailored specifically to Maryland practice and left several key components unaddressed. Nonetheless, the National Study provides a clear picture that excessive workloads are a pervasive problem. The study provides a roadmap on how to improve an overtaxed public defense system; offers a data-backed basis for funding and staffing estimates; and creates a framework for conducting appropriate oversight and establishing workload expectations.

Our analysis indicates that OPD requires 2.5 to 3 times the current number of adult criminal attorneys to grapple the problems revealed by the National Study. We have a multi-pronged strategy to close, if not shorten, the gaps of representation, workload, and time for Maryland public defenders’:

RECRUITMENT

Renewed recruitment efforts (hiring fairs, campus visits, community events, and targeted advertising) have resulted in a significant number of offers to qualified individuals. The hiring fairs alone yielded 68 offers made in the last 5 months.

- September 2023 hiring fair - 39 scheduled, 45 interviews, 38 offers made, 31 accepted offers.
- November 2023 hiring fair -15 scheduled, 13 interviews, 12 offers made, 10 accepted offers.
- February 2024 hiring fair - 23 scheduled, 19 interviews, 18 conditional offers made. Start dates will range between March 2024 through September 2024.
- 17 active recruitments for various attorney grades (APD I to DPD)

Status of vacancies:

As of January 31, 2024, there are 80.5 vacant attorney positions (13.75% vacancy rate), 31.0 vacant Core Staff positions (8.76% vacancy rate); 11.88% overall vacancy rate. On July 1, 2023, OPD received 55 PINS. It is important to note with the addition of new attorney PINS the attorney vacancy rate rose to 18.36%. The current attorney vacancy rate of 13.75% reflects a significant **25% decrease from July 2023**.

RETENTION

OPD continues to face retention challenges due to salary inequities with other similarly situated State agencies, and minimal employee incentives. OPD’s current workload and retention challenges are due to:

- Not having pay parity with the Office of the Attorney General.
- No increases for Core Staff employees to address historical salary inequities.
- Lack of mechanism that provides continued funding of licensing and certification fees for applicable employees.
- Lack of paid legal intern and law clerk program.

- Lack of Core Staff position growth in proportion to other criminal justice stakeholders such as the Judiciary.

WORKLOAD STUDY

The National Study has shown that OPD's current attorney staff level is woefully inadequate, and all staff members are dangerously overworked. The National Study necessitates a threefold increase in OPD's attorney workforce to meet recognized standards. To meet the national public defense standard in district and circuit courts alone, would require OPD to obtain an additional 873 new attorney positions. When we factor in other areas of law, this number climbs to 920 new positions. This profound understaffing directly impacts morale, job satisfaction, and the quality of legal representation our attorneys can provide. OPD aims to tackle the problem over the course of three to five years.

The efficiency and effectiveness of OPD operations are dependent on the legal expertise, staffing levels, and retention of qualified attorneys and non-attorney staff members. Without sufficient staff, attorneys are required to perform administrative and additional tasks that further adversely affect workloads. Competitive salaries for Core Staff are key to maintaining a strong work force. Core Staff handle time-consuming and non-legal tasks, allowing attorneys to focus on their core responsibilities of providing quality legal defense. This will not only reduce stress and burnout, but also enhances the efficiency of our legal teams. Core Staff allow for streamlining operations, reducing paperwork bottlenecks, and improving overall organizational productivity.

The data from the National Public Defense Workload Study makes it clear that OPD is facing a staffing crisis that threatens the quality of legal defense and the well-being of dedicated professionals. It is imperative that a Maryland specific workload study is conducted. The National Study is an important tool to assess current conditions but does not include important areas of Maryland criminal law practice, necessary non-attorney positions, all categories of offenses, differentiation of courts, or OPD's different divisions. OPD will conduct a Maryland Public Defense Workload Study and has begun the procurement process. Currently, OPD is in the process of obtaining RFPs. Additional funding will be necessary to effectuate the Maryland specific workload study and obtain a critical analysis of OPD's overall staffing needs.

Responses to the DLS Budget Analysis

(OPD should comment on) The Department of Legislative Services (DLS) recommendation that the budgeted turnover adjustment for OPD be reduced by \$1.7 million for existing regular positions in order to align the budgeted amount more closely with the agency's current vacancy rate and by \$816,719 for new regular position salaries in order to account for the time needed to fill newly created positions after the start of the fiscal year.

OPD respectfully disagrees with DLS' recommendation to increase the budgeted turnover rates for existing positions from 5.88% to 7.50% and for new positions from 5.90% to 25.00%. Increases will put undue pressure on OPD's budget as our renewed recruitment efforts are starting to bear fruit. On July 1, 2023, OPD received 55 PINS. It is important to note with the addition of new attorney PINS the attorney vacancy rate rose to 18.36%. The current attorney vacancy rate of 13.75% reflects a significant **25% decrease from July 2023**.

(OPD should comment on) DLS' recommendation of the adoption of committee narrative requesting a report on attorney hiring and retention in fiscal 2019 through 2024 and average attorney caseloads in fiscal 2024.

Caseloads: The National Study serves as a benchmark but did not include consideration of important points such as Maryland criminal law practice, necessary non-attorney positions, all categories of offenses, differentiation of courts, or OPD's different divisions. Consequently, OPD will conduct a Maryland Public Defense Workload Study and is currently in the process of obtaining RFPs. Additional funding will be necessary to effectuate the Maryland-specific workload study and obtain a critical analysis of OPD's overall staffing needs. It is anticipated that a vendor will be selected by Fall of FY 2025.

Hiring & Retention: OPD will be able to provide the requested report on attorney hiring and retention for FY 2019-FY 2024 by the December 1, 2024, deadline.