

Office of State Public Defender HB 693 Required Reports

- **(3) Tasks performed by attorneys and non-attorneys in FY 2022 not required by statute or the Constitution w/amount of time**

Please see the tables below detailing the amount of time spend by OPD employees and expenditures from outside vendors for matters OPD is not constitutionally nor statutorily required to provide representation.

OPD employee time spent on matters for which OPD is not constitutionally nor statutorily required to provide representation

		Attorney	Case Worker	Investigator	Total Hours
DPA - Private Adoption	Attorney Consulting/Mentoring	0.50			0.50
	Case Work	60.85			60.85
	Client Communication	5.40			5.40
	Court	7.00			7.00
	Management	0.70			0.70
	Travel	1.50			1.50
	Total	75.95			75.95
TE - Treatment Court	Attorney Consulting/Mentoring	4.90	0.50		5.40
	Case Work	826.19	105.80	0.75	932.74
	Client Communication	93.22	28.20		121.42
	Court	1,057.73	36.50		1,094.23
	Leave (Sick/Vacation/Holiday)	4.00			4.00
	Management	9.80			9.80
	Training	21.70			21.70
	Travel	0.20			0.20
	Total	2,017.74	171.00	0.75	2,189.49
Total Hours		2,093.69	171.00	0.75	2,265.44

Expenditures paid by OPD for matters OPD is not constitutionally nor statutorily required to provide representation

			Expenditures
DPA - Private Adoption	Contract Attorney	Cost	\$180.00
		Hourly Fees	\$1,536.70
TE - Treatment Court	Contract Attorney	Cost	\$488.89
		Flat Fees	\$17,307.60
		Hourly Fees	\$42,916.05
Total Expenditures			\$62,429.24

OPD currently provides representation in Private Adoption matters under a duty set by the Supreme Court in *In the Matter of the Adoption of A.W.S. and K.R.S.*, 2014 MT 322, 377 Mont. 234, 339 P.3d 414.

OPD currently provides a defense attorney to all District Court Treatment Courts pursuant to an MOU with Office of Court Administrator from 2018. OPD further provides a defense attorney to many lower court treatment courts, some of which have funding for OPD and some of which do not, on the basis of client’s best interests, treatment court best practice, and cohesiveness of the justice system.

- **(4) Report on Title IV-E funding met needs to provide legal representation for children and parents of child abuse and neglect proceedings - other funds used if not**

Title IV-E reimbursement is not intended nor designed to offset 100% of the costs OPD incurs in providing representation in Abuse & Neglect matters, though it does reduce the general fund expenditures for these cases allowing OPD’s appropriation to go further.

In FY 2022 OPD successfully leveraged over one million dollars in Title IV-E Funding via an MOU with the Department of Public Health and Human Services. These funds are invoiced for and paid on a reimbursement basis. Implementation of our case management and reporting system during the first and second quarters of FY 2022 made invoicing challenging but OPD has made procedural and system changes to eliminate delays in invoicing. DPHHS has proven to be a good partner to work with as we leverage this important funding stream.

OPD continues to develop reporting that allows us to identify all eligible cases and associated expenditures to apply to IV-E. Current matching requirements and changes in penetration rates make this a bit of a moving target within our budget and appropriation so we are cross training and increasing the reporting frequency and are, as a result, better positioned to monitor and invoice for expenses. The table below shows our case numbers for Dependency and Neglect (DN) in FY 2022 by “DN – Type” (client type)¹. In addition to direct case work, we have established procedures and internal controls to effectively leverage eligible support expenditures outside of personal services and contracted attorney hours.

# of Matters	# of Clients	
8,872	6,165	
<input type="checkbox"/> DN - Type ↓	<input type="checkbox"/> fx # of Matters	<input type="checkbox"/> fx # of Clients
<input type="checkbox"/> Child	1,374	1,333
<input type="checkbox"/> Parent	7,190	4,641
<input type="checkbox"/> -	308	243
Total	8,872	6,165

¹ A blank “DN – Type” indicates OPD was not able to programmatically determine whether a case is a “Child” or “Parent” matter type due to the type of relationship(s) between the subject(s) and respondent(s) of a petition.

Our Fiscal Year 2022 reliance on contracted attorneys has presented challenges to fully leveraging these funds, largely due to the lack of timely invoicing on the part of those contract attorneys assigned to DN cases. We are seeing success in hiring OPD attorneys, which, if continued, improve our ability to invoice for IV-E in an accurate and timely manner. IV-E funding, used in tandem with drug court sub grants, create a valuable resource for OPD and the clients we serve. Expansion of both funds would be welcome as we continue to work with drug impacted populations. Continued leveraging of the IV-E funding stream and the resulting collaborative effort with DPHHS are crucial to the success of OPD and representative justice for the clients we serve.

- **(5) Data needed to measure performance and establish data-based performance measures & targets**

As with many criminal justice agencies across the nation, OPD has struggled to identify specific, meaningful performance measures for public defenders and the agency as a whole. Complicating this effort is that OPD is a purely responsive entity, has no discretion in work received, and while OPD's work will affect the outcome in a specific case, determining performance based on outcomes is ill-advised at best, and impossible at worst. This is partly because there are so many external, objective factors that influence the outcome in any given case that OPD has no ability to control or affect, such as the underlying evidence in a specific case and the defendant's history and situation. The largest factor, though, is that the decisions and discretion of other justice system actors, such as judges and prosecutors, have an overwhelmingly larger impact on outcomes than OPD's work.

Thankfully, OPD is not alone in this, and in 2022 the Council of State Governments Justice Center and the Bureau of Justice Assistance created the Justice Counts initiative. Justice Counts sets consensus-driven metrics for all criminal justice stakeholders, designed to provide consistent data to agencies and policymakers alike. Justice Counts has metrics across many categories, such as: Capacity & Costs; Population Movements; Operations & Dynamics; Public Safety; Equity; and Fairness. These metrics vary by stakeholder, for example, OPD's Population Movement category includes the following metrics: 'cases appointed counsel', 'cases disposed', and 'caseloads'.

Currently, OPD is tracking all data points identified by Justice Counts and plans to continue to follow the recommendations of data tracking and performance metric targets by Justice Counts to ensure our ability to share data to stakeholders and decision makers regarding the operations of OPD and the Montana criminal justice system.

It is important to note, however, that as of now, Justice Counts has only identified the metrics to **track**, it has not identified **targets** for stakeholders to achieve. OPD will continue to seek guidance and best practices from Justice Counts and other groups like the American Bar Association, the National Association of Public Defense, and the National Legal Aid and Defenders Association on performance measures and metrics.

- **(6) Cases in fiscal year 2022 in which it moved for waiver of the assessment and the basis for the motion**

OPD attorneys are required to represent the client and their interests at all stages in a proceeding, which includes advocating for the client's position on any number of issues, such as the waiver or imposition of any financial obligations stemming from a client's matter. As all OPD clients that are

defendant in a criminal matter must qualify for OPD services, by demonstrating either financial indigency or a severe financial hardship in retaining private counsel, it is the normal and typical practice to request a full or partial waiver of all financial obligations related to their matters, such as fines, fees, surcharges, etc., which would include any OPD Fee Assessments. Additionally, the imposition of any financial obligations requires the sentencing court to make a determination on the defendant's ability to pay, and ultimately, the decision to impose any financial obligations, including OPD Fees, is purely within the court's discretion.

To provide additional insight into this question, OPD has prepared the attached spreadsheet titled "693(6) OPD Fees Assessed", which details how many times an OPD Fee was assessed in Fiscal Year 2022 by court.

- **(7) Employees and contractors in cases involving defendants in treatment courts in the preceding fiscal year for each defendant without identifying the defendant by name for each district court or court of limited jurisdiction**

Please see the attached spreadsheet titled "693(7) FTEs and Contractors in Treatment Courts" which details which individuals worked in which treatment courts by court and client. Please note that not all treatment courts in the state provide individual cause numbers for each participant in the treatment court, and further, that OPD practice on treatment court tracking varies depending on local circumstances and needs. As such, in these circumstances it is currently not possible to provide the raw number of treatment court participants in an aggregate way. These are indicated in the "ClientID" column by displaying "Duty Assignment/Tracking Cases" instead of a ClientID.

- **(8) Time spent by employees and contractors in cases involving defendants in capital cases in fiscal year 2022 for each defendant**

Please see the attached spreadsheet titled "693(8) FTE Time for Capital Matters" which details the hours tracked by FTEs for capital matters in Fiscal Year 2022.

Please see the attached spreadsheet titled "693(8) Contractor Hours for Capital Matters" which details hours submitted by contractors for work done on capital matters in Fiscal Year 2022 which have been paid by OPD as of August 29, 2022. Please note that some contractor tasks are not assigned, tracked, or paid on an hourly basis, which is indicated by a zero in the "Total Hours" column in the spreadsheet. Examples might include flat fee evaluations or services, lodging or mileage, or other non-hourly work. Although there are no hours associated directly with these tasks, they do represent work performed by contractors on these matters and OPD has included these for context.