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OPD FY 2025

Annual Performance Report

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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About this Report

This FY 2025 Annual Performance Report is prepared and provided pursuant to Montana Code Annotated § 2-12-105 and reports on the Office of State Public Defender's (OPD's) progress on its FY 2025 Annual Plan.

Objective and Measure Statuses

Each reported objective or measure has a visual indicator and short narrative detailing OPD's progress toward completion. Additional information or context may follow.

	Complete <i>The objective or measure has been met.</i>
	In Progress <i>There has been progress toward completing the objective or measure, but it has not yet been met.</i>
	Incomplete <i>There has not been progress toward completing the objective or measure.</i>

Note that an objective may be marked as complete based on overall progress even if individual measures related to that outcome are still in progress or incomplete.

Data from Prior Fiscal Years

Please note that metrics from prior fiscal years may slightly differ from prior fiscal year's formal reporting, due to either the nature of the datasets for each fiscal year, or changes in a specific measure(s) reported, or both. These data are presented solely to provide context for the FY 2025 metrics in this report. All prior fiscal year reports are available on [OPD's website](#).

FY 2025 Annual Plan

Pursuant to Montana Code Annotated § 2-12-104, OPD prepared its FY 2025 Annual Plan, which is reproduced below.

Provide Effective and Timely Constitutionally, Statutorily, and Court-Mandated Representation

Recruit and Retain Qualified Employees and Contractors

- Make progress toward eliminating the Public Defender Shortfall
- Increase by 10% the number of contract public defenders that accept at least half an FTE public defender's worth of work
- Keep and hold the daily average vacancy rate for public defender positions to 6% or below
- Keep and hold the annualized voluntary turnover rate for public defender positions to 15% or below

Effectively Manage Employee Workload

- Reduce and hold average and median Ethical Case Management percent (ECM %) to between 100% and 120% for agency employed (FTE) trial public defenders
- Increase the number of FTE appellate defenders completing between 100% and 120% of Appellate Workload Standards
- Monitor, manage, and improve OPD's ECM Protocols with consideration to national workload standards for public defenders

Provide Effective, Timely Representation

- Reduce and hold the average number of days to first, non-conflict, FTE, public defender assignment to within 3 days
- Reduce and hold the average number of days to first, conflict, FTE, public defender assignment to within 3 days
- Reduce and hold the average number of days to first, contract public defender assignment to within 7 days
- Make measurable progress toward reducing the existing backlog of appellate cases and reduce the average time to first assignment for appellate cases
- Offer at least 125 hours of training hours to OPD employees and contractors
- Hold or reduce the percentage of substantiated client complaints against OPD assigned attorneys to 7.5% or less

FY 2025 Annual Performance Report

Provide Effective and Timely Constitutionally, Statutorily, and Court-Mandated Representation

The Office of State Public Defender exists solely to provide effective assistance of counsel by qualified and competent attorneys to individuals in criminal and civil cases who are entitled to assistance of counsel at public expense. *Mont. Code Ann. § 47-1-102*. To fulfill this purpose, OPD has adopted a single overarching goal: to provide this representation in an effective and timely manner. To reach this goal in FY 2025, OPD chose three strategic outcomes, each with specific strategies and measures. Each strategic outcome and associated measures are reported below.

Recruit and Retain Qualified Employees and Contractors



OPD met its two employee (FTE) focused goals in FY 2025, related to vacancy and turnover, but fell short on its overall goal of reducing the Public Defender Shortfall as well as one contract public defender focused goal.

Make progress toward eliminating the Public Defender Shortfall

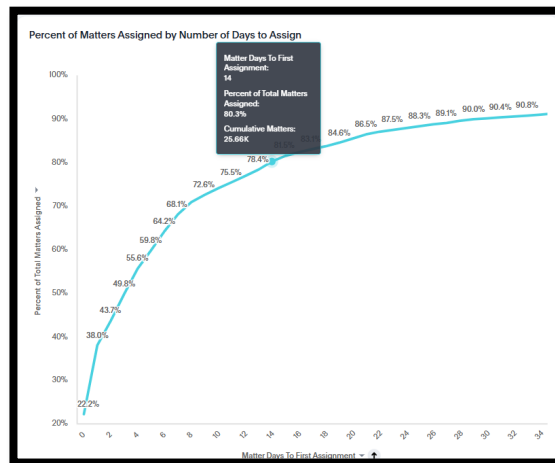


In FY 2025, due to the documented and continuing gaps in necessary resources, OPD was unable to reduce the Public Defender Shortfall.

The Public Defender Shortfall metric quantifies the volume of newly received matters not assigned within 14 days of OPD's appointment, expressed as the number of FTE public defenders needed to handle this unassigned workload. This metric captures the actual, realized gap between OPD's intake volume and its current capacity, including both cases assigned to FTEs and those assigned to private contract public defenders. It provides a direct measure of the additional public defender resources required to ensure timely case assignments and maintain ethical standards of representation.

Public Defender Shortfall evidences the realized gap between the demand for legal work through OPD and the supply of available public defenders to accept assignments, either as employees or contractors. OPD's ability to directly and materially impact this resource gap is limited by the actual appropriations provided by the legislature.

The chart to the right shows the percentage of matters received in FY 2025 by the number of days to assignment. For all matters received in FY 2025, OPD was able to assign about 25,600 matters within 14 days of appointment, which represents about 80% of all matters received. The remaining 20% were unable to be assigned within 14 days and represent OPD's Public Defender Shortfall for FY 2025.

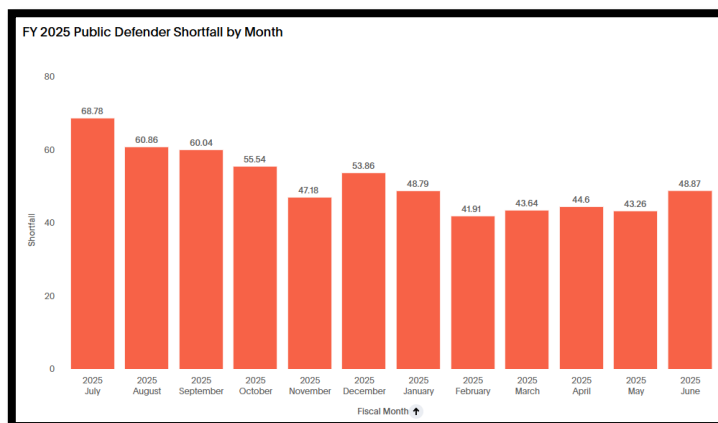


Fiscal Year	Shortfall	# of Matters	# of Clients	Avg. Time to First Assignment	Median Time to First Assignment
2025	51.44	7,500	5,727	50.6	31

Each month in FY 2025, the new workload received exceeded OPD's capacity by an average of over 51 FTE public defender's worth of work. This shortfall resulted in delayed assignments for more than 7,500 cases representing over 5,700 clients. The average and median days to assign for these shortfall matters were 51 and 31 days respectively.

The Public Defender Shortfall has continued to increase over recent years, reflecting a continuing and widening gap between OPD's growing responsibilities and available resources. This capacity crisis stems from three key factors:

- insufficient FTE public defender positions;
- below-market contract attorney rates; and,
- insufficient number of available attorneys in the state



The growing shortfall directly impacts OPD's ability to meet its constitutional obligation of timely representation.

Increase by 10% the number of contract public defenders accepting at least half an FTE public defender's workload



During FY 2025, OPD saw a decrease in the number of contract public defenders accepting at least half an FTE's workload, primarily due to the lack of an effective contracting public defender rate.

The number of contract public defenders accepting at least half-an-FTE public defender's workload metric is the number of contract public defenders that, on average, have accepted at least 67.5 weighted hours of assignment per month during the fiscal year.

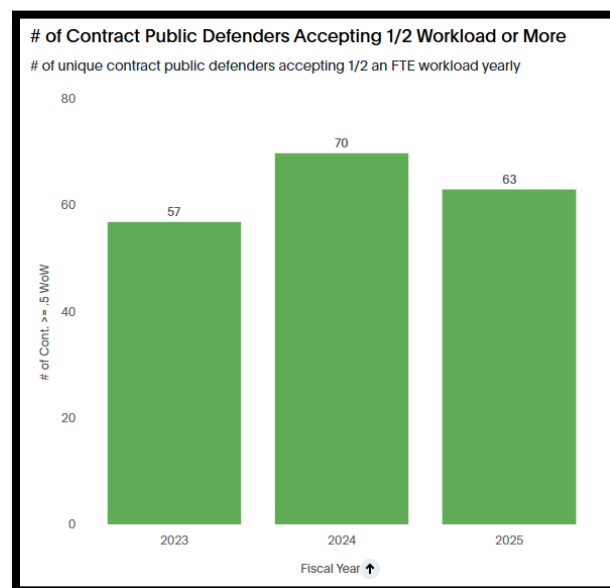
In FY 2025, OPD was unable to increase the number of contract public defenders accepting at least half-an-FTE public defender's workload from FY 2024, though FY 2025 still represents over a 10% increase in this metric since FY 2023.

This metric is significantly influenced by the contract public defender rate, which has historically been well below market rates, giving less incentive for contract public defenders to accept assignments. In FY 2025, for example, the contract public defender professional service rate

was \$71/hour and \$45/hour for travel. As discussed in OPD's FY 2024 Annual Performance Report and in many legislative hearings, \$71/hour has been ineffective in addressing OPD's public defender and resource gaps.

However, on July 1, 2025 (start of FY 2026), the OPD rate for contract public defenders became \$90/hour for both professional service and travel hours. Further, OPD has overhauled its Contract Services Program policy and MOU (memorandum of understanding) structures, providing a more flexible and robust contracting environment.

OPD is optimistic these changes will provide measurable, positive impacts on contract public defenders willingness to accept OPD assignments.

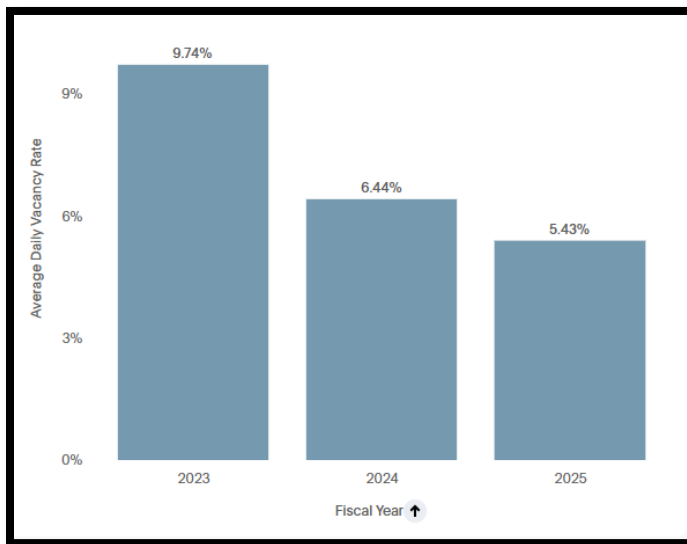


Keep and hold the daily average vacancy rate for public defender positions to 6% or below



During FY 2025, OPD successfully held its average daily vacancy rate for public defenders to below 6%.

The average daily vacancy rate for public defender positions measures the average percent of vacant public defender positions per day within the year. The metric is calculated by dividing the number of vacant public defender positions, including modifieds, minus double filled positions, by the total number of public defender positions available per day, and then averaging these rates for the year.



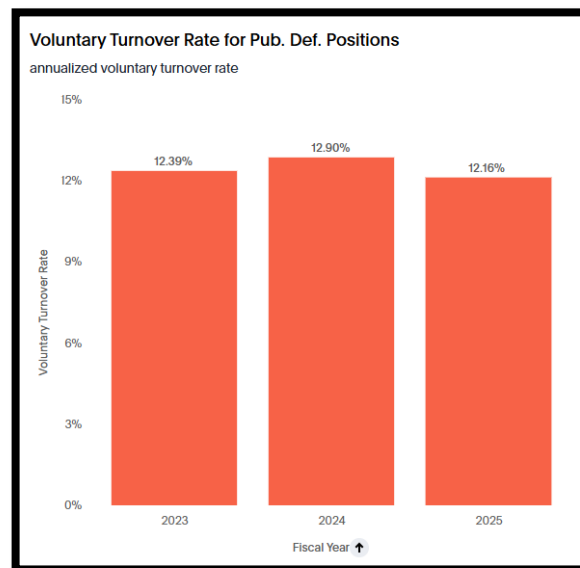
In FY 2025, OPD saw a 15% reduction in the average daily vacancy rate for public defender positions, for an annualized rate of 5.43%.

Keep and hold the annualized voluntary turnover rate for public defender positions to 15% or below



In FY 2025, OPD saw a slight reduction in the voluntary turnover rate to just over 12%, within its annual goal.

The Voluntary Turnover Rate measures the proportion of public defenders who voluntarily leave employment with OPD within a fiscal year. This metric is calculated by dividing the number of public defenders who voluntarily terminated their employment by the daily average number of employed public defenders during the fiscal year, expressed as a percentage. Also included is the total count of departing public defenders, categorized by their primary reason for leaving OPD: career, personnel, or workplace.



In FY 2025, OPD maintained a voluntary turnover rate well below its 15% goal.

Effectively Manage Employee Workload



In FY 2025, OPD successfully managed FTE trial public defenders' workloads, as shown by both the average and median ECM % assigned to FTE trial public defenders being within OPD's ECM standards. Further, OPD began development on Appellate ECM standards, bringing the same data-driven methodology used to effectively manage trial public defender's work to appellate public defenders.

Trial Divisions' ECM Workload Standard

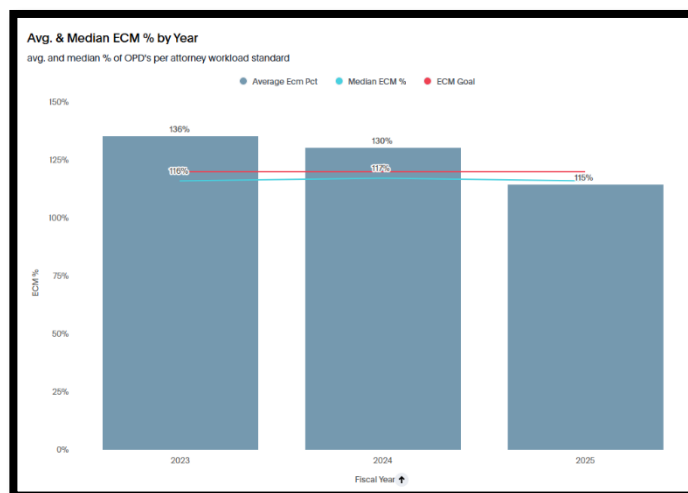


In FY 2025, both the average and median ECM % assigned to FTE trial public defenders in FY 2025 were within OPD's ECM standards.

The Trial Divisions' ECM Workload metric measures the percentage of an individual public defender's assigned workload relative to OPD's Ethical Case Management (ECM) workload standards for a given calendar month. This metric is calculated by dividing the total case weight assigned to a public defender in a calendar month by their expected ECM workload. The ECM % helps assess whether a

public defender's caseload is within expected limits, ensuring that workloads are manageable and aligned with ethical representation standards. The average and median for each month or year is then derived from these individual, monthly numbers.

Effectively managing FTE public defenders' workloads is one of OPD's core strategies across multiple objectives and supports OPD's efforts to both improve the quality of client representation and limit workloads to an ethically reasonable and sustainable level.



Appellate Division's Workload Standard



In FY 2025, OPD began the effort to overhaul its Appellate Workload Standards to bring them in line with the weighted hours-based approach used by ECM.

The Appellate Division Workload Standard measures the number of individual appellate defenders who completed between 100% and 120% of the Appellate Division's workload standards within a fiscal year.

For FY 2025, OPD was able to improve the accuracy of this metric by controlling for an employee's tenure, though this is the last year this workload standard will be used to measure appellate workload, as OPD is in the process of developing an Appellate ECM framework to more accurately and effectively capture the appellate workload.

For FY 2025, a total of five (5) attorneys completed at least 100% of the workload standard, with an additional five (5) attorneys completing more than 80% of the workload standard.

OPD anticipates deploying the first version of its Appellate ECM framework during FY 2026.

Manage ECM Protocol



In FY 2025, OPD updated its ECM protocols as follows:

- revising the weights associated with multiple charge enhancements, bringing them more in line with expectations and observations;
- implementing a formalized process to move work pending assignment back into an FTE assignment queue, ensuring FTEs are assigned appropriate workloads before work is offered to contract public defenders; and,
- ensured compliance with National Public Defender Workload Standards methodology.

Provide Effective, Timely Representation



In FY 2025, OPD was able to meet its measure goals on four of eight measures of timely assignment, as well as its goals for both agency-offered training hours and substantiated client complaints.

Non-Conflict FTE Trial Public Defender Assignment Timeline

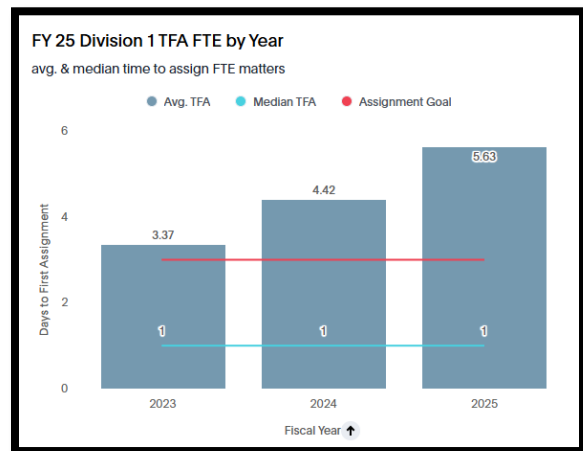


During FY 2025, OPD experienced another slight increase in the average time to first assignment to a non-conflict FTE trial public defender to 5.6 days, though the median remained stable at 1 day.

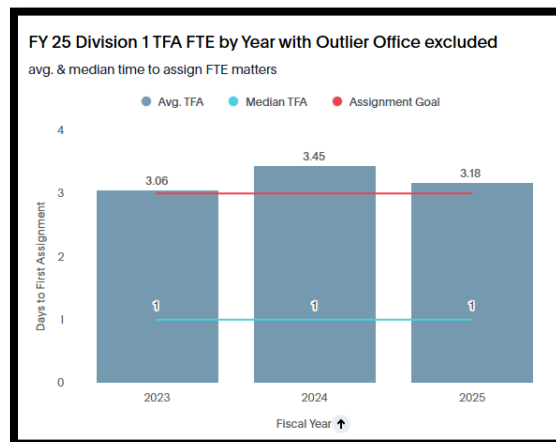
The Time to First Assignment of Non-Conflict FTE Matters measures the days from the date a matter enters a non-conflict FTE assignment queue to the date of the first assignment for matters assigned to non-conflict FTE trial public defenders.

OPD continues to see an increase in the average non-conflict FTE assignment timelines for two primary reasons:

1. OPD's increased efforts to assign cases passed over by the contract public defender pool to FTE public defenders, shortening the overall time to first assignment for these clients but resulting in more time spent at the non-conflict FTE assignment stage as cases are returned to that stage for further assignment attempts; and,
2. An assignment process failure in a high-volume office that was greatly increasing the average TFA metrics. OPD has now addressed this process failure, and assignment timelines are beginning to normalize.



For context, excluding the outlier office brings Division 1's average TFA much closer to its goal of three (3) days, as shown in the chart to the right.

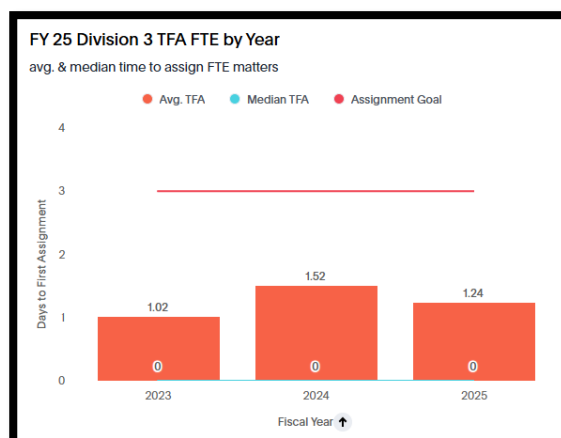


Conflict FTE Public Defender Assignment Timeline



During FY 2025, OPD maintained both average and median times to first assignment to conflict FTE trial public defenders of 1.2 and 0 days respectively, both under the 3-day goal.

The Time to First Assignment of Conflict FTE Matters measures the days from the date the Conflict Defender Division receives the matter to the first assignment for matters assigned to conflict FTE trial public defenders.

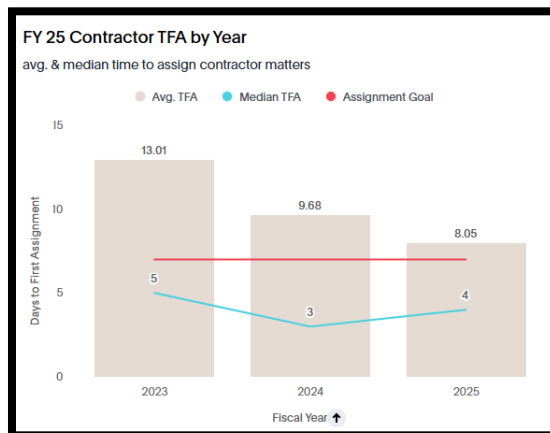


Contract Public Defender Assignment Timeline



During FY 2024, OPD made further progress in reducing the average time to first assignment for a contract public defender matter to 8 days, though it did not meet the measure goal of 7 days. However, the median time to first assignment for a contract public defender in FY 2025 was 4 days, well under the goal of 7 days.

The Time to First Assignment of Contract Matters measures the days from the date the Contract Services Program receives the matter to the date of the first assignment for matters assigned to a contract public defender.



Appellate Assignment Timeline

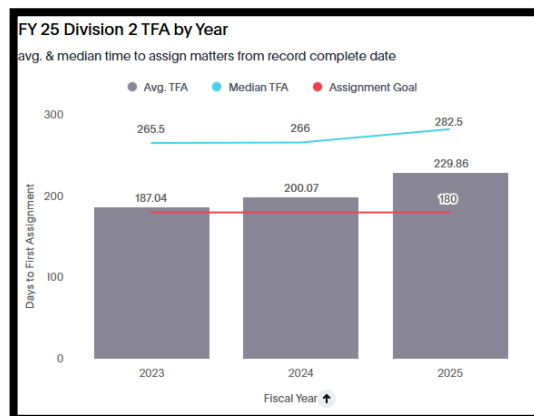


During FY 2025, OPD experienced an increase in both the median and average time to first assignment of appellate matters, to 230 and 283 days respectively, both over OPD's measure goal of 180 days.

However, OPD did see a significant reduction in the number of backlogged appellate matters (the number of individual appellate matters pending assignment).

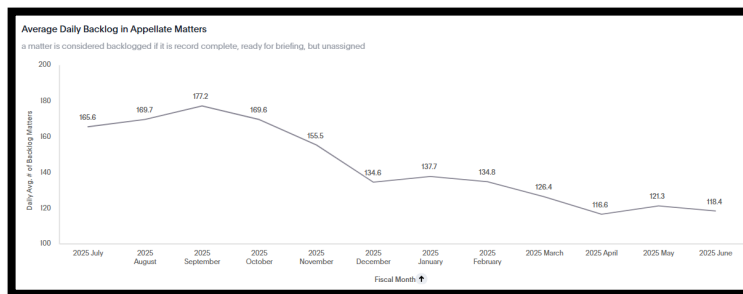
The Time to First Assignment of Appellate Matters measures the days from the date the matter is "record complete" and ready for briefing to the date of the first assignment to an appellate public defender.

For the same reasons the Public Defender Shortfall increased for trial division matters, there was an increase in the assignment timeline for appellate matters: there are not enough public defenders, either employed or contracted, for the necessary work generated by the justice system.



While OPD did see an increase in the overall average and median time to assign, it also experienced a significant reduction in the number of individual matters pending assignment, referred to as the appellate backlog. The appellate backlog is a proxy measure for the gap between the need for appellate public defenders and available resources at a given time.

As discussed, OPD is currently developing an effective workload standard for appellate assignments. This work, started in FY 2025, will provide greater insight and more accurate data regarding appellate assignments.



Offer at least 125 hours of training hours to OPD employees and contractors



In FY 2025, OPD provided more than 140 hours of training to OPD employees and contractors, exceeding its goal of 125 hours.

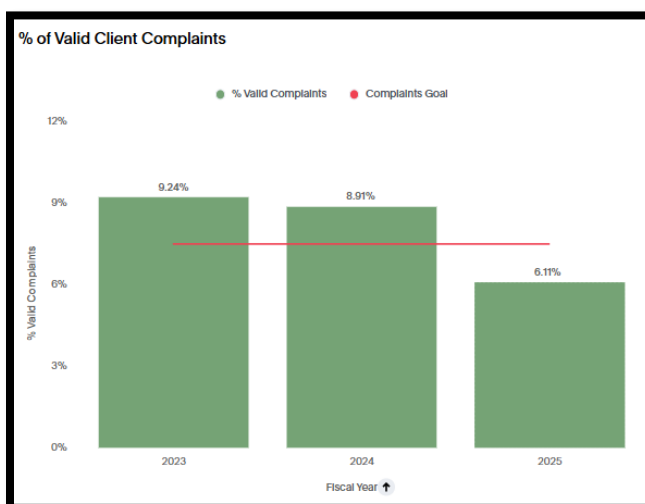
Hold or reduce the percentage of substantiated client complaints against OPD assigned attorneys to 7.5% or less



In FY 2025, OPD met its goal of holding the percentage of substantiated client complaints to under 7.5%.

The Substantiated Client Complaints metric measures the percent of all received client complaints substantiated by a managing public defender or the Contract Services Program.

In FY 2025, OPD experienced an overall substantiated client complaint rate of 6.11%, which is below its baseline goal of 7.5%.



Notices

Contact Information

This report was prepared by the Office of the Director, Brett D. Schandelson. Any questions, comments, or concerns regarding this report should be sent to opdoperations@mt.gov with a subject of "Annual Plan Report Inquiry" to ensure proper routing.

ADA Compliance

The Office of State Public Defender is committed to providing equal access to information to individuals with disabilities. If you require this report in an alternative format, please contact opdoperations@mt.gov with a subject of "Annual Plan Report Inquiry" to ensure proper routing.

Use of Generative AI

This report was drafted with the assistance of generative artificial intelligence (AI) tools to enhance efficiency, clarity, and effectiveness in content creation. All content generated by AI has been reviewed and edited by human contributors to ensure accuracy, relevance, and compliance with State of Montana standards.