Prior to 2006, Public Defense was handled on a county-by-county basis

Established OPD in 2006

Structural changes in 2017

Currently handles over 35,000 cases a year
OBJECTIVE

Determine if the Office of State Public Defender manages its staff and contract attorney workforce to provide cost-efficient and effective indigent legal services.
ENSURING EFFECTIVE COUNSEL
PERFORMANCE EVALUATIONS

- Regular, formal evaluations are considered best practice
- 36% of OPD staff attorneys had never been evaluated
- OPD has never completely met the contract attorney statutory evaluation requirement
客户端投诉未被一致地记录在各个州。投诉没有被集中跟踪或监控，以确保一致性或识别模式。
RECOMMENDATION #1

Improve centralized oversight to ensure effective counsel is provided by attorneys performing public defense work by:

• requiring consistent evaluations of staff attorneys,
• evaluating contractors on a biennial basis, and
• enforcing client grievances policy and procedures.

Department response: Concur
EXCESSIVE CASELOADS ARE A NATIONWIDE CHALLENGE TO PUBLIC DEFENSE

- Increase risk of ineffective counsel
- Costs the client, their family, and even the tax payer
- Impact agency retention
SOME CASELOADS AT OPD ARE EXCESSIVE

• 56.6% of OPD attorneys had more than the 1,500 expected number of case hours assigned in a year
• 19.7% exceeded total number of hours in a full-time work year without leave time (2,080 hours)
• 12.5% exceeded national maximum standards
Figure 4
Seventy percent of Public Defender Division attorneys disagree their caseloads are reasonable.

Source: Compiled by Legislative Audit Division staff from OPD attorney survey responses.
Public Defender Division regions 9 and 3 most strongly disagreed their assigned caseloads are reasonable.

Source: Compiled by Legislative Audit Division staff from OPD attorney survey responses.

*Region 11 - Miles City had no responses in this category.
Too Few Attorneys

- Inflexible Recruitment
- Low Contract Rates
- Un-competitive Attorney Wages

High Turnover

Attorney Burnout

Heavy Caseloads
SOME REGIONS STRUGGLE TO RECRUIT ATTORNEYS

• Difficult to recruit and retain staff attorneys in some regions

• Recruitment practices do not:
  • strategically target out-of-state attorneys,
  • assist applicants to attend interview,
  • compensate for relocation, or
  • allow for on-the-spot job offers at job fairs
RECOMMENDATION #2

Develop a recruitment plan to fill positions in chronically understaffed regional offices.

Department response: Concur
OPD ATTORNEYS WAGES ARE LOWER THAN OTHER STATE ATTORNEYS
... AND COUNTY ATTORNEYS

<table>
<thead>
<tr>
<th></th>
<th>Average Actual Salary</th>
<th>Minimum</th>
<th>Maximum</th>
</tr>
</thead>
<tbody>
<tr>
<td>Public Defender</td>
<td>$74,925</td>
<td>$64,064</td>
<td>$92,851</td>
</tr>
<tr>
<td>Deputy County Attorney</td>
<td>$81,173</td>
<td>$56,908</td>
<td>$113,443</td>
</tr>
<tr>
<td>OPD Regional Manager</td>
<td>$93,864</td>
<td>$83,966</td>
<td>$99,049</td>
</tr>
<tr>
<td>County Attorney</td>
<td>$110,116</td>
<td>$87,485</td>
<td>$135,235</td>
</tr>
</tbody>
</table>

Source: Compiled by Legislative Audit Division staff from SABHRS June 2020 salary data, self-reported deputy county attorney salaries from 11 counties as of August 2020, and a Montana Association of Counties FY 2019 salary survey for County Attorneys.
RECOMMENDATION #3

Investigate and propose methods to the legislature to address excessive differences in pay between OPD staff attorneys and other public attorneys.

Department response: Concur
CONTRACT ATTORNEYS ALSO INDICATE THEY ARE UNDERCOMPENSATED

• Contract attorneys most commonly stop or decrease contracting due to low compensation rate
• Half of survey respondents would not consider contracting unless the rate was $15 an hour higher from the current rates
• Regional midpoint rates varied $10 an hour between the lowest and highest regions.
RECOMMENDATION #4

Assess the need for an increase to the contract professional or travel rate to attract willing and competent attorneys in high demand areas of the state.

Department response: Concur
CASELOAD IS NOT EVENLY DISTRIBUTED BETWEEN AGENCY DIVISIONS OR REGIONS

• Conflict Division average caseload was 42 percent lower than in the Public Defender Division
• Cases currently are only assigned to the Conflict Division there is a conflict of interest
RECOMMENDATION #5

Establish and implement policy for moving cases between divisions for select case overflow relief.

Department response: Concur
PROVIDING COST-EFFICIENT COUNSEL
Table 6

Staff Attorneys Cost Less on Average Per Added Case Weight and Added Case

<table>
<thead>
<tr>
<th>Percent Difference Contractor to Staff Attorney</th>
<th>Average Cost Per Added Case Weight</th>
<th>Average Cost Per Added Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>+22%</td>
<td>+64%</td>
<td></td>
</tr>
</tbody>
</table>

Source: Compiled by Legislative Audit Staff from cost-efficiency analysis.
The most cost-efficient means of providing indigent legal services is by assigning cases to OPD staff attorneys. OPD may be able to increase its capacity to keep cases in-house by increasing the number of staff attorney positions and conflicting cases out between different regions, potentially decreasing overall costs.
OPD DOES NOT TRACK ATTORNEY TIME

- Time-tracking is best practice for public defense for resource allocation and performance measurement
- Time-tracking is required to meet statutory reporting standards
- Policy requires tracking by case type and court
- Current time-tracking practices are inconsistent and inaccurate
RECOMMENDATION #6

Improve agency time-tracking completeness and accuracy by centrally monitoring frequency of submissions and quantity of time, enforcing the requirement that managers review and approve time each week, and improving the ease of time-tracking.

Department response: Concur
SOME CONTRACTORS BILL INCONSISTENTLY AND INEFFECTIVELY

• Eight contract attorneys bill more hours than a full-time employee, despite only an estimated 75% of time being billable hours
• 41% of surveyed private attorneys do not use their assistant to complete any OPD work
• 8% use assistants to work on OPD cases, but charged at the higher attorney professional rate.
RECOMMENDATION #7

Increase centralized oversight of contractor billing on an agency level to improve efficiency and consistency in contractor billing by reviewing agency-wide billing patterns and revising and communicating contracting policy.

Department response: Concur
DATA TRACKING AND ANALYSIS
Inaccurate and incomplete data compromises agency decision-making and resource allocation.
MONTANA’S JUSTICE SYSTEM DATA IS DISCONNECTED AND DUPLICATIVE

- No integrated justice database
- No central repository of justice data (data warehouse)
- U.S. Department of Justice describes efficiencies and quality improvement of integrating justice information
- Other states have completed or begun the process to integrate justice agency data
RECOMMENDATION #8

Develop and implement a data management program to:

• identify data needs,
• develop controls,
• establish performance targets,
• develop reports, and
• improve access to justice data.

Department response: Concur
QUESTIONS