

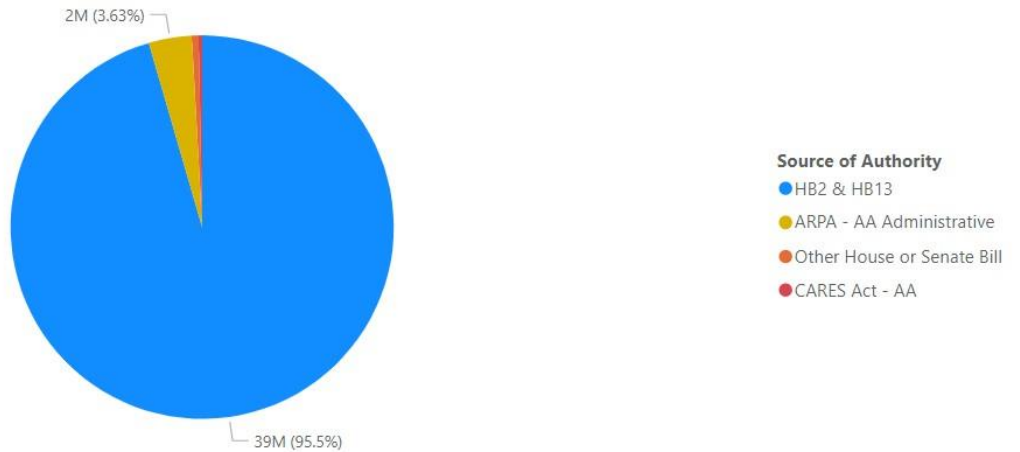
OFFICE OF PUBLIC DEFENDER

(Spending report July 1, 2021 through June 30, 2022 – FYE 2022)

TOTAL APPROPRIATION AUTHORITY

The total appropriation authority for the agency is shown in the pie chart below. HB 2 and HB 13 provide 95.5% 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	FYE22 Modified Budget	FYE22 Expended Budget	Percent Expended
HB2 & HB13	39,455,597	39,152,274	99.2%
Other House or Senate Bill	238,361	238,361	100.0%
CARES	121,913	121,913	100.0%
ARPA	1,500,000	545,535	36.4%
Total	41,315,871	40,058,083	97.0%

Report Period

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

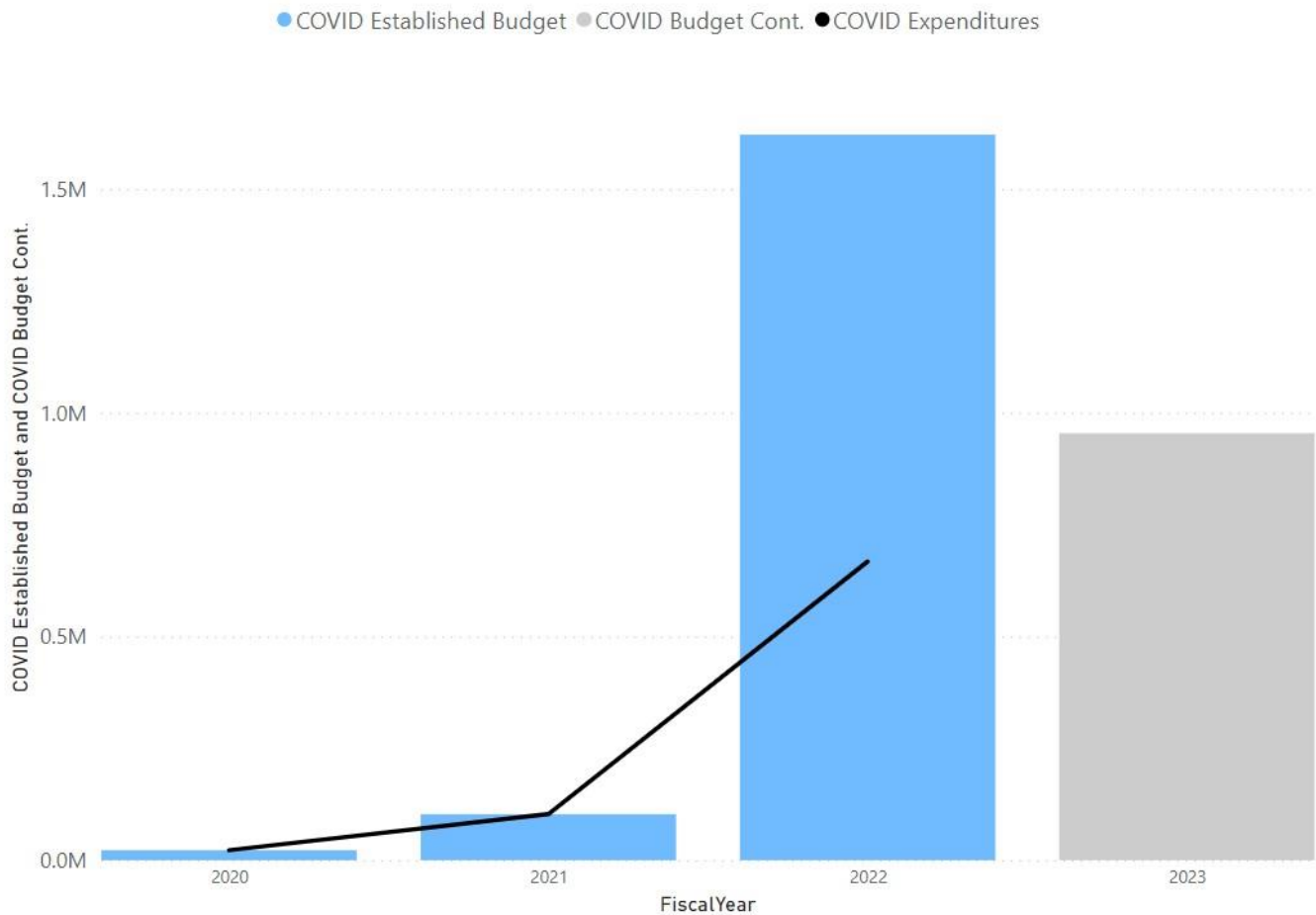
OTHER HOUSE OR SENATE BILLS

In FY 2022, the Office of Public Defender (OPD) was provided \$238,361 of contingent general fund authority through SB 191, which was fully expended through fiscal year end (FYE) 2022. The authority was provided in FY 2022 only and was used for retirement payouts within the agency. This authority will not become a component of the OPD base budget since no authority was provided in FY 2023.

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-19 related authority, as allocated by the executive. Through FYE, OPD expended \$667,448, or 41.2%, of the total authority. 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. Through FYE 2022, OPD expended \$545,535 of the authority. From the total expenditures, 3.6% were expended on OPD attorney costs and 96.4% was expended on contracted public defender attorney costs.

At FYE 2022, OPD had an unexpended/unobligated COVID-19 authority balance of \$964,465 from the ARPA authority. This authority has been continued into FY 2023 to address the continuing backlog in the Yellowstone County area.

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 FYE 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	June Modified Budget	FYE22 Modified Budget	Net Modifications
<input type="checkbox"/> Public Defender	38,497,597	39,455,597	958,000
APPELLATE DEFENDER DIVISION	2,361,494	2,478,494	117,000
CENTRAL SERVICES DIVISION	3,759,273	4,153,273	394,000
CONFLICT DEFENDER DIVISION	8,853,157	8,886,157	33,000
PUBLIC DEFENDER DIVISION	23,523,672	23,937,672	414,000
Total	38,497,597	39,455,597	958,000

Acct & Lvl 1 DESC	June Modified Budget	FYE22 Modified Budget	Net Modifications
<input type="checkbox"/> 61000 Personal Services	27,210,284	26,046,737	-1,163,547
<input type="checkbox"/> 62000 Operating Expenses	11,287,313	13,408,860	2,121,547

Fund Type	June Modified Budget	FYE22 Modified Budget	Net Modifications
<input type="checkbox"/> 01 General	38,497,597	39,455,597	958,000

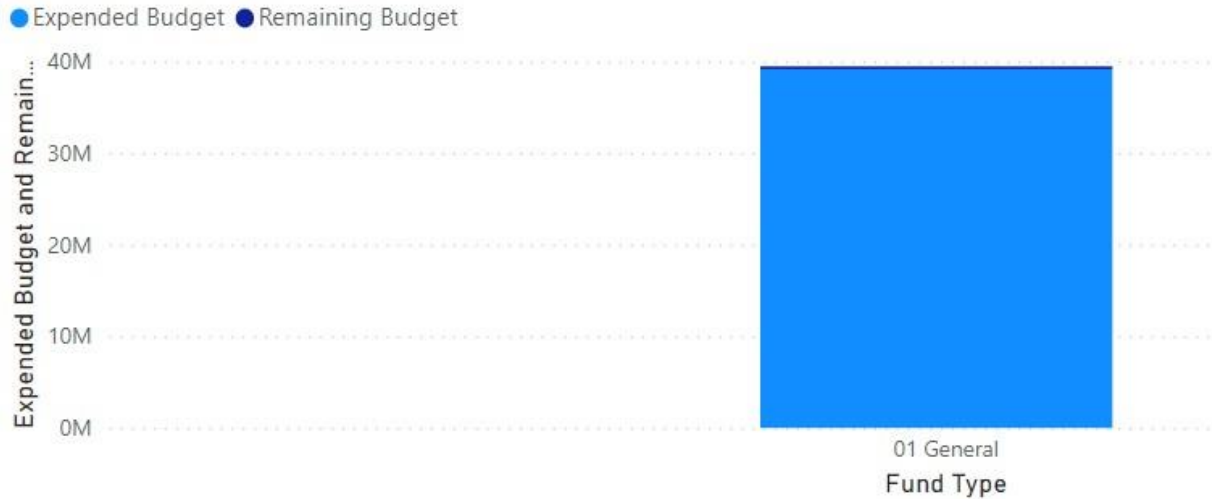
The figure above highlights modifications to the HB 2 budget that occurred in June 2022. The June modified budget, as seen in the figure above, was presented at the June Interim Budget Committee (IBC) meeting. During FYE activities, it is not unusual for agencies to process numerous modifications to align expenditures with appropriations and to balance costs in funds. Through FYE 2022, primary modifications to the HB 2 budget include:

- \$958,000 transferred from FY 2023 budget to FY 2022 budget, which consisted of 91.8% of personal services and 8.2% of operating expenses authority
- \$2.0 million from personal services to operating expenses in support of the need for contracted attorney funding

HB 2 APPROPRIATION AUTHORITY

The following chart shows the appropriated budget for the agency compared to expenditures through FYE 2022.

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



acclv1_descr	Modified Budget	Expended Budget	Percent Expended
Personal Services	26,046,737	25,993,451	99.8%
Operating Expenses	13,408,860	13,158,823	98.1%

Program Name	Modified Budget	Expended Budget	Percent Expended
APPELLATE DEFENDER DIVISION	2,478,494	2,400,529	96.9%
CENTRAL SERVICES DIVISION	4,153,273	4,056,516	97.7%
CONFLICT DEFENDER DIVISION	8,886,157	8,825,626	99.3%
PUBLIC DEFENDER DIVISION	23,937,672	23,869,604	99.7%
Total	39,455,597	39,152,274	99.2%

Through FYE, OPD expended \$39.2 million, or 99.2%, 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.

At FYE, HB 2 expenditures of 99.2% of the modified budget is equal to the five-year annual average, including supplemental appropriations in years where they were required. In nominal terms, a comparison shows that personal services were \$620,778 lower and operating expenses were \$1.9 million higher in FY 2022 than FY 2021. Increased operating expense costs in FY 2022 were related to spending on contract attorneys.

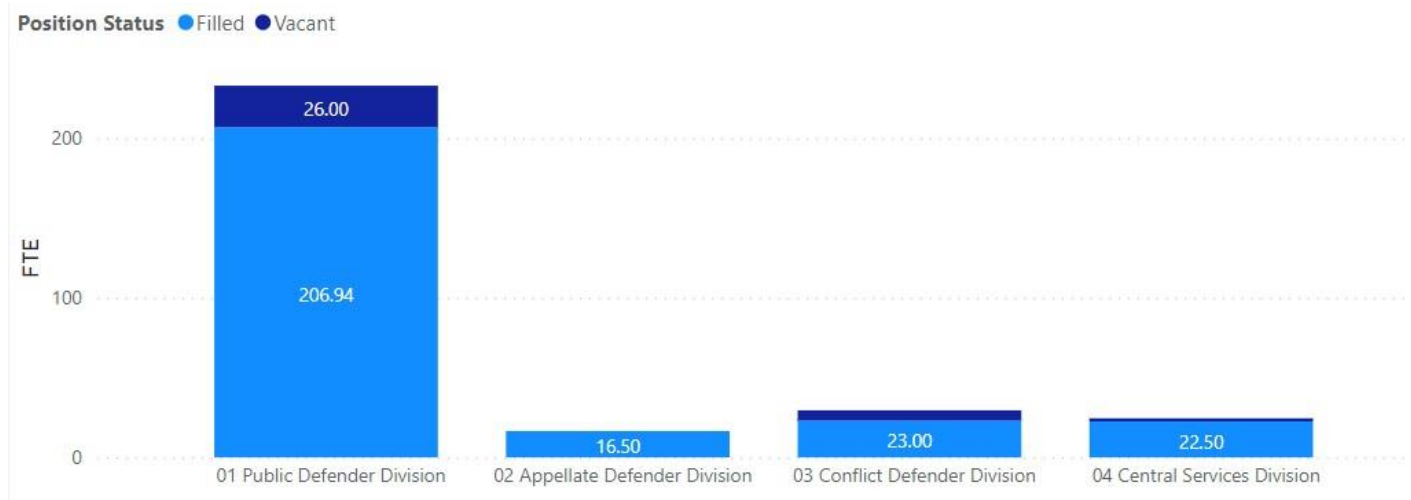
HB 2 (2021 Legislative Session) included the following line-item appropriations that are summarized as follows:

- \$197,326 in FY 2022 for caseload growth contingencies in the Public, Appellate, and Conflict Defender Divisions with 50.0% of the appropriation transferred to OPD operating costs and 50.0% unused due to caseload growth below the conditional 0.5% level
 - According to the agency, OPD met the caseload growth condition in quarter four of FY 2022.
 - The additional funding was not represented in the appropriation authority at FYE 2022
- \$150,000 in the Central Services Division for improvements in the case management system that is restricted to the implementation of a timekeeping system with \$147,498, or 98.3%, of the appropriation expended

At FYE 2022, OPD had an unexpended/unobligated balance of \$308,614 in HB 2 authority. Because OPD is budgeted with biennial appropriations, the full balance was transferred to the FY 2023 budget.

Personal Services

The following chart shows the filled and vacant FTE within the agency as of June 30, 2022.



In FY 2022, OPD has 302.44 FTE. From the total FTE, the OPD had 34.50 vacant positions (11.4% vacancy rate). This represents a reduction of 1.0 FTE vacant positions since the June report. According to the data provided by the Department of Administration, Human Resources Division, 24.50, or 71.0%, of the vacant positions were classified as lawyers.

Next Steps for Personal Services Reporting

The LFD has begun 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.

In September 2022, the LFD will update the interim budget committees on the comparison from July 2020 to July 2022 base salaries. 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 be included in the 2025 Biennium Budget Analysis.

REQUIRED REPORTS

Triggering BCD's

A triggering budget change document is one that makes changes to level 1 account categories (personal services, operating expenses and so on) that exceed \$1.0 million or 25.0% of the account level. To trigger review, BCD amounts are cumulative across the fiscal year. Time-sensitive "triggering" budget change documents (BCD's) are reviewed by staff of the Legislative Fiscal Division (LFD). When a triggering BCD is non-time sensitive, the change requires review and comment by the Legislative Finance Committee. At the FYE closing, triggering BCD's are common and are time-sensitive due to the need to close the accounting records. OPD requested a triggering BCD as follows:

- A time-sensitive BCD movement of \$2.0 million from personal services to operating expenses in all four of the OPD divisions
 - LFD staff had no comments/concerns related to this change

HB 693 Reporting – This legislation requires reporting by DOJ on the following items (as excerpted):

- (3) No later than August 1, 2022, the office of state public defender shall report to the legislative finance committee on the tasks performed by attorneys and non-attorneys in fiscal year 2022 that were not required by statute or constitutional requirement and the amount of time dedicated to that work.
- (4) No later than September 1, 2022, the office of state public defender shall report to the legislative finance committee on whether funding from Title IV-E of the Social Security Act provided all funding needed to provide legal representation for children and parents in child abuse and neglect proceedings in fiscal year 2022 and, if not, what necessary expenditures were made from other appropriated funds.
- (5) The office of state public defender shall identify data needs for measuring agency performance and establish data-based performance measurements and targets and shall report to the legislative finance committee on these needs and measurements by September 1, 2022.
- (6) No later than September 1, 2022, the office of state public defender shall report to the legislative finance committee on the cases in fiscal year 2022 in which it moved for waiver of the assessment and the basis for the motion.
- (7) No later than September 1, 2022, the office of state public defender shall report to the legislative finance committee on the time spent by employees and contractors in cases involving defendants in treatment courts in the preceding fiscal year for each defendant. The report must report on each defendant without identifying the defendant by name for each district court or court of limited jurisdiction.
- (8) No later than September 1, 2022, the office of state public defender shall report to the legislative finance committee on the time spent by employees and contractors in cases involving defendants in capital cases in fiscal year 2022 for each defendant.

These reports will be posted on the Section D Interim Budget Committee webpage with the September meeting materials as they are provided.