

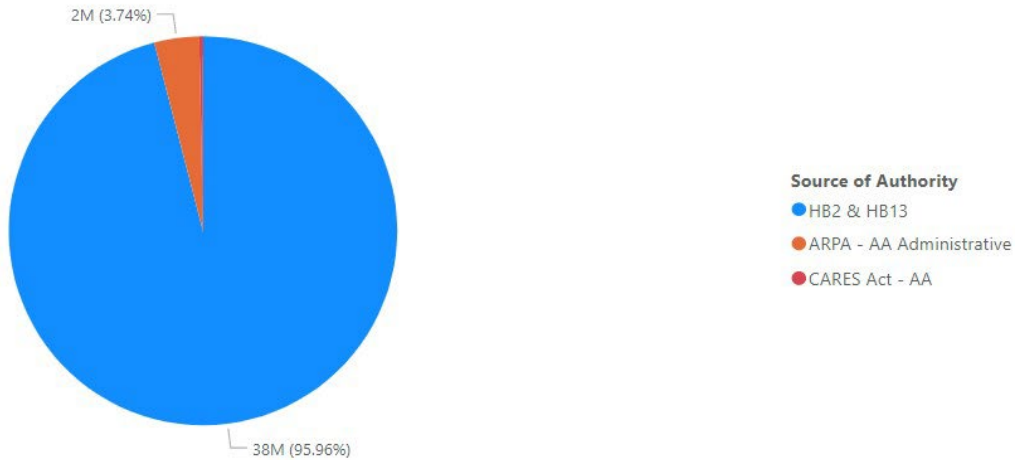
OFFICE OF PUBLIC DEFENDER

(Spending report July 1, 2021 through February 28, 2022)

TOTAL APPROPRIATION AUTHORITY

The total appropriation authority for the agency is shown in the pie chart below. HB 2 and HB 13 provide 96.0% 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	24,677,699	64.1%
CARES	121,913	121,913	100.0%
ARPA	1,500,000	50,500	3.4%
Total	40,119,510	24,850,113	61.9%

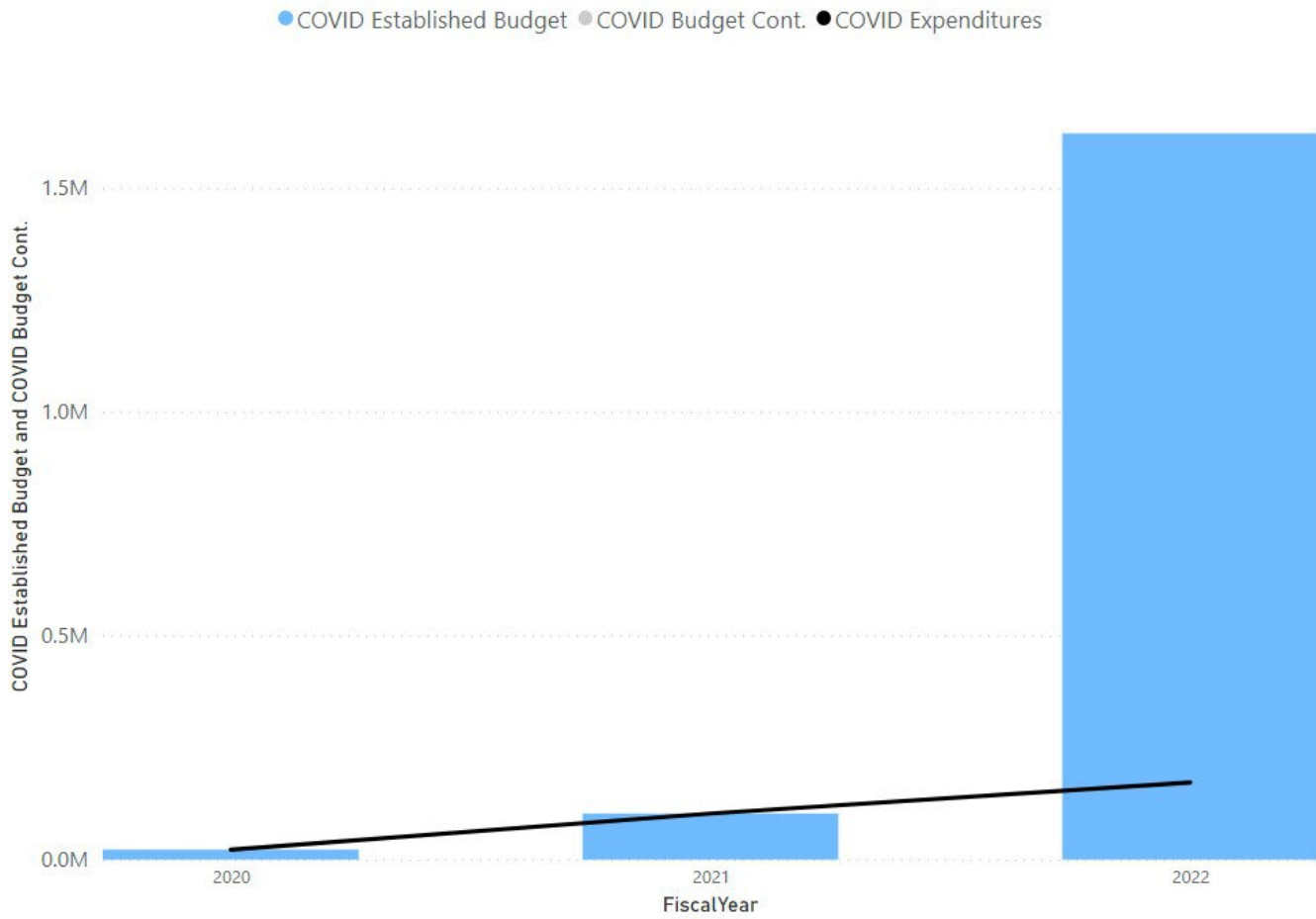
Report Period

- Jul
- Aug
- Sep
- Oct
- Nov
- Dec
- Jan
- Feb
- Mar
- Apr
- May
- Jun

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.

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



In FY 2022, OPD has \$1.6 million of various COVID related authority, as allocated by the executive. Through February, OPD expended \$172,413, or 10.6%, of the total authority. OPD had \$121,913 of Cares Act authority which was fully expended this fiscal year. Expenditures covered costs of information technology services in the agency. In FY 2022, OPD was also provided with a \$1.5 million allocation from HB 632, the American Rescue Plan Act (ARPA). The ARPA funding was provided specifically to address the COVID caused backlog of cases in Billings. OPD has initially allocated 43.3% of the funding to personal services and 56.7% to operating expenses and has expended \$50,500 of the operating expenses on contracted public defender attorney costs.

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 February 28, 2022. 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	December Modified Budget	March Modified Budget	Net Modifications
<input type="checkbox"/> Public Defender	38,497,597	38,497,597	0
APPELLATE DEFENDER DIVISION	2,349,994	2,361,494	11,500
CENTRAL SERVICES DIVISION	3,671,273	3,759,273	88,000
CONFLICT DEFENDER DIVISION	8,851,157	8,853,157	2,000
PUBLIC DEFENDER DIVISION	23,625,172	23,523,672	-101,500
Total	38,497,597	38,497,597	0

Acct & Lvl 1 DESC	December Modified Budget	March Modified Budget	Net Modifications
<input type="checkbox"/> 61000 Personal Services	27,210,284	27,210,284	
<input type="checkbox"/> 62000 Operating Expenses	11,287,313	11,287,313	0

Fund Type	December Modified Budget	March Modified Budget	Net Modifications
<input type="checkbox"/> 01 General	38,497,597	38,497,597	0

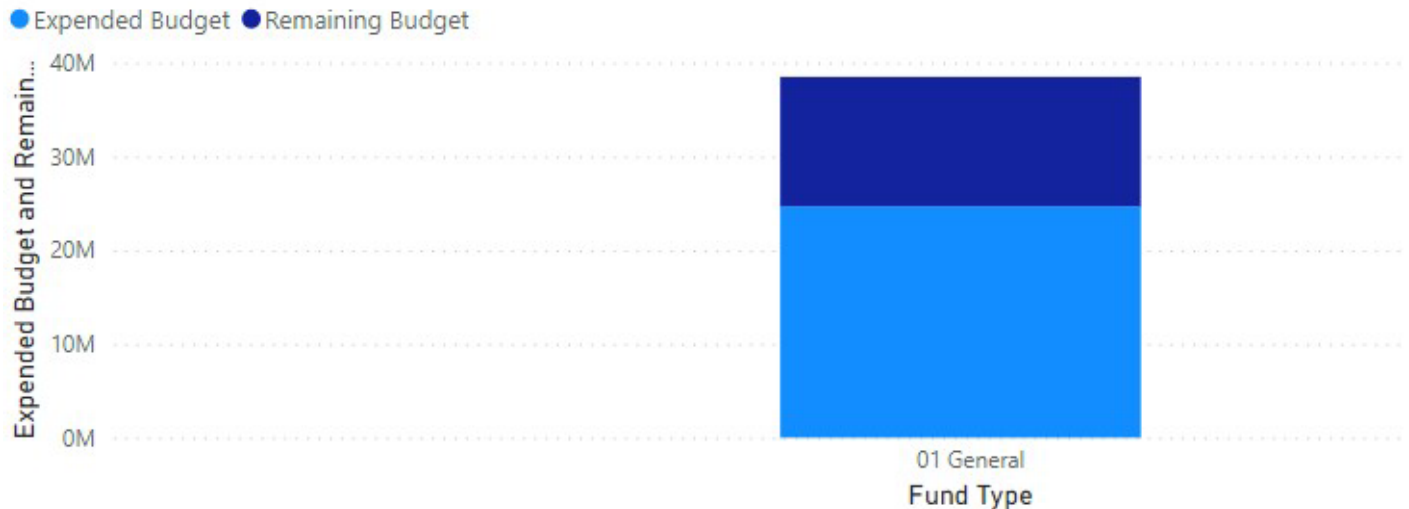
The figure above highlights modifications to the HB 2 budget that have occurred between December 2021 and February 2022. These modifications are then added to the modified budget that was presented at the December Interim Budget Committee (IBC) meeting. Between December and February, OPD requested the following modifications to the HB 2 budget:

- \$101,500 - OPD reallocated operating expenses for the costs of the state information technology services from Public Defender Division to the other three divisions in the agency to match the needs of the programs
- \$49,332 –Although not seen in the figure above, OPD documented that the number of cases worked on meets or exceeds 0.5% growth as compared to the second quarter of FY 2021 and shifted the restricted authority to the HB 2 operating budget in the various programs

HB 2 APPROPRIATION AUTHORITY

The following chart shows the appropriated budget for the agency compared to expenditures through February 28, 2022.

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



acclv1_descr	Modified Budget	Expended Budget	Percent Expended
⊕ Personal Services	27,210,284	16,297,350	59.9%
⊕ Operating Expenses	11,287,313	8,380,349	74.2%

Program Name	Modified Budget	Expended Budget	Percent Expended
⊕ APPELLATE DEFENDER DIVISION	2,361,494	1,482,422	62.8%
⊕ CENTRAL SERVICES DIVISION	3,759,273	2,720,116	72.4%
⊕ CONFLICT DEFENDER DIVISION	8,853,157	5,435,941	61.4%
⊕ PUBLIC DEFENDER DIVISION	23,523,672	15,039,220	63.9%
Total	38,497,597	24,677,699	64.1%

Through February, OPD expended \$24.7 million, or 64.1%, of the modified HB 2 budget. The figure at the top of this page explains the HB 2 funding. The OPD HB 2 budget and associated spending is entirely funded with general fund.

HB 2 expenditures through February were 64.1% of the modified budget, which is lower than the five-year annual average of 66.4%, but slightly higher than expenditures in the same period of FY 2021, 63.4% of the budget. Changes from the historic averages occur in the personal services and operating expenses where FY 2022 spending is lower than average. Operating expenses are higher in FY 2022 than in FY 2021 (through February), and the greatest difference is apparent in computer hardware maintenance and State Information Technology Services Division enterprise services costs (\$257,967 greater). Additionally, OPD spent \$4.1 million on contracted public defender costs, which was \$185,458 more than in the same period of FY 2021. These increased operating costs are offset by lower costs in other operating expense accounts.

The department's expenditures are weighted to personal services, accounting for 66.0% of the costs. In personal services, OPD expended \$16.3 million, of which \$12.3 million or 75.7% of the personal services budget was expended in the Public Defender Division in support of public defender services across the state.

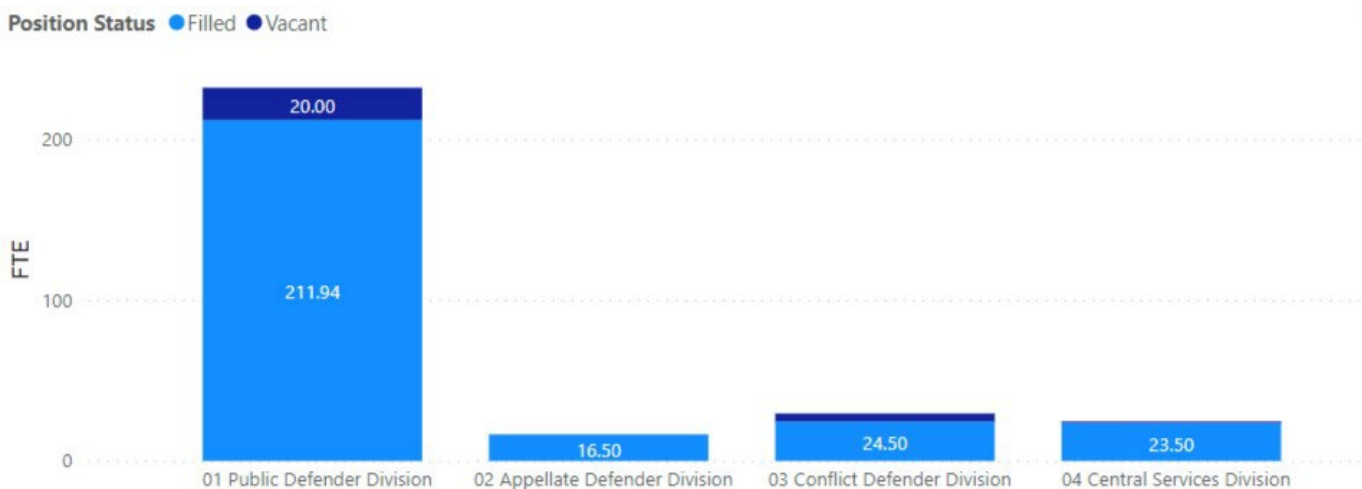
As shown in the figure above, the Central Services Division expended 72.4% of the HB 2 modified budget. The increased spending occurred in operating expenses and was related to computer hardware maintenance, where expenditures were \$821,758 or 57.1% of the operating expenses spending in the program. 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-item appropriations that are summarized as follows:

- \$197,326 in FY 2022 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
 - The authority associated with this condition has been “unlocked”, or made available, for two quarters of FY 2022
 - The authority is transferred from the contingency appropriation to the operating programs of the three divisions
 - To date, \$49,332 has been transferred to the designated divisions in each quarter, reducing the restricted appropriation by a total of \$98,663 for the year
 - The transferred authority may be expended on the divisions’ normal operating costs
- \$150,000 in the Central Services Division for improvements in the case management system that is restricted to the implementation of a time keeping system
 - OPD has expended \$103,749, or 69.2%, of this authority

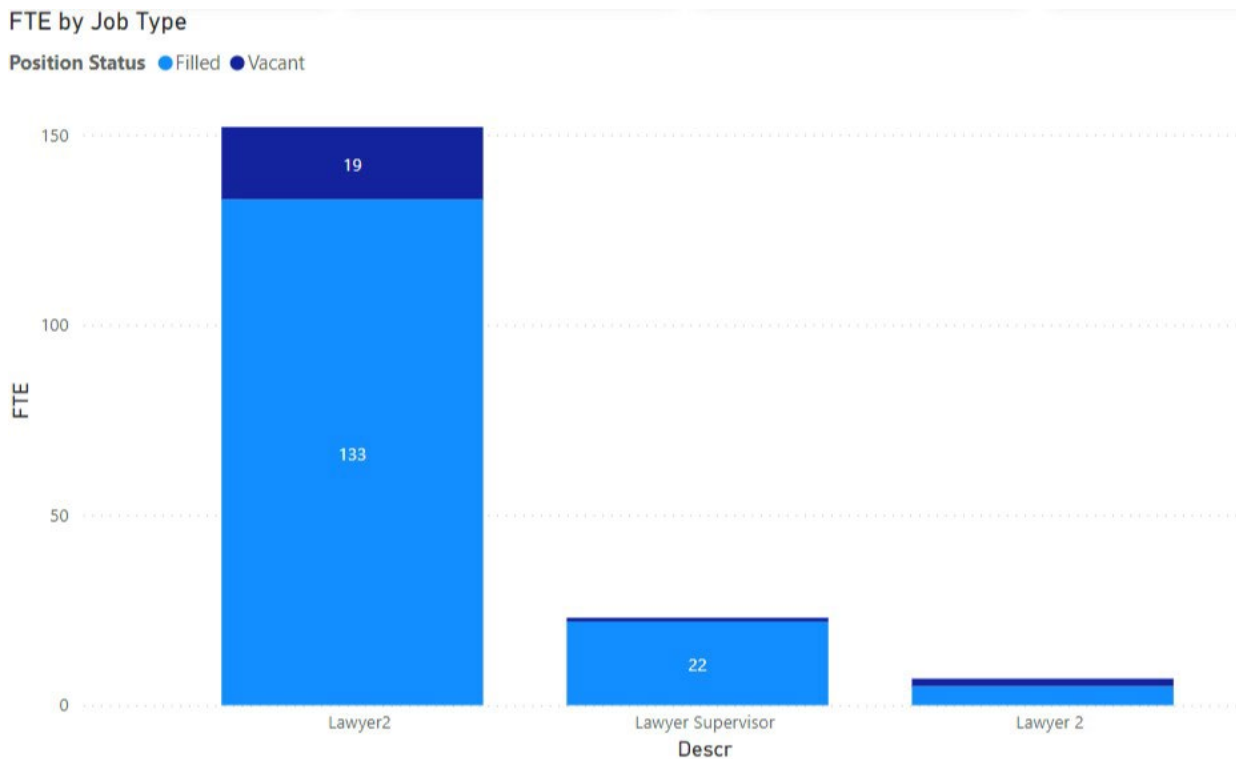
Personal Services

The following chart shows the filled and vacant FTE within the agency as of February 1, 2022.



In FY 2022, OPD is budgeted for 302.44 FTE. From the total FTE, the OPD had 26.00 vacant positions as of February 1, 2022. According to the data provided by the Department of Administration, Human Resources

Division, 60.2% of the total FTE positions in OPD are classified as lawyers and 22, or 84.6%, of the vacant positions were classified as lawyers. The figure below illustrates the lawyer vacancies in the agency:



The chart above provides a graphic of lawyer positions in the agency. The data shows that from the 182 lawyer positions in the agency on February 1, 12.1% were vacant. Vacancies were located in offices throughout the state. 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.

At the end of November, OPD received funding through ARPA to address the backlog in cases in Billings area courts. The funding was intended to hire additional FTE in Billings and provide funds for contracted legal services. While OPD was provided five additional FTE attorney positions, the wage offers were (thought to be) too low to attract qualified candidates and the positions remain vacant. According to OPD two contract related items have been put in place to utilize the ARPA funding that include:

1. Engaging with a firm to provide representation in the Billings Municipal Court (freeing up FTEs for other courts); and,
2. Increasing the contract attorney rate to \$71/hour for all matters assigned on or after January 1, 2022 in Yellowstone, Carbon, Big Horn, and Stillwater counties. This has had an immediate impact on the existing contracting pool’s willingness to accept assignments and has enticed additional contractors to return to OPD’s contracting pool or join for the first time. However, this has negatively affected other areas of the state where the rate remains \$56/hour.

Next Steps for Personal Services Reporting

In upcoming Quarterly Financial Reports, the LFD will begin the process of a more comprehensive look at personal services. The LFD will compare two executive “snapshots” -- July 2020 and July 2022. The analysis will

identify adjustments adopted by the legislature in 2021 and modifications made by the agencies, within the confines of budget law.

The September Quarterly Financial Report will provide the complete comparison from July 2020 to July 2022. Ultimately, the analysis will result in a description of all the components that will be part of the executive's decision package one (DP 1) 2025 biennium budget request. This work will prepare legislators for budget deliberations in the 2023 session. For a review of how DP 1 works and snapshot components, please read this [short brochure](#) from 2019.

REQUIRED REPORTS

HB 2 required OPD to report quarterly to the Office of Budget and Program Planning (OBPP) 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

Note: reports have been provided to OBPP for the first two quarters and the funding has been "released".

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

NOTE: Since the December meeting of the IBC, OPD shared this report and it is found on the IBC webpage.

[OPD FY 2021 Biennial Report](#)