



**MONTANA STATE
PUBLIC DEFENDER**

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Joint Appropriations Sub-Committee Part D

Sent via email

Chair Mercer and Members of the Committee:

Please accept these supplemental responses to the Committee's questions for OPD. Altogether, OPD's supplemental responses consists of the following documents:

- This narrative response document;
- OPD's Case Weight System Document; and,
- Three additional signed Flat Fee Addendums

I hope you find these supplemental responses helpful as you consider our budget request, and I look forward to future discussions.

Best,

Brett Schandelson

Brett D. Schandelson

Director

Office of State Public Defender

Description of OPD's Caseload Management System

OPD has had a caseload management standard since at least 2010, though it was never routinely or consistently enforced. During the work of and in response to the recently completed Legislative Audit Division's Performance Audit of OPD, OPD set out to improve and enforce its caseload management system.

In April 2021, OPD began rolling out the Ethical Case Management standard (ECM), which is a combination of enforcement of the previously existing caseload management process with additional tools to monitor those monthly caseloads at attorney and office levels. ECM also includes a procedure for overflow matters that are received by OPD when FTE attorneys and offices have reached their capacity for new assignments.

As an extension of current process and policy, ECM is supported by the following policies, procedures, and statutes:

- Case Weight System (attached)
- [OPD Policy 117](#)
- [OPD Policy 210](#)
- [OPD Policy 215](#)
- [Mont. Code Ann. § 47-1-104\(2\)-\(3\)](#)
- [Mont. Code Ann. § 47-1-202\(1\)](#)
- [Mont. Code Ann. § 47-1-215](#)

Though these controls provide the basic structure and requirements for caseload management, they need updating to reflect the current ECM tools and processes. Specifically, the tools and processes for determining attorney and office monthly assignments, and as well as the procedures to overflow matters received when all available FTE attorneys are at or over ECM capacity, are not reflected in the resources linked above.

While there are exceptions and matter specific circumstances, ECM generally functions as follows:

1. Each attorney is assigned an FTE value that indicates that attorney's expected caseload. For example, a full-time attorney would have a 100% (1.0) FTE Value, a part-time attorney would have a 50% FTE Value (0.5) and a three-quarter attorney would have a 75% FTE Value (0.75). Managing Attorneys' FTE values are currently reduced by 5% (0.05) for general supervision and an additional 5% (0.05) for each FTE employee they supervise.
2. Each OPD matter has a matter weight associated with it that is automatically calculated by the case management system (called AdvOPD) based on the number and severity of charges.
3. When a court appoints OPD under Title 47, the court sends a referral to OPD providing OPD the matter name, cause number, and basic information about the client and the matter.
4. All new trial level OPD appointments are received and processed by OPD staff in the Public Defender Division (Division 1) and all new matters are built into AdvOPD, which includes weighting the matter.
5. All newly created matters are automatically put into an assignment queue for the Managing Attorneys of the local office to assign, and any conflicts immediately identifiable from the

matter initiation documents are then transferred into a Conflict Managing Attorney's assignment queue. The regional administrator must approve the conflict determination.

6. Managing Attorneys work through the assignment queue and assign matters to FTE attorneys, typically by court and/or by matter type, with each new assignment increasing their ECM% for that calendar month.
7. Each matter is assigned to FTE attorneys until the office has received an average assignment per attorney of at least 125 new matter weight hours in a calendar month, the OPD matter weight standard. As necessary, managing attorneys may, and routinely do, assign FTE attorneys up to 150 matter weight hours in a calendar month, which is 20% over the matter weight standard.
8. These assignments are represented by the attorney's ECM %, which is the total of all new matter weight assigned in the month divided by 125 * the attorneys FTE Value:

Matter Weight Hours Assigned

/

(125 * FTE Value)

9. When an office's average ECM% for a calendar month exceeds 120%, all unassigned matters for that office, as well as any newly received matters in that calendar month, are indicated as "Overflow". Managing attorneys have discretion to continue to assign cases for existing clients, for other client related reasons or at the request of the line attorney.
10. Overflow matters are matters ready for assignment at a time when the OPD office did not have capacity to assign to an FTE attorney.
11. Overflow matters are first offered to FTE attorneys in the Conflict Defender Division – Division 3. The local conflict office will accept and assign these matters if it is under the ECM% for the calendar month, otherwise the matter will be put into the Contracts assignment queue for assignment to a contract attorney.
12. Each month, any unassigned matters in the Contracts assignment queue will be returned to the local office and conflict office Managing Attorneys' assignment queues, by the age and priority of the matters, for assignment to an FTE attorney until or unless that office exceeds an average ECM% of 120%. OPD currently triages matters assignments by matter severity and incarcerated clients, with felony matters for incarcerated clients being the top priority.
13. Managing attorneys work through the assignment queues and again assign until the office is at or over 120% of ECM, at which point newly received matters are indicated as overflow and the process loops.

What has OPD spent on the preparation and defense of State v. Patricia Batts?

Since the time the Office of State Public Defender was appointed to represent Patricia Batts on February 13, 2020, OPD has expended *at least* **\$1,601,468.03**. The breakdown of these expenditures by SABHRS Account Code is as follows:

Personal Services	61101 Regular	\$72,397.93	
	61103 Sick Leave	\$51.41	
	61401 FICA	\$5,432.24	
	61402 Retirement - Other	\$6,445.82	
	61403 Group Insurance	\$11,790.48	
	61404 Workers Compensation Insur	\$359.51	
	61410 State Unemployment Tax	\$145.88	
	Contracted Services	62109 Public Defender Costs - Other	\$60,602.50
62109A Contracted PD Attorney		\$1,064,697.13	
62109D Transcripts/Duplications		\$196.65	
62109E Expert Witness Fee		\$113,955.31	
62109I Investigator Fee		\$252,042.97	
62109O Outside Laboratory Testing		\$28.00	
62109X Mental Health Evaluation		\$2,824.94	
62225 Books & Reference Materials		\$411.00	
62241 Office Sup/Minor Equip-NonStat		\$225.95	
62245 Computer Hardware		\$62.49	
62407 In-State Meals		\$23.00	
62485 NonEmployOutStateCommerc/Trans		\$6,201.38	
62497 Non-Employee In-State Lodging		\$3,573.44	
Grand Total		\$1,601,468.03	

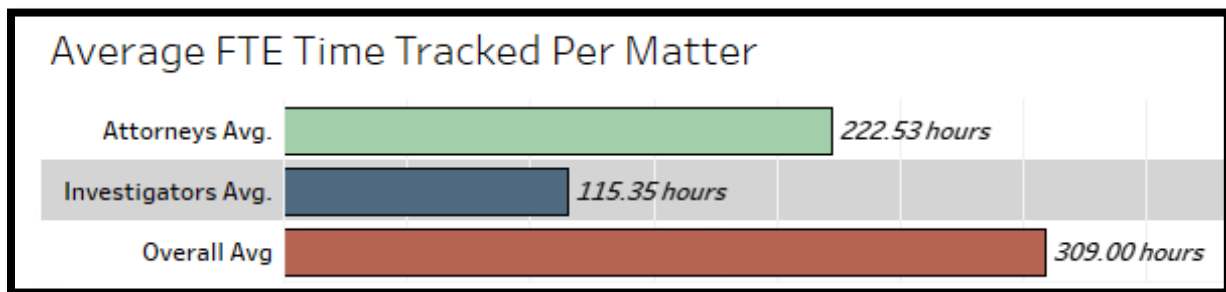
Please note these expenditures **do include** FTE costs incurred in support of this matter **after** it was assigned to external death-qualified contract attorneys, but **do not include** approximately **360 hours** expended by FTE attorneys and investigators **prior** to this matter being assigned to external death-qualified contract attorneys. These hours were expended early in the matter at a time it appeared this matter could be assigned solely to FTE attorneys.

What does OPD estimate it would have cost to defend this matter if the death penalty had never been noticed?

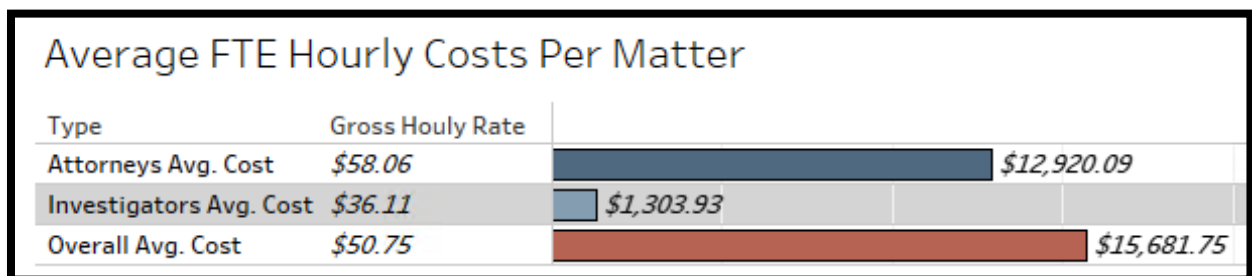
OPD estimates it would expend between **\$20,000.00 to \$30,000.00** to represent a typical, non-capital homicide matter.

To determine this range, OPD looked at FTE hours tracked and external expenditures for all homicides closed in OPD's case management system since the beginning of FY 2022 (July 1, 2021). In total there were 66 such matters, with 35 of these being handled by FTE attorneys and 31 being handled by contract attorneys.

For the matters handled by FTE attorneys, the **average amount of time tracked** for these matters by FTE employee type and overall is as follows:



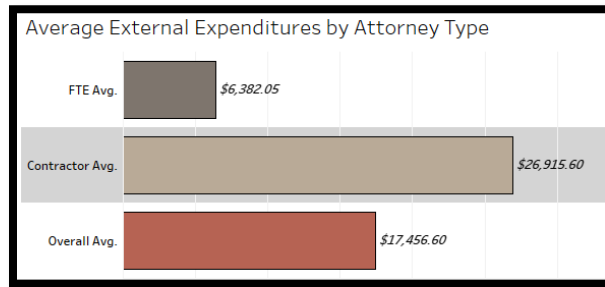
To convert these hours into costs, they are multiplied by a gross hourly rate that includes all salaries and benefits, but **does not include overhead**, to get a total average FTE cost per matter. The overall hourly rate is a weighted average of the attorney and investigator rate to give a more accurate total hourly expenditure per matter.



For the matters handled by contract attorneys, the **average expenditures** for contract attorney and contract investigators for these matters is as follows:

62109A Contracted PD Attorney	\$21,251.19
62109I Investigator Fee	\$5,226.03

Regardless of whether an FTE or contract attorney handles a matter, there are likely to be external client costs, especially in serious matters like homicides. The total **average external expenditures** for these matters is as follows:



Please note the “Contractor Avg.” *includes* the contract and investigator expenditures, as well as all other external expenditures.

Together we see an overall average total expenditure per matter of between roughly \$22,000.00 for an FTE assigned matter (\$15,681 internal costs plus \$6,382 external costs) and roughly \$27,000.00 for a contractor assigned matter.