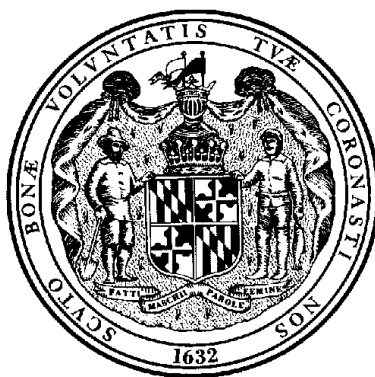


OFFICE OF THE PUBLIC DEFENDER



STATE OF MARYLAND

FISCAL YEAR 2010 ANNUAL REPORT

Paul B. DeWolfe
Public Defender

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LETTER FROM THE PUBLIC DEFENDER

The Office of the Public Defender continues to struggle with the effects of increasing caseloads and diminishing resources. The most significant development in this regard is the impact of the Court of Appeals decision handed down on April 16, 2010 captioned **OPD v. State**. As a result of this decision, the agency was compelled to change its intake procedure and accept clients who would previously have been rejected due to income levels above the federal poverty guidelines. OPD has experienced an across-the-board increase in cases in excess of 10% as a result of the court mandate. It is well established that attorneys working under the burden of excessive caseloads impede the efficient administration of justice. Effective representation of indigent clients requires that attorneys have adequate time and resources to perform their duties as advocates for their clients. As the charts within this annual report show, OPD attorneys are handling caseloads in excess of established caseload standards in every district across the state. The office also represents clients in criminal appeals, post-conviction litigation and Child In Need of Assistance. The caseloads in these divisions are in excess of acceptable levels as well. To address this growing crisis, the agency is working collaboratively with the other stakeholders within the criminal justice system to study the problem and make recommendations for long-term solutions.

The office continues to leverage technology and budgetary efficiencies to maintain a high level of service in these times of fiscal uncertainty. The protection of constitutional rights and the effective representation of agency clients remains the central mission of all the employees of the office. To that end the office will continue to work with our partners in the community and the criminal justice system to deliver superior representation to the indigent accused in Maryland.



Paul B. DeWolfe
Public Defender
September 30, 2010

OFFICE OF THE PUBLIC DEFENDER

MISSION STATEMENT

The mission of the Office of the Public Defender (OPD) is to provide superior legal representation to the indigent accused in the State of Maryland, to safeguard fundamental individual rights, and ensure access to the protections guaranteed by the United States Constitution, the Bill of Rights, the Maryland Constitution and Declaration of Rights, and the laws of Maryland.

DECLARATION OF POLICY AND LEGISLATIVE INTENT

It is hereby declared to be the policy of the State of Maryland to provide for the realization of the constitutional guarantees of counsel in the representation of indigents, including related necessary services and facilities, in criminal and juvenile proceedings within the State, and to assure effective assistance and continuity of counsel to indigent accused taken into custody and indigent defendants in criminal and juvenile proceedings before the courts of the State of Maryland, and to authorize the Office of the Public Defender to administer and assure enforcement of the provisions of this article in accordance with its terms. Annotated Code of Maryland, Criminal Procedure Article, §16-201.

PUBLIC DEFENDER OPERATIONS

Prior to the creation of the Office of the Public Defender by the Maryland Legislature on July 1, 1971, the appointment of counsel for indigent defendants in state prosecutions was limited to those cases where, in the judgment of the trial court, “a just regard for the rights of the accused require[d] it.” Acts of 1886, Ch. 46, Section 1. Thus, by statute, in Maryland there was no **right** to appointed counsel, only the discretionary authority of the trial court to appoint counsel.

On March 18, 1963, the United States Supreme Court, in ***Gideon v. Wainwright***, 372 U.S. 335 (1963), announced that the Sixth Amendment of the United States Constitution guaranteeing the right to counsel in federal prosecutions, applied with equal force to state prosecutions. Thus, the right of indigent defendants to appointed counsel in state court was “constitutionalized.”

Between the years 1963 and 1970, the United States Supreme Court continued to expand the right to counsel beyond the trial itself to include the right to counsel at line-ups, custodial interrogations, preliminary hearings and arraignments. In response to the continuing expansion of the right to counsel, the Governor of Maryland created a Commission to study the need for a statewide public defender system. This culminated in the passage of Article 27A, creating a statewide public defender system funded by the State of Maryland.

Effective June 1, 2010, a thirteen-member Board of Trustees is composed of 11 members appointed by the Governor with the advice and consent of the Senate and one member each appointed by the President of the Senate and the Speaker of the House of Delegates respectively. The Board of Trustees appoints a Public Defender who serves a six-year term. The Public Defender is authorized to appoint, with the approval of the Board of Trustees, a Deputy Public Defender, and one District Public Defender for each of the twelve district offices. The Public Defender, with the advice of the District Public Defender, may appoint Assistant Public Defenders in such number as authorized by the budget. The Deputy Public Defender, District Public Defenders and Assistant Public Defenders all serve at the pleasure of the Public Defender.

The State is divided into twelve operational districts, conforming to the geographical boundaries of the District Court of Maryland as set forth in the Courts and Judicial Proceedings Article of the Annotated Code of Maryland. The District Public Defenders, along with the Assistant Public Defenders, are responsible for representing all eligible indigent defendants in the District and Circuit Courts within their geographical boundaries.

Representation of an indigent individual extends to a criminal (or Juvenile) proceedings in which a defendant (or party is alleged to have committed a serious offense. Md. Code, Criminal Procedure Article, Section 16-204(b).

“An individual may apply for services of the Office as an indigent individual, if the individual states in writing under oath or affirmation that the individual, without undue financial hardship, cannot provide the full payment of any attorney and all other

necessary expenses of representation...” Md. Code, Criminal Procedure Article, Section 16-210(a).

Every applicant for OPD services must complete a detailed written application that includes income, liability, and assets that are measured against the projected expenses of representation based on the complexity of the case and the charges involved, as mandated by statute.

Eligible clients are represented in court by Assistant Public Defenders except when there is an ethical conflict. In those cases, the Public Defender, or District Public Defender, appoints a panel attorney from the public defender’s list of private attorneys approved to represent public defender clients. Panel attorneys receive \$50 per hour, subject to a maximum of \$3,000 for most cases. The Public Defender exercises discretion in approving fees exceeding the maximum amount.

In addition to the district offices, there are also four statewide operational divisions within the OPD that represent indigent defendants at all levels of the criminal justice process and in other proceedings where the rights of indigent defendants are implicated: (1) the Appellate Division handles all public defender appeals in the state appellate courts, and the United States Supreme Court; (2) the Collateral Review Division provides representation in post conviction hearings, extradition hearings and parole revocation hearings; (3) the Mental Health Division provides representation to those indigent clients involuntarily confined to mental health facilities; (4) the Children In Need of Assistance Division (CINA) provides representation to parents and legal guardians in cases involving allegations of abuse and neglect or where termination of parental rights (TPR) are sought. The OPD provides required legal services and expertise to district operations through three in-house divisions: (i) the Forensics Division provides OPD attorneys with technical and litigation support regarding the use of forensic experts; (ii) the Aggravated Homicide Division provides direct representation, training and litigation consultation in capital cases and other aggravated homicide cases statewide; and (iii) the Juvenile Protection Division monitors the conditions of confinement of all OPD juvenile clients committed to the custody of Juvenile Services.

The OPD also operates the Innocence Project in collaboration with the University of Baltimore Law School Law Clinic. This unit screens over 150 cases annually to assess whether an inmate claiming innocence may have a viable claim utilizing contemporary forensic testing on old evidence retained by the police. It litigates viable innocence claims through all stages of the process.

More information about the Office of the Public Defender is available at the website: <http://www.opd.state.md.us/>.

MANAGING FOR RESULTS

KEY AGENCY GOALS

- Goal 1.** The Office of the Public Defender will provide superior representation to indigent defendants at all critical stages of representation throughout the State of Maryland.
- Goal 2.** The Office of the Public Defender will provide sufficient and balanced resource distribution throughout the Agency.
- Goal 3.** The Office of the Public Defender will recruit and maintain a qualified and competent workforce.
- Goal 4.** The Office of the Public Defender will provide a sufficient information technology infrastructure to efficiently support all Agency operations.
- Goal 5.** The Office of the Public Defender will consult with the Courts, the State legislature and other public organizations regarding the protection of procedural rights, the due process of law, constitutional safeguards and the administration of criminal justice.

OPD STATEWIDE DIVISIONS

Appellate

The **Appellate Division** represents OPD clients in direct appeals from the circuit courts to the Court of Special Appeals of Maryland. If the Court of Appeals of Maryland or the United States Supreme Court grants further review, the Appellate Division will represent clients there as well.

The majority of appeals from criminal cases, juvenile delinquency cases and child access cases in the State of Maryland are handled by the 28 lawyers of the OPD Appellate Division.

Aggravated Homicide Division

OPD's **Aggravated Homicide Division** provides direct trial representation to clients who face the death penalty, and provides instruction and support to all OPD attorneys statewide who represent persons charged with capital offenses.

The Aggravated Homicide Division provides in-depth, training, consultation, and resources to assist the capital defense team in all areas of representation, including death penalty motion practice, selection and retention of necessary experts, capital jury selection and capital sentencing.

Additionally, the Aggravated Homicide Division oversees the allocation of all necessary resources to persons who have been sentenced to death in the Maryland state courts.

Collateral Review

The OPD **Collateral Review Division** provides representation in state post conviction hearings, as well as coram nobis, state habeas corpus, motions to reopen, parole revocation, and extradition hearings.

Children in Need of Assistance (CINA)

When the Department of Social Services (DSS), through Child Protective Services (CPS), institutes proceedings regarding abuse or neglect of a child by a parent or legal guardian, CINA Division attorneys represent those parents/guardians. Representation is provided through all of the stages of the Juvenile Court case.

Forensics

The **OPD Forensics Division** provides training, as well as technical and litigation support to OPD attorneys in order to facilitate effective use and cross examination of forensic experts. The attorneys in this Division also directly represent clients throughout the state.

Mental Health Division (Involuntary Institutionalization Services)

The OPD **Mental Health Division** provides representation to individuals involuntarily confined to public and private mental health facilities across the state.

Juvenile Protection Division (JPD)

The **Juvenile Protection Division** is a specialized statewide division that monitors the conditions of confinement of all OPD juvenile clients committed to the care and custody of the Department of Juvenile Services (DJS).

The JPD is also responsible for protecting the individual rights of juveniles who are committed to the DJS facilities, ensuring the safety and appropriateness of their placements and assuring the timely implementation of juvenile court orders. Juvenile Protection Division attorneys directly represent juveniles in all post disposition matters.

Impact of OPD v. State

Annualized Additional Cases By District & Area of Law									
District	Circuit Court	Circuit Court OPD v. State	%Increase in Circuit Court	District Court	District Court OPD v. State	%Increase in District Court	Total CDJ	Total OPD v. State - Addl	%Increase
01	14,507	578	4.2%	37,851	4,246	12.6%	56,011	4,869	9.52%
02	2,216	90	4.2%	8,082	813	11.2%	10,914	925	9.26%
03	2,825	86	3.1%	7,478	616	9.0%	10,690	713	7.14%
04	2,090	459	28.1%	8,045	2,563	46.8%	11,078	3,056	38.09%
05	4,097	239	6.2%	15,866	1,396	9.6%	21,373	1,634	8.28%
06	2,160	41	1.9%	12,511	907	7.8%	15,522	948	6.50%
07	2,317	93	4.2%	9,910	925	10.3%	12,683	1,019	8.73%
08	5,515	146	2.7%	12,858	1,037	8.8%	20,272	1,194	6.26%
09	1,694	45	2.7%	3,463	287	9.0%	5,746	336	6.21%
10	1,858	97	5.5%	5,881	810	16.0%	8,325	910	12.28%
11	2,918	175	6.4%	7,090	1,269	21.8%	11,097	1,466	15.23%
12	504	7	1.5%	2,951	213	7.8%	3,552	220	6.61%
Total	42,701	2,056	5.1%	131,985	15,082	12.9%	187,265	17,291	10.17%

Chart 1

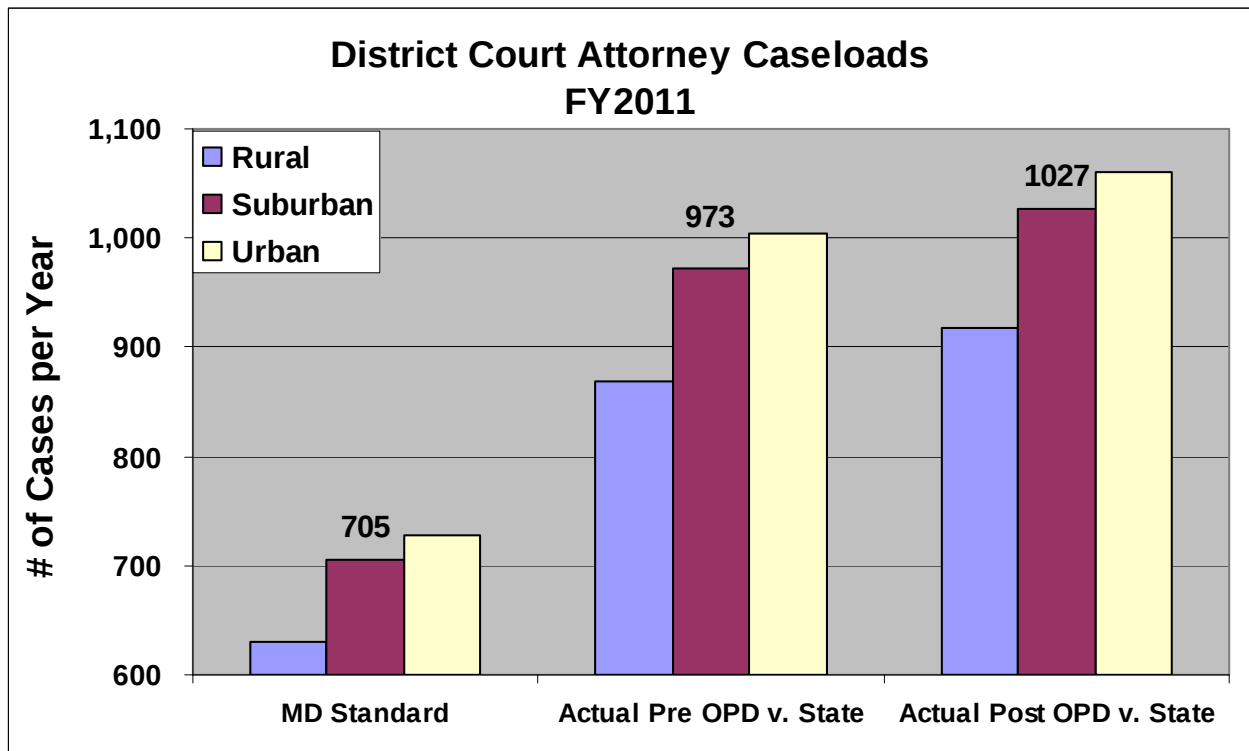


Chart 2

OFFICE OF THE PUBLIC DEFENDER TEN YEAR GROWTH IN CASES OPENED

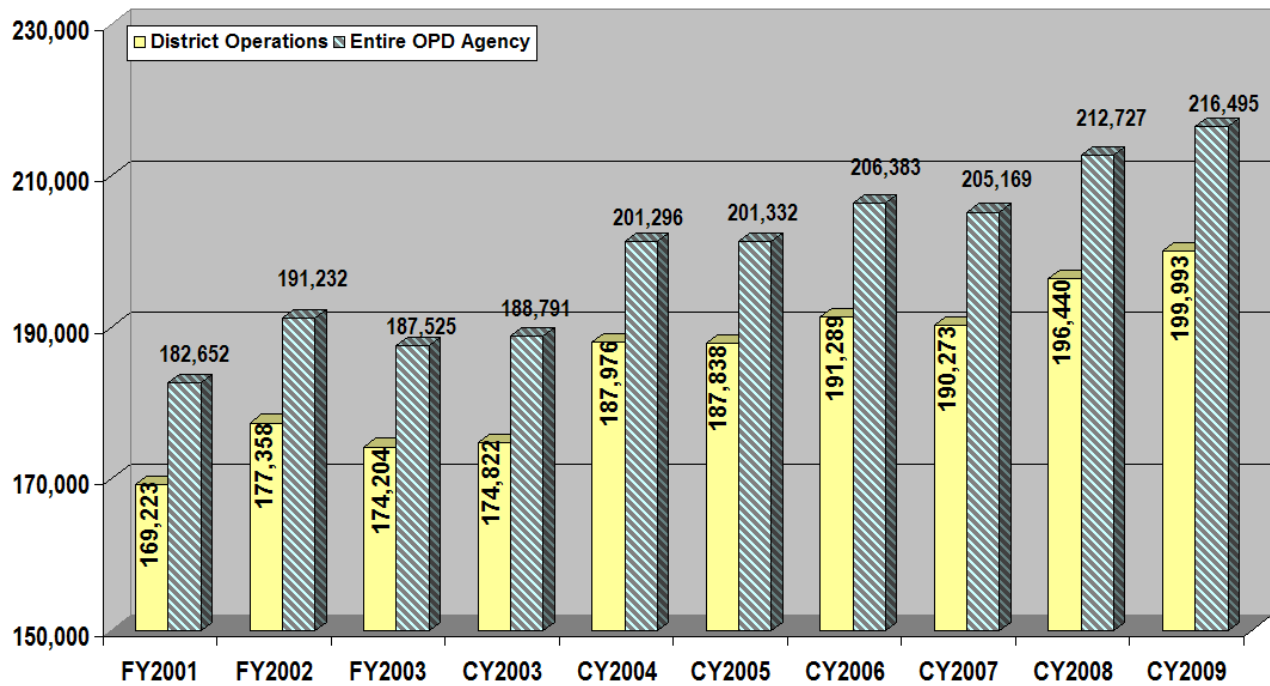


Chart 3

OFFICE OF THE PUBLIC DEFENDER Calendar Year 2009 Cases Opened Per District Or Division & Area of Law

Calendar Year 2009	CIRCUIT	DISTRICT	JUVENILE	DISTRICT TOTALS
DISTRICT OPERATIONS				
DISTRICT 1	17,867	45,768	6,085	69,720
DISTRICT 2	2,273	7,193	1,467	10,933
DISTRICT 3	2,576	6,158	565	9,299
DISTRICT 4	2,175	7,577	1,353	11,105
DISTRICT 5	4,888	14,526	1,896	21,310
DISTRICT 6	2,064	11,806	1,087	14,957
DISTRICT 7	2,753	9,748	1,317	13,818
DISTRICT 8	5,138	12,533	2,683	20,354
DISTRICT 9	1,651	3,263	606	5,520
DISTRICT 10	1,765	5,191	736	7,692
DISTRICT 11	3,150	7,295	1,301	11,746
DISTRICT 12	408	2,922	209	3,539
SUB-TOTALS	46,708	133,980	19,305	199,993
DIVISIONS				
APPELLATE	937			
CINA	6,351			
COLLATERAL REVIEW	2,406			
MENTAL HEALTH	6,695			
JUVENILE PROTECTION	113			

Chart 4

OFFICE OF THE PUBLIC DEFENDER
CY2009 Total Cases Opened by District by Area of Law & Matter Type

Matters Opened		AreaOfLaw																		
Calendar Year 2009		Circuit							Circuit Total	District						District Total	Juvenile		Juvenile Total	Total
District	County	CI	DA	JT	NS	OC	SC	VC		CR	OD	PH	SD	TR	VD		DE	VJ		
01	Baltimore City	6,103	387	7,480	408	22	159	3,308	17,867	27,251	9	5,324	7	3,737	2,644	38,972	5,986	99	6,085	62,924
01 Total		6,103	387	7,480	408	22	159	3,308	17,867	27,251	9	5,324	7	3,737	2,644	38,972	5,986	99	6,085	62,924
02	Dorchester County	181	20	126	8	5	24	91	455	619	2	117	8	327	86	1,159	226	4	230	1,844
	Somerset County	105	7	22	17	1	11	49	212	417	-	81	1	236	19	754	113	3	116	1,082
	Wicomico County	544	28	207	45	42	7	243	1,116	1,905	3	392	1	918	250	3,469	832	71	903	5,488
	Worcester County	187	23	124	32	4	7	113	490	1,076	6	149	6	493	81	1,811	201	17	218	2,519
02 Total		1,017	78	479	102	52	49	496	2,273	4,017	11	739	16	1,974	436	7,193	1,372	95	1,467	10,933
03	Caroline County	71	1	188	23	2	4	77	366	665	-	96	2	433	47	1,243	68	0	68	1,677
	Cecil County	223	13	845	53	2	17	243	1,396	1,163	-	99	2	682	120	2,066	242	7	249	3,711
	Kent County	50	3	84	18	8	40	80	283	315	1	16	4	201	52	589	76	7	83	955
	Queen Anne's County	36	11	65	19	12	27	62	232	485	5	59	36	341	176	1,102	82	4	86	1,420
	Talbot County	108	3	62	14	1	14	97	299	519	1	90	1	446	101	1,158	75	4	79	1,536
03 Total		488	31	1,244	127	25	102	559	2,576	3,147	7	360	45	2,103	496	6,158	543	22	565	9,299
04	Calvert County	132	13	72	150	2	46	110	525	1,186	-	12	44	571	142	1,955	333	13	346	2,826
	Charles County	381	8	96	184	23	54	226	972	1,990	7	143	16	906	276	3,338	485	243	728	5,038
	St. Mary's County	232	11	143	184	1	19	88	678	1,398	1	81	92	532	180	2,284	244	35	279	3,241
04 Total		745	32	311	518	26	119	424	2,175	4,574	8	236	152	2,009	598	7,577	1,062	291	1,353	11,105
05	Prince George's County	1,512	17	2,308	176	35	179	661	4,888	8,529	8	1,941	1	3,882	165	14,526	1,884	12	1,896	21,310
05 Total		1,512	17	2,308	176	35	179	661	4,888	8,529	8	1,941	1	3,882	165	14,526	1,884	12	1,896	21,310
06	Montgomery County	939	406	52	201	39	43	384	2,064	6,671	17	976	17	3,303	822	11,806	978	109	1,087	14,957
06 Total		939	406	52	201	39	43	384	2,064	6,671	17	976	17	3,303	822	11,806	978	109	1,087	14,957
07	Anne Arundel County	1,078	207	453	96	28	143	748	2,753	5,680	11	475	243	2,640	699	9,748	1,249	68	1,317	13,818
07 Total		1,078	207	453	96	28	143	748	2,753	5,680	11	475	243	2,640	699	9,748	1,249	68	1,317	13,818
08	Baltimore County	1,892	367	1,296	300	6	298	979	5,138	7,268	2	981	268	3,408	606	12,533	2,399	284	2,683	20,354
08 Total		1,892	367	1,296	300	6	298	979	5,138	7,268	2	981	268	3,408	606	12,533	2,399	284	2,683	20,354
09	Harford County	349	231	519	51	26	47	428	1,651	1,768	21	194	88	777	415	3,263	537	69	606	5,520
09 Total		349	231	519	51	26	47	428	1,651	1,768	21	194	88	777	415	3,263	537	69	606	5,520
10	Carroll County	194	25	445	32	18	84	254	1,052	1,079	3	102	64	489	113	1,850	273	28	301	3,203
	Howard County	208	15	182	43	1	88	176	713	1,677	3	185	61	1,213	202	3,341	411	24	435	4,489
10 Total		402	40	627	75	19	172	430	1,765	2,756	6	287	125	1,702	315	5,191	684	52	736	7,692
11	Frederick County	283	65	572	100	10	130	348	1,508	1,678	6	183	58	964	235	3,124	565	107	672	5,304
	Washington County	576	73	420	193	50	70	260	1,642	2,215	5	488	92	938	433	4,171	494	135	629	6,442
11 Total		859	138	992	293	60	200	608	3,150	3,893	11	671	150	1,902	668	7,295	1,059	242	1,301	11,746
12	Allegany County	71	7	141	-	1	14	56	290	1,205	2	209	46	357	209	2,028	126	8	134	2,452
	Garrett County	43	5	27	1	1	8	33	118	566	2	36	28	180	82	894	63	12	75	1,087
12 Total		114	12	168	1	2	22	89	408	1,771	4	245	74	537	291	2,922	189	20	209	3,539
Total		15,498	1,946	15,929	2,348	340	1,533	9,114	46,708	77,325	115	12,429	1,186	27,974	8,155	127,184	17,942	1,363	19,305	193,197

Key

CI = Crim Information/Indictment	NS = Non-Support	VC = Violation of Probation - Circuit	CR = Criminal - District	SD = Sentence Review District	DE = Juvenile Delinquency
DA = District Court Appeal	OC = Other - Circuit		OD = Other - District	TR = Traffic - District	VJ = Violation of Probation - Juvenile
JT = Jury Trial Demand	SC = Sentence Review Cir		PH = Preliminary Hearing	VD = Violation of Probation - District	

Chart 5

Office of the Public Defender

Average Attorney Caseloads by Geographical Region

Urban - Suburban - Rural

Calendar Year 2009

Average Annual Caseloads per Attorney

The following charts illustrate the average annual caseload per attorney in District Operations in calendar years 2008 and 2009 by geographic region (urban, suburban, and rural) and computed within three areas of law; Circuit Court (mostly felonies), District Court (mostly misdemeanors) and Juvenile Court.

Average annual attorney caseloads are compared to the Maryland caseload standards as developed by the National Center for State Courts in 2005 as well as the more generic American Bar Association standards.

By any measure, attorney caseloads in almost every area of law and region of the State far exceed acceptable caseload standards established to protect *effective* representation as guaranteed by the U.S. Constitution, the Maryland Declaration of Rights and Maryland law. The American Bar Association has declared that attorneys have an ethical obligation to decline new cases when current caseloads prevent them from effectively representing their clients. As the charts show, not only do excessive caseloads jeopardize effective assistance of counsel Statewide, these caseloads continue to increase in calendar 2009 as they have over the last decade.

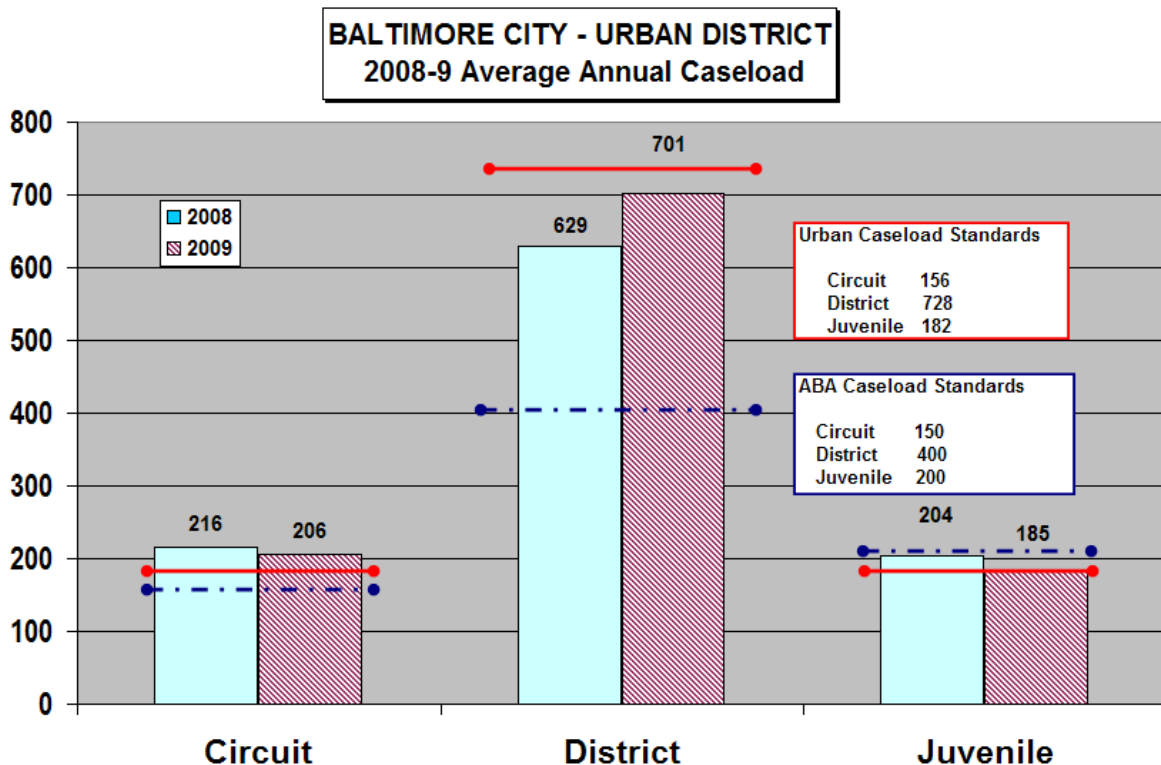


Chart 6

CIRCUIT COURT - RURAL DISTRICTS 2008-9 Average Attorney Caseloads

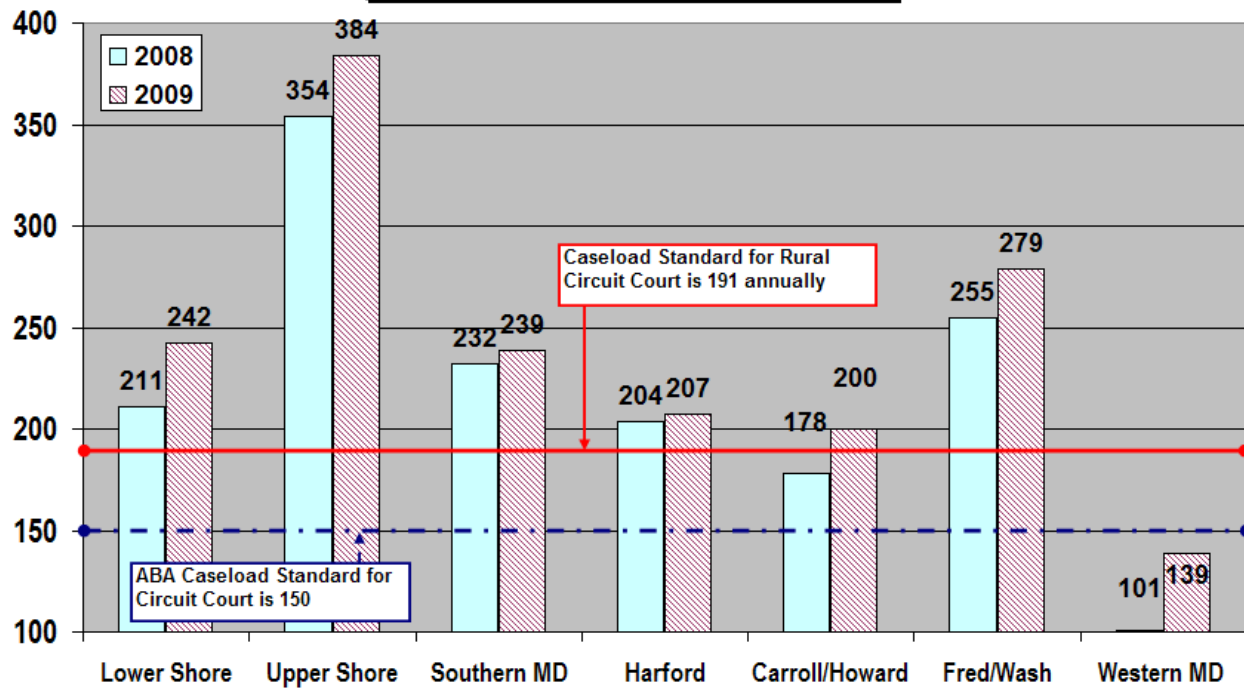


Chart 7

CIRCUIT COURT - SUBURBAN DISTRICTS 2008-9 Average Attorney Caseloads

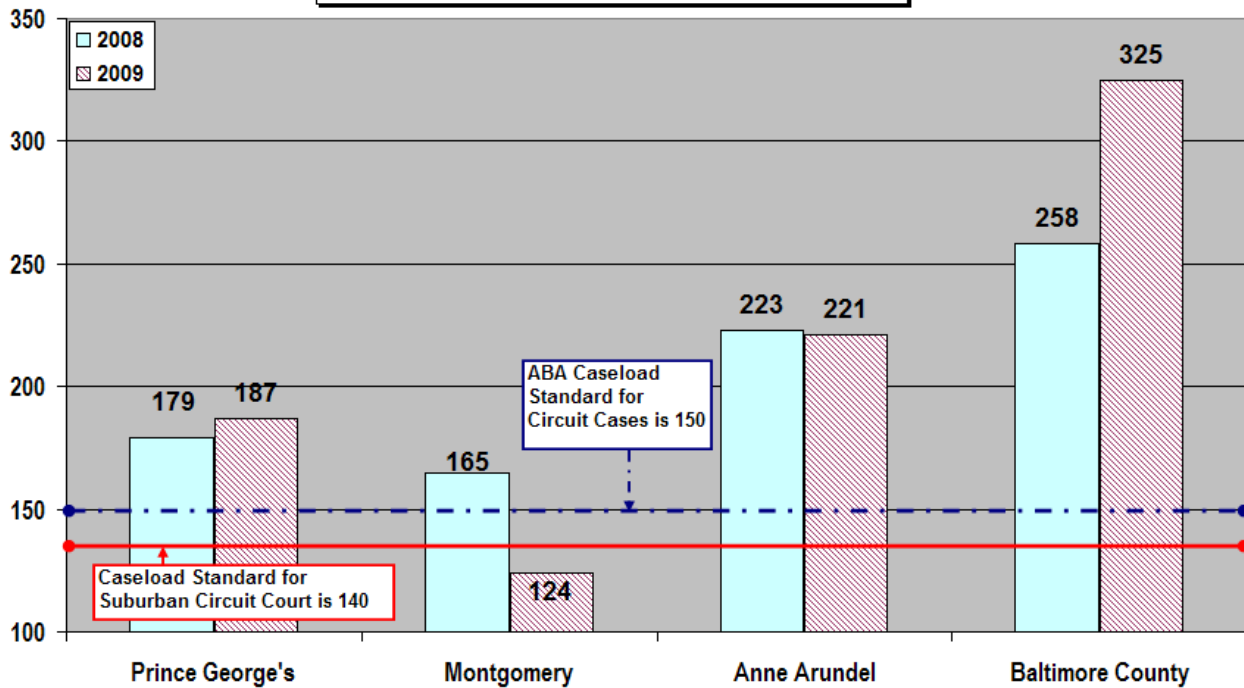


Chart 8

DISTRICT COURT - RURAL DISTRICTS 2008-9 Average Attorney Caseloads

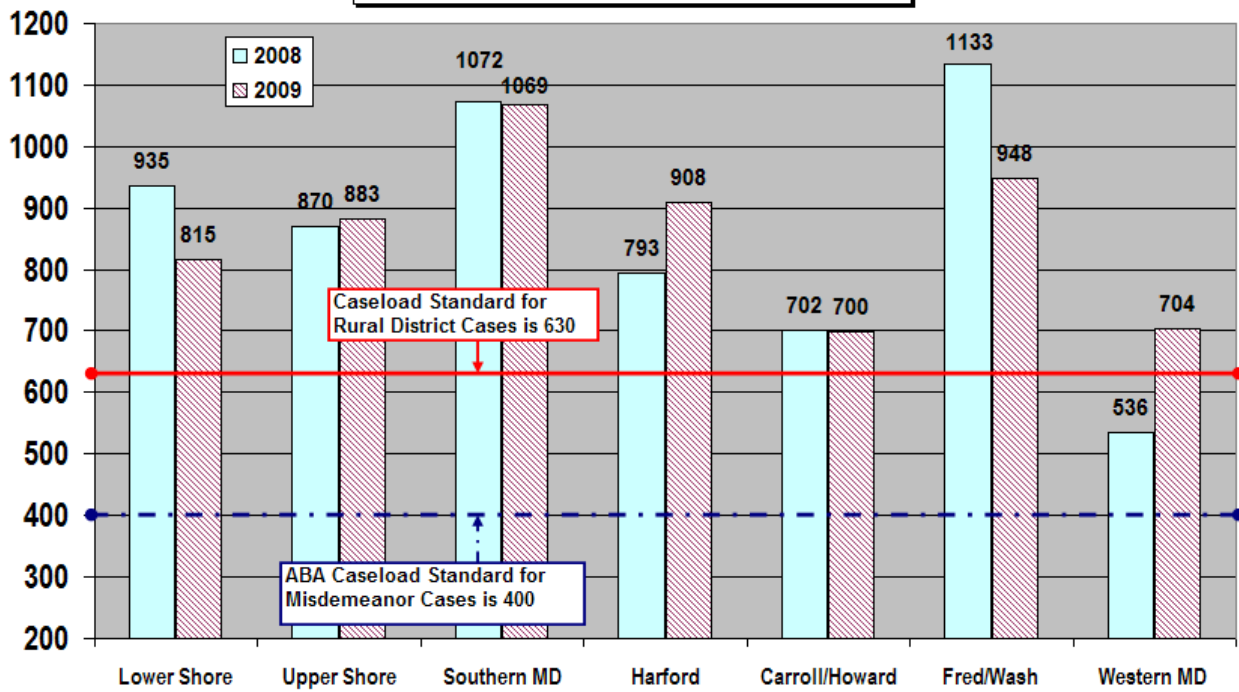


Chart 9

DISTRICT COURT - SUBURBAN DISTRICTS 2008-9 Average Attorney Caseloads

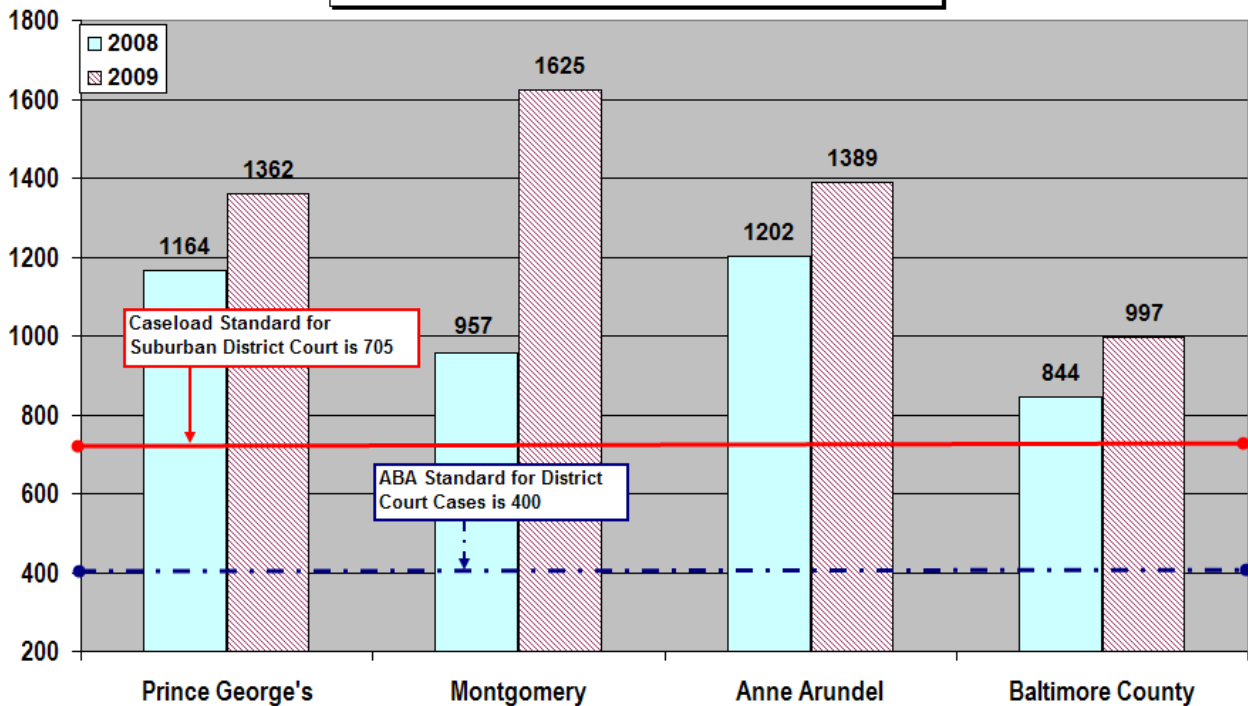


Chart 10

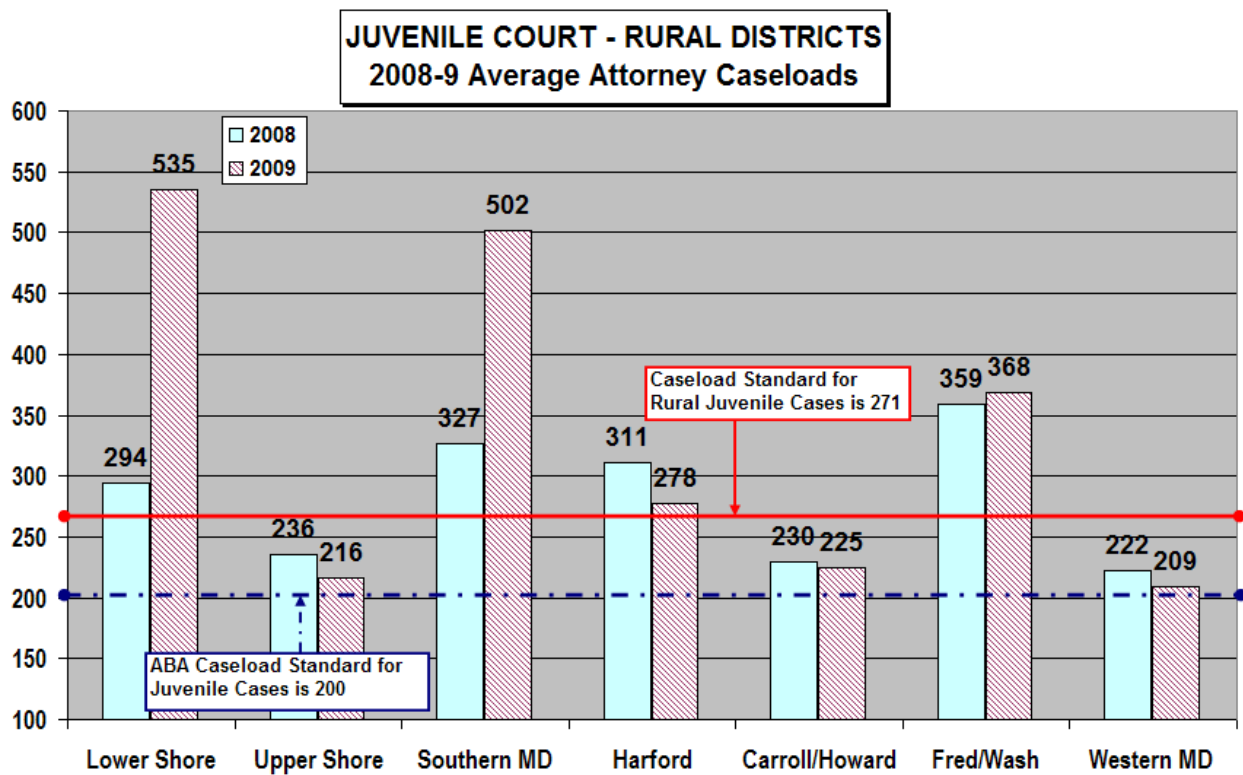


Chart 11

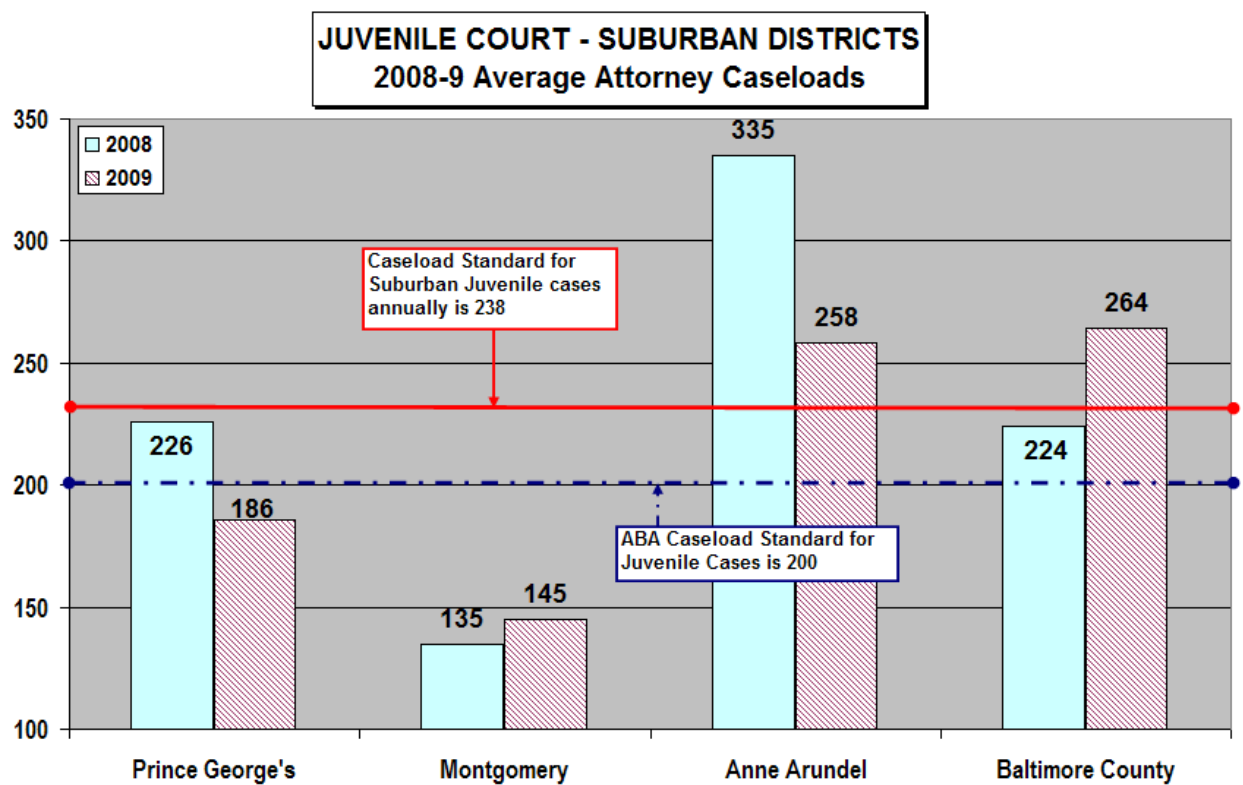


Chart 12

**PERCENTAGE CHANGE IN AVERAGE ATTORNEY CASELOAD
CALENDAR YEAR 2008 TO 2009***

District		Area of Law	CY2008	CY2009	Change	Caseload Standards	% change in Caseload Numbers	% over/under Caseload Standards
01	Baltimore City	Circuit	216	206	-10	156	-4.8%	31.9%
		District	629	701	72	728	11.5%	-3.7%
		Juvenile	204	185	-19	182	-9.2%	1.8%
02	Dorchester, Somerset, Wicomico Worcester County	Circuit	211	242	31	191	14.8%	26.8%
		District	935	815	-120	630	-12.9%	29.3%
		Juvenile	294	535	241	271	81.9%	97.3%
03	Caroline, Cecil, Kent, Queen Anne's, Talbot County	Circuit	354	384	30	191	8.4%	100.9%
		District	870	883	13	630	1.5%	40.1%
		Juvenile	236	216	-20	271	-8.7%	-20.5%
04	Calvert County Charles County St. Mary's County	Circuit	232	239	7	191	3.1%	25.2%
		District	1,072	1,069	-3	630	-0.2%	69.8%
		Juvenile	327	502	175	271	53.5%	85.2%
05	Prince George's County	Circuit	179	187	8	140	4.3%	33.4%
		District	1,164	1,362	198	705	17.0%	93.1%
		Juvenile	226	186	-40	238	-17.7%	-21.8%
06	Montgomery County	Circuit	165	124	-41	140	-24.8%	-11.4%
		District	957	1,625	668	705	69.8%	130.5%
		Juvenile	135	145	10	238	7.4%	-39.1%
07	Anne Arundel County	Circuit	223	221	-2	140	-0.8%	58.0%
		District	1,202	1,389	187	705	15.6%	97.1%
		Juvenile	335	258	-77	238	-23.0%	8.4%
08	Baltimore County	Circuit	258	325	67	140	26.1%	132.3%
		District	844	997	153	705	18.2%	41.5%
		Juvenile	224	264	40	238	17.7%	10.7%
09	Harford County	Circuit	204	207	3	191	1.4%	8.3%
		District	793	908	115	630	14.5%	44.1%
		Juvenile	311	278	-34	271	-10.8%	2.4%
10	Carroll County Howard County	Circuit	178	200	22	191	12.2%	4.5%
		District	702	700	-2	630	-0.3%	11.1%
		Juvenile	230	225	-5	271	-2.0%	-16.9%
11	Frederick County Washington County	Circuit	255	279	24	191	9.4%	46.1%
		District	1,133	948	-185	630	-16.4%	50.4%
		Juvenile	359	368	9	271	2.4%	35.6%
12	Allegany County Garrett County	Circuit	101	139	38	191	37.3%	-27.4%
		District	536	704	168	630	31.4%	11.8%
		Juvenile	222	209	-13	271	-5.9%	-22.9%

* CY 2009 caseloads do not reflect 10% increase in cases due to OPD v. State implemented in May 2010.

See Chart 2 for OPD v. State impact on attorney caseloads statewide.

Chart 13