

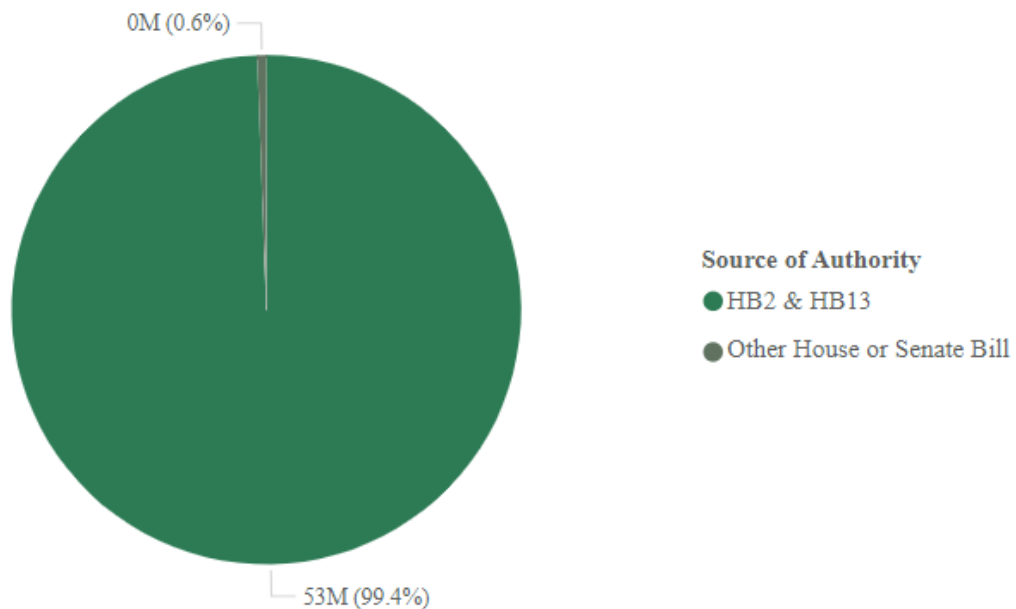
OFFICE OF STATE PUBLIC DEFENDER

(Spending report March 1, 2024 through May 31, 2024)

TOTAL APPROPRIATION AUTHORITY

The total appropriation authority for the Office of State Public Defender (OPD) is shown in the pie chart below. HB 2 and HB 13 provide 99.4% of the total authority for this agency with remaining authority coming from appropriations contained in other bills. The two 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	% Expended
Other House or Senate Bill	300,000		
HB2 & HB13	52,673,705	45,002,605	85.4%
Total	52,973,705	45,002,605	85.0%

Other Bills

The OPD has \$300,000 in authority provided through HB 16 of the 2023 Legislature. This bill increases the statutory timeframe for holding Emergency Protective Services hearings from three days to five days. Appropriations provided to the OPD cover costs of providing legal representation to parents and guardians

during the hearings and prehearing conferences. Through May 31, 2024, the OPD has not expended any of this appropriation.

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 from March 1, 2024, through May 31, 2024. 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	HB 2 Budget	Modified Budget	Net Modifications
Public Defender	47,673,705	52,673,705	5,000,000
01 PUBLIC DEFENDER DIVISION	31,455,031	32,621,348	1,166,317
02 APPELLATE DEFENDER DIVISION	2,713,771	3,155,889	442,118
03 CONFLICT DEFENDER DIVISION	8,704,185	11,113,838	2,409,653
04 CENTRAL SERVICES DIVISION	4,800,718	5,782,630	981,912
Total	47,673,705	52,673,705	5,000,000

Expenditure Type	HB 2 Budget	Modified Budget	Net Modifications
61000 Personal Services	33,720,311	33,720,311	0
62000 Operating Expenses	13,903,394	16,724,901	2,821,507
63000 Equipment & Intangible Assets	50,000	50,000	
69000 Debt Service		2,178,493	2,178,493
Total	47,673,705	52,673,705	5,000,000

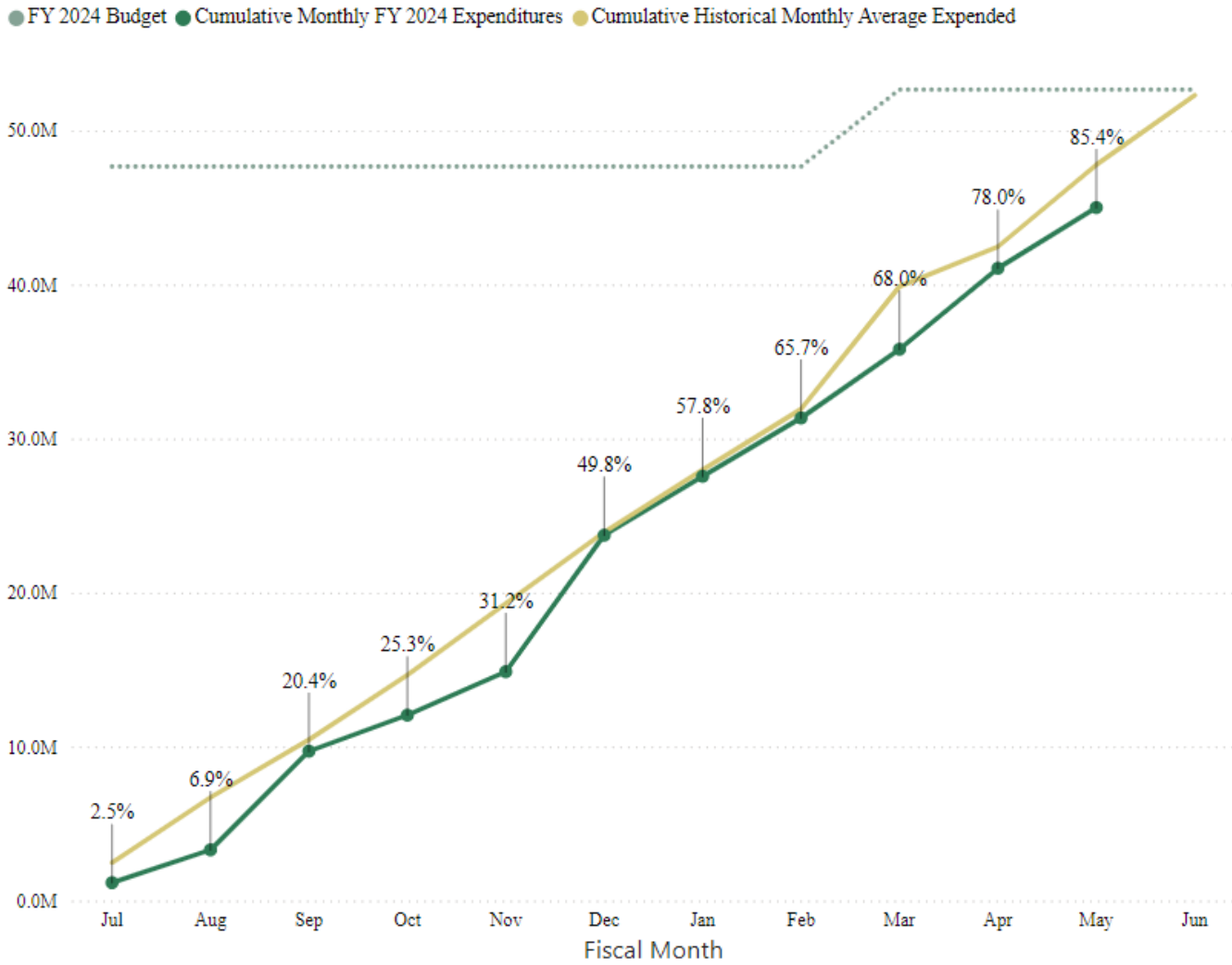
Fund Type	HB 2 Budget	Modified Budget	Net Modifications
01 General	47,673,705	52,673,705	5,000,000
Total	47,673,705	52,673,705	5,000,000

Since the March meeting, the OPD has made one additional change to its HB 2 budget. The agency transferred \$5.0 million in operating expense authority from FY 2025 appropriations to FY 2024 in response to a budget shortfall from rising costs of contracted attorneys. This transfer was divided between operating expenses and debt service for FY 2024. The 2025 biennium budget for the OPD is biennial, and appropriations can be moved between fiscal years. More detail is provided in the section below.

HB 2 APPROPRIATION AUTHORITY

The following chart shows the appropriated budget for the agency compared to expenditures through May 31, 2024.

Monthly Expenditures Compared to Historical Average



Program Name	Modified Budget	Expended Budget	% Expended
⊕ 01 PUBLIC DEFENDER DIVISION	32,621,348	28,441,055	87.2%
⊕ 02 APPELLATE DEFENDER DIVISION	3,155,889	2,596,218	82.3%
⊕ 03 CONFLICT DEFENDER DIVISION	11,113,838	9,315,780	83.8%
⊕ 04 CENTRAL SERVICES DIVISION	5,782,630	4,649,553	80.4%
Total	52,673,705	45,002,605	85.4%

Expenditure Type	Modified Budget	Expended Budget	% Expended
⊕ Equipment & Intangible Assets	50,000	50,000	100.0%
⊕ Debt Service	2,178,493	2,109,233	96.8%
⊕ Personal Services	33,720,311	28,762,258	85.3%
⊕ Operating Expenses	16,724,901	14,081,114	84.2%
Total	52,673,705	45,002,605	85.4%

Fund Type	Modified Budget	Expended Budget	% Expended
⊕ 01 General	52,673,705	45,002,605	85.4%
Total	52,673,705	45,002,605	85.4%

Through May, the OPD expended \$45.0 million or 85.4% of its HB 2 budget including the \$5.0 million transfer. As a result, the agency's spending compared to its original budget is a much higher percentage. For example, if the total expenditures as of May 31 were compared to the original budget, the budget would be 94.4% expended rather than the 85.4% shown in the chart above. So spending would have been well above historical trend without the budget transfer. The figure above shows the FY 2024 appropriated budget for the OPD (dotted line) compared to expenditures through May 31, 2024 (solid green line). Additionally, the chart includes the average of expenditures from the previous five fiscal years (yellow line). For the OPD, HB 2 appropriations in FY 2024 are comprised entirely of general fund. Expenditures totaling 85.4% are slightly below the historical average of 90.7% for the same period (July 1 – May 31).

HB 2 appropriations for the OPD in FY 2024 are comprised primarily of personal services (\$33.7 million or 64.0% of total authority) and operating expenses (\$16.7 million or 31.8% of total authority). Personal service

expenditures through May 2024 were \$28.8 million or 85.3% of personal service appropriations which is roughly on track with this point of the fiscal year. However, there are two unspent new personal service line-item appropriations contained in the 2023 version of HB 2 that have not yet been expended through May. These line items are the following:

- \$750,000 general fund provided to the Public Defender Division to continue legal coverage in Yellowstone County to address the backlog in cases
- \$605,000 general fund for 5.00 new FTE lawyer positions within the Public Defender Division. This funding is contingent, requiring that all management personnel who are members of the Montana BAR, except the director and division administrators, perform a minimum of 25.0% of a typical attorney caseload

Within operating expenses, the OPD has expressed difficulty in keeping up with the costs of the contracted attorney market. The 2023 Legislature provided \$300,000 general funding in both FY 2024 and FY 2025 to supplement paying contracted attorneys, and this authority was evenly split between the Public Defender and Conflict Defender Divisions. This additional appropriation helped to partially offset the \$5.5 million supplemental which was needed for shortfalls in FY 2023 leaving roughly \$5.0 million in shortfalls for FY 2024.

If the transfer had not occurred, the OPD's operating budget would have been 101.0% expended as of May 1, 2024. As a result of this movement of authority, operating expenses have returned to trend at 84.2% as the high contract attorney expenditure is now compared to a larger denominator of budget.

Because this transfer comes from next year's appropriation, the agency is expected to ask the legislature for a supplemental appropriation to backfill this transfer from FY 2025 and to fund next year's expenditures which are also likely to be \$5.0 million short at the very least. With this information, it is expected the department will ask for a supplemental appropriation of approximately \$10.0 million dollars. The legislature could reasonably expect a request for an increase in HB 2 authority in the 2025 Session to address this funding gap.

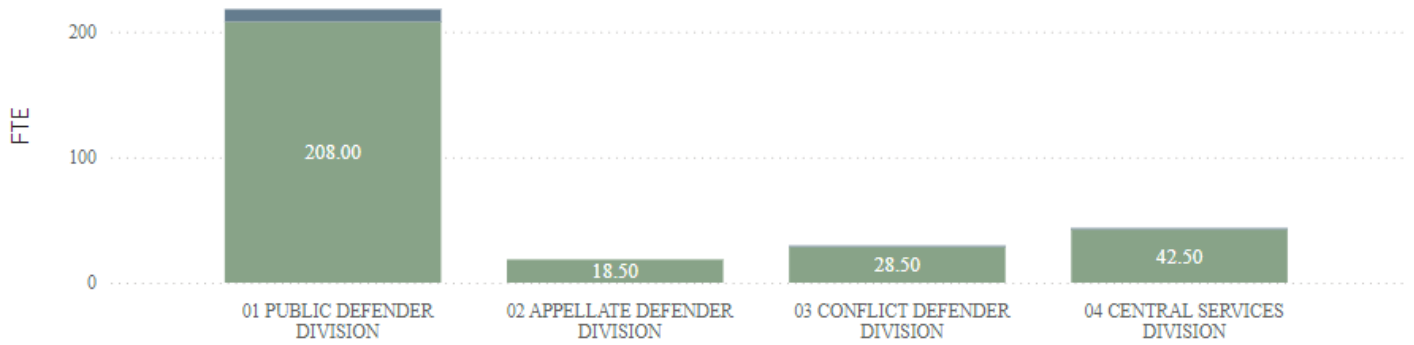
Additionally, the department received \$175,000 in FY 2024 authority to extend and improve its case management system. Through February 2024, all authority has been expended.

The \$50,000 in remaining authority exists in the equipment and intangible assets account and was provided as one-time-only for the OPD to establish a consistent computer replacement cycle. The OPD has expended this entire appropriation.

Personal Services

The OPD has a personal services budget of \$33.7 million in FY 2024, and this budget was 85.3% expended by the end of May. The following chart shows the filled and vacant FTE within the agency as of May 20, 2024.

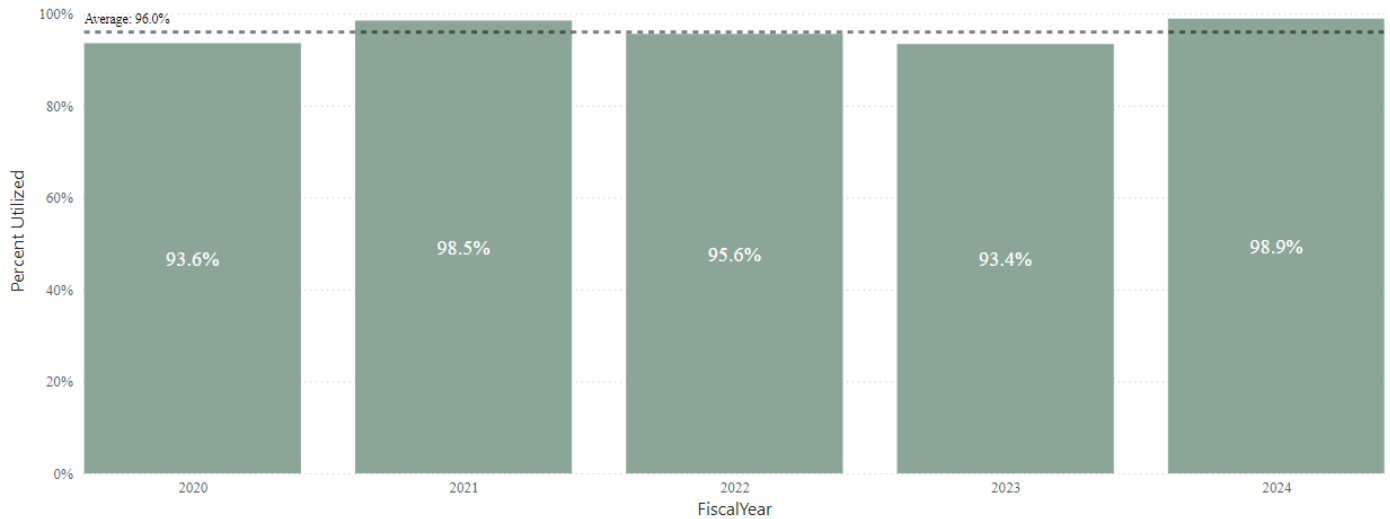
Position Status ● Filled ● Vacant



The OPD is currently budgeted for 309.44 FTE in HB 2. Of this total, the OPD had 11.94 vacant FTE as of May 1, 2024. This reflects an agency vacancy rate of 3.9% and represents an increase of 2.00 vacant FTE from the March meeting. Of the 11.94 FTE currently vacant within the department, 8.00 FTE correspond to lawyer or lawyer supervisor positions. This number is up 3.00 FTE when compared to March data. Other areas currently experiencing vacancies are within an Administrative Assistant position (1.00 FTE) and an Administrative Supervisor (0.94 FTE). Despite a small uptick in vacancy, 3.9% is still a low vacancy rate when compared to other state agencies, indicating recruitment and retention efforts appear to be successful.

There have been a total of 40 positions that have turned over since the beginning of FY 2024. Of these positions, 34 have left employment with the state, four have retired, and two individuals transferred to a different state agency.

The chart below shows the hourly utilization percentage for the OPD between July 1 and May 1 for each fiscal year. Overall, the agency has utilized 98.9% of the hours budgeted for this time period in FY 2024. This utilization rate is slightly higher than the historical five-year average of 96.0% for the same time period.



The chart below shows the vacant FTE in each division, the number of months each position has been vacant, and the midpoint hourly pay rate. As of May 1, 2024, all vacant positions had become vacant since the

beginning of FY 2024 with one Administrative Supervisor position reflecting the longest period of just over 9 months.

Vacant Positions Report

	FTE	Median Months Vacant	Market Midpoint (Hourly)
⊖ 61080 PUBLIC DEFENDER	9.94	1.49	55.14
⊖ 01 PUBLIC DEFENDER DIVISION	7.94	1.66	55.14
Administrative Assistant 2	1.00	1.41	18.15
Administrative Supervisor	0.94	9.08	40.00
Lawyer2	6.00	1.66	55.14
⊖ 03 CONFLICT DEFENDER DIVISION	1.00	0.30	55.14
Lawyer 2	1.00	0.30	55.14
⊖ 04 CENTRAL SERVICES DIVISION	1.00	0.85	55.14
Lawyer 2	1.00	0.85	55.14
Total	9.94	1.49	55.14