

**OPD.MT.GOV**



# **OPD Materials**

**March 17, 2026, Sub-D IBC**

**Mission**

Providing the most compassionate and expert defense of clients and the Constitution.

**Vision**

Creating expert teams of advocates for justice, bringing respect and dignity to our clients to achieve holistic and equitable outcomes.

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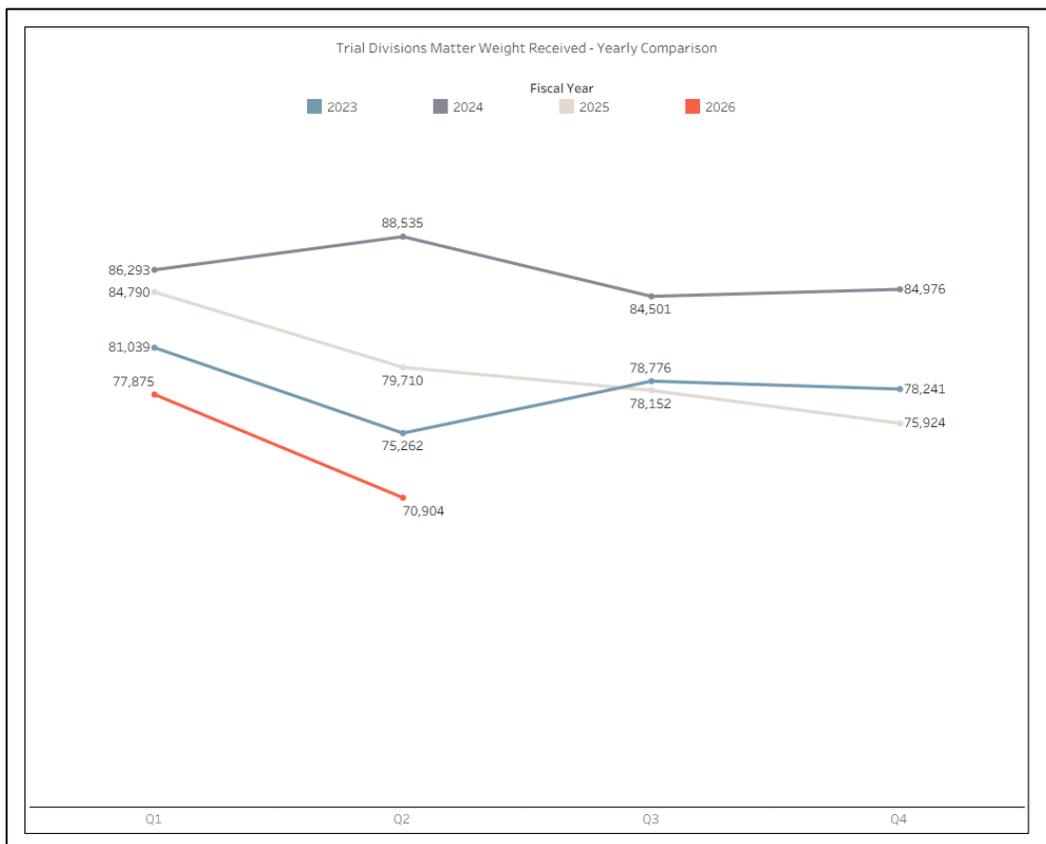
# March 17, 2026, IBC Agenda Items

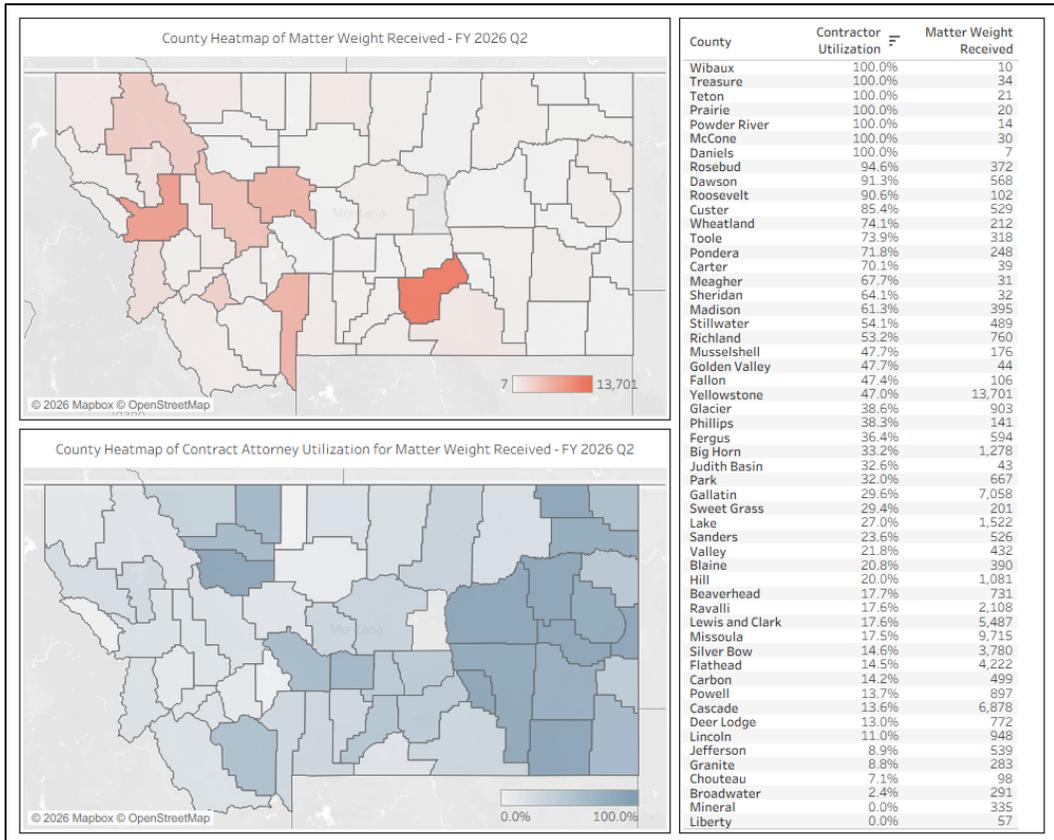
## Potential supplemental update

OPD currently projects that its need for supplemental funding will be less than \$2.5 million by the end of FY 2027. The primary variables affecting this estimate are the total weight of new, incoming cases (which remains below last year), FTE vacancy rate (which has become increasingly seasonal), and contractor case acceptance rate (which is up slightly over the past quarter but remains substantially below last year).

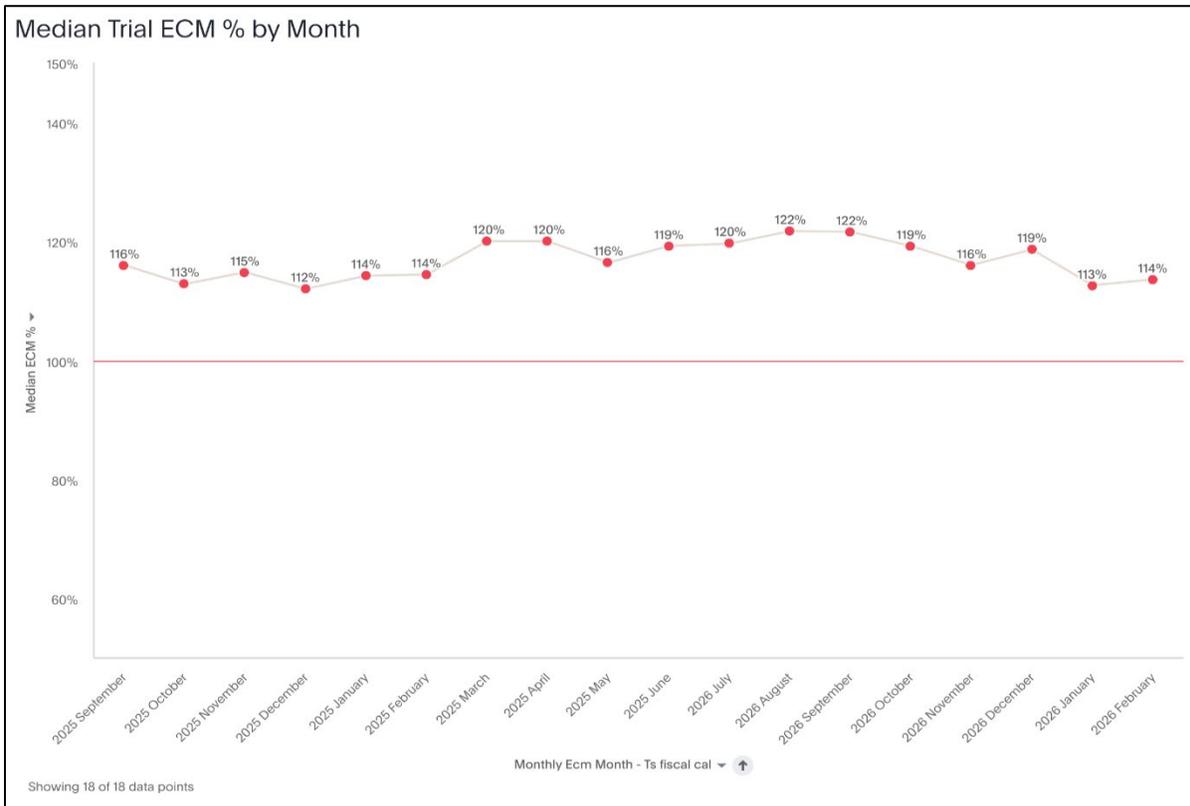
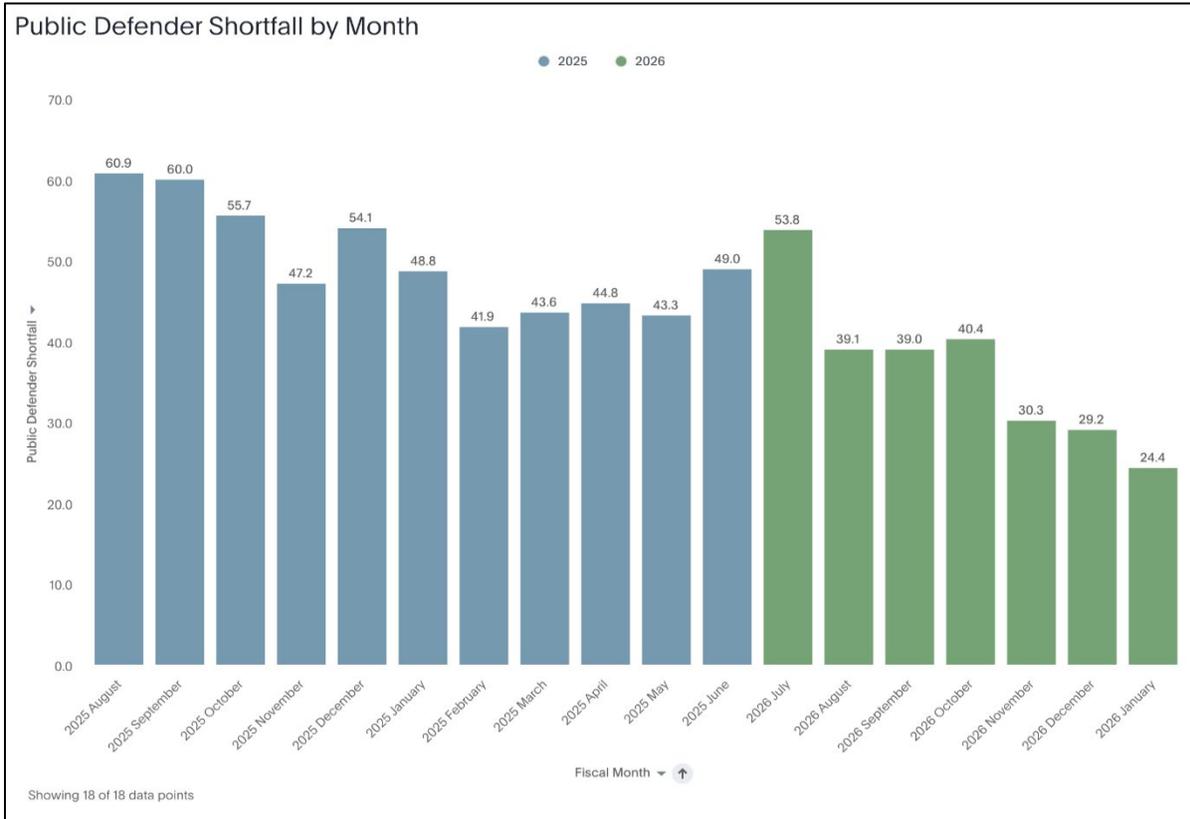
## FY 2026 Q2 caseload statistics

The charts below present the number and weight of matters received by case type, received caseload by area, and contract public defender utilization by area. The total weight of cases received during the first half of FY 2026 was down 9.6% versus the same period in FY 2025.

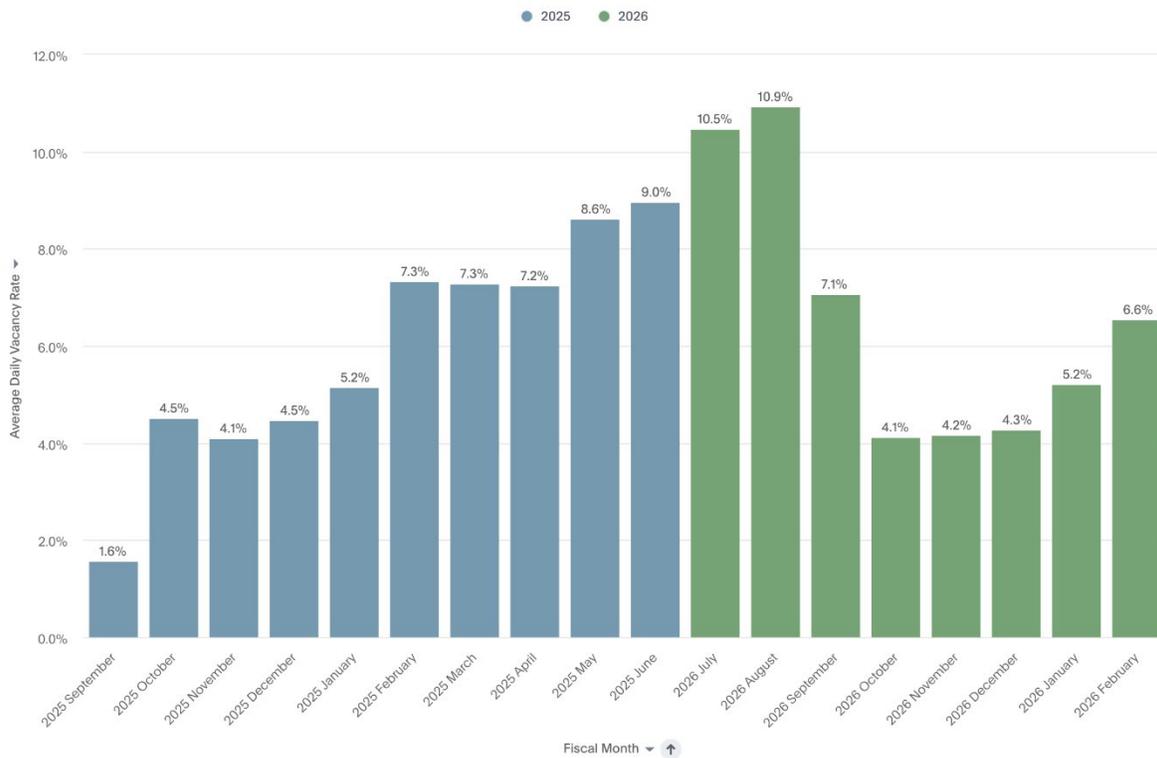




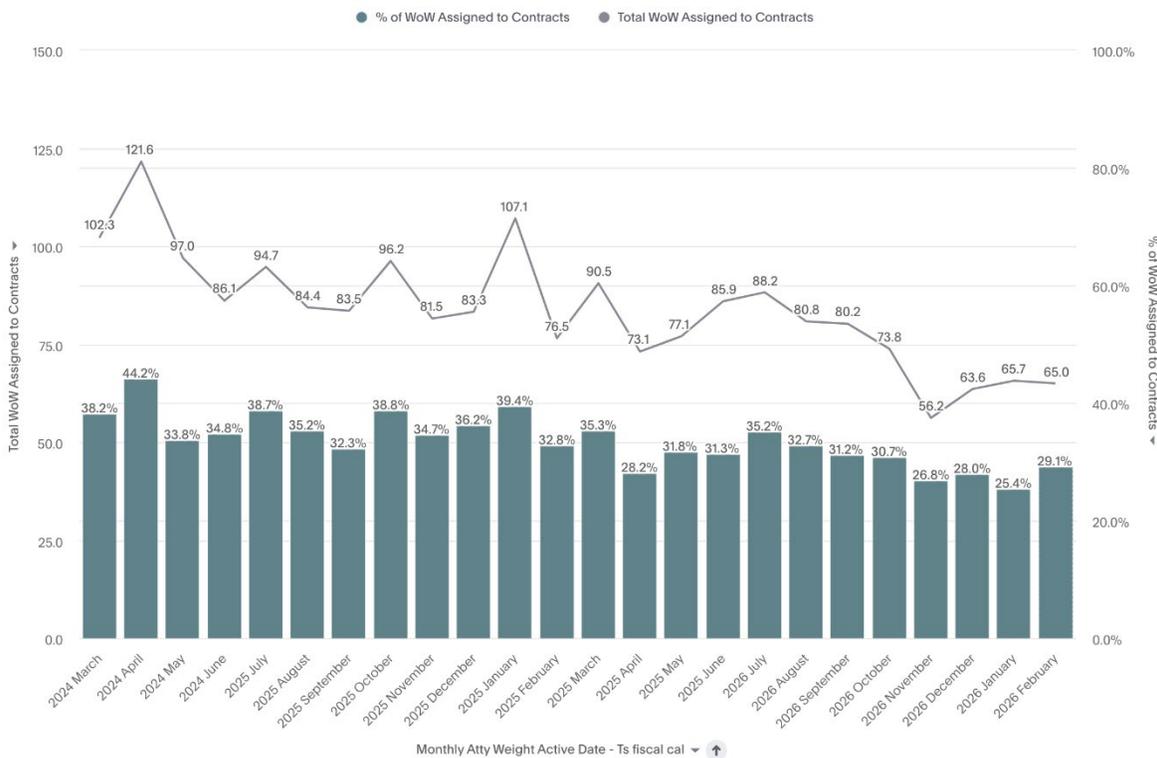
# Standing IBC metrics



### Avg. Daily Vacancy Rate for Pub. Def. Positions by Month



### WoW Assigned to Contract Public Defenders



## Changes in work accepted by contractors

Over the past two years, OPD has experienced a significant decline in the amount of work that has been accepted by contract attorneys. This decline has been particularly apparent in FY 2026 Q2, despite the increase in contract attorney rates from \$71/hour to \$90/hour at the start of FY 2026. The dynamics behind the amount of work OPD is able to contract are complex. Co-occurring potential reasons for the decline are detailed below.

### **1. Reduction in overall work received**

FY 2026 Q2 represented the lowest quarterly volume of work OPD has received in its trial divisions since the start of FY 2023. After peaking in FY 2024, the volume of work referred to the agency has largely been falling quarter-over-quarter since. With an increase in FTE attorneys at the start of FY 2026, both the volume and share of work made available to contractors has been diminished.

This effect is particularly pronounced in the flat-fee contracting for Billings Municipal Court. FY 2026 Q2 saw more than a 30% decline in the volume of work received from this court compared to the same quarter last year. This reduction in work received resulted in a one-for-one reduction in work taken by the flat-fee contractors there.

Additionally, the smaller pool of work available to contractors may be creating fewer options generally for contractors to choose from when looking for the types of cases each individual contractor is willing to accept. Some contractors may have responded to this change by accepting less work. Importantly, however, despite the decrease in work received, OPD continues to offer far more work to the contract attorney market than the market is willing to accept, resulting in a continued Public Defender Shortfall.

### **2. Compositional shift toward lower court criminal cases**

In addition to the decline in overall options available to contractors, the composition of work being offered to contractors has shifted materially from District Court criminal cases to lower court criminal cases. Per OPD's contracts program staff, contractors generally prefer District Court criminal matters. Lower courts typically offer fewer options for court appearances by video, requiring more travel and diminishing the attorney's flexibility. Lower court cases are also spread out over a wider range of court locations and times, creating scheduling conflicts and making a full caseload of such misdemeanor cases more difficult to manage—and, thus, less attractive—for contract attorneys.

### **3. Compositional shift toward Gallatin County courts**

Geographically, OPD has also seen a shift in where the agency is offering cases to contractors, primarily driven by a decline in the volume of work offered in Yellowstone County and an increase in the volume of work offered in Gallatin County. To a much lesser extent, the work available to contractors has also fallen in Cascade and Lewis & Clark Counties while slightly increasing in Missoula County.

It is, thus, possible that the decline in contract volume is due in part to offering cases in more expensive jurisdictions where OPD's payment rate is even less competitive.

### **4. Recent loss of specific high-volume contractors**

Finally, OPD's decline in contracting volume, at least in recent months, is partly due to the loss of several individual, high-volume contractors. The reasons for these attorneys' reduction or cessation of work for OPD include:

- Self-imposed reductions due to an already high caseload
- Holiday period reduction that has yet to rebound
- Desired type of cases less available
- MOU termination by OPD
- Pursuit of other professional opportunities

OPD's Contracts Office continues to seek new contract attorneys but the attorney market in Montana is fairly static, and these specific contractors have not yet been wholly replaced.

### **5. Direct Assignment agreements**

Hopefully pushing in the opposite direction, this quarter OPD has signed its first Direct Assignment agreements with specific contractors. These agreements commit individual contractors to accepting a set weight of cases each month from agreed upon locations and case types in exchange for OPD committing to offer them those specified cases when available. OPD intends to continue negotiating these individual agreements and is optimistic that their establishment of consistent and predictable work in chosen areas will motivate interested contract attorneys to commit to increased assignments while also providing OPD reliable contracting around which OPD can then efficiently structure FTE assignments.