

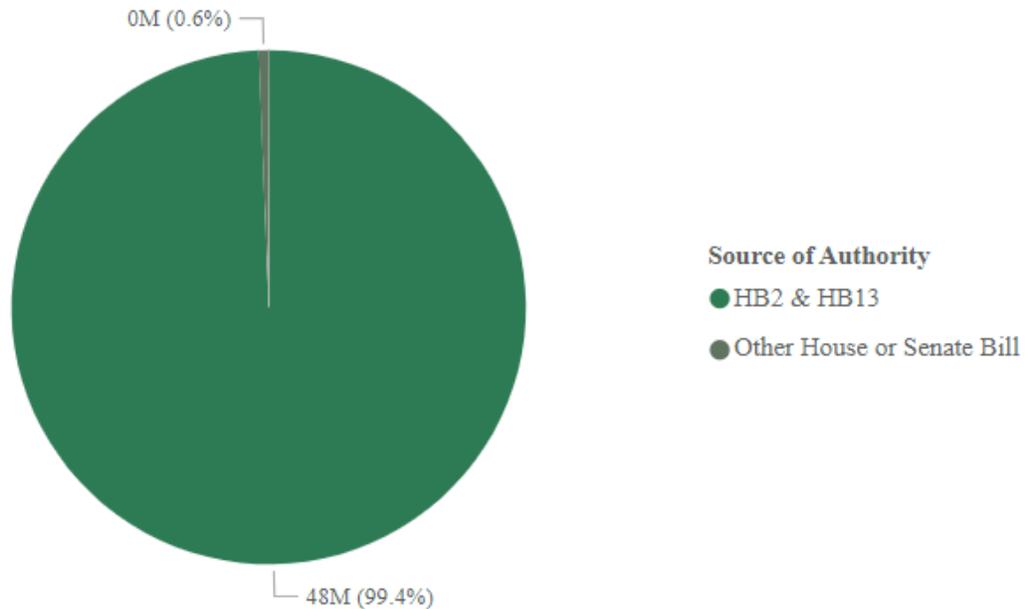
OFFICE OF STATE PUBLIC DEFENDER

(Spending report December 1, 2023 through February 29, 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
HB2 & HB13	47,673,705	31,341,093	65.7%
Other House or Senate Bill	300,000		
Total	47,973,705	31,341,093	65.3%

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 February 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 December 1, 2023, through February 29, 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.

Agency Name	HB 2 Budget	Modified Budget	Net Modifications
☐ Public Defender	47,673,705	47,673,705	0
☐ 01 PUBLIC DEFENDER DIVISION	30,095,031	31,455,031	1,360,000
☐ 02 APPELLATE DEFENDER DIVISION	2,713,771	2,713,771	
☐ 03 CONFLICT DEFENDER DIVISION	10,064,185	8,704,185	-1,360,000
☐ 04 CENTRAL SERVICES DIVISION	4,800,718	4,800,718	
Total	47,673,705	47,673,705	0

Expenditure Type	HB 2 Budget	Modified Budget	Net Modifications
☐ 61000 Personal Services	33,720,311	33,720,311	
☐ 62000 Operating Expenses	13,903,394	13,903,394	
☐ 63000 Equipment & Intangible Assets	50,000	50,000	
Total	47,673,705	47,673,705	

Fund Type	HB 2 Budget	Modified Budget	Net Modifications
☐ 01 General	47,673,705	47,673,705	
Total	47,673,705	47,673,705	

Through the end of February, the OPD has made one change to its HB 2 budget and two changes which added or continued the usage of modified positions in the agency.

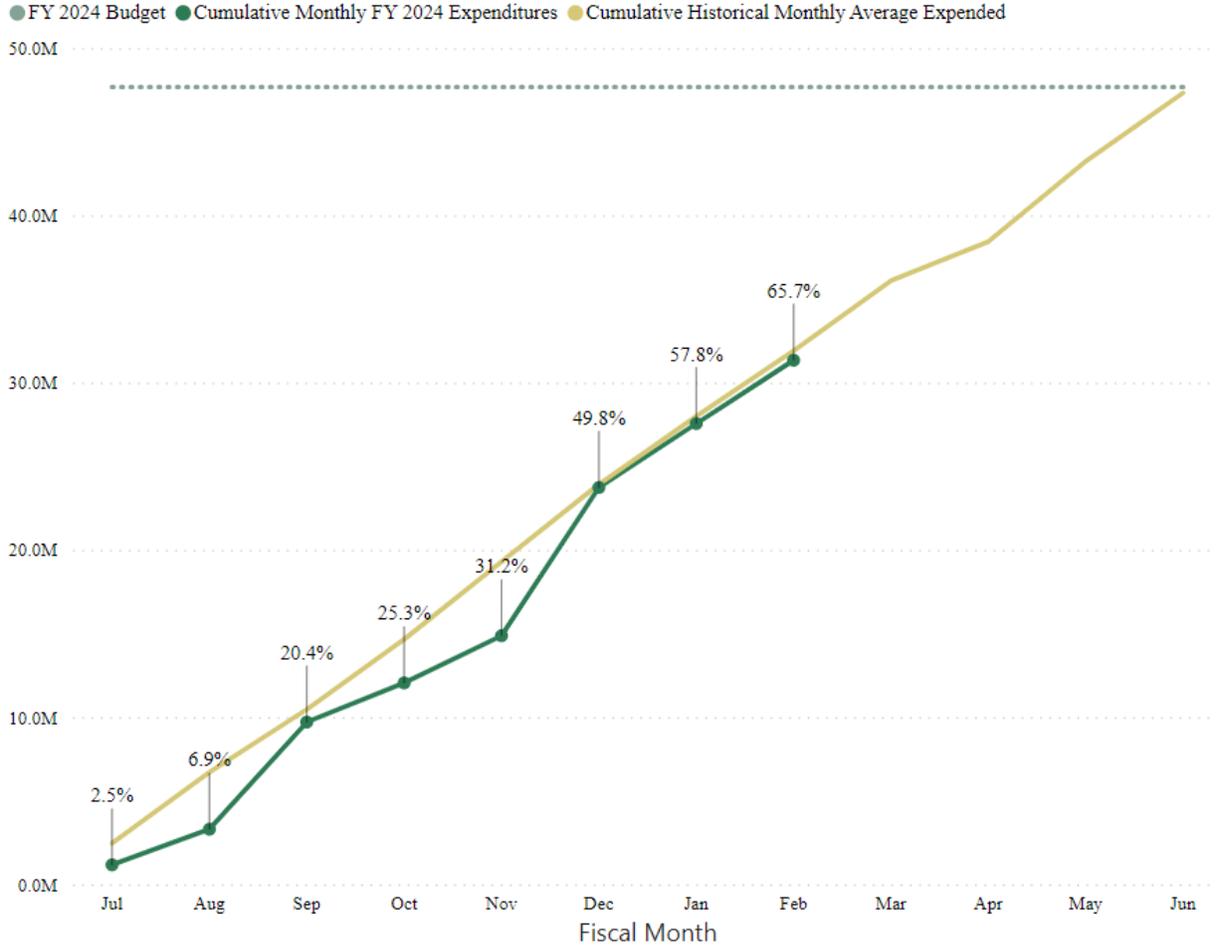
The budget change moves nearly \$1.4 million in operating expense authority between two divisions within the agency. It was anticipated that new guidelines for EPS hearings contained in HB 16 would cause the caseload in the Conflict Defender Division to increase. Current caseloads do not reflect this assumption, and this authority is being transferred to the Public Defender Division where no more budget remains. This change triggers 17-7-138, MCA, due to the amount of operating expenses being moved between programs.

The OPD continued 4.00 modified FTE that have been used in previous biennia for operational support and established 5.00 new modified FTE to run a Family Defense Unit to comply with HB 16 and to support the Appellate Defender Division. All modified positions are being paid out with existing resources.

HB 2 APPROPRIATION AUTHORITY

The following chart shows the appropriated budget for the agency compared to expenditures through February 29, 2024.

Monthly Expenditures Compared to Historical Average



Program Name	Modified Budget	Expended Budget	% Expended
⊕ 01 PUBLIC DEFENDER DIVISION	31,455,031	19,597,660	62.3%
⊕ 02 APPELLATE DEFENDER DIVISION	2,713,771	1,790,707	66.0%
⊕ 03 CONFLICT DEFENDER DIVISION	8,704,185	6,766,162	77.7%
⊕ 04 CENTRAL SERVICES DIVISION	4,800,718	3,186,564	66.4%
Total	47,673,705	31,341,093	65.7%

Expenditure Type	Modified Budget	Expended Budget	% Expended
⊕ Personal Services	33,720,311	19,879,311	59.0%
⊕ Operating Expenses	13,903,394	11,433,044	82.2%
⊕ Equipment & Intangible Assets	50,000	28,737	57.5%
Total	47,673,705	31,341,093	65.7%

Fund Type	Modified Budget	Expended Budget	% Expended
⊕ 01 General	47,673,705	31,341,093	65.7%
Total	47,673,705	31,341,093	65.7%

Through February, the OPD expended \$31.3 million or 65.7% of its modified HB 2 budget. The figure above shows the FY 2024 appropriated budget for the OPD (dotted line) compared to expenditures through February 29, 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 65.7% are slightly below the historical average of 67.0% for the same period (July 1 – February 29).

HB 2 appropriations for the OPD in FY 2024 are comprised primarily of personal services (\$33.7 million or 70.7% of total authority) and operating expenses (\$13.9 million or 29.2% of total authority). Personal service expenditures through February 2024 were nearly \$19.9 million or 59.0% of personal service appropriations. Principally, this is quite similar to the historical five-year average of 61.7%. The slightly lower level of personal service spending is associated with two new line-item appropriations contained in the 2023 version of HB 2 that have not yet been expended through February. 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

The largest discrepancy between current trending expenditures and the historical five-year average occurs within operating expenses. Operating expenses through February 2024 totaled nearly \$11.4 million and represent 82.2% of total operating expense authority for FY 2024. The main reason operating costs reflect high levels of spending is due to paying contracted attorney costs. Of the \$11.4 million that has currently been spent out of operating cost budgets, contracted attorney provider rates comprise \$7.1 million or approximately 62.3% of this amount.

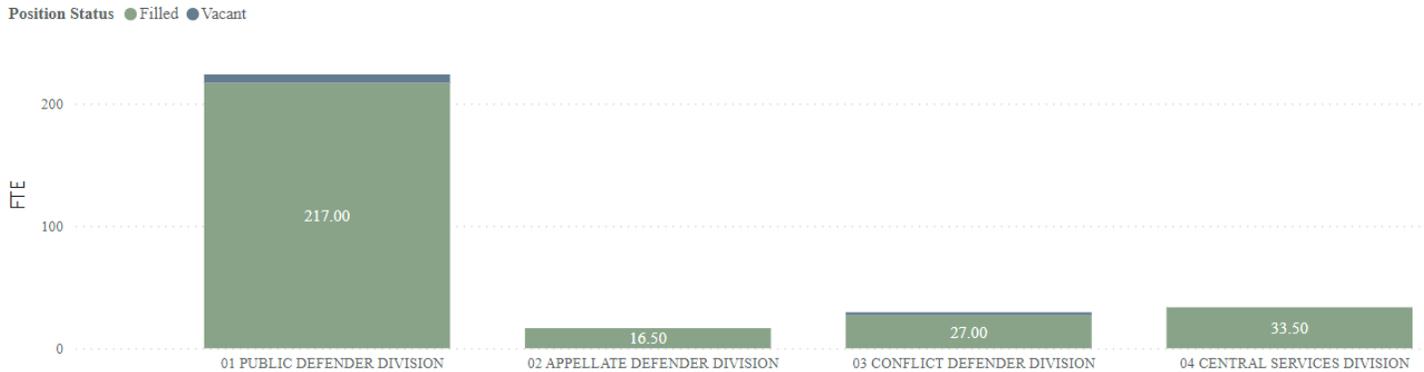
The OPD has expressed difficulty in keeping up with the costs of the contracted market. The 2023 Legislature provided \$300,000 general funding in both FY 2024 and FY 2025 to supplement paying contracted attorneys, and this authority was evenly split between the Public Defender and Conflict Defender Divisions. As of February 29, the OPD has spent \$150,000 of this appropriation within the Public Defender Division. However, the OPD has expressed that they almost certainly see themselves in a status of needing supplemental funding at the end of the biennium. Early estimates reflect a need of at least \$5.0 million barring any large unforeseen changes to the private attorney labor market.

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 almost \$29,000 of this appropriation so far.

Personal Services

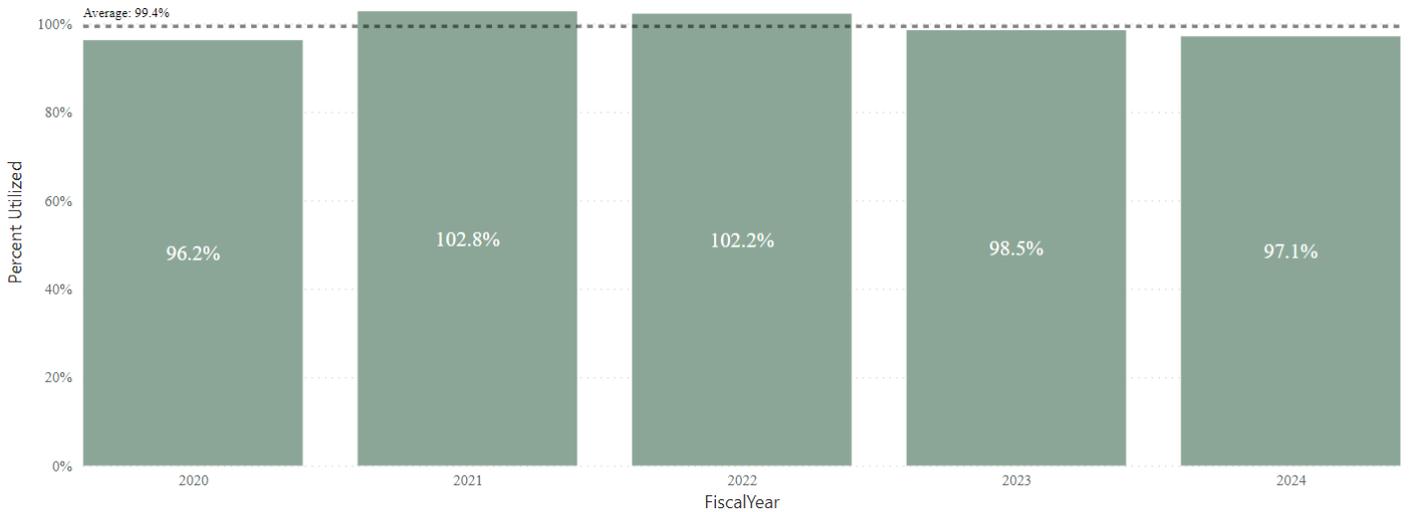
The OPD has a personal services budget of \$33.7 million in FY 2024, and this budget was 59.0% expended by the end of February. The following chart shows the filled and vacant FTE within the agency as of February 12, 2024.



The OPD is currently budgeted for 310.44 FTE in HB 2. From the total FTE, the OPD had 9.44 vacant FTE as of February 12, 2024. This reflects an agency vacancy rate of 3.0% and represents a decrease of 2.00 vacant FTE from the December meeting. Of the 9.44 FTE currently vacant within the department, 5.00 FTE correspond to lawyer or lawyer supervisor positions. This number is down 0.50 FTE when compared to December data. Other areas currently experiencing vacancies are within Administrative Assistant positions (2.94 FTE) and Crime Investigators (1.50 FTE). Additionally, turnover has been on the decline as recruitment and retention efforts appear to have been successful.

There have been a total of 28 positions that have turned over since the beginning of FY 2024. Of these positions, 23 have left employment with the state, four have retired, and one position transferred to a different state agency.

The chart below shows the hourly utilization percentage for the OPD between July 1 and February 12 for each fiscal year. Overall, the agency has utilized 97.1% of the hours budgeted for this time period in FY 2024, as shown in the chart below. This utilization rate is slightly lower than the historical five-year average of 99.4% 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 February 12, 2024, all vacant positions had become vacant since the beginning of FY 2024 with one Administrative Assistant position reflecting the longest period of just over 6 months.

Vacant Positions Report

DEPT NUM/NAME	FTE	Median Months Vacant	Market Midpoint (Hourly)
61080 PUBLIC DEFENDER	9.44	2.66	47.41
01 PUBLIC DEFENDER DIVISION	6.94	2.85	54.83
Administrative Assistant 2	2.00	3.84	18.15
Administrative Supervisor	0.94	6.13	40.00
Lawyer Supervisor	1.00	0.56	54.83
Lawyer2	3.00	1.93	55.14
03 CONFLICT DEFENDER DIVISION	2.50	2.46	36.55
Crime Investigator2	1.50	3.38	36.55
Lawyer2	1.00	2.46	55.14
Total	9.44	2.66	47.41