



Office of State Public Defender

FY 22-23 Biennial Report to the Governor, the Legislature, and the Supreme Court

Please find the Office of State Public Defender's Fiscal Year 2022-2023 Biennial Reporting in accordance with Montana Code Annotated § 47-1-125(1) in the box to the right.

OPD has again chosen to release its Fiscal Year 2022-2023 Biennial Report with an interactive data discovery dashboard, allowing much greater insight into OPD's work. Direct, raw data downloads also remain available through the links to the right. We hope visitors find this format useful and enlightening.

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- ❖ [FY 22-23 Raw Report Data Download](#) – this Excel workbook contains the following FY 22-23 Agency Data:
 - Matter counts, Client counts, and Expenditures
 - FTE Matters Assigned
 - Agency Staffing
 - Trainings Offered

While the 2023 Biennium presented OPD with many obstacles and challenges, across nearly all aspects of the agency, the most significant issues, in terms of impact and agency response, were directly or indirectly related to OPD's vacancy crisis at the Public Defender position.

Public defense nationwide was severely affected by the "Great Resignation," the term applied to significant turnover experienced as a knock-on effect of the Covid-19 Pandemic and its effects on the labor market. Unfortunately, OPD was no exception. As workers looked to improve their quality of life, wages and workloads became paramount concerns. Unsurprisingly, given OPD's historical lack of competitive pay and an ineffective—unenforced—workload standard, OPD struggled to recruit and retain qualified Public Defenders as the "Great Resignation" ramped up. These vacancies in-turn put additional pressure on OPD's already strained contractor pool, for which the hourly attorney rate was \$56/hour at the start of this biennium, a rate cut from \$61/hour in April 2018.

The lack of adequate FTE attorneys combined with the unwillingness of contractors to accept work at the offered rate created the situation that caused delays in attorney assignment, garnering much attention in the fall and winter of 2021. Frustratingly, these same issues—FTE attorney pay, FTE attorney workload, and Contract Attorney pay—were the most critical findings and recommendations of the Legislative Audit Division's Performance Audit of OPD and issues on which OPD had made little progress at the start of this biennium.

This time, however, OPD responded.

Just prior to the start of the biennium, OPD began enforcing its workload standard for FTE attorneys, Ethical Case Management (ECM). ECM ensures that FTE attorneys across the agency are assigned an ethical and equitable amount work. After two years of enforcement, I can confidently say that the system is accomplishing its purpose. Further, ECM has also provided the agency much higher quality (and in some cases, the first and only) data on attorney workloads, which was utilized in crafting and supporting OPD's budget request for the FY 2024-2025 biennium. ECM has had a profound, paradigm shifting impact on OPD. Though the work on ECM is far from complete, OPD is committed to continuously improving ECM to ensure the system is as robust and accurate as possible. While ECM is a significant step forward, other interventions were needed during this biennium to ensure the agency did not collapse under the weight of its constitutionally, statutorily, and court-mandated work.

In May 2022, in a last-stand effort to support the justice system, and in compliance with the Performance Audit, OPD adjusted both Public Defender wages and Contract Attorney hourly rates. These adjustments halted the collapse in OPD's FTE and contract workforce and enabled OPD to return to net positive hiring.

As part of the ongoing process of rebuilding OPD's workforce, OPD has targeted recruitment efforts on third-year law students, identifying individuals likely to be successful at OPD early, providing offer letters in the fall for employment the next year. The combination of ECM and competitive wages now provides an environment for these young attorneys in which they can thrive instead of merely survive. The two recruiting classes so far have been very successful, with more than twenty new Public Defenders joining the agency through this process. And when all the current 2023 "3L" have all joined the agency, OPD will be as close to fully staffed at the Public Defender position than in any time since, at least, the restructuring of the agency in the 2017 Legislative Session.

Although there remains much to be done, OPD made significant improvements over the last biennium. Many of these efforts are guided, if not recommended, by the Performance Audit, adding its reasoning and credibility to the chorus of those calling for much needed change. Sadly, OPD has not been alone in addressing these kinds of issues, but OPD is again striving to be a national leader in Public Defense.

While the FY 2022-2023 Biennium has been a difficult couple of years for OPD, the agency has come through it improved and in a better position to serve the citizens of Montana, ensuring that the Montana Constitution has a stalwart defender for years to come.

Best,

Brett D. Schandelson

Brett D. Schandelson
Director
Office of State Public Defender