

Policy 201 – Ethical Case Management

1) Ethical Case Management

- A. The Office of State Public Defender (OPD) shall utilize Ethical Case Management (ECM) to:
 - i) ensure individuals assigned by OPD to represent, investigate, or support OPD clients are assigned a reasonable volume of work and are able to provide ethical, competent, and effective representation, services, and support to each matter and client assigned in accordance with this policy, OPD’s Standard Operating Procedures (SOPs), OPD’s Practice Standards, the Montana Rules of Professional Conduct, any relevant judicial or ethics opinions, and any rules, standards, or canons promulgated by any relevant licensing authority; and,
 - ii) provide predictable, consistent, and standardized matter management processes, protocols, and procedures that ensure client matters and related records contain relevant, timely, accurate, and necessary information to effectively provide public defender services.
- B. To implement the provisions of this policy, OPD shall adopt SOPs, which are incorporated by reference into this policy. These SOPs define and document each activity, assignment, process, protocol, and procedure necessary to implement ECM, including mandating that certain information be entered into OPD’s case management system at certain stages or in certain ways throughout a record’s lifecycle.
- C. Unless otherwise specified, any reference to a “public defender” in this policy shall refer to both an attorney employed by OPD, an FTE public defender, as well as an external attorney providing public defender services pursuant to a Memorandum of Understanding (MOU), a contract public defender.
- D. Failure or refusal to comply with the provisions of this policy, the SOPs, or directives from management regarding Ethical Case Management shall be subject to appropriate discipline.

2) Matter Management

- A. All OPD matters shall be managed within OPD’s case management system, pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage client matters, and which shall, at a minimum, require that the matter record, together with all related records, data, files, documents, and other information is the sole source of official information regarding OPD matters.
- B. OPD employees shall utilize OPD’s case management system for all work performed on behalf of an OPD client pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively utilize OPD’s case management system by assignment, activity, or role.
- C. All contractors, vendors, and service providers shall utilize OPD’s case management system as required by their Memorandums of Understanding (MOUs) or Service Agreements (SAs) and pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively utilize OPD’s case management system by assignment, activity, or role for all work performed on behalf of an OPD client.
- D. **Client Contact Information**
 - i) Ensuring up-to-date, accurate client contact information in OPD’s case management system is critical as individuals providing representation, investigation, or services to OPD clients

must be able to rely on the accuracy of client information in OPD's case management system. Further, clients' contact information is utilized throughout OPD's case management system, including providing client access to the client portal and a series of automations within OPD's case management system, such as providing automatic notice of events and messaging through multiple communication channels.

- ii) Client contact information shall be managed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage client contact information in OPD's case management system, and which shall, at a minimum, require that OPD employees make regular and routine efforts to ensure a client's contact information on file is up-to-date and accurate.

E. Matter Initiation

- i) A new matter shall be created in OPD's case management system when the new matter represents a new unit of work subject to matter weighting under this policy.
- ii) All new matters shall be created pursuant to the SOPs which document the procedures, timelines, and mandatory information required to open a new matter in OPD's case management system, and which shall, at a minimum, require that, within all reasonable efforts, new matters be created within one business day of OPD receiving notice of the obligation to provide representation.

F. ECM Weighting Protocol

- i) Each individual matter, as well as certain assignments, activities, or roles, are assigned a weight which represents the number of hours the matter, assignment, activity, or role is estimated to take over the matter, assignment, activity, or role's lifecycle. The ECM Weighting Protocol shall be performed pursuant to the SOPs, which document the procedures, values, and mandatory information required to effectively and appropriately weigh each matter, assignment, activity, and role with the estimated number of hours that the matter, assignment, activity, or role should take to work to completion.
- ii) ECM Weights are estimates, designed to ensure an individual is given an appropriate and reasonable amount of work, and the actual number of hours required for an individual matter, assignment, activity, or role will vary.
- iii) The ECM Weighting Protocol shall be periodically validated, and adjusted as necessary, pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively modify the ECM Weights, and which shall, at a minimum, require that employee time tracking, contractor invoicing, employee feedback, relevant national standards, OPD's practice standards, relevant ethical standards, and common-sense be considered in the validation or adjustment of the estimated hours associated with an individual matter, assignment, activity, or role.
- iv) Most ECM weights are automatically calculated based on the following protocol and statute weight tables:

(1) Criminal and Juvenile Matters

- (a) OPD's case management system creates a "Charge Weight" for each matter, which is the highest value of all statute weights associated with all charges related to the matter, as identified in the tables below. The "Charge Weight" will dynamically update as charges are added, amended, or dismissed.

- (b) The “Charge Weight” will stop dynamically updating 45 days after the matter was received. Regional Public Defenders or Division Administrators may adjust the “Charge Weight” after this time if they determine the matter has substantially changed.
- (c) OPD’s case management system will create a “Matter Enhancement” weight for an individual matter if the matter has 5 or more active charges as identified in the tables below.

(2) All Other Matter Types

- (a) OPD’s case management system creates a “Charge Weight” for each matter that has the value of the matter type as identified in the tables below.
- (b) DN – Abuse & Neglect Matters are weighted per petition or family, as appropriate, and not by the number of children related to the petition or family.

(3) User Activity Weights

- (a) Various user activity weights provide weight hours as identified in the tables below.

Criminal & DJ Matter Types ECM Statute Weights

<u>Statute Weight Hours</u>	<u>Statute Desc.</u>	<u>Statute Code Reference</u>
2.5	Fugitive/Out of County Warrant	- Various
3	All City/County Ordinance Violations	- Various
3	All Traffic Offenses, except DUI Crimes	- All Misd Title 61-X-XXX <i>except 61-8-10XX crimes</i>
3	Disorderly Conduct, Obstructing a Peace Officer, and MIP Crimes	- 45-8-101 - 45-7-302 - 45-5-624
3	Sentence Review	- 46-18-903
3.5	Misdemeanor Petition to Revoke	- 46-18-203 - 41-5-1431
6	Felony Petition to Revoke	- 46-18-203 - 41-5-1431
7	Lower Court Appeal	- 46-17-311
7	Misd. Crimes, except Misd. Sex Crimes, and Misd DUI Crimes	- All Misd Title 45, <i>except 45-5-5XX and 45-5-7XX</i> - All Misd Title 61-8-10XX
10	Misd. Sex Crimes	- All Misd Title 45-5-5XX - All Misd Title 45-5-7XX
10	Felony Property, Public Order, and Public Administration Crimes	- All Felony Title 45-6-XXX - All Felony Title 45-7-XXX - All Felony Title 45-8-XXX
15	Felony Dangerous Drugs and DUI Crimes	- All Felony Title 45-9-XXX - All Felony Title 61-8-10XX

20	Felony Theft and Offenses Against Person, <i>except Felony Sex and Homicide Crimes</i>	<ul style="list-style-type: none"> - All Felony Title 45-6-3XX - All Felony Title 45-5-XXX, <i>except 45-5-5XX and 45-5-7XX</i>
50	Felony Sex Crimes	<ul style="list-style-type: none"> - All Felony Title 45-5-5XX - All Felony Title 45-5-7XX
100	Homicide Crimes	<ul style="list-style-type: none"> - All Felony Title 45-5-1XX

Civil Matter Types ECM Statute Weights

<u>Statute Weight Hours</u>	<u>OPD Matter Type</u>	<u>Statute Desc.</u>	<u>Statute Code Reference</u>
4	DD	Developmental Disability	- 53-20-128
4.5	DI	Involuntary Commitment	- 53-21-121
5	DG	Guardianship	- 72-5-321
20*	DN	Abuse & Neglect	- 41-3-422
20	DPA	Private Adoption	- 42-5-101
<i>* only one charge row per DN matter and only one child matter per petition or family shall be weighted 20 ,all others shall use the 0 weight statute</i>			

Miscellaneous ECM Weights

<u>Weight</u>	<u>Weight Desc</u>	<u>Weight Type</u>	<u>Weight Added by</u>	<u>Weight Criteria</u>
3	EPS Hearing Coverage	User	Automatically by AdvOPD	Weight given to an attorney assigned to a matter as an EPS Attorney
7	Misd Matter Enhancement	Matter	Automatically by AdvOPD	5 or more charges in a single matter
10	Felony Matter Enhancement	Matter	Automatically by AdvOPD	5 or more charges in a single matter with 1 or more Felony charges
Varies	Travel Weight	User	Automatically by AdvOPD	Average of prior 90 days' time tracked to "Travel"
20	Treatment Court Coverage	User	Manual by Manager or above	Weight given to individual assigned to cover treatment court
35	Half Unassigned Initial Appearance Coverage	User	Manual by Manager or above	Weight given to individual assigned to half jail court/initial appearance coverage
70	Full Unassigned Appearance Coverage	User	Manual by Manager or above	Weight given to individual assigned full jail court/initial appearance coverage
Varies	Co-Counsel Weight	User	Manual when adding co-counsel participant	Weight given to co-counsel participant

G. Conflicts of Interest Protocol

- i) To ensure any potential conflict of interest is identified and appropriately addressed in a timely manner, all matters shall be screened for potential conflicts of interest to determine if assignment of, or continued representation by, an identified public defender, Office, Region, or Division complies with this policy, OPD's Standard Operating Procedures, OPD's Practice Standards, the Montana Rules of Professional Conduct, any relevant judicial or ethics opinions, and any rules, standards, or cannons promulgated by any relevant licensing authority. Conflict of Interest screening shall be performed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to screen a matter for potential conflict of interest, and which, at a minimum, shall require that:
 - (1) Legal Assistants shall screen matters for potential conflicts of interest upon matter creation, assignment of new counsel, and any addition of a participant to the matter record; and,
 - (2) Public defenders shall screen matters for potential conflicts of interest upon receipt of discovery and any other relevant information obtained, observed, or received throughout their representation.
- ii) An identified conflict of interest shall immediately be submitted, reviewed, and determined pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to properly submit and determine a potential conflict of interest, and which, at a minimum, shall require that the request contain sufficient detail to determine whether an actual or risk of a conflict of interest exists and, within all reasonable efforts, that the correct Regional Public Defender or Division Administrator review and determine a submitted conflict of interest within two (2) business days of submission.
- iii) If an actual conflict of interest in a matter is identified, or if the risks of an actual conflict developing are so high as to outweigh the benefits of continued representation, and if no waiver of the conflict of interest is obtained from the client, the matter shall be reassigned pursuant to the SOPs, which documents the procedures, timelines, and mandatory information required to process an identified conflict of interest, including removing or reassigning an assigned public defender and transferring ownership of the matter to another Office, Region, or Division, not subject to the identified conflict or potential conflict of interest.
- iv) During the time a conflict request is pending determination, and unless and until the matter is reassigned to another attorney, any public defender representing an OPD client shall continue to appear at scheduled court hearings and shall, to the extent reasonably practicable, continue to protect and secure the client's interests.

H. Documenting Matter Participants

- i) To provide for timely identification of conflicts of interest, provide ample opportunity to prepare for litigation, effectively advise clients on an effective course(s) of action, provide effective data on the usage of external service providers, expert witnesses, and law enforcement, identification of witness specific issues, such as witness credibility or *Brady* issues, and to ensure an accurate record of the individuals involved in a matter is recorded, certain participants must be added to the matter record pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively add

participants to the matter record, and which shall, at a minimum, require the following participants be added as soon as possible after the individuals listed below can be identified:

- (1) Any known or identified individual likely to be relevant to the matter, including individuals identified in a ticket, complaint, information, petition, report of violation, or other matter-initiating documents;
- (2) Any individual identified as a party in the matter or in a related matter, such as a co-defendant;
- (3) Any individual identified in a witness list by any party in the matter;
- (4) Any individual identified as an expert witness by any party in the matter; and,
- (5) Any individual approved to provide representation, investigation, or services to an OPD client.

I. Matter Calendar, Events, and Deadlines

- i) The matter calendar within OPD's case management system is the official calendar of events and deadlines related to the matter and shall be managed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage matter calendars within OPD's case management system, which shall require, at a minimum, FTE public defenders to ensure their calendars, including events and deadlines, are backed up in an independent way, which may be met by connecting OPD's case management system to their state provided exchange account.
- ii) For the purposes of this policy and the SOPs, the following terms have been defined:
 - (1) An event within OPD's case management system means a hearing, meeting, or appointment where one or more attendees will gather at a specific place at a specific time, such as a court hearing, deposition, or client appointment.
 - (2) A deadline within OPD's case management system means a date or date and time by which a particular act must be completed or accomplished, such as a filing, discovery, or notice due date.

J. Employee Time Keeping and Matter Notes

- i) All OPD employees providing representation, investigation, or services to OPD clients shall enter their time worked, together with contemporaneous notes of their activities with sufficient detail to ensure:
 - (1) continuity of effective client services through any other individual(s) providing representation, investigation, or services to the client;
 - (2) accurate and effective data on employee activities, including ensuring the accuracy of weights created or informed by employee time tracking; and,
 - (3) identification of areas where additional employee training, resources, or support are needed.
- ii) Employee time and matter notes shall be entered pursuant to the SOPs, which document the procedures, timelines, and mandatory information required for effective employee time tracking and matter notes in OPD's case management system, and which shall, at a minimum, require that time and notes be entered daily and must be related to a specific matter, unless the time kept is not matter related.
- iii) Employee time shall be reviewed by supervisors pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to ensure timely, accurate, and

effective record of an employee's time and activities is recorded, and which shall, at a minimum, require that supervisors review employee time tracking weekly.

- iv) Employee matter notes shall be reviewed by supervisors pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to review matter notes, and which shall, at a minimum, require that supervisors review matter notes with sufficient regularity to ensure compliance with this policy.

K. Official Matter File

i) For Matters Assigned to FTE Public Defenders

- (1) The matter record in OPD's case management system, together with all related records, constitute the official OPD matter file, which shall be managed pursuant to the SOPs, and shall contain all documents, data, files, or other information relevant to the matter, including information regarding the client, court hearings, other events, deadlines, tasks, time entries, notes, pleadings, and discovery.
- (2) The official matter file does not include the file(s) of an external provider, such as a mental health provider, investigator, case manager, social worker, or expert witness unless the file(s) have been provided to OPD, utilized in the representation of an OPD client, and/or made part of the official matter filing cabinet.
- (3) All official OPD matter files are the property of the State of Montana, Office of State Public Defender, and are subject to retention and destruction in compliance with the rules established by the Montana Secretary of State, this Policy, and the SOPs, which document the procedures, timelines, and mandatory information required for retention and destruction in OPD's case management system.

ii) For Matters Assigned to Contract Public Defenders

- (1) Contract public defenders representing OPD clients shall maintain, retain, and destroy the matter file in compliance with the rules established by the Montana Secretary of State, their MOU with OPD, this Policy, and the SOPs, which document the procedures, including notice to the contract public defender of retention and destruction timelines, and mandatory information required for retention and destruction in an OPD assigned matter file.

iii) Client Matter File Access

- (1) Clients shall be provided matter information and documents during the pendency of a matter pursuant to the Montana Rules of Professional Conduct and the SOPs, which document the procedures, timelines, and mandatory information required to provide client matter file access, including any necessary redaction or removal of information or documents.
- (2) Client matter file access may be provided through an electronic OPD client portal, where clients may view their matter information, essential participants, charges, including sentences and dispositions, scheduled court hearings, court filings, plea offers or agreements, and any discovery that is not subject to a protective order or other prohibition on dissemination to the client.

iv) Client Requests for Client Matter Files

- (1) Upon request, and within the OPD's file retention schedule, clients are entitled to receive a copy of their entire matter file free of charge, excluding any information, data,

or documents subject to protective order or other prohibition on dissemination to the client.

(2) For Matters Assigned to an FTE Public Defender

- (a) Upon final disposition of a client's matter, clients shall be notified of their rights to and the procedures for requesting a complete copy of their OPD matter file.
- (b) Dissemination of matter files to clients shall be made pursuant to the SOPs, which document the procedures, including any necessary redaction or removal of information or documents, timelines, and mandatory information required for dissemination of matter files to clients, which, absent good cause, shall be provided electronically through the OPD Client Portal, Montana Secure File Transfer, or through physical media, such as a thumb drive or disc.

(3) For Matters Assigned to a Contract Public Defender

- (a) Requests for a client's file shall be made directly to or referred to the contract public defender and fulfilled by that contract public defender pursuant to their MOU with OPD, this Policy, and the SOPs, which document the procedures, including any necessary redaction or removal of information or documents, timelines, and mandatory information required for dissemination of matter files to clients, and which shall, at a minimum, include the contract public defender's billing and invoice records.

L. Matter Disposition

- i) Matters shall be disposed of pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively dispose of a matter in OPD's case management system, which shall, at a minimum, require that public defenders review their open and inactive matters monthly to identify which matters are ready to be disposed and:
 - (1) for matters assigned to an FTE public defender:
 - (a) any documents, data, files, or other relevant information residing outside of OPD's case management system has been scanned, entered, or otherwise documented within OPD's case management system; and,
 - (b) matters ready to be disposed are disposed in OPD's case management system within ten (10) business days of being identified.
 - (2) for matters assigned to a contract public defender:
 - (a) all dispositional information has been entered into OPD's case management system; and,
 - (b) matters ready to be disposed are disposed in OPD's case management system within thirty (30) days of being identified.
- ii) Matters are ready to be disposed in OPD's case management system when the assigned public defender has completed all necessary representation in the matter, including:
 - (1) reviewing the final judgement, opinion, or order;
 - (2) taking any action necessary to protect the client and preserve their rights; and,
 - (3) has advised the client of their rights to any appeal, sentence review, or other collateral review or rights.

M. Matter Appeal

- i) Matters shall be appealed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively and timely initiate an appeal on behalf of an OPD client, and which shall, at a minimum, require that prior to referring a matter for appeal, a public defender shall:
 - (1) consult with the client regarding the advantages and disadvantages of seeking an appeal; and,
 - (2) either:
 - (a) receive explicit instructions from the client to initiate an appeal on their behalf; or,
 - (b) have a good faith belief that the client desires an appeal based on the consultation in subsection (1) above.

N. Duration of Public Defender Representation

- i) A public defender assigned by OPD to represent an OPD client shall continue to represent the client in the assigned matter unless or until:
 - (1) the public defender has completed all necessary representation in the matter, and the time for an appeal or any post-disposition motions has passed;
 - (2) OPD reassigns the matter to another public defender or a non-OPD assigned attorney files a notice of substitution of counsel;
 - (3) a court of competent jurisdiction issues an order rescinding OPD’s appointment in the matter; or,
 - (4) a court of competent jurisdiction issues an order removing the public defender as counsel of record in the matter.
- ii) A public defender assigned by OPD to represent an OPD client in a matter shall not file a *Motion to Withdraw*, or otherwise request removal as counsel of record in any matter, without the express approval of a Managing Public Defender, in the case of an FTE public defender, or the Contracts Program, in the case of a contract public defender.

3) ECM Workload Limitations and Assignment Protocol

A. ECM Workload Limitations

- i) Except as provided for below, assignments of ECM weighted work shall be subject to the following ECM Workload Limitations by role and timeline:

<u>Role</u>	<u>ECM Workload Limitation</u>	<u>ECM Timeline</u>
FTE Trial Public Defender*	Up to 150 new matter weight hours	Calendar Month
FTE Managing Trial Public Defender	Up to 150 new matter weight hours, reduced by 11.25 weight hours for each direct report, with a floor of no less than 37.5 new matter weight hours	Calendar Month
FTE Regional Public Defender	37.5 new matter weight hours	Calendar Month
* an FTE trial public defender joining the agency with less than two (2) years’ experience as a practicing attorney shall be assigned no new matter weight for the first two (2) weeks of employment and assigned a gradually increasing amount of matter weight over an eight (8) week period until the ECM workload limit is reached.		

- ii) **Exceptions to ECM Workload Limitations:** An individual may be assigned ECM weighted work over the ECM Workload Limitations only in the following, limited circumstances:
- (1) If the individual providing representation, investigation, or services to an OPD client is currently working on behalf of the same OPD client in another active matter in the same court;
 - (2) If the individual's active ECM weighted workload has been materially reduced due to reassignment of existing ECM weight work to other individuals, but only by an amount reasonably commensurate with the ECM weight of work being reassigned;
 - (3) If the individual has been hired or transferred into a new office, practice area, or role, and is being assigned an initial ECM weighted workload; or,
 - (4) If the individual is absorbing all or part of the active ECM weighted workload of another individual that is transferring to a new practice area or role, is no longer licensed, is exiting the agency or going on leave, or is otherwise unavailable to complete the ECM weighted work previously assigned.

B. ECM Matter Assignment Protocol

- i) All matters pending assignment shall be assigned pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively assign matters in OPD's case management system.

ii) **Public Defender Matter Assignments**

- (1) Matters pending assignment to a public defender beyond the timelines listed in this protocol shall be managed pursuant to the SOPs, which document the procedures, timelines, and mandatory information required to effectively manage unassigned matters, and which shall, at a minimum, require that OPD make all reasonable efforts to keep the client and the court informed regarding the status of assignment of counsel.

(2) **FTE Public Defender Matter Assignments**

- (a) Matters pending FTE public defender assignments and reporting regarding current FTE assignments shall be reviewed daily by a Managing Public Defender, Regional Public Defender, or a Division Administrator.

(b) **Assignment Protocol**

- (i) Matters pending assignment to FTE public defenders shall be assigned within the initiating or conflict office pursuant to the following factors:
1. the order in which the matter was received;
 2. the age of the matter;
 3. the matter type;
 4. whether the client is incarcerated;
 5. the matter's timeline, including the next critical or substantive hearing date;
 6. whether the client has other active matters in the same court with the same judge;
 7. the initiating office's ECM Workload Metrics; and,
 8. the efficiency of assignment.
- (ii) Within all reasonable efforts, matters able to be assigned to an FTE public defender within ECM Workload Limitations shall be assigned to an FTE public

defender within three (3) business days of the initiating office receiving the matter.

- (iii) Matters unable to be assigned to an FTE public defender within the initiating office due to ECM Workload Limitations shall be referred to the relevant conflict office for assignment to an FTE public defender within the same three business days of the initiating office receiving the matter.
- (iv) Within all reasonable efforts, matters able to be assigned to an FTE conflict public defender within ECM Workload Limitations shall be assigned to an FTE conflict public defender within three (3) business days of the conflict office receiving the matter.
- (v) Matters unable to be assigned to an FTE public defender within the conflict office due to ECM Workload Limitations shall be referred for assignment to a contract public defender within the same three (3) business days of the conflict office receiving the matter.

(3) Contract Public Defender Matter Assignments

- (a) Matters pending assignment to a contract public defender and reporting regarding current contracting public defender assignments shall be reviewed by the Contracts Program daily.

(b) Assignment Protocol

- (i) Matters pending assignment to contract public defenders shall be assigned to contract public defenders pursuant to the following factors:
 - 1. the order in which the matter was received;
 - 2. the age of the matter;
 - 3. the matter type;
 - 4. whether the client is incarcerated;
 - 5. the matter's timeline, including the next critical or substantive hearing date;
 - 6. whether the client has other active matters;
 - 7. the available contract public defenders and their workloads; and,
 - 8. the efficiency of assignment.
- (ii) Within all reasonable efforts, matters able to be assigned to a contract public defender shall be assigned within seven (7) business days of the contracts program receiving the matter.
- (iii) Regardless of priority, matters shall be assigned to contract public defenders within this seven (7) day period if there is an available contract public defender willing to accept assignment, though lower priority matters shall only be offered to the contract public defender after all reasonable efforts to assign higher priority matters have been made.
- (iv) Matters unable to be assigned to contract public defender within a reasonable time shall be returned to the initiating or requesting office's assignment queue for assignment to an FTE public defender within their ECM Workload Limitations.