

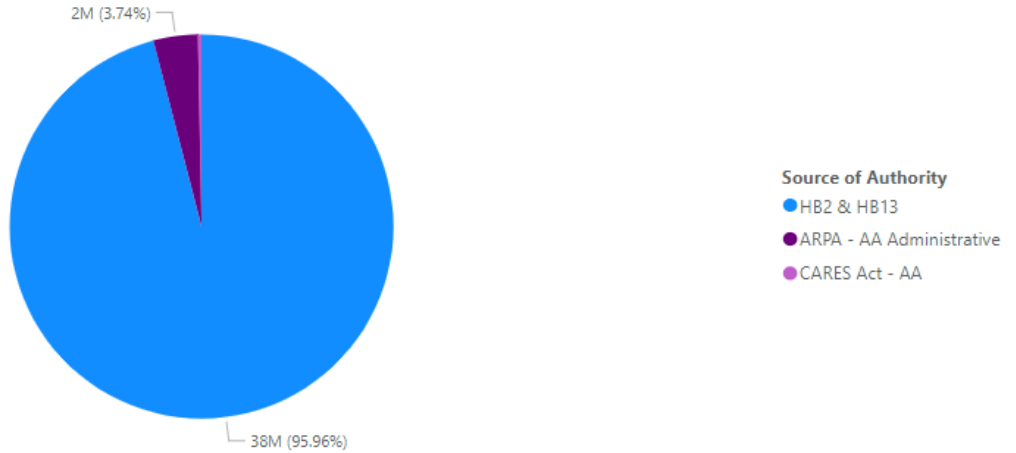
OFFICE OF PUBLIC DEFENDER

(Spending report July 1, 2021 through May 31, 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	35,484,410	92.2%
CARES	121,913	121,913	100.0%
ARPA	1,500,000	252,500	16.8%
Total	40,119,510	35,858,823	89.4%

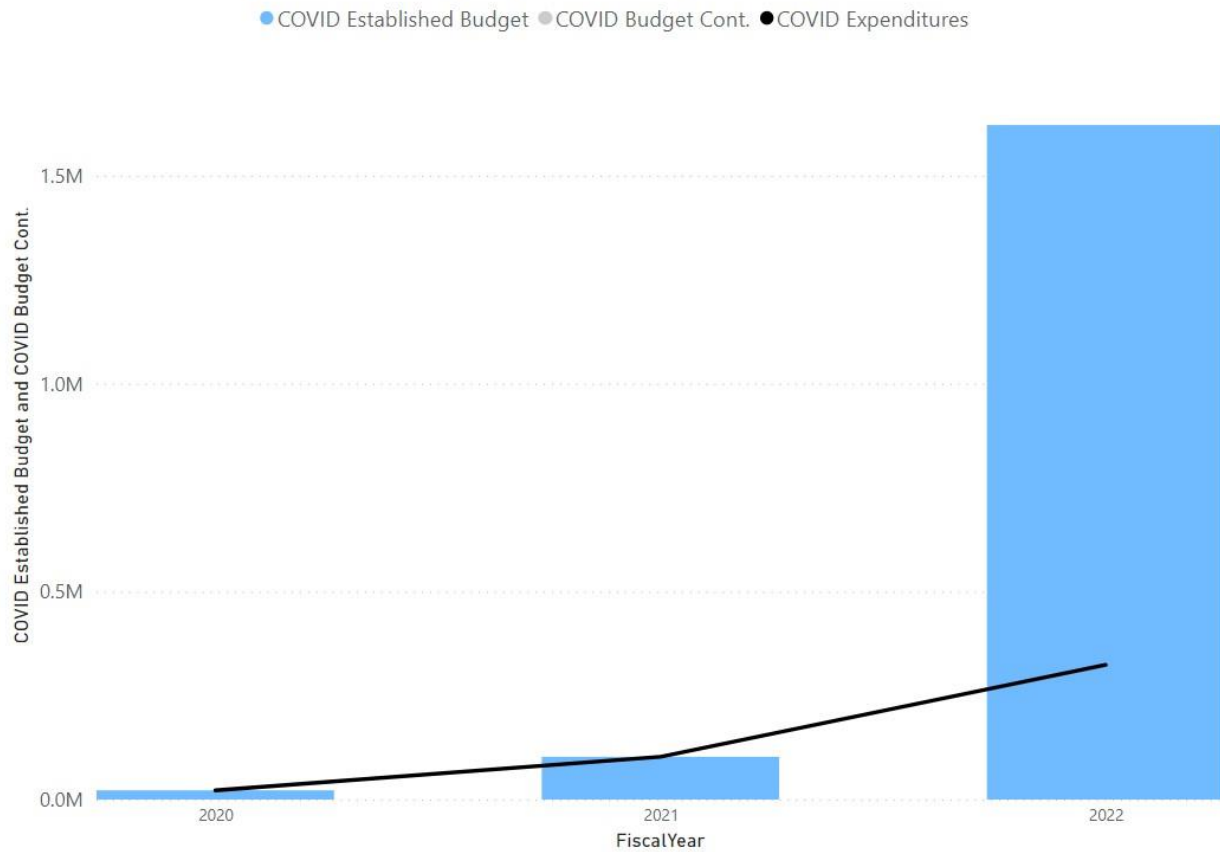
Report Period

- 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 was appropriated \$1.6 million of various COVID related authority, as allocated by the executive. Through May, OPD expended \$374,413, or 23.1%, of the total authority. OPD had \$121,913 of Cares Act authority in FY 2022, which was fully expended. Expenditures covered costs for information technology services in the agency. In FY 2022, OPD was also appropriated \$1.5 million 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 allocated 43.3% of the funding to personal services and 56.7% to operating expenses and has expended \$252,500 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 May 31, 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	March Modified Budget	June Modified Budget	Net Modifications
<input type="checkbox"/> Public Defender	38,497,597	38,497,597	
APPELLATE DEFENDER DIVISION	2,361,494	2,361,494	
CENTRAL SERVICES DIVISION	3,759,273	3,759,273	
CONFLICT DEFENDER DIVISION	8,853,157	8,853,157	
PUBLIC DEFENDER DIVISION	23,523,672	23,523,672	
Total	38,497,597	38,497,597	

Acct & Lvl 1 DESC	March Modified Budget	June 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	

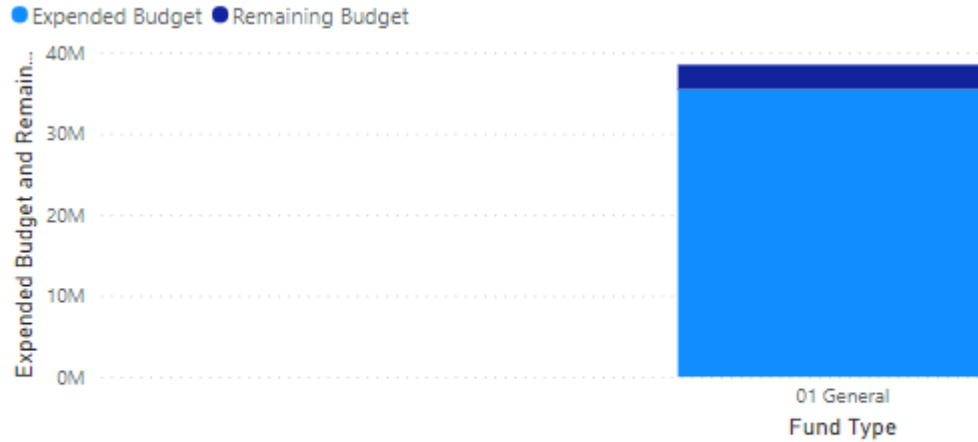
Fund Type	March Modified Budget	June Modified Budget	Net Modifications
<input type="checkbox"/> 01 General	38,497,597	38,497,597	

The figure above highlights modifications to the HB 2 budget that have occurred between March and May 2022. These modifications are then added to the modified budget that was presented at the March Interim Budget Committee (IBC) meeting. During this time period, OPD made no changes to their HB 2 budget.

HB 2 APPROPRIATION AUTHORITY

The following chart shows the appropriated budget for the agency compared to expenditures through May 31, 2022.

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



acciv1_descr	Modified Budget	Expended Budget	Percent Expended
Personal Services	27,210,284	23,311,649	85.7%
Operating Expenses	11,287,313	12,172,761	107.8%

Program Name	Modified Budget	Expended Budget	Percent Expended
APPELLATE DEFENDER DIVISION	2,361,494	2,175,954	92.1%
CENTRAL SERVICES DIVISION	3,759,273	3,519,288	93.6%
CONFLICT DEFENDER DIVISION	8,853,157	8,322,570	94.0%
PUBLIC DEFENDER DIVISION	23,523,672	21,466,598	91.3%
Total	38,497,597	35,484,410	92.2%

Through May, OPD expended \$35.5 million, or 92.2%, 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 May were 92.2% of the modified budget, which is higher than the five-year annual average of 88.2% and is higher than the same period of FY 2021, 87.1% of the budget. Changes from the historic averages occur in personal services (higher in FY 2022) and operating expenses (higher in FY 2022). Compared to FY 2021, operating expenses are higher in FY 2022 with the greatest difference being apparent in contracted public defender attorney costs, where there has been a \$1.4 million increase. The increased spending may be impacted to some degree by the increased rate for contracted public defender services that OPD began providing in late April.

In April, OPD worked with the Office of Budget and Program Planning to increase the rate paid to contracted public defenders from \$56/hour to \$71/per hour, a 26.8% increase. OPD expects to be able to manage the increase within their FY 2022 operating budget. In FY 2023, the increase is projected to be approximately \$1.8 million. Through FY 2022, OPD has expended more of their operating expense budget than would have been expected at this time of the fiscal year, 107.8%. OPD has exceeded their current operating expense budget and

will need to make adjustments to their budget before the end of FY 2022 by transferring authority from personal services or the FY 2023 budget.

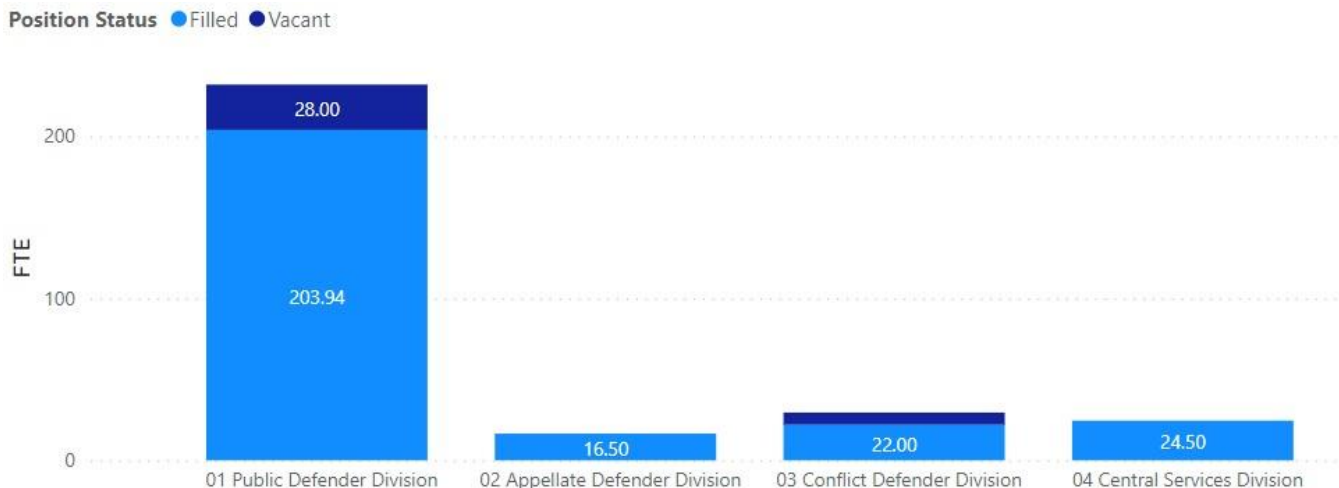
The department’s expenditures are weighted to personal services, accounting for 65.7% of the costs. Average personal services costs in the previous five years were 86.4% of the budget when compared to spending of 85.7% in FY 2022. In personal services, OPD expended \$23.3 million, a nominal increase of \$185,381 from the same period in FY 2021. The increased personal services spending may reflect an increase in salaries. In April, OPD reached an agreement with the public defender union to provide raises to lawyers. For more information, see the Personal Services section below.

HB 2 (2021 Legislative Session) included the following line-item appropriations that are summarized as follows:

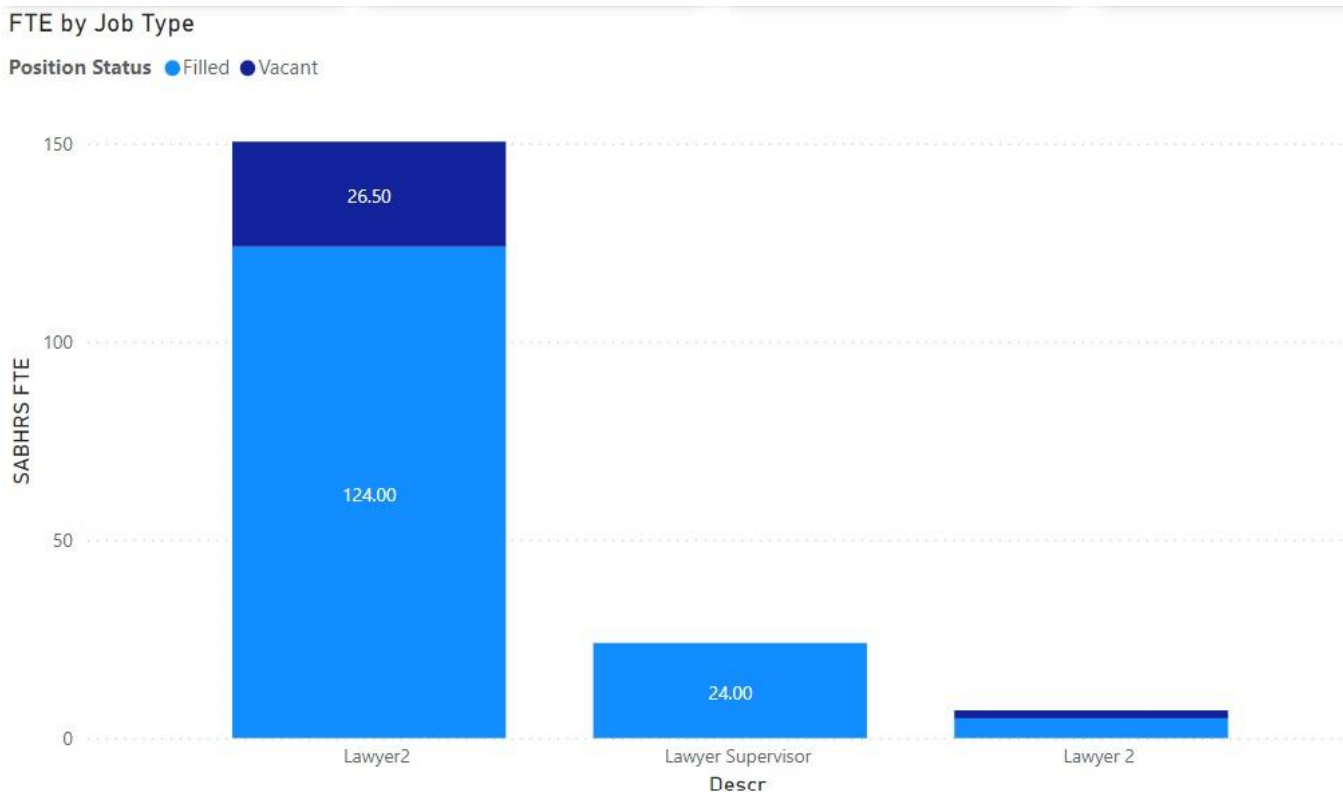
- \$197,326 in FY 2022 for caseload growth contingencies in the Public, Appellate, and Conflict Defender Divisions
 - The appropriations may be expended only after the budget director certifies that the number of cases worked on meets or exceeds 0.5% growth as compared to the same quarter in the prior fiscal year
 - The authority associated with this condition has been “unlocked”, or made available, for two quarters of FY 2022 and is expected to be unlocked for the third quarter at some point in the future
 - 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 May 1, 2022.



In FY 2022, OPD is budgeted for 302.44 FTE. From the total FTE, the OPD had 35.50 vacant positions (11.7% vacancy rate), an increase of 9.50 FTE vacant positions since the March report. According to the data provided by the Department of Administration, Human Resources Division, 78.9%, 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 158 lawyer positions demonstrated in this chart, 18.1% 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. Recent increases in salary have not yet impacted the lawyer vacancies in the agency as of May 1.

In late April, OPD reached an agreement with the public defender union to provide raises to the public defender lawyers in the agency, which was effective immediately. Increases in salaries were quoted in the media as \$10,000 for new hires, \$6,800 for lawyers in their second year and \$5,200 for lawyers with three or more years at the agency. OPD has stated that they will be able to manage the increases in FY 2022 within the HB 2 budget. However, if the agency is able to fill the vacant positions, a rough calculation for FY 2023 is an increase in personal services costs of approximately \$1.3 million. If full employment is attained, the agency may need to request supplemental authority.

Next Steps for Personal Services Reporting

As mentioned in the March report, the LFD will begin the process of a more comprehensive look at personal services this summer. 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.