

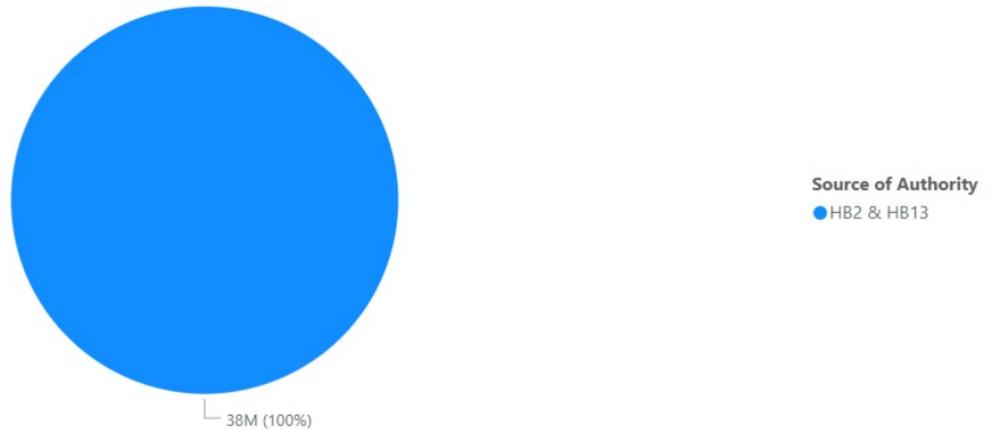
# OFFICE OF PUBLIC DEFENDER

## (Spending report July 1 through November 30, 2021)

### TOTAL APPROPRIATION AUTHORITY

The total appropriation authority for the agency is shown in the pie chart below. HB 2 and HB 13 provide 100.0% of the total authority for this agency. All types of appropriation authority for this agency are described below, including total budget and the percent expended by source of authority.

Total Modified Budget by Source of Authority



Source of Authority	Modified Budget	Expended Budget	Percent Expended
HB2 & HB13	38,497,597	15,374,944	39.9%
<b>Total</b>	<b>38,497,597</b>	<b>15,374,944</b>	<b>39.9%</b>

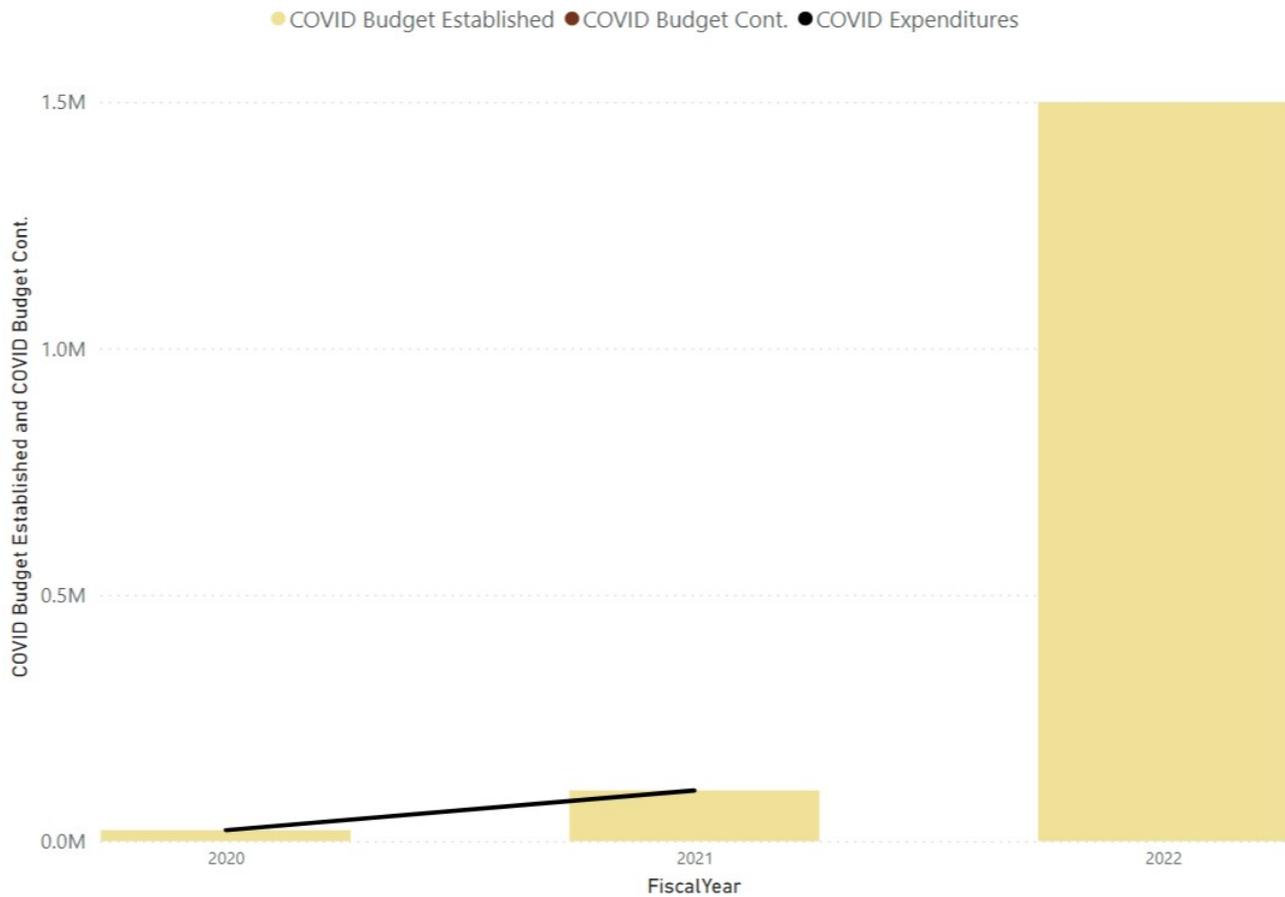
- FiscalMonth**
- Select all
  - Jul
  - Aug
  - Sep
  - Oct
  - Nov
  - Dec

Through November of FY 2022, the Office of Public Defender (OPD) has only HB 2 and HB 13 appropriation authority.

### COVID-19 Authority

The following chart is provided to allow the legislature to examine the funding that is available to the agency for COVID-19 impacts. Administrative authority for CARES I and ARPA appropriations was allocated to the agency by the Governor’s Office. Administrative authority is not an appropriation and thus is not included in the total appropriation authority shown on the previous page.

COVID Established Budget, COVID Continuing Budget, and COVID Expenditures by Fiscal Year



The OPD expended all their authority from CARES I in FY 2021. In FY 2022, OPD was provided a \$1.5 million allocation from HB 632, ARPA. In a memorandum to the Economic Transformation and Stabilization and Workforce Development Advisory Commission dated October 27, the commission was advised that working cases open in OPD increased from 7,789 in mid-2020 to 9,687 in mid-2021 in Region 9, which includes Yellowstone County. The COVID-related case backlog had increased earlier in the pandemic and between June and August of 2021 another 147 suspects for new crimes were released pending trial or revocation, which is almost a 49.0% increase over the same period in 2020. The agency was allocated \$1.5 million of federal “revenue replacement” funds to address this backlog (Note: the Department of Justice also receive an allocation of \$815,000). A link to the memorandum is included below, and the subject of the memo is “Addressing Significant Violent Crime Increase to Economically Stabilize Billings,” which can be found on page 9 of the document.

<https://leg.mt.gov/content/publications/fiscal/2023-Interim/November-2021/LFC-Request-for-Meeting.pdf>

## HB 2 BUDGET MODIFICATIONS

The following chart shows the HB 2 budget as passed by the legislature, including the pay plan, and the HB 2 modified budget through November 30, 2021. Net modifications to the budget include operating plan changes from one expenditure account to another, program transfers, reorganizations, and agency transfers of authority. The **positive modifications** and **negative modifications** are shown by program, expenditure account, and fund type.

### Legislative Budget Compared to Modified Budget - HB 2 Only

Agency Name	Legislative Budget	Modified Budget	Net Modifications
<b>Public Defender</b>	<b>38,497,597</b>	<b>38,497,597</b>	<b>0</b>
APPELLATE DEFENDER DIVISION	2,413,841	2,349,994	-63,847
CENTRAL SERVICES DIVISION	3,541,959	3,671,273	129,314
CONFLICT DEFENDER DIVISION	9,024,928	8,851,157	-173,771
PUBLIC DEFENDER DIVISION	23,516,869	23,625,172	108,303
<b>Total</b>	<b>38,497,597</b>	<b>38,497,597</b>	<b>0</b>

Acct & Lvl 1 DESC	Legislative Budget	Modified Budget	Net Modifications
61000 Personal Services	27,210,284	27,210,284	0
62000 Operating Expenses	11,287,313	11,287,313	0

Fund Type	Legislative Budget	Modified Budget	Net Modifications
01 General	38,497,597	38,497,597	0

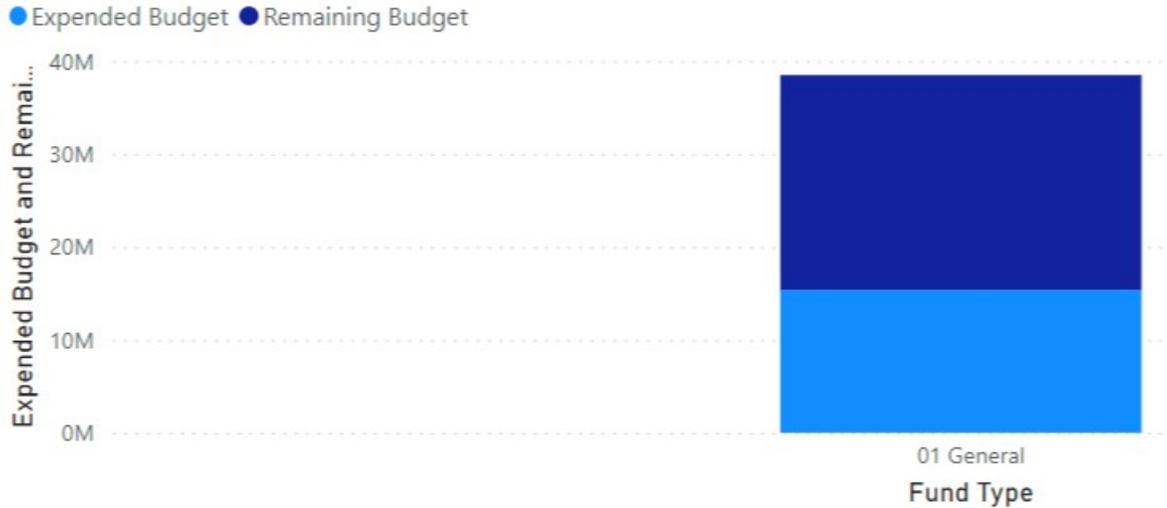
Through November, OPD did not make budget modifications that changed appropriations by account level or fund level. As shown in the figure above, the department transferred FTE and the associated budget authority between programs. The funding for the changes was retained in the personal services account and were funded with general fund. The details of these changes include:

- \$63,847 reduction of the funding to reduce 1.00 FTE in the Appellate Defender Division
- \$129,314 increase of the funding to increase 1.50 FTE in the Central Services Division
- \$173,771 reduction of the funding to reduce 1.50 FTE in the Conflict Defender Division
- \$108,303 increase of the funding to increase 1.00 FTE in the Public Defender Division

## HB 2 APPROPRIATION AUTHORITY

The following chart shows the appropriated budget for the agency compared to expenditures through November 30, 2021.

### Expended Budget and Remaining Budget by Fund Type - HB 2 Only



acclv1_descr	Modified Budget	Expended Budget	Percent Expended
Personal Services	27,210,284	10,175,817	37.4%
Operating Expenses	11,287,313	5,199,127	46.1%

Program Name	Modified Budget	Expended Budget	Percent Expended
APPELLATE DEFENDER DIVISION	2,349,994	909,188	38.7%
CENTRAL SERVICES DIVISION	3,671,273	1,936,414	52.7%
CONFLICT DEFENDER DIVISION	8,851,157	3,067,954	34.7%
PUBLIC DEFENDER DIVISION	23,625,172	9,461,389	40.0%
<b>Total</b>	<b>38,497,597</b>	<b>15,374,944</b>	<b>39.9%</b>

Through November, OPD expended \$15.4 million, or 39.9%, of the modified HB 2 budget. The figure at the top of this page explains the HB 2 funding. The OPD HB 2 budget is entirely funded with general fund and the spending through November was funded with 100.0% of general fund.

Expenditures through November were 39.9% of the modified budget, slightly higher than the five-year annual average of 39.0%, and higher than expenditures in the same period of FY 2021, 36.8% of the budget. Changes from the historic averages occur in the personal services where the spending is higher (historic – 36.0% of the personal services budget). Personal services costs are \$682,885 higher than the costs of FY 2021 (through November).

Through November, the department's expenditures are weighted to personal services, accounting for 66.2% of total HB 2 budget. In personal services, OPD expended \$10.2 million, of which \$7.7 million or 75.7% was expended in the Public Defender Division for public defender services across the state.

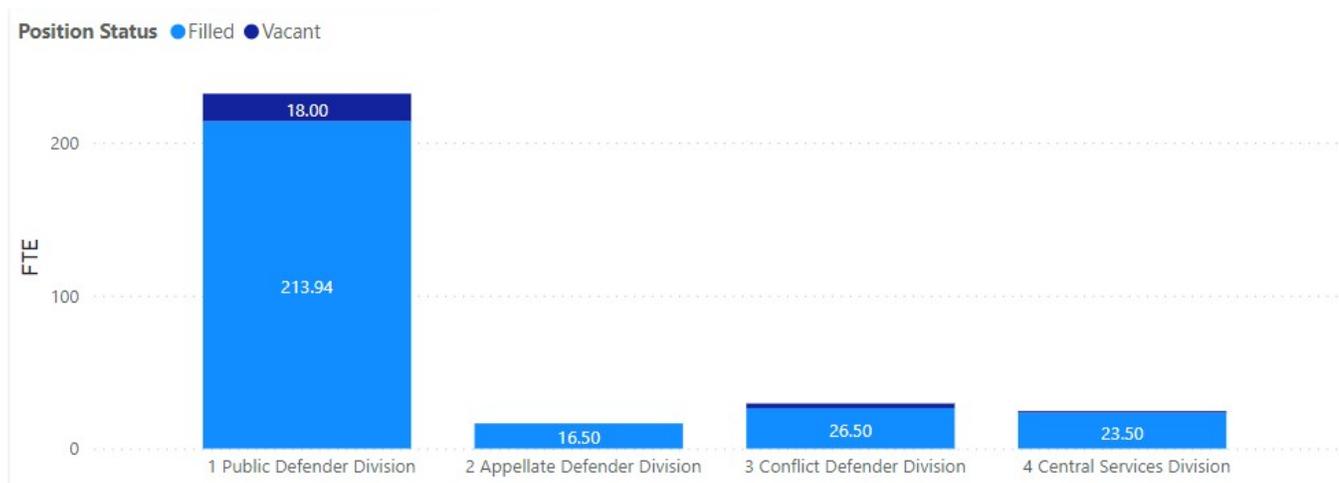
As shown in the figure above, the Central Services Division expended 52.8% of the HB 2 modified budget, higher than the 39.0% average of the previous five years. The increased spending occurred in operating expenses and was related to computer hardware maintenance, where expenditures were \$714,702 or 61.7% of the operating expenses spending in the program. Most of these costs were for continuing development of the case management system and will be moved to a capital account code once the costs are finalized.

The 2021 version of HB 2 included the following line-items that are summarized as follows:

- \$197,326 of appropriations for caseload growth contingencies in the Public, Appellate, and Conflict Defender Divisions. The appropriations may be expended only after the budget director certifies that the number of cases worked on meets or exceeds 0.5% growth as compared to the same quarter in the prior fiscal year. Through November there have been no expenditures related to the authority
- \$150,000 of appropriation in the Central Services Division for improvements in the case management system that is restricted to the implementation of a time keeping system. As of November, there have been no expenditures related to this authority

## Personal Services

The following chart shows the filled and vacant FTE within the agency as of November 1, 2021.



In FY 2022, OPD is budgeted for 302.44 FTE. From the total FTE, the OPD had 22.00 positions vacant as of November 1, 2021. According to the State Human Resources data, 81.8% of the vacant positions were classified as lawyers. As mentioned above, OPD transferred FTE among programs, with 1.00 FTE moved from the Appellate Defender Division to the Public Defender Division (attorney position) and 1.50 FTE moved from the Conflict Defender Division to the Central Services Division (accountant and contract manager). According to OPD, the vacancies can impact services by delaying case assignments, shuffling clients around, delaying resolutions, increasing client stress, and directly affecting staff morale and burnout.

As of November 17, OPD reports vacancies of legal staff in the following locations:

- Billings – five lawyer-2 positions
- Missoula, Kalispell, Helena – two lawyer-2 positions
- Glasgow, Great Falls Havre, Hamilton, Polson – one lawyer-2 position

## OTHER ISSUES

### Information Technology Project Expenditures

As mentioned earlier in this report, through November OPD expended \$714,702 on computer hardware maintenance, mostly on the case management system, in the Central Services Division. The case management system offers various ways to track the time of employees and offers tools that will allow management to monitor and follow up with employees on completing these timely entries. For more information on these expenditures along with discussion of the case management system restricted appropriation, see the HB 2 expenditures section of this report.

## REQUIRED REPORTS

HB 2 required OPD to report to the Office of Budget and Program Planning on the following:

The number of new cases filed, and the number of cases worked on by Office of State Public Defender employees. Cases worked on are defined as follows:

- A case was opened
- An OPD employee charged time directly related to the case
- An OPD contractor submitted a valid and approved claim for work related to the case
- Two or more of the following events took place during a calendar month:
  - the case was in an open status; the case went from inactive status to closed status
  - an Office of State Public Defender employee generated a document related to the case
  - a non-continued, non-vacated court or client-related event took place

<https://leg.mt.gov/content/publications/fiscal/2023-Interim/July-2021/HB-693-LFC-Memo-July-2021.pdf>

HB 693 Reporting – This legislation requires reporting by the OPD on the following items as of this report (note: other HB 693 reporting is due later in the biennium):

- 1) By July 1, 2021, the Office of State Public Defender shall report to the Legislative Finance Committee on what measures it is taking in FY 2022 and FY 2023 to ensure that its employees are accurately and completely making time entries that demonstrate how much time is:
  - a) dedicated to core tasks;
  - b) spent on specific cases; and
  - c) spent on tasks other than those required to meet the constitutional requirement to provide counsel for individuals not financially able to afford counsel for crimes if jail or prison time may be the punishment if convicted.
- 2) By July 1, 2021, the Office of State Public Defender shall report to the Legislative Finance Committee on what it will do in FY 2022 and FY 2023 to address the concerns identified by the Legislative Audit Division in 2020 regarding billing practices by contractors, including the failure to require the use of assistants for non-attorney tasks, and allowing contractors to work a number of hours each year that may induce attorneys to be contractors instead of the office of state public defender employees.

<https://leg.mt.gov/content/publications/fiscal/2023-Interim/July-2021/HB-693-LFC-Memo-July-2021.pdf>

47-1-125. Reports. (1) (a) The office shall submit a biennial report to the governor, the supreme court, and the law and justice interim committee in accordance with 5-11-210.

- (b) The biennial report must cover the preceding biennium and include:
- (i) all policies or procedures in effect for the operation and administration of the statewide public defender system;
  - (ii) all standards of practice established or being considered by the director for the public defender division, the appellate defender division, and the conflict defender division;
  - (iii) the number of deputy public defenders and the region supervised by each;
  - (iv) the number of public defenders employed or contracted with in the system, identified by region, if appropriate, and office;
  - (v) the number of nonattorney staff employed or contracted with in the system, identified by region, if appropriate, and office;

- (vi) the number of new cases in which counsel was assigned to represent a party, identified by region, court, and case type;
  - (vii) the total number of persons represented by the public defender division, the appellate defender division, and the conflict defender division identified by region, if appropriate, court, and case type;
  - (viii) the annual caseload and workload of each public defender identified by region, if appropriate, court, and case type;
  - (ix) the training programs conducted by the office and the number of attorney and nonattorney staff who attended each program;
  - (x) the continuing education courses on criminal defense or criminal procedure attended by each public defender employed or contracted with in the system; and
  - (xi) detailed expenditure data by court and case type.
- (2) The office shall report data for each fiscal year by September 30 of the subsequent fiscal year representing the caseload for the entire statewide public defender system to the governor, the legislature in accordance with 5-11-210, and legislative fiscal analyst. The report must include unduplicated count data for all cases for which representation is paid for by the office, the number of new cases opened, the number of cases closed, the number of cases that remain open and active, the number of cases that remain open but are inactive, and the average number of days between case opening and closure for each case type. The report must be provided in an electronic format.
- (3) (a) For the fiscal year beginning July 1, 2011, and every 5 years thereafter, the legislative fiscal analyst shall compare the percentage change in general fund revenue for the previous 5 years to the percentage change in the amounts allocated to local governments under the provisions of 15-1-121, as amended in 2005, and the actual costs for public defender services for the same time period.
- (b) The results of the comparison must be reported to the governor, legislative finance committee, law and justice interim committee, and supreme court the following fiscal year and in accordance with 5-11-210.

Note: OPD is working on the biennial report, but it is not yet complete.