

# **PUBLIC DEFENDER WORKFORCE MANAGEMENT**

**Office of State Public Defender**

**19P-04**

**October 2020**

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Auditor**

## BACKGROUND

- **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**



OPD Director

Public Defender  
Division  
Administrator

Appellate Defender  
Division  
Administrator

Conflict Defender  
Division  
Administrator

Central Services  
Division  
Administrator

11 Regional  
Offices and  
Contractors

3 Regional  
Offices and  
Contractors

## 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**

## TRACKING CLIENT GRIEVANCES

- **Client grievances not consistently entered across the state**
- **Grievances not centrally tracked or monitored for consistency or concerning patterns**



## 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**

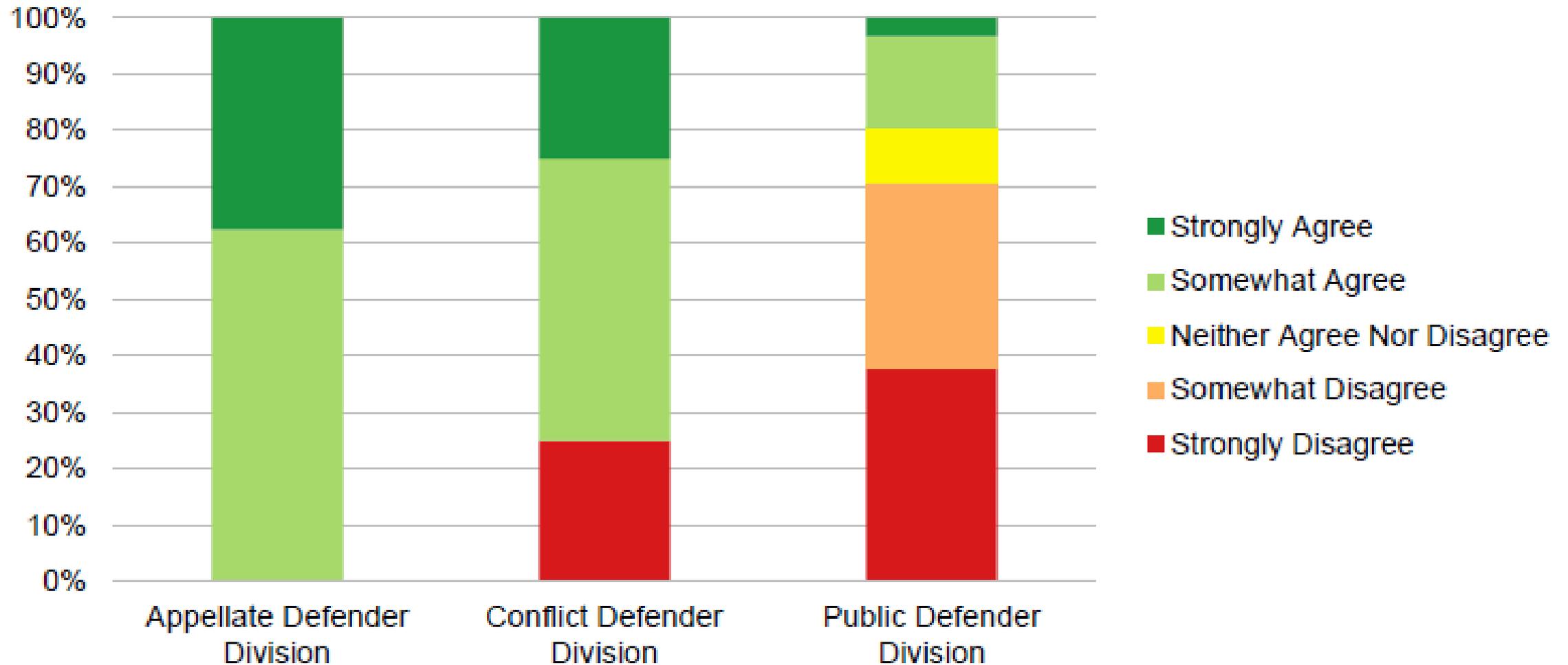
- **Increase risk of ineffective counsel**
- **Costs the client, their family, and even the tax payer**
- **Impact agency retention**

## 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**

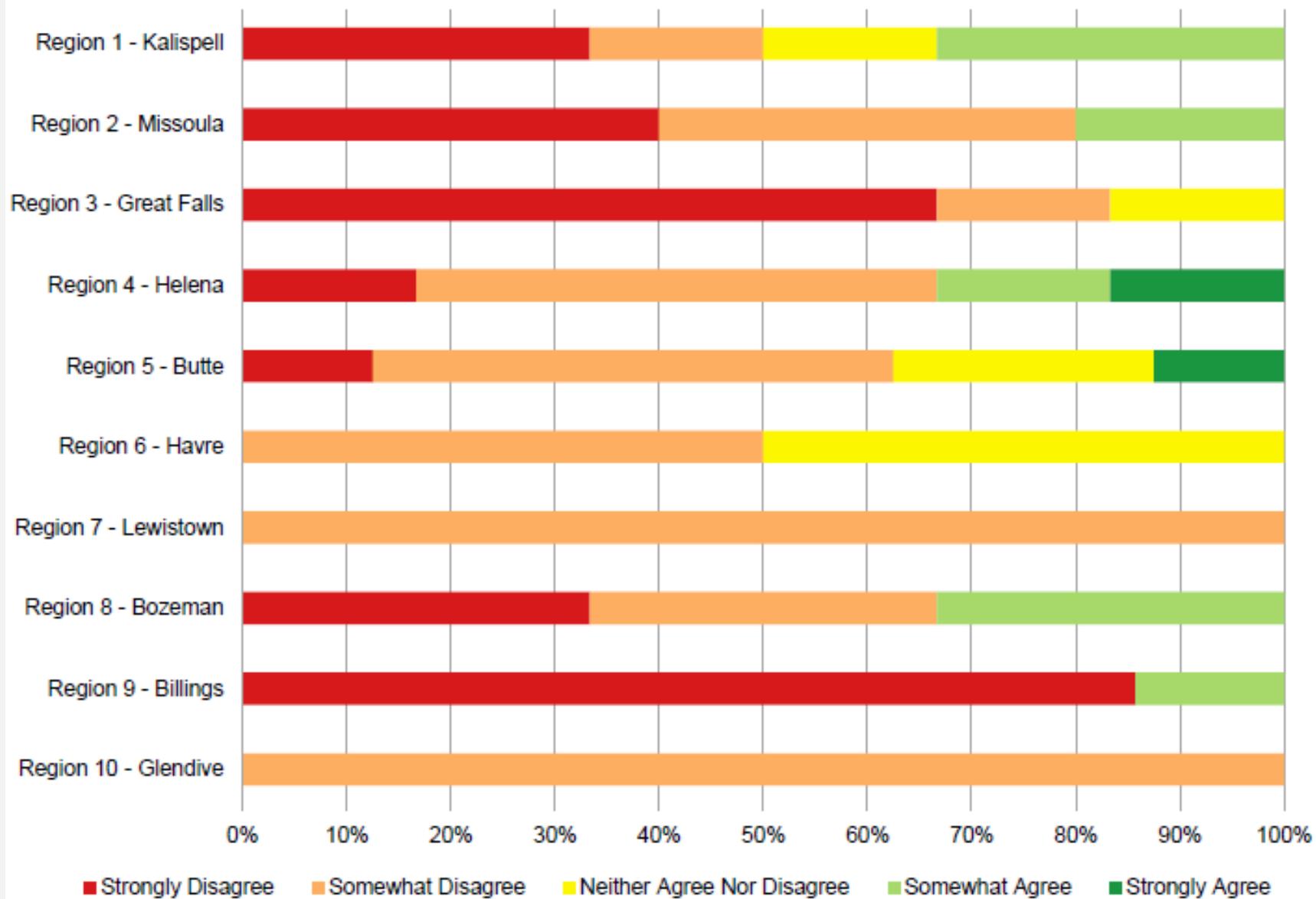
Figure 4

Seventy percent of Public Defender Division attorneys **disagree** their caseloads are reasonable.



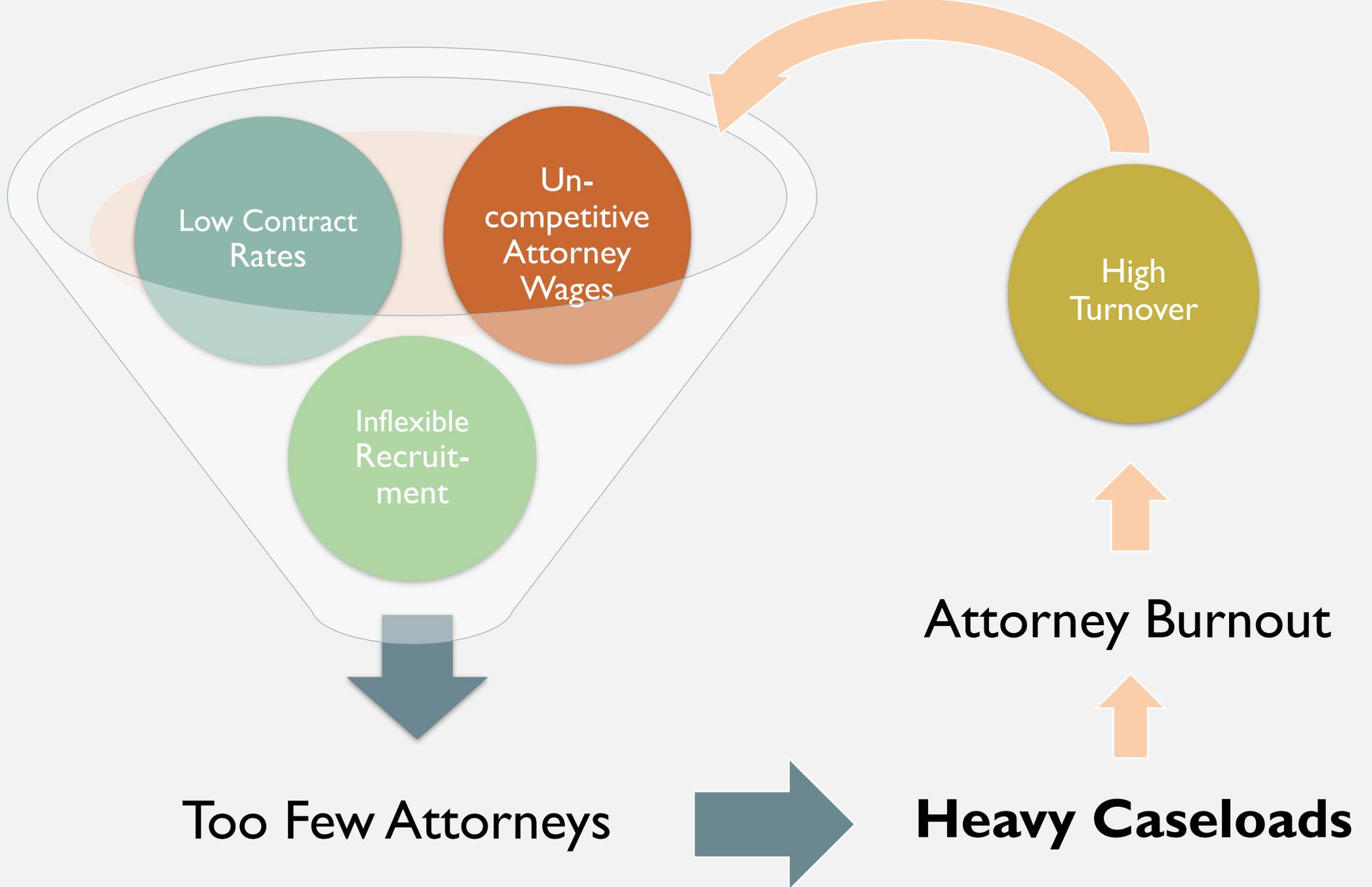
Source: Compiled by Legislative Audit Division staff from OPD attorney survey responses.

**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.



Low Contract Rates

Un-competitive Attorney Wages

Inflexible Recruitment

Too Few Attorneys

Attorney Burnout

High Turnover

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

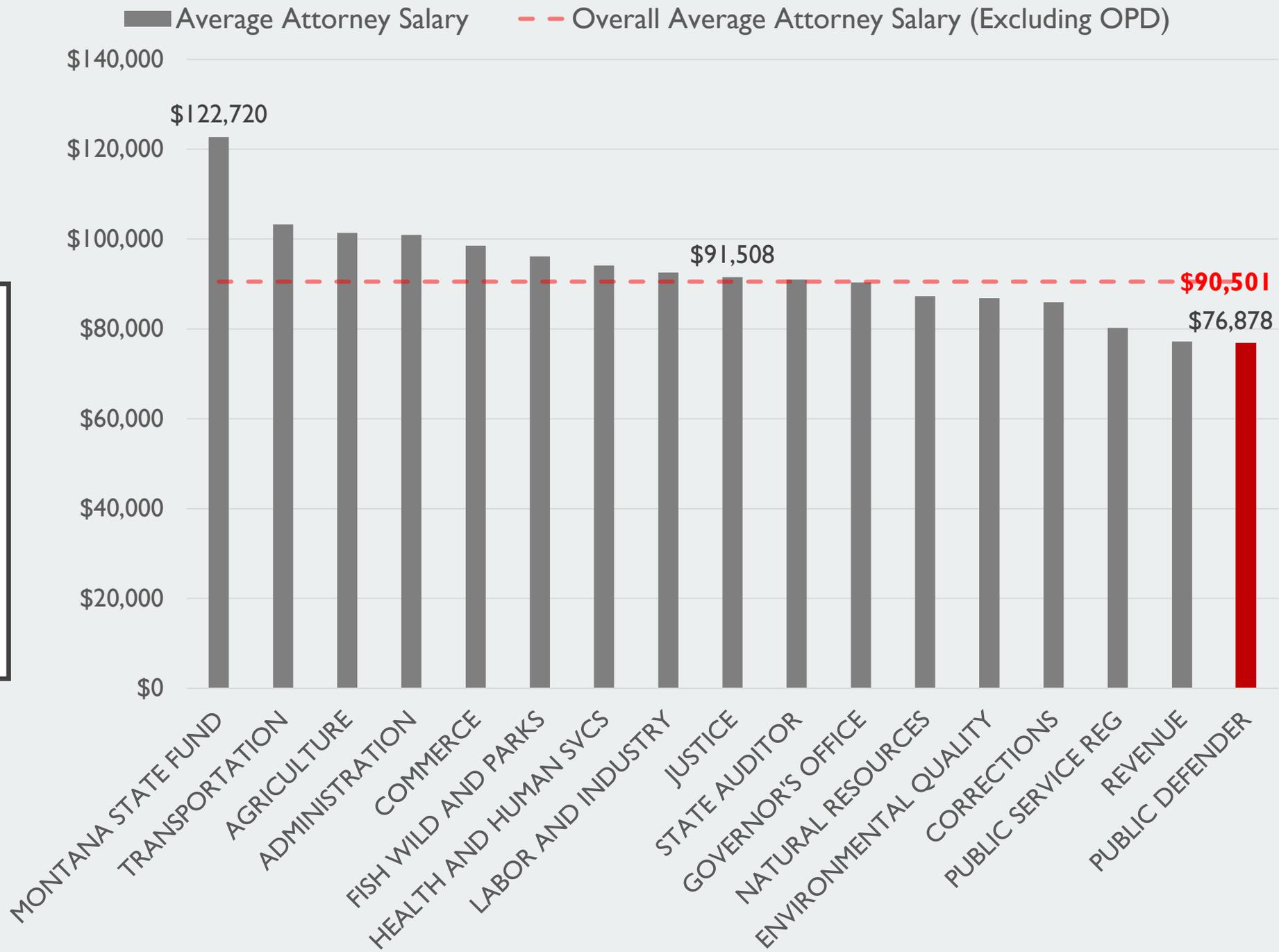


## RECOMMENDATION #2

**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 4  
Pay Comparison of Public Defenders and County Attorneys

	Average Actual Salary	Minimum	Maximum
Public Defender	\$74,925	\$64,064	\$92,851
Deputy County Attorney	\$81,173	\$56,908	\$113,443
OPD Regional Manager	\$93,864	\$83,966	\$99,049
County Attorney	\$110,116	\$87,485	\$135,235

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**

# STAFF ATTORNEYS COST RELATIVELY LESS THAN CONTRACT ATTORNEYS

Table 6

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

	Average Cost Per Added Case Weight	Average Cost Per Added Case
Percent Difference Contractor to Staff Attorney	+22%	+64%

Source: Compiled by Legislative Audit Staff from cost-efficiency analysis.

## CONCLUSION

**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

OPD DOES NOT ACCURATELY TRACK  
KEY DATA POINTS

Data Points not  
Identified or  
Tracked

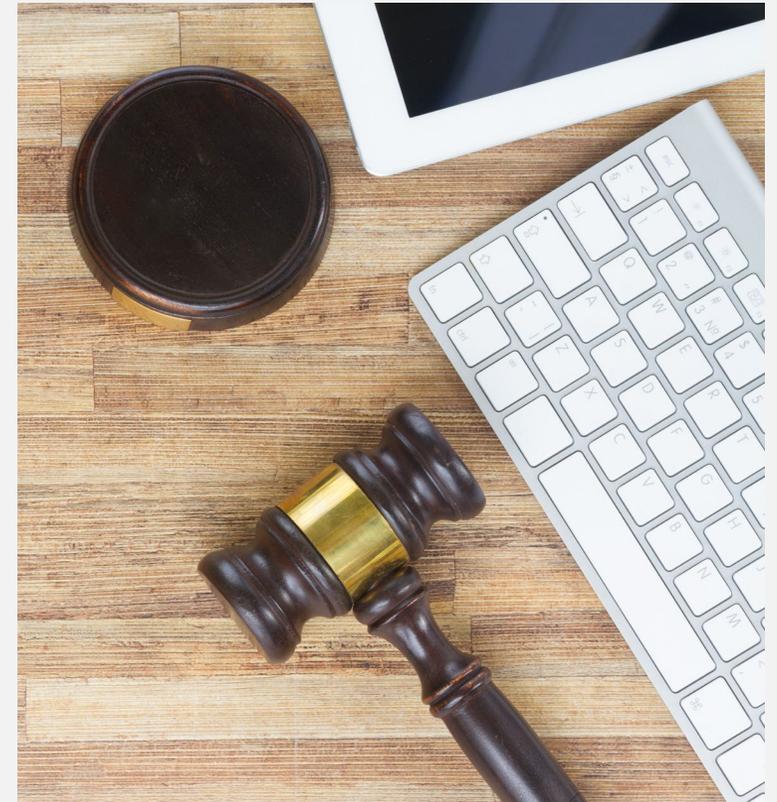
Data Heavily  
Reliant on Manual  
Entry

Duplicative Justice  
Data Siloed  
Between Agencies

**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