



Department of Legislative Services
Office of Legislative Audits

**Office of the Public Defender
Performance Audit Report**

Report Dated November 19, 2009



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Background - Organization

- OPD consists of 7 divisions and 12 district offices located throughout the State.
- Legal services are provided to indigent persons at all stages of criminal proceedings.
- Staffing increased from 763 positions in FY 02 to 1,007 in FY 08. Attorney positions increased from 420 to 565 over that period.
- Due to budgetary cost constraints, the number of positions was reduced to 928 for FY 2010 (per the FY 11 budget book).



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Background – Financial

- OPD received deficiency appropriations for 12 of the 15 fiscal years from 1995 to 2009 totaling \$21.9 million.

- For fiscal year 2009, expenditures totaled \$91.1 million, a 56% increase since FY 02. This increase was primarily due to the increase in positions.

- FY 09 expenditures did not exceed OPD's original appropriation plus a \$3.5 million deficiency appropriation.



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Background – Other Information

- OPD contracted with National Center for State Courts to develop caseload standards using 2003 – 2004 data.
- Adoption of caseload standards and comparison of these standards with existing staffing levels and caseloads indicated a need for substantial increase in resources to meet standards.
- In FY 04, OPD implemented an integrated automated case management system , at a cost of \$4 million, to track detailed case information and provide caseload statistics and data for management oversight.
- Based on available data, Maryland costs per case appear to be lower than other states with a similar office structure, primarily due to a greater use of in-house resources by OPD.



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Audit Objectives

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 OLA's November 2001 performance audit.
3. Determine the current status of OLA recommendations contained in that 2001 audit report.



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Audit Methodology

- Evaluate the OPD budget process by reviewing procedures for estimating future costs and examining documentation to support budget requests, including requests for funding over the budget target.
- Reviewed controls and processes to control costs and monitoring spending.
- Interviewed district staff for case intake and reporting procedures.
- Tested accuracy of automated case management records.
- Compiled case statistics and analyzed caseloads.



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Key Audit Issues

- OPD frequently required deficiency appropriations to fund operating expenditures as it was unable to manage its costs within the allotted budget.
 - OPD frequently carried forward unfunded expenditures into the following fiscal year.
 - Funding issues appear to be rooted in difference between OPD anticipated needs and budget targets.
 - Budgets included some unrealistic assumptions to meet targets.
 - Caseloads per attorney decreased but still often significantly exceeded recommended caseloads.
 - OPD generally made substantial progress in complying with the recommendations made in the November 2001 audit report.
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Objective 1 – Budgetary and Funding Issues

- OPD received deficiency appropriations for 5 of 8 fiscal years from 2002 to 2009 and has carried over unfunded expenditures in 3 of the past 5 fiscal years. (Finding 1)
- Excluding deficiency appropriations, operating (non-payroll) expenditures exceeded the related appropriation each year from 2005 to 2009 and payroll costs exceeded the related appropriation 4 out of 6 years from FY 04 to 09.
- Excess expenditures have a variety of causes including an increase in panel attorney fee rate in FY06, lower than expected turnover rate in FY08 and higher panel attorney costs in FY 09.



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Objective 1 – Budgetary and Funding Issues

- 90 percent of expenditures relate to salaries and benefits and other personnel costs. Historically, OPD has staggered the hiring of new staff throughout the fiscal year as a method to control costs. However, these actions have not been sufficient in meeting appropriated amounts for payroll costs.
- OPD 's position has historically been that the legal mandate to provide representation to all eligible clients who request services is more critical than reducing costs to meet appropriations.
- Due to the high percentage of salary related costs, OPD has limited ability to influence total expenditures through cost-cutting in other areas.



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Objective 1 – Budgetary and Funding Issues

- OPD budget submissions sometimes used unrealistic amounts to meet targets. Budgets submitted by OPD met DBM established targets. (Finding 2)
 - FY 08 – Artificially high turnover of 7% (DBM budget instructions specify a rate of 2%-4%). Actual turnover was less than 4% (which is in line with historical averages).
 - FY 09 – No funds requested for panel attorney fees (which average \$4 to 5 million per year)
 - FY 10 – Reduced amounts for panel attorney fees and other costs to meet budgeted target. Used highest specified turnover rate.
 - Financial monitoring could be improved, including better tracking of certain costs such as panel attorneys. (Finding 3)
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Objective 2 – Case Management

- Overall average caseloads per attorney have decreased since CY 03 due to additional positions and a relatively stable caseload. However, caseloads for a number of specific districts and types of cases have increased. (Finding 6)
- CY 07 caseloads for many districts exceeded established standards by 25% or more for at least one type of case. For example, the Circuit Court caseload per attorney exceeded recommended standards by over 25% in 9 of 12 districts. In 2 districts, caseloads for all types of cases exceeded recommended standards by more than 25%. OPD did not routinely reallocate attorney positions to minimize caseload disparities. (Finding 7)



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Objective 2 – Case Management

- OPD calculations for additional attorneys needs to meet caseload standards understated the actual number of attorneys needed. OPD prepared the calculation in a report submitted to the General Assembly in August 2008. (Finding 8)
- The case management system was not used as a tool to monitor the efficiency of operations. (Finding 10)
- While the audit disclosed certain issues with annual reviews of case management system statistics, our testing found that the information recorded in the system was generally accurate. (Findings 11 and 12)



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Objective 3 – Current Status of Prior Report

- The audit found that OPD generally made substantial progress in implementing the recommendation of our November 2001 audit, see the Table below.

Table – Current Status of Recommendations Contained in November 2001 Performance Audit Report

| Finding | Recommendation | Current Status |
|---------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|
| 1 | OPD, in conjunction with DBM, identify the operational and funding requirements for a comprehensive case management system. As part of the process, OPD should conduct research to identify and evaluate other states' systems for use as a benchmark and to save development time and costs | Substantial Progress |
| 2 | OPD establish caseload standards for its attorneys and compare its actual experience to these standards. OPD should present this data in its annual budget requests. | Completed |
| 3 | OPD, in conjunction with DBM, identify all inadequacies related to its budget requests and implement corrective action(s). OPD should obtain agreement from DBM on interim supporting documentation that will be acceptable until OPD could fully comply with DBM's requirements for reliable caseload statistics. | Substantial Progress |



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Objective 3 – Current Status of Prior Report

**Table – Current Status of Recommendations Contained in
November 2001 Performance Audit Report**

| Finding | Recommendation | Current Status |
|---------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------|
| 4 | OPD use available information to make reasonable budgetary requests. | In Progress |
| 5 | OPD develop and implement an appropriate system to ensure compliance with the Managing for Results requirements. OPD should ensure that its strategic planning process links MFR goals, objectives and measures with budget requests and initiatives. | OLA did not follow up |
| 6 | 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. | Substantial Progress |
| 7 | OPD implement an appropriate process to improve the timeliness of internal financial reporting and monitoring of budgets for the divisions and district offices. | No Progress |
| 8 | OPD should identify the training needs and develop an appropriate training programs for managers and other key staff with financial management and budgeting responsibilities. OPD should include appropriate funding for this fiscal training in its annual budget requests | Completed |



Conclusion

Since 2001, OPD made improvements to its budgeting, fiscal monitoring and case management processes. Further actions are needed to meet budgets, control costs and ensure efficient operations.