



FINAL REPORT

**Oregon Public Defense Commission**  
**SIX-YEAR PLAN TO REDUCE REPRESENTATION DEFICIENCY**

March 15, 2024

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# **THE OREGON PUBLIC DEFENSE COMMISSION SIX-YEAR PLAN TO REDUCE REPRESENTATION DEFICIENCY**

A FOLLOW-UP TO THE FINDINGS IN:

“The Oregon Project – An Analysis of the Oregon Public Defense System  
and Attorney Workload Standards,” published January 2022

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This report was produced by Moss Adams. For over 30 years, Moss Adams has operated a full-service government consulting practice serving government agencies as well as state, county, city, tribal, federal, and special purpose district governments. The Moss Adams project team included Scott Simpson, CPA, Partner; Jessie Lenhardt, PMP, Senior Manager; Emily Hayes, CIA, Manager; and Annie Fadely, Senior Consultant. Scott has practiced public accounting since 1997 and was the lead partner on *The Oregon Project*. He was also the lead partner on *The New Mexico Project* and the following *New Mexico 5-year Plan*.

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# I. EXECUTIVE SUMMARY

**“More than 90 percent of people charged with crimes in Oregon depend on a public defender.”**

— Oregon Justice Resource Center

This report provides a two-pronged approach to form a strategy to eliminate excessive workloads for public defenders who manage the full spectrum of Adult Criminal case types by 2031. The two critical categories that drive the six-year plan include:

 **People and budget strategy**  
People factors address the strategy of adding to, and reallocating, resources within, and contracted by, OPDC.

 **Policy strategy**  
Policy factors address actions that can either reduce or increase caseloads.

Enactment of the plan will produce reasonable workloads, optimize costs, and most critically, enable the state’s public defenders to fulfill their ethical and constitutionally mandated duty to provide effective defense services.

## A. ADULT CRIMINAL ATTORNEY DEFICIENCY CALCULATION

*The Oregon Project* analysis outlined the need for an additional 1,296 full-time attorneys to manage the full scope of Adult Criminal and Juvenile type cases annually. The first step in our analysis was to update this deficiency calculation and narrow it to reflect the focus of this report on Adult Criminal cases.

Adult Criminal cases represent the majority of cases by count (79%), and the highest volume of hours for public defenders (54%). While this plan focuses on Adult Criminal caseloads, the model and strategies outlined in this plan can be applied to future Juvenile defender deficiency reduction strategies.

The average annual Adult Criminal caseload projection was updated with new data provided by the Office of Economic Analysis (OEA), which is both more recent and more reliable than the data that was available at the time of *The Oregon Report*. The deficiency analysis multiplies the average annual caseload by the time needed by Case Type as determined by the Delphi panels. This produces the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The total annual hours needed are translated into FTEs by dividing the total by the industry-accepted annual work hours for one FTE, which is 2,080. The number of needed FTEs is compared to FTEs under contract to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.

At a consistent annual workload, OPDC is deficient 564 contract attorney FTEs annually for its Adult Criminal caseloads. In other words, OPDC has only 47% of the FTE contract attorneys needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Oregon to its Adult Criminal clients. Based on historical trends, the six-year plan assumes a decrease of 1.4% in Adult Criminal caseloads annually. This incrementally reduces the total need from 564 FTEs to 480 FTEs over six years.<sup>1</sup> This means that in 2031, the total attorney needs of OPDC are projected to be 986 FTEs.

## B. STAFFING AND BUDGET STRATEGY

### Adult Criminal Attorney Staffing Strategy

This baseline six-year staffing and budget plan simply adds 480 attorney FTEs to the current 506 attorney FTEs to eliminate the deficiency. Assuming an annual decrease of 1.4% in caseloads annually, OPDC will need to hire 80 attorneys per year to reach the total needed 986 attorney FTEs and eliminate the Adult Criminal attorney deficiency by 2031 (Table 1).

The analysis does not take into consideration the average annual turnover resulting from retirements, voluntary or involuntary departures, or availability of contract staff. Changes in actual FTEs per year are expected to fluctuate. The analysis also assumes that all current Adult Criminal contract attorneys (506 FTE) would continue to be funded on an ongoing basis and that the Agency continues its regular practice of replacing attorneys in response to turnover.

TABLE 1: SIX-YEAR ADULT CRIMINAL ADDITIONAL STAFFING STRATEGY

	YEAR 0	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6
<b>ADULT CRIMINAL STAFFING IMPACTS</b>							
Additional Funded Attorney FTE		80	80	80	80	80	80
<b>Running Total Attorney FTE</b>		80	160	240	320	400	480
<b>TOTAL IMPACT ON ADULT CRIMINAL ATTORNEY DEFICIENCY</b>							
Adult Criminal Attorney FTE Need <sup>2</sup>	1,070	1,056	1,041	1,027	1,013	999	986
Current Adult Criminal FTEs <sup>3</sup>	506	586	666	746	826	906	986
Adult Criminal Attorney FTE Deficiency at End of Year	564	470	375	281	187	93	0

<sup>1</sup> Historical trends are calculated by averaging the percent decrease in Adult Criminal caseloads year over year going back to 2017. The calculation does not include 2020 caseload changes, nor is it reflective of specific legislative actions. This trend is not guaranteed. The impacts of legislative actions are described further in [Interventions Impacting the Public Defender Deficit](#).

<sup>2</sup> Adult Criminal Attorney FTE Need is reduced year-over-year as a result of an estimated 1.4% decrease in caseloads annually, based on historical trends.

<sup>3</sup> Current Adult Criminal FTEs are based on the contract summary for FY2023–2025. It does not include budgeted vacancies of any duration, supervisors, or investigators.

	YEAR 0	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6
<b>Percent Adult Criminal Attorney Deficiency at End of Year</b>	53%	45%	36%	27%	18%	9%	0%

## Budget Impacts

The second step in our analysis was to calculate the cost of addressing the projected attorney need by 2031. To build the six-year budget impact, first, a baseline increase was applied to future biennial budget years (labeled OPDC Total Operating Trend, Table 2). This was calculated by applying the historical average increase in biennial budgets between FY2017–FY2025 (23%) to future biennial budget years. This results in an estimated baseline operating budget for FY2029–2031 of 1.08 billion.

The cost to fund additional attorney FTE is calculated by taking the annual average cost per attorney FTE (\$241,218)<sup>4</sup> and multiplying it by the needed attorney FTE outlined in the baseline staffing plan (Table 1). The total funding needed by year is then the operating trend plus the cost to fund the additional attorney FTE.

To address the public defender deficit by exclusively hiring attorneys to manage Adult Criminal cases, OPDC’s operating budget would need to increase from its baseline forecast of \$1.08 billion to \$1.3 billion in FY2029–2031 (Table 2).

**TABLE 2: BUDGET IMPACTS OF THE SIX-YEAR PLAN**

	FY2023–2025	FY2025–2027	FY2027–2029	FY2029–2031
<b>OPDC Total Operating Budget Trend</b>	\$576,276,124	\$709,626,419	\$873,833,972	\$1,076,039,153
<b>Cost to Fund Additional Attorney FTE</b>		\$77,189,760	\$154,379,520	\$231,569,280
<b>Total Funding Needs by Year</b>		\$786,816,179	\$1,028,213,492	\$1,307,608,433
<b>Percent Additional Budget to be Requested from the State</b>		11%	18%	22%

## C. INTERVENTIONS IMPACTING THE DEFICIT REDUCTION STRATEGY

Interventions that could impact the Agency’s deficit reduction strategy are grouped into two categories—those with impacts that reduce annual caseloads (and accordingly would reduce the needed FTE and budget), and those with impacts that increase annual caseloads (and accordingly would increase the needed FTE and budget).

<sup>4</sup> Based on the average funding rate across attorney 1,2, and 3 categories established in the OPDC 2023 contract.



## Decriminalization

Decriminalization of crimes that are non-violent or have no victim is an emerging nationwide trend. Decriminalization of these charges in Oregon would reduce the demand on the criminal justice system, which would in turn reduce the need for additional attorneys. Recommended decriminalization of Low-Level Misdemeanors that are non-violent or have no victim include:

- Driving with a Suspended License
- Failure to Carry and Present a License
- Failure to Appear (FTA)
- Possession Drug Charges
- Criminal Trespass
- Criminal Mischief 3

Other non-violent or victimless offenses that could be revised by the legislature include:

- Hit and Run Where the State Is the Victim
- Theft 3 When the Item Stolen Is Food or Basic Needs
- Failure to Register If the Person Complies with Registration upon Arrest

Table 3 outlines the estimated reduction in number of filings, with an overall estimated reduction to annual caseloads of about 8%. This caseload reduction would, in turn, reduce the needed attorney FTE by 198 FTEs every year.

**TABLE 3: OVERVIEW OF ESTIMATED IMPACT OF DECRIMINALIZATION BASED ON 2022 CHARGES FILED**

OFFENSE	NUMBER OF FILINGS	% OF TOTAL 2022 FILINGS
<b>Decriminalization Impact on Attorney FTE</b>		
<b>Total 2022 Charges Filed:</b>	<b>293,205</b>	
Subtotal Recommended Decriminalization + Reduced "Other Crimes"	23,157	7.9%
Estimated Total Reduced by 20% <i>The reduction accounts for variability in overall decriminalization estimates</i>	18,526	6.3%
<b>Reduced Defense FTE</b> <b>(18,526 x 22.26 hrs. per case/2080 hrs. per FTE)</b>		<b>198 FTE</b>

## Sentencing Reform

The promise of Measure 11—that significantly increased length of sentences would produce significant reductions in violent crime rates—simply did not occur. Measure 11 also has cost impacts on public defense. By repealing or reforming Measure 11, Oregon could not only reduce needed attorney FTE but also provide funding for the remaining FTE needed through savings on incarceration.

Between 2017–2022, 80% of Oregon’s High-Level Felony cases were Measure 11. High-Level Felony cases have the second-highest number of hours required per case. An evaluation of High-

Level Felony, Measure 11 case types identified the following charges that would likely be reassigned as Mid-Level Felony, were Measure 11 repealed or these charges removed from Measure 11:

- Assault in the Second Degree
- Attempted Murder in the Second Degree
- Kidnapping in the Second Degree
- Manslaughter in the Second Degree
- Rape in the Second Degree
- Robbery in the First Degree
- Robbery in the Second Degree
- Sexual Abuse in the First Degree
- Sodomy in the Second Degree

If the above case types were to become Mid-Level Felonies it would result in a reduction of total average caseload hours by 107,901 annually. This caseload reduction would, in turn, reduce the needed attorney FTE by 52 FTEs every year. The hours reduction excludes cases of the above where a firearm is involved. The associated budget reduction from this reform would be \$12.5 million annually.

Repealing the Measure 11 provisions that unnecessarily lengthen prison terms and artificially prop up the prison population would also significantly reduce the projected prison population and result in additional considerable cost savings (Table 4).

**TABLE 4: SUMMARY OF OREGON CRIMINAL JUSTICE SYSTEM COST SAVINGS FROM REFORMS**

DESCRIPTION	AMOUNT
Total Current Criminal Justice System Costs	\$8,280,000,000
Estimated Savings Due to Sentencing Reform	-( \$240,000,000)
Estimated Increased Costs for Probation	\$25,000,000
<b>Net Reduction</b>	<b>-( \$215,000,000)</b>

## 2024 Oregon Legislative Session Outcomes

The 2024 Oregon Legislative Session saw the passage of several bills that will impact public defense. The most significant was the passage of House Bill 4002, repealing parts of Measure 110 and recriminalizing most unlawful possession of a controlled substance offenses. The recriminalization of these non-violent offenses will increase the need for Adult Criminal attorney FTEs in Oregon. Analysis provided by OPDC estimates that an additional 39 Adult Criminal attorneys will be needed to cover anticipated increases in caseloads. These additional 39 FTEs are not included in the analysis of annual attorney FTE need, as the law passed while this report was in progress.

During the 2023 session, the Oregon Legislature also passed:

- House Bill 4043
- House Bill 4145
- House Bill 4146
- House Bill 4156
- Senate Bill 1553
- Senate Bill 1574
- Senate Bill 1580

These bills either create a new crime or increase the penalty of conviction— therefore increasing the total annual attorney FTE needed.

## Support Staff

A staffing strategy that focuses exclusively on recruiting attorneys has the highest cost and requires the longest timeframe to achieve. Other factors can reduce the deficiency with less hiring of Adult Criminal attorneys, and with greater cost efficiency. This includes proportionate recruitment of case support personnel such as paralegals, investigators, social workers, case managers, interpreters, and administrative personnel. Incorporating support staff into OPDC’s hiring strategy will help eliminate the public defender deficiency more quickly. Support staff were not included in the staffing strategy and budget, as OPDC is currently working on updating its market data for these roles. The National Association for Public Defense has published recommended non-attorney-to-attorney ratios. A staffing strategy that hires 192 non-attorney personnel alongside the 80 proposed annual attorney FTEs can not only achieve total elimination of the public defender deficiency ahead of 2031 but also save approximately \$32 million each year.

## Aggregate Impact of Interventions

Together, the aggregate impact of policy and staffing interventions that could both reduce and increase Adult Criminal attorney caseloads is illustrated in Table 5. Oregon should consider these interventions as levers that can either help eliminate the Adult Criminal public defender deficiency ahead or behind the target 2031 date.

TABLE 5: AGGREGATE IMPACT OF POLICY AND STAFFING INTERVENTIONS ON ATTORNEY NEED

DESCRIPTION	ANNUAL ATTORNEY FTE NEED IMPACT	ESTIMATED COST IMPACT
<b>Forecasted 2031 Attorney FTE need and FY2029–2031 Funding Need</b>	<b>986</b>	<b>\$1,307,608,433</b>
Decriminalization of non-violent Low-Level Misdemeanors and non-violent other charges	- (198)	- (\$47,761,164)
House Bill 4002	39	\$9,407,502
Other legislation (likely to result in increased attorney need)	<i>unknown</i>	<i>unknown</i>
Impact of repealing Measure 11 on certain crimes	- (52)	- (\$12,543,336)
Case support personnel (192 non-attorney FTE x \$75,000)	- (192)	- (\$31,913,856)
<b>Updated Attorney Need for 2031 and Estimated Operating Budget</b>	<b>583</b>	<b>\$1,224,797,579</b>
<b>Total Difference Between 2031 Forecast, and Impact of Policy and Staffing Interventions</b>	<b>- (403)</b>	<b>- (\$82,810,854)</b>

Estimated cost impacts are a calculation of the annual attorney contract amount and the number of attorney FTEs. It does not reflect the fully burdened<sup>5</sup> cost of increases or decreases to attorney FTEs. The estimated cost impact for case support personnel is calculated by subtracting the savings from the 192 attorney FTE reduction and adding the cost to fund an additional 192 non-attorney FTEs. Non-attorney personnel costs are not differentiated by role.

This calculation does not account for other potential cost savings that may result, including savings on appeals, post-conviction cases, wrongful litigation, and litigation over failure to properly fund and staff indigent defense. Additionally, while Table 5 describes the impacts on OPDC's operating budget, it should not be forgotten that the policy changes above could lead to significant downstream cost savings (\$215 million, Table 4) across Oregon's criminal justice system.

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<sup>5</sup> A fully burdened rate accounts for basic wage or salary as well as additional costs associated with employing that worker either mandatory (such as payroll or other type taxes) or voluntary (such as bonus or incentives) inclusions.

## II. INTRODUCTION

**“Everyone – defendants, victims, attorneys, courts, and the wider community – is harmed by inadequate defense.”**

— Ben Haile, Special Counsel, Oregon Justice Resource Center

### A. BACKGROUND

In 2019, Oregon became the seventh state to undergo a workload assessment of its public defenders by the American Bar Association Standing Committee on Legal Aid and Indigent Defense culminating in *The Oregon Project – An Analysis of the Oregon Public Defense System and Attorney Workload Standards*.<sup>6</sup> *The Oregon Project* workload study found that the state’s public defenders have over three times the number of cases they can ethically handle (See [Appendix A: Methods Used by The Oregon Project](#)). In response to these findings, Oregon is now the second state to seek a multiple-year implementation plan to address the very serious problem of excessive public defense workloads. This six-year plan identifies feasible strategies to systematically reduce public defender workloads. With this six-year plan, the state is better positioned to take advantage of proposed federal legislation under consideration to support the constitutionally mandated—and costly—service of public defense.

The cost of effective public defense is substantial; however, the cost of an overburdened public defense system is even greater. People in need of constitutionally required legal services are denied or delayed the assignment of an attorney. Attorneys are forced to triage cases, sacrificing time spent with one client for another client with similarly urgent needs. As a result, public defenders are at greater risk of foregoing critical steps required to provide reasonably effective assistance of counsel. Attorneys face immense stress knowing they may be unable to deliver the services they are ethically bound to provide, amplifying the cycle of burnout, staffing shortages, and even greater workloads. Further, persistently excessive workloads place the state at heightened risk of legal exposure over its constitutional failure to provide effective public defense services.

An overburdened public defense system also results in delays in adjudication. While waiting for a case to progress through the court system, people accused of crimes are at increased risk of losing wages, employment, housing, and custody of their children. Prolonged case timelines are also more likely to significantly disrupt the structure and support for individuals managing addiction, as well as other physical and mental health burdens. In the face of case delays, many may choose a plea deal to hasten the process, without knowing whether additional investigation or research would yield viable defenses. As a result, the state faces rising costs of its public safety system, directly related to increased detention levels.

This six-year plan builds off analysis, methodology, and conclusions in *The Oregon Project*, published in January 2022 by the American Bar Association Standing Committee on Legal Aid and Indigent

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<sup>6</sup> Moss Adams LLP, “The Oregon Project, An Analysis of the Oregon Public Defense System and Attorney Workload Standards” (On behalf of American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants, January 2022).

Defense (ABA SCLAID) and Moss Adams LLP (Moss Adams) on behalf of the currently-named Oregon Public Defense Commission (OPDC).<sup>7</sup> *The Oregon Project's* analysis has two prongs: 1) the calculation of the average amount of time Oregon attorneys should spend on cases to meet minimum standards for representation, and 2) the application of Oregon-specific metrics to the then-current OPDC caseload. The metrics were determined using the well-established Delphi method. Applying Oregon's Delphi panel results to the state's historical caseloads, the research team identified a significant deficiency of attorney time needed to provide the "reasonably effective assistance of counsel pursuant to prevailing professional norms" required by *Strickland v. Washington*<sup>8</sup> and the Oregon Rules of Ethics and Professional Standards set forth in [Appendix B: The Oregon Rules of Ethics and Professional Standards](#).

*The Oregon Project* analysis showed that based on the average annual caseload, the state needed an additional 1,296 full-time attorneys—more than two times its current level—to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment to the U.S. Constitution.

The first step in our analysis was to update this deficiency calculation and narrow it to reflect the focus of this report on Adult Criminal.

Adult Criminal cases represent the majority of cases by count (79%), and the highest volume of hours for public defenders (54%), and are at the core of the Sixth Amendment right to counsel. Analysis of the combination of Juvenile cases and Adult Criminal cases together does not clarify the key drivers of deficits for either case type. For example, in Oregon, 10 of the 27 judicial districts are in the Parent-Child Representation Program (PCRP). PCRP limits the open caseload of providers within the program and provides some additional non-lawyer staffing to assist with cases. Between the differing programs and the length of time it takes to get most Juvenile cases to final resolution, the factors contributing to the representation deficit are dissimilar enough that including Juvenile cases in this discussion is not appropriate.

While this plan focuses on Adult Criminal caseloads, the same methodology can be used to develop a similar strategy to address the Juvenile Dependency and Delinquency attorney deficiency.

The cost to eliminate the constitutional risk related to excessive public defender workloads is substantial. As detailed in this report, hiring the attorneys needed to address the deficit for Adult Criminal cases would require OPDC to double its Total Operating Budget over the next six years.

The baseline six-year plan details the costs required to exclusively fund additional attorney FTEs. However, there is a very real opportunity to enact policy changes and case support staffing strategies that could significantly reduce costs to the criminal justice system and reduce the need for additional public defenders with no risk to public safety. Many of these reforms would lead to substantial savings on incarceration costs, which could be used to fund the additional staffing needed by OPDC to recruit personnel.

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<sup>7</sup> Effective January 1, 2024, both the Oregon Office of Public Defense Services and the Public Defense Services Commission were collapsed into the new Oregon Public Defense Commission, which was created by SB 337 (2023). For this document, the term OPDC will be used for simplicity.

<sup>8</sup> *Strickland v. Washington*, 466 U.S. 668, 690 (1983).

## B. OVERVIEW OF THE OREGON PUBLIC DEFENSE SYSTEM

The Oregon Public Defense Commission (OPDC) is an independent body charged with establishing and maintaining a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution, the Rules of Professional Conduct, and Oregon and national practice standards.

OPDC provides counsel to individuals in Adult Criminal, Juvenile Delinquency, Juvenile Dependency,<sup>9</sup> Civil Commitment, Contempt, Habeas Corpus, Post-Conviction Relief, Guardianship, and other proceedings at the trial level, as well as in direct appeals from these cases. Historically, OPDC has contracted with providers of different types—public defender offices, law firms, consortia, non-profit organizations, and individual attorneys (collectively known as “contractors”)—to provide public defense services. Oregon is the only state that provides trial-level counsel primarily through a contracting system.<sup>10</sup>

OPDC is moving toward a model with more full-time public defenders working at both OPDC and non-profit public defender offices. The remaining public defense services will be provided by a panel of attorneys who work at an hourly rate.

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<sup>9</sup> OPDC is responsible for representation of both children and parents in Juvenile Dependency proceedings. This arrangement is somewhat unusual and prone to creating administrative challenges, as attorneys from the same organization or law firm generally are prohibited by the Rules of Professional Responsibility from representing two parties in the same case. As a result, a dependency case in which there is one child and two parents may require lawyers from three different contracting entities. For more on models of representation in dependency proceedings and suggestions for best practices, see Mimi Laver and Cathy Krebs, “The Case for a Centralized Office of Legal Representation in Child Welfare Cases” (American Bar Association, *Child Law Practice Today*, December 2020). [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/).

<sup>10</sup> By contrast, appellate services in Oregon are provided primarily through the Appellate Division of OPDC. Attorneys in this office are full time employees of OPDC. Contract services are used for appeals only when the appellate division is not able to accept a case or client due to conflict or lack of capacity.

### III. ADULT CRIMINAL DEFICIENCY ANALYSIS UPDATE

#### A. ADULT CRIMINAL CASELOAD DATA UPDATES

Since its original calculation in 2022, the Oregon Justice Department (OJD) has partnered with OEA to make significant updates to its caseload tracking dataset to inform future deficiency calculations, budgets, and staffing strategies.<sup>11</sup> Based on improved data, and to align with forecasts developed by OEA, the following is an update to the estimated Annual Adult Criminal caseload data for 2023. Applying the Delphi Method, OPDC’s annual estimated needed hours to address Adult Criminal Cases in 2023 were 2,226,394 (Table 6).

TABLE 6: 2023 UPDATED WORKLOAD ANALYSIS FOR ADULT CRIMINAL CASE TYPES

ADULT CRIMINAL			
Case Type	Delphi Hours Per Case <sup>12</sup>	Estimated Annual Caseload (2023 Data) <sup>13</sup>	Total Hours
Low-Level Misdemeanor	22.26	23,683	527,190
Complex Misdemeanor	36.98	8,919	329,838
Low-Level Felony	39.78	18,419	732,696
Mid-Level Felony	47.73	2,088	99,667
High-Level Felony	148.95	2,030	302,321
Homicide and Sex Cases	552.46	161	88,714
Probation Violations	8.33	17,523	145,968
<b>Total Adult Criminal</b>		<b>72,823</b>	<b>2,226,394</b>

<sup>11</sup> The updated information specifically provides additional detail including but not limited to: 1) A Statute column showing the statute for the most serious charge on the case. This column denotes civil commitment and some procedural matters in cases that do not have charges. 2) The criteria for post-disposition appointments are updated to better distinguish between appointments for probation violations and appointments due to the case being reinstated or remanded on appeal. Multiple post-disposition appointments on the same case are now represented, as defendants may have multiple probation violations. 3) The data excludes orders appointing appellate attorneys. 4) Post-disposition appointments on civil commitment cases are categorized as either Reinstated/Remand on Appeal or Continued Commitment/Trial Visit Revocation, as commitment cases may come back to court post-disposition for either reason. 5) For cases that were assigned to a specialty court, the dataset now shows the OPDC Category associated with the most serious charge for the case (Misdemeanor, Minor Felony, etc.) rather than Specialty Court.

<sup>12</sup> Per the Adult Criminal Delphi panel results, see *The Oregon Project*.

<sup>13</sup> Based on the average opened cases per year for the respective Case Type.



## B. ADULT CRIMINAL ATTORNEY DEFICIENCY CALCULATION UPDATES

To perform the deficiency analysis, the projected caseload is multiplied by the time needed by Case Type as determined by the Delphi panels to produce the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.



The hours needed are then translated into FTEs and compared to the number of FTEs currently available to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.



At 2023 caseloads, OPDC is deficient 564 contract attorney FTEs for its Adult Criminal caseloads. In other words, OPDC has only 47% of the FTE contract attorneys needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Oregon to its Adult Criminal clients.



## IV. BASELINE STAFFING AND BUDGET STRATEGY

### A. ATTORNEY FTE STAFFING STRATEGY

OPDC faces a baseline Adult Criminal public defender deficiency of 564 attorney FTEs as detailed in the [Adult Criminal Deficiency Analysis](#) section. However, caseloads have been decreasing year-over-year historically. In the six-year plan, a 1.4% decrease in caseloads is anticipated each year. This percentage is based on the average annual reduction in caseload between 2017 and 2022, excluding changes between 2019—and 2020. Changes for 2020 are excluded due to the acute impacts of the global pandemic, which temporarily drove down caseloads. Based on average annual reductions in Adult Criminal caseloads, the original need of 564 FTEs is incrementally reduced to 480 FTEs over six years.

In other words, to meet the total expected attorney FTE need in 2031 (986 attorney FTE) and close the Adult Criminal attorney deficiency, OPDC would need to hire an additional 480 attorney FTEs over the next six years (Table 7).

TABLE 7: SIX-YEAR ATTORNEY-ONLY STAFFING STRATEGY

	YEAR 0	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6
<b>ADULT CRIMINAL CASELOAD HOURS</b>							
Total Adult Criminal Caseload Hours <i>(in thousands, with a 1.4% decrease)</i>	2,226k	2,196k	2,166k	2,136k	2,107k	2,079k	2,050k
<b>ADULT CRIMINAL STAFFING IMPACTS</b>							
Additional Funded Attorney FTE		80	80	80	80	80	80
<b>TOTAL IMPACT ON ADULT CRIMINAL ATTORNEY DEFICIENCY</b>							
Adult Criminal Attorney FTE Need	1,070	1,056	1,041	1,027	1,013	999	986
Current Adult Criminal FTEs <sup>14</sup>	506	586	666	746	826	906	986
Adult Criminal Attorney FTE Deficiency at End of Year	564	470	375	281	187	93	0
<i>Percent Adult Criminal Attorney Deficiency at End of Year</i>	<i>53%</i>	<i>45%</i>	<i>36%</i>	<i>27%</i>	<i>18%</i>	<i>9%</i>	<i>0%</i>

### B. HISTORICAL OPERATING BUDGET TRENDS

OPDC operations are funded via two primary methods: an appropriation from the Oregon State Legislature known as General Funds (96% of the total operating budget), and additional Other Funds awards (4% of the total operating budget). Over the past 8 years, the Oregon legislature has increased funding for OPDC by an average of 23% per biennium. The total OPDC General Fund

<sup>14</sup> Current Adult Criminal FTEs are based on the contract summary for FY2023–2025. It does not include budgeted vacancies of any duration, supervisors, or investigators.

request for FY2023–2025 is approximately \$576 million. The OPDC Operating Budget Trend chart (Table 8) builds off the 8-year average increase of 23% to establish a baseline forecast for the next six years.

**TABLE 8: OPDC OPERATING BUDGET TREND**

BIENNIUM	OPERATING BUDGET	PERCENT CHANGE
2017–2019	\$314,952,957	
2019–2021	\$367,079,232	16.55%
2021–2023	\$463,860,928	26.37%
2023–2025	\$598,045,792	28.93%
2025–2027	\$709,626,419	23%
2027–2029	\$873,833,972	23%
2029–2031	\$1,076,039,153	23%

### C. COST FOR ADDITIONAL BUDGETED ROLES BY TYPE

The compensation rate for agency attorneys will likely drive the rate for all full-time public defenders including agency, non-profit public defenders, and panel. To improve its ability to accurately reflect the budget impact of this workforce model transition, OPDC has been directed by the legislature to conduct a market study to update its hourly rate compensation data. The outcomes of the compensation study will be integrated into an updated forecast so the state can adjust its budget as necessary. In addition to updated annual compensation data for attorneys, the hourly study will provide wage information for all eight of the case support roles identified in [Additional Resources to Support Workload](#). As OPDS carries out its deficiency reduction strategy, this will provide essential information to inform budget adjustments.

For this report, the cost of attorney FTEs and case support FTEs is based on averages derived from the OPDC’s 2023 contract terms. Included in the contract terms is a 5% administration fee. This has been included in the FTE amounts to demonstrate a fully burdened FTE cost per biennium (Table 9).

**TABLE 9: AVERAGE ATTORNEY AND INVESTIGATOR COSTS**

DESCRIPTION	AMOUNT
Average cost per attorney FTE per biennium	\$482,436
Average cost of contract investigator FTE per biennium	\$157,500

### D. OPERATING BUDGET IMPACT

To reduce the public defender deficiency and restore reasonable workloads, OPDC’s operating budget will need to increase. The state has historically increased OPDC’s budget by 23% per

biennium. Table 10 calculates the average additional biennium increase, outlining the cost to fully fund 480 attorney FTEs over the next six years.

To recruit the additional recommended attorneys and eliminate the public defender deficiency by 2031, OPDC will need to pursue additional funding averaging 17% each budget cycle on top of its historical average increase of 23% resulting in an estimated operating budget of \$1.3 billion by 2031 (Table 10). Additional funds could come from general fund appropriations from the state, award funds, or a combination of both.

**TABLE 10: BUDGET IMPACTS OF THE ATTORNEY STAFFING STRATEGY**

	FY2023–2025	FY2025–2027	FY2027–2029	FY2029–2031
<b>OPDC Total Operating Budget Trend</b>	\$576,276,124	\$709,626,419	\$873,833,972	\$1,076,039,153
<b>Cost to Fund Additional Attorney FTE</b>		\$77,189,760	\$154,379,520	\$231,569,280
<b>Total Funding Needs by Year</b>		\$786,816,179	\$1,028,213,492	\$1,307,608,433
<b>Percent Additional Budget to be Requested from the State</b>		11%	18%	22%

## E. ATTORNEY RECRUITMENT, RETENTION, AND DEVELOPMENT CONSIDERATIONS

This budget scenario is the costliest way to reduce the public defender deficiency that OPDC faces. It also may not succeed even if fully funded. For reasons related to compensation, level of debt, desire to work remotely, persistently high workloads, and focus on the national crisis, public defenders and prosecutor offices nationally are facing significant challenges recruiting and retaining qualified lawyers.<sup>15</sup> This landscape presents significant challenges for OPDC and makes it challenging to solve the public defender shortage through an exclusive focus on funding and hiring attorney FTEs.

While the state may increase its funding for Adult Criminal public defenders, there must be available and qualified individuals to fill vacancies to achieve deficiency reductions. Oregon has three law schools, each with an average class size of 145 students. OPDC would need to hire approximately 20% of students each year to achieve its recruitment target, assuming that the entire class graduates, and that OPDC would not need to back-fill any attorney FTEs that were lost due to retirement or turnover. Oregon must attract new attorneys to public defense and improve working conditions and pay so that new and experienced attorneys are recruited into the profession. Enhanced recruitment, such as creating law school-to-public-defense pipelines, loan forgiveness opportunities, and programs to attract lawyers to underserved parts of the state, would benefit Oregon’s public defense

<sup>15</sup> Disha Raychaudhuri and Karen Sloan, “Prosecutors Wanted: District Attorneys Struggle to Recruit and Retain Lawyers” (Reuters, April 23, 2022).

system in the long term. However, investments in these areas have a long maturation period. OPDC may not see the results of its investment for more than six years.

There are also opportunities to improve state-wide training and qualification programs. OPDC currently requires nine months' experience before an attorney can move from misdemeanor to felony cases. However, access and availability of required training, defined competencies, and observation or oversight to determine whether an attorney has sufficient expertise to transition to increasingly complex cases could be enhanced. OPDC, alongside other organizations, has made investments in improving training and oversight programs that could shorten the time period before up-qualification could occur. If the training supervision is fully funded, attorneys could up-qualify in six months, which would help to reduce excessive workloads for complex cases. It should be noted that despite the availability of training, in an overburdened environment dedicating time to training is not always feasible.

Retention of attorneys is a top concern for the workforce. Unequivocally, the deficiency emphasizes that Oregon must retain its current public defense workforce to not further contribute to increasing workloads. While tactics such as fair compensation and incentives can be effective measures for retention, there is little that OPDC can do in the face of a growing contingent of retirement-eligible public defenders.

Hiring attorney FTEs is not the only way to close the current public defense workload deficit. Outlined in [Interventions Impacting the Public Defender Deficit](#), recruitment of case support personnel, decriminalization of Low-Level Non-Violent Misdemeanors, and repealing minimum and maximum sentencing can significantly contribute to faster reductions in excessive workloads at far less cost to the state and public.

## V. INTERVENTIONS IMPACTING THE PUBLIC DEFENDER DEFICIT

**“There are serious financial and social consequences to inadequate staffing. Clients pay the costs of representation that is not meaningful. The criminal legal system pays the costs of delayed resolutions. The public has less reason to have confidence that ...results are reliable and valid.”**

— National Association for Public Defense

While this study aims to eliminate the deficiency through recruitment of attorney FTEs and additional funding, several upstream and downstream factors impact the state’s ability to achieve its goal of eliminating the Adult Criminal public defender deficiency by 2031. Policies that reduce public defense caseload burdens can reduce needed attorney FTE, decreasing needed budget expenditures. At the same time, policies that increase caseload burdens will increase attorney FTE needs and with it, the budget required to provide constitutionally required services to poor people accused of crimes in Oregon. Strategic recruitment of case support personnel can also alleviate workloads on public defenders while contributing to a more resilient workforce.

### A. DECRIMINALIZATION

In response to the growing body of data that recognizes the social inequalities perpetuated by criminal sanctions for victimless crimes, national decriminalization efforts are continually emerging.

COVID-19 and Measure 110<sup>16</sup> reduced the number of arrests and criminal case filings for Low-Level, Non-Violent Misdemeanor crimes. Despite these significant changes, there remain large numbers of people arrested and charged with relatively minor crimes that could be removed from the criminal courts. Low-level, Non-Violent Misdemeanor crimes are proven to disproportionately impact individuals who are minorities or experiencing homelessness or poverty. Table 11 shows those crimes that could no longer be treated as criminal and the estimated impact on criminal case filings each year, based on the number of charges filed in 2022.

TABLE 11: ESTIMATED IMPACT OF DECRIMINALIZATION BASED ON 2022 CHARGES FILED

OFFENSE	NUMBER OF FILINGS	% OF TOTAL 2022 FILINGS
<b>Recommended Decriminalization of Low-Level Non-Violent Misdemeanors</b>		
Driving with a Suspended License	3,711	1.3%
Failure to Appear (FTA)	2,021	0.7%
Criminal Trespass	6,550	2.2%
Failure to Carry and Present License	194	0.1%

<sup>16</sup> In March 2024, the state legislature passed House Bill 4002 repealing parts of Measure 110.

OFFENSE	NUMBER OF FILINGS	% OF TOTAL 2022 FILINGS
Possession Drug Charges	2,260	0.8%
Criminal Mischief 3	7,558	2.6%
<b>Subtotal of Recommended Decriminalization:</b>	<b>22,294</b>	<b>7.6%</b>
<b>Other Crimes to be Revised by Legislature</b>		
Hit and Run Where the State Is the Victim	22	0.0%
Theft 3 When the Item Stolen Is Food or Basic Needs	3,263	1.1%
Failure to Register If the Person Complies with Registration upon Arrest	1,030	0.4%
<b>Subtotal of Other Crimes:</b>	<b>4,315</b>	<b>1.5%</b>
<b>“Other Crimes” Subtotal Reduced by 80%:</b>	<b>863</b>	<b>0.3%</b>
<b>Decriminalization Impact on Attorney FTE</b>		
<b>Total 2022 Charges Filed:</b>	<b>293,205</b>	
Subtotal Recommended Decriminalization + Reduced “Other Crimes”	23,157	7.9%
Estimated Total Reduced by 20% <i>The reduction accounts for variability in overall decriminalization estimates</i>	18,526	6.3%
<b>Reduced Defense FTE</b> <b>(18,526 x 22.26 hrs. per case/2080 hrs. per FTE)</b>		<b>198 FTE</b>

The analysis shows a total reduction of over 18,000 cases from the criminal courts annually. Using the estimated 22.26 hours per Low-Level Misdemeanor case based on *The Oregon Project*, Delphi results in a reduced need of 198 FTEs. These estimates should be viewed as conservative as they discount the decriminalization analysis by 20% and the other crimes for which precise information is not available by 80%. The discount factor recognizes that some percentage of the cases will not be impacted by the reform due to the discretion law of enforcement and the courts in making charging decisions.

Decriminalization is a significant trend impacting public defenders nationally. Coupled with adequate social support, there are proven benefits to systematic decriminalization efforts beyond public defender workloads. Were Oregon to pursue additional decriminalization, it would expedite eliminating the public defender deficiency. However, discussed further in the following section, pursuing recriminalization and enacting new crimes could prolong and exacerbate the public defense crisis.

## B. SENTENCING REFORM

Minimum and maximum sentences are often linked to the classification of various crimes. Long sentences are a clear driver of the hours required for public defenders. Changes to offense

classifications are outside OPDC’s direct control. However, changes to crime classification and sentencing lengths impact the public defender deficiency on an ongoing basis. Were Oregon to pursue sentencing reform, OPDC could reach its targeted elimination of excessive workloads earlier than 2031.

For example, between 2017–2022, 80% of Oregon’s 13,028 High-Level Felony cases were Measure 11.<sup>17</sup> The following table represents an analysis of the impact of repealing Measure 11 or exempting certain charges from Measure 11 sentencing, which would result in the reclassification of those offenses from High-Level Felony to Mid-Level Felony.<sup>18</sup> Further, the analysis outlines the impact of reclassifying these crimes based on attorney FTE need and associated costs.

**TABLE 12: MEASURE 11 REDUCTION ANALYSIS**

MEASURE 11 CASES RECOMMENDED FOR REDUCTION	TOTAL CASES 2017–2023	CASES WITHOUT FIREARMS	PERCENT OF TOTAL CASES
Assault in the Second Degree	3,642	3,589	29%
Attempted Murder in the Second Degree	170	105	1%
Kidnapping in the Second Degree	370	369	3%
Manslaughter in the Second Degree	179	179	1%
Rape in the Second Degree	97	97	1%
Robbery in the First Degree	1,819	1,497	12%
Robbery in the Second Degree	1,097	1,094	9%
Sexual Abuse in the First Degree	1,213	1,213	10%
Sodomy in the Second Degree	35	35	0%
<b>Total percent of Measure 11 Cases that Could be Reduced to Mid-Level-Felonies</b>			<b>66%</b>
<b>IMPACT ANALYSIS OF RECLASSIFICATION RECOMMENDATION</b>			
Delphi – Avg. Hours per High-Level Felony Case:			148.95
Delphi – Avg. Hours per Mid-Level Felony Case:			47.73
<b>Difference (Hours Savings) per Case:</b>			<b>101.22</b>

<sup>17</sup> High-Level Felony cases include Measure 11 felonies (excluding homicide cases), sex cases (excluding sex cases with potential for 25+ years), and gun minimum cases. While this report focuses on Adult Criminal caseloads, it’s important to note that Juveniles aged 15 and older charged with Measure 11 felonies can be tried as adults.

<sup>18</sup> These are charges which, based on charge alone, would likely fall into the Mid-Level Felony category, but fall into the High-Level Felony category because of the additional sentencing at stake under Measure 11. These are the charges, for example, where an attorney is most likely to seek relief from Measure 11, which requires substantial additional attorney time in preparation, motion practice, court preparation and court time.



MEASURE 11 CASES RECOMMENDED FOR REDUCTION	TOTAL CASES 2017-2023	CASES WITHOUT FIREARMS	PERCENT OF TOTAL CASES
	Avg. Number of High-Level Felony Cases		2,030
Measure 11 Cases as a Percent of Total High-Level Felony Cases (80%):			1,626
Number of Measure 11 Cases Recommended for Reduction (66%):			1,066
<b>Total Hours Savings for Average Annual Caseload:</b>			<b>107,901</b>
<b>Annual FTE Savings:</b>			<b>51.88</b>
<b>Annual Cost Savings<sup>19</sup>:</b>			<b>\$12,543,336</b>

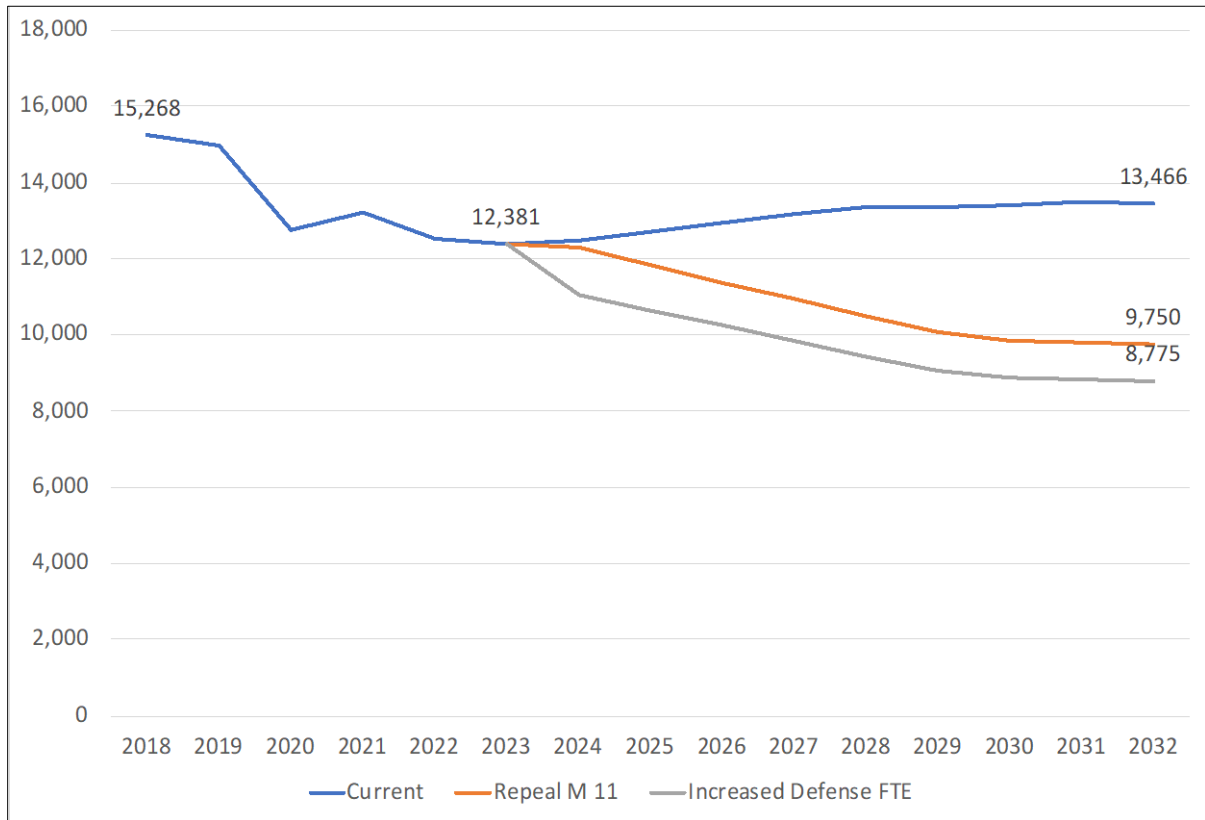
The cases above represent 66% of Measure 11 High-Level Felony cases. High-Level Felony cases have the second-highest number of case hours required. If the following cases were exempted from Measure 11 sentencing, they would instead be classified as Mid-Level Felony. This would result in a reduction of total average caseload hours by 107,901 annually, reducing the attorney FTE need by 52 FTE (rounding 51.88 FTE to the nearest whole). The reduction in caseload hours excludes cases in Table 12 where a firearm is involved. The associated budget reduction from reduced attorney FTE need would be \$12.5 million annually.

Repealing Measure 11 provisions that unnecessarily lengthen prison terms and artificially prop up the prison population will also significantly reduce the projected prison population (Figure 1) and result in considerable cost savings (Table 13).<sup>20</sup>

<sup>19</sup> Annual cost savings are calculated by rounding to the nearest whole attorney FTE (52) and multiplying this by the annual cost per attorney FTE.

<sup>20</sup> Lauren-Brooke Eisen, James Austin, Ph.D., James Cullen, Jonathan Frank, and Inimai M. Chettiar, "How Many Americans Are Unnecessarily Incarcerated?" (Brennan Center for Justice, December 9, 2016). <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.

**FIGURE 1: CURRENT AND ALTERNATIVE PRISON POPULATION FORECASTS**



Altogether, repealing Measure 11 would lower prison and post-prison supervision costs by about \$240 million per year with no impact on violent or property crime rates.<sup>21</sup> At the local level, pretrial jail populations will also decline, producing more savings. Oregon can expect an increase in the probation population of about 10%, as more people are sentenced to probation in lieu of prison sentences. The estimated increase in probation costs would be about \$25 million per year, assuming the newly diverted probationers would be initially placed on high supervision at a cost of \$21.95 per day.<sup>22</sup> Overall, there would be a net reduction of about \$215 million (Table 13).<sup>23</sup>

<sup>21</sup> Ibid.

<sup>22</sup> Oregon Department of Corrections, Community Corrections Division, “Evaluating Oregon’s Community Corrections Act 2021–23,” (public report, January 2023). <https://www.oregon.gov/doc/Documents/community-corrections-act-report-2021-23.pdf>.

<sup>23</sup> Based on the 2017 costs of Oregon criminal justice system as estimated by the Bureau of Justice Statistics, U.S. Department of Justice with 20% inflation between 2017 and 2023.

TABLE 13: SUMMARY OF OREGON CRIMINAL JUSTICE SYSTEM COST SAVINGS FROM REFORMS

DESCRIPTION	AMOUNT
Total Current Criminal Justice System Costs	\$8,280,000,000
Estimated Savings Due to Sentencing Reforms	-( \$240,000,000)
Estimated Increased Costs for Probation	\$25,000,000
<i>Net Reduction</i>	<i>-( \$215,000,000)</i>

Reducing sentences in this manner, likely would not impact public safety. A report published by the Brennan Center for Justice evaluates the impact on public safety against three sentence length reduction scenarios: 10%, 25%, and 50%. The report concludes that lawmakers should consider reducing sentence maximums and minimums defined in criminal statutes and sentencing guidelines by 25%.<sup>24</sup>

### C. ADDITIONAL RESOURCES TO SUPPORT WORKLOAD

**“Public defenders who do not have the investigator, social worker, administrative and paralegal assistance to support their representation have far less capacity to provide meaningful representation to each client.”**

— National Association for Public Defense

Case support personnel can alleviate the pressure of excessive workloads and contribute to eliminating the public defender deficiency ahead of 2031. Effectively deploying the full suite of resources available on a project team can begin to shift total caseload hours from public defenders to other project team members, reducing overall attorney FTE need. Identifying and mapping support opportunities to available resources can help facilitate the delegation of duties and balance workloads. [Appendix C: Additional Resources for Case Support Analysis](#) outlines the support type by resource to illustrate the task, and impacted category used in workload standards and calculations by case type.<sup>25</sup>

Further, when a public defense organization engages administrative personnel, paralegals, legal assistants, or mitigation specialists and then provides career development benefits, it can create career ladders, contributing to a stronger public defender pipeline. Indeed, this could help build a pipeline to law school for people with public defense experience and interest and help OPDC overcome attorney recruiting hurdles.

<sup>24</sup> Lauren-Brooke Eisen, James Austin, Ph.D., James Cullen, Jonathan Frank, and Inimai M, Chettiar, "How Many Americans Are Unnecessarily Incarcerated?" (Brennan Center for Justice, December 9, 2016). <https://www.brennancenter.org/our-work/research-reports/how-many-americans-are-unnecessarily-incarcerated>.

<sup>25</sup> Miscellaneous administrative work is not included in past or present deficit calculations. This work is in addition to workload calculations. Depending on the office structure, this work is often performed by public defenders.

## Reallocation of Attorney Time to Case Support Staff

Each Case Task by Case Type was examined to identify a reasonable percent of time per Case Task that could be allocated to case support personnel, effectively reducing attorney workloads. The full analysis is provided in [Appendix D: Workload Reduction Analysis](#), and reveals that—depending on case outcome (plea or otherwise resolved, or go to trial) and case type (Complex Misdemeanor, Low-Level Felony, etc.)—between 18–22% of total case hours could be reduced from the annual attorney caseload hours through the strategic recruitment of paralegals, investigators, social workers, or mitigation specialists. Using the updated 2023 annual caseload estimates, 410,969 hours overall could be reduced from the total annual caseload estimates, effectively reducing the annual attorney need by 192 FTE.

Within each Case Type, there are common Case Tasks that align with the phases of a criminal case, including:

- Attorney Investigation/Interviews
- Client Communication
- Client Support Services
- Court Prep
- Court Time
- Discovery/Case Prep
- Experts
- Legal Research, Motions Practice
- Negotiations
- Post-Judgment
- Sentencing/Mitigation

The Delphi Method calculates the amount of time that attorneys should expect to spend on a particular Case Task for particular Case Types, considering both the Strickland standard (reasonably effective assistance of counsel) and the applicable ethical and substantive professional standards discussed earlier in this report (prevailing professional norms). Within each case task, however, there are activities that, while currently handled by attorneys, could be undertaken by non-attorney staff if such staff were available. For example, Client Support Services, Attorney Investigation/Interviews, and Sentencing/Mitigation are all tasks with sub-activities that could be supported by non-attorney personnel such as investigators or paralegals. Indeed, based on background and experience, case support personnel such as investigators may outperform attorneys in these tasks.

Managing cases efficiently requires a holistic approach, engaging not only public defenders but also non-attorney professionals involved across the ecosystem of a case. Case team composition can vary greatly depending on team structures that may or may not include the following supportive personnel:

- Paralegal or legal assistant
- Investigators
- Interpreters
- Non-PCRCP case managers
- Social workers
- Mitigation specialists
- Tech-support
- Office administrative support

As OPDC continues to update its workforce model and seeks to build an internal team, it should be mindful of building its workforce strategy with a mix of attorney and case support personnel. There are several advantages to engaging a diverse case team beyond workload balancing. There is likely a better labor pool to hire supportive personnel such as paralegals, administrative support,

investigators, caseworkers, and case navigators. When developing a multi-year strategy to reduce the public defender deficiency, the availability of supportive personnel to build a case team will be a critical determinant of success or failure in this area.

It's important to note that the skills, abilities, and competencies of each individual will determine their suitability to successfully support the case team. It is possible that individuals could provide additional support beyond the items listed in the chart. Additionally, an individual such as a paralegal may provide support across several areas including file documentation, technology, motion filing, etc.

## Case Support Staffing Scenario

### Case Support Staff Ratios

The National Association for Public Defense (NAPD) issued a policy statement in 2020<sup>26</sup> providing useful guidance on minimum staffing of case support staff to attorneys (Table 14). To support the transition of case hours to non-attorney FTE, any non-attorney FTE recruitment strategy should consider alignment with NAPD's ratios.

TABLE 14: CASE STAFFING RATIOS

STAFF TYPE	RATIO (CASE SUPPORT: ATTORNEY)
Investigator	1:3
Mental Health Professional (often a Social Worker)	1:3
Supervisor	1:10
Paralegal	1:4
Admin Assistant	1:4

### Operating Staff Ratios

As OPDC's total agency employee count grows, additional administrative staff will be required. Operating staffing ratios and workload indicators can be used to help OPDC proactively manage operational staffing needs as staffing numbers grow (Table 15).

<sup>26</sup> "Standards for Indigent Defense Services in Non-Capital Cases," National Association for Public Defense, May 28, 2020, [https://publicdefenders.us/app/uploads/2023/10/NAPD\\_Policy-Statement-on-Public-Defense-Staffing.pdf](https://publicdefenders.us/app/uploads/2023/10/NAPD_Policy-Statement-on-Public-Defense-Staffing.pdf).

TABLE 15: OPERATIONAL STAFFING RATIOS

STAFF TYPE	RATIO (OPERATION STAFF: TOTAL EMPLOYEE COUNT)
HR <sup>27</sup>	2:125
IT <sup>28</sup> (for organizations less than 500)	1:18
<b>Finance<sup>29</sup></b> This metric is often associated with either revenue or operating budget alongside employee count. \$100M–500M (251–500 employees) \$500M–\$1B (501–1,000 employees)	Number of Finance team FTE 11.9–14.7 14.8–19.2

It's important to note that operating staff ratios are highly dependent on the sophistication of OPDC's operating environment. The number of manual and paper-based versus automated processes, the tenure and competencies of staff, and the number of systems, hardware, and equipment under management can significantly influence the actual number of staff needed. As the majority of OPDC's Adult Criminal attorneys are contracted, there is not enough data to develop a case support staffing strategy and associated budget impacts. For these reasons, case support personnel were not included in the baseline plan.

Table 16 presents a scenario comparing an attorney-only approach (Table 7) versus a combined attorney and case support staff recruitment strategy in Year 1. If only the 80 recommended attorney FTEs are hired in Year 1, the resulting Year 2 attorney FTE deficiency would equal 455 FTEs. Alternatively, if 192 case support FTEs were recruited alongside the 80 attorney FTEs, the new Year 2 deficiency would equal 263 FTEs. A reduction of 192 attorney FTEs in one year, produces approximately \$46 million in reduced costs. While OPDC is working on updating its market data to more accurately calculate the true cost of hiring a broader array of support staff, applying a blended estimate of \$75,000 per non-attorney FTE would still result in a \$32 million cost savings.

TABLE 16: CASE SUPPORT STAFFING SCENARIO ANALYSIS

SCENARIO ANALYSIS	YEAR 0	YEAR 1	YEAR 2 <i>(attorney only)</i>	YEAR 2 <i>(attorney and case support)</i>
<b>Total Adult Criminal Caseload Hours:</b>	2,226k	2,196k	2,166k	1,766k
<b>Current Attorney FTE:</b>	506	506	586	586
<b>Additional Attorney FTEs:</b>	-	80	-	-
<b>Remaining Attorney FTE Deficiency:</b>	<b>564</b>	<b>470</b>	<b>455</b>	<b>263</b>

<sup>27</sup> "Human Capital Report: Government," Society of Human Resources Benchmarking, accessed February 25, 2024, <https://www.shrm.org/topics-tools/research/shrm-benchmarking#accordion-a5599cb1d9-item-b5dbc3c3b3>.

<sup>28</sup> "Ratio of IT Staff to Employees," Workforce.com, April 10, 2023, <https://workforce.com/news/ratio-of-it-staff-to-employees>.

<sup>29</sup> "How Big Should Your Finance Team Be as You Grow," GrowCFO, accessed February 25, 2024, <https://www.growcfo.net/2022/11/16/how-big-should-your-finance-team-be-as-you-grow/>.

SCENARIO ANALYSIS	YEAR 0	YEAR 1	YEAR 2	YEAR 2
			(attorney only)	(attorney and case support)
Additional Case Support FTEs: ("adjustment")		192		
Caseload hours reduction % (assuming full recruitment of case support staff using NAPD attorney-staff ratios):		18.5%		
<b>Annual Reduction in Attorney FTE Need Through Recruitment of Case Support Personnel:</b>				<b>192</b>

As described, OPDC can eliminate excessive workloads for public defenders ahead of the six-year deadline and with a conservative cost savings of \$32 million annually by actively recruiting case support personnel including investigators, paralegals, social workers, and administrative personnel. This multi-pronged approach can help OPDC achieve its strategic goals earlier, build a more resilient team, and strengthen its public defender pipeline.

#### D. AGGREGATED IMPACT OF POLICY AND STAFFING INTERVENTIONS ON THE SIX-YEAR PLAN

Together, the aggregate impact of policy interventions that both reduce and increase Adult Criminal attorney caseloads is illustrated in Table 17, alongside the impact of recruiting case support personnel on attorney needs.

TABLE 17: AGGREGATE IMPACT OF POLICY AND STAFFING INTERVENTIONS ON ATTORNEY NEED

DESCRIPTION	ANNUAL ATTORNEY FTE NEED IMPACT	ESTIMATED COST IMPACT
<b>Forecasted 2031 Attorney FTE need and FY2029–2031 Funding Need</b>	<b>986</b>	<b>\$1,307,608,433</b>
Decriminalization of non-violent Low-Level Misdemeanors and non-violent other charges	- (198)	- (\$47,761,164)
House Bill 4002	39	\$9,407,502
Other legislation (likely to result in increased attorney need)	<i>unknown</i>	<i>unknown</i>
Impact of repealing Measure 11 on certain crimes	- (52)	- (\$12,543,336)
Case support personnel (192 non-attorney FTE x \$75,000)	- (192)	- (\$31,913,856)
<b>Updated Attorney Need for 2031 and Estimated Operating Budget</b>	<b>583</b>	<b>\$1,224,797,579</b>
<b>Total Difference Between 2031 Forecast, and Impact of Policy and Staffing Interventions</b>	<b>- (403)</b>	<b>- (\$82,810,854)</b>

Estimated cost impacts are a calculation of the annual attorney contract amount and the number of attorney FTEs. It does not reflect the fully burdened<sup>30</sup> cost of increases or decreases to attorney FTEs. The estimated cost impact for case support personnel is calculated by subtracting the savings from the 192 attorney FTE reduction and adding the cost to fund an additional 192 non-attorney FTEs. Non-attorney personnel costs are not differentiated by role.

This calculation does not account for other potential cost savings that may result, including savings on appeals, post-conviction cases, wrongful litigation, and litigation over failure to properly fund and staff indigent defense. Additionally, while this table describes the impacts on OPDC's operating budget, it should not be forgotten that the policy changes above could lead to significant downstream cost savings (\$215 million, Table 4) across Oregon's criminal justice system.

## E. IMPACT ON THE CRIMINAL JUSTICE SYSTEM

In the last two decades, there has been an emerging national and bipartisan consensus, supported by evidence-based studies conducted by highly respected nonpartisan research institutions, that the nation's criminal justice and prison and jail systems continue to need serious reform.

Right on Crime is a national campaign that supports conservative solutions to reducing crime, restoring victims, reforming offenders, and lowering taxpayer costs. In Texas, it supported an investment of \$241 million into alternative sentencing, expanded access to parole, and evidence-based programs aimed at improving the success rate for those reentering society or on supervision.

As a result, 11 prisons closed while simultaneously reducing crime to the lowest since the 1960s. Instead of spending \$2 billion, Texas saved \$4 billion. The Brennan Center for Justice—a nonpartisan law and policy institute focused on reducing mass incarceration while lowering crime rates—developed a national blueprint for reducing the prison population by 25% with no impact on the crime rate.

This kind of smart-on-crime reform has happened in many other states including New York, Illinois, and California, all of which have reduced their prison populations by over 35% with no increase in crime rates. The plan developed in this report is a way forward for Oregon to reduce costs, increase public safety, and strengthen the state's constitutionally mandated duty to provide effective public defense.

Increasing the level and quality of criminal justice defense representation likely will have several positive impacts on the size and costs of Oregon's criminal justice system. By ensuring that Adult Criminal public defenders are able to maintain reasonable workloads, the state can experience significant benefits in the following areas:

- **Reducing the size of the pretrial jail population.** It has been well recognized that the jail population that consists primarily of people in pretrial status is being driven by the frequent use of continuances often requested by defense counsel due to excessive caseloads. The National Center of State Courts found in its research that continuances were the greatest obstacle to

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<sup>30</sup> A fully burdened rate accounts for basic wage or salary as well as additional costs associated with employing that worker either mandatory (such as payroll or other type taxes) or voluntary (such as bonus or incentives) inclusions.



“timely justice.”<sup>31</sup> Such requests are often needed for defense counsel to adequately investigate the charges against their clients, prepare for court appearances, and negotiate reasonable plea agreements with prosecutors. Given that most continuances are 30 days in length, eliminating just one unnecessary continuance would reduce the defendant’s length of stay by 30 days. For people charged with serious felony cases who make up the bulk of the pretrial population, this would reduce the pretrial population by about 10%. A recent test of such reforms in Brooklyn found significant reductions in the time to disposition without negatively impacting the defendant’s final court outcomes.<sup>32</sup>

- **Increased use of probation and other non-prison sentences.** Adequate representation will also result in a higher number of probation sentences as opposed to prison terms. As noted in [Appendix E: Oregon Crime Trends](#), the state’s probation rate per 100,000 population is well below the national rate, showing there is a considerable opportunity to increase the use of probation terms.
- **Reducing the prison and post-prison supervision populations.** Increasing the use of probation will have a direct impact on reducing the number of prison admissions, which will reduce the size of the prison population. Additionally, when public defenders are able to dedicate sufficient time to a case, they are more likely to negotiate appropriate sentences with prosecutors, leading to a reduction in prison sentence lengths. As both prison admissions and prison sentences are reduced, the post-prison supervision population and associated costs are lowered. The estimate is that, at a minimum, prison admissions would decline by 5% and length of stay by another 5% due to shorter sentences, for a combined prison reduction of 10%. One would expect fewer people to be placed on post-prison supervision as the prison population declines.

Every state has an obligation under the Sixth Amendment to provide reasonably effective assistance of counsel to those accused of crime who cannot afford to hire an attorney. Oregon faces a critical juncture in addressing its public defender deficiency. The strategies outlined in this report offer viable pathways toward fulfilling this obligation. Whether through hiring 480 additional attorneys or a combination of more moderate attorney recruitment alongside decriminalization efforts, sentencing reforms, and non-attorney support staff, Oregon has the opportunity to rectify its current shortcomings. By recognizing the multifaceted nature of the issue and presenting comprehensive solutions, this report empowers policymakers to make informed decisions that will shape the future of public defense in Oregon.

By implementing the recommendations laid out in this six-year plan, Oregon can move towards a more ethical, equitable, and effective public defense system. However, success will hinge on sustained commitment and collaboration among policymakers, stakeholders, and communities.

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<sup>31</sup> Brian J. Ostrom, Ph.D. Lydia E. Hamblin, Ph.D. Richard Y. Schauffler, and Nial Raaen, “Timely Justice in Criminal Cases: What the Data Tells Us,” (National Center for State Courts, 2020).  
[https://www.ncsc.org/data/assets/pdf\\_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf](https://www.ncsc.org/data/assets/pdf_file/0019/53218/Timely-Justice-in-Criminal-Cases-What-the-Data-Tells-Us.pdf)

<sup>32</sup> Joanna Weill, Michael Rempel, Krystal Rodriguez, and Valerie Raine, “Reducing Felony Case Delay in Brooklyn. Evaluation of Jail Reduction Strategies Implemented in 2019,” (New York: Center for Court Innovation, March 2021).

# APPENDICES

## APPENDIX A: METHODS USED BY THE OREGON PROJECT

This appendix summarizes key methods used in *The Oregon Project*. Please refer to *The Oregon Project* report for full details.

### Historical FTE

The FTE method was used in *The Oregon Project*, which included a review of historical and current personnel employment data for attorneys and conversion of attorney personnel to FTEs. This allows for a comparison of total attorney time available, based on FTE and caseloads, to total attorney time at the system level, based on the Delphi panel results and caseloads. Calculating FTEs for contract attorneys is inherently complex. Attorneys in contract systems often work less than full-time, engaging in private practice or other legal work. OPDC contracts are with a range of entities in terms of size and method of operation. Some have employees who spend all their time on public defense work; others have contracts with OPDC and also engage in private practice or other legal work. The percentage of time each attorney at a contracting entity or each individual attorney with a contract devotes to public defense work may vary year to year, or even quarter to quarter. Absent timekeeping or a detailed manner of collecting and verifying information on complete contractor caseloads (including private practice cases), an FTE calculation in contracting systems can only be estimated, and it often relies on self-reported percentages.

### Historical Caseload

Historical case data was provided by the OJD’s Office of the State Court Administrator providing data through September 30, 2023 for Adult Criminal cases. This study analyzed Adult Criminal data for all case types filed from January 1, 2017, through September 30, 2023 (Table 18). Notably, this analysis does not consider the impact of cases that remain open for more than one year, nor the impacts of the COVID-19 pandemic.

TABLE 18: STATEWIDE CASES OPENED BY TYPE

CASE TYPE	2017	2018	2019	2020	2021	2022	JAN 1–SEP 30, 2023	AVG. CASELOAD DELTA
Adult Criminal	78,071	76,107	74,374	50,284	48,829	48,976	38,546	
% Change	-	-2.5	-3.5	-29.8	-1.0	1.5	--	-1.4%

### The Delphi Method

The workload study applied the results of data collected via the Delphi method, an iterative survey process developed by the RAND Corporation and used in a range of industries and professions. Within the legal system, examples of Delphi method use can be traced back decades, and the Delphi

method is considered an appropriate methodology for a caseload study.<sup>33</sup> Examples of these uses of Delphi were conducted by both the National Association of Court Management and the National Center for State Courts.<sup>34</sup> These efforts were principally focused on assessing judicial and court support staff needs.<sup>35</sup> Additionally, the Delphi method has been implemented by ABA SCLAID and partner accounting and consulting firms in similar public defense workload studies of public defense systems in seven other states. An overview of the Delphi method, including use of the method in determining appropriate caseloads for public defense attorneys, is summarized below and further described in Appendix A of *The Oregon Project*.<sup>36, 37</sup>

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop a reliable consensus on a specific issue. As a methodological strategy, the Delphi method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at set intervals. The surveying practices applied can be either interviews or surveys that focus on fundamental questions of significance to the group participating.

To initiate the Delphi method, a group of experts provides individual, anonymous responses on a given topic based on their expertise and experience. Next, the professionals who responded to the initial survey are provided the same survey with peer response data from the initial round. This iterative process of alternating participants' independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

In *The Oregon Project*, as in prior ABA SCLAID workload studies, the Delphi method was used to provide a reliable consensus of professional judgment on the time that should be required for a public defense attorney in Oregon to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The Delphi process used in Oregon relied upon the expertise of attorneys from various types of contractors, as well as private practice attorneys, to develop a reliable consensus professional judgment of the amount of time that attorneys should expect to spend on a particular Case Task in specific Case Types considering both the Strickland standard (reasonably effective assistance of counsel) and the applicable ethical and substantive professional standards discussed earlier in this report (prevailing professional norms).

In consultation with OPDC, ABA SCLAID determined that two separate Delphi panels were needed in Oregon covering the two major areas of practice in which public defense providers are utilized: (1)

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<sup>33</sup> Norman Lefstein, "Securing Reasonable Caseloads: Ethics and Law of Public Defense" (Chicago: American Bar Association, 2011), 140-51.  
[https://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads\\_supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf).

<sup>34</sup> National Center for State Courts' reports available at <http://www.ncsc.org>.

<sup>35</sup> Matthew Kleiman, Cynthia G. Lee, and Brian J. Ostrom, "Workload Assessment: A Data-driven Management Tool for the Judicial Branch" (National Center for State Courts, 2013).

<sup>36</sup> Moss Adams LLP, 2022.

<sup>37</sup> Stephen. F. Hanson, Malia N. Brink, and Norman Lefstein, "Use of the Delphi Method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned" (American Bar Association, 2021).  
[https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf).

Adult Criminal and (2) Juvenile.<sup>38</sup> These two panels correspond to the areas of specialization most often practiced by defense attorneys in Oregon.<sup>39</sup> Participants in each panel were selected based on their substantive expertise and experience in these areas. Participants included OPDC staff, public defenders, private practitioners, and court officers around the state, and they were approved by independent selection panels.

Each Delphi area was subdivided into Case Types and Case Tasks, and further divided by Resolution (e.g., plead/otherwise resolve v. go to trial). For each Case Task in each Case Type, participants were surveyed about the amount of time the task takes and its frequency.

The Delphi process in Oregon consisted of two rounds of online surveys, taken independently. The second-round survey was completed only by those who participated in the first round and included a summary of the responses from the first round for second-round participants to consider. A third survey was then conducted in a live group setting only by those who had completed the first and second survey rounds. These participants met to review the results of the second survey and developed a professional consensus regarding the appropriate amount of time an attorney should spend on a series of Case Tasks for each Case Type to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Oregon.

The result of the Delphi process is the consensus of the expert panel on the frequency and time needed to complete each Case Task in compliance with applicable standards, as well as Resolution—the percentage of cases that should plead/otherwise resolve v. go to trial. These consensus decisions were then used to calculate the Delphi result, the time needed for a public defense attorney to provide reasonably effective assistance of counsel to a client in an average case of the Case Type. See Tables 19 and 20 for a description of the Case Types and Case Tasks used in the Adult Criminal panel.

**TABLE 19: CASE TYPES AND CASE TASKS USED IN THE ADULT CRIMINAL PANEL**

<b>ADULT CRIMINAL</b>	
<b>Case Type</b>	<b>Case Task</b>
<b>Low-Level Misdemeanor</b>	Client Communication
<b>Complex Misdemeanor</b>	Client Support Services
<b>Low-Level Felony</b>	Discovery/Case Preparation

<sup>38</sup> The Juvenile survey covered both Juvenile Delinquency and Dependency Case Types. The Case Types in dependency in turn covered both parent and child representation. These Case Types were grouped in a single survey and addressed by a single Delphi panel because Oregon Juvenile attorneys often represent individuals in both dependency and delinquency cases.

<sup>39</sup> Initial workload studies, such as the ones completed in Missouri and Louisiana, utilized a single Delphi panel. In later studies, it was noted that a single Delphi panel did not reflect the specialization that had developed in public defense practice. While the same attorney may represent clients in misdemeanor and felony cases, it is relatively rare that a trial defense attorney also takes cases in Juvenile courts. As a result, many Juvenile attorneys participating in the single Delphi panel could only answer questions regarding one Case Type, e.g., Juvenile Delinquency. Additionally, having only one or two Case Types in specialist areas, such as Juvenile cases, did not reflect the complexity of these specialty practices. For example, a Juvenile defender’s caseload may range from status violations to serious assaults and even murder. Over the several ABA SCLAID public defense workload studies, this recognition resulted in the number of Case Types increasing. For example, in the Colorado workload study, there were 18 Case Types, including three Juvenile Case Types. This number of Case Types became difficult to manage. To address this problem, the use of specialty Delphi panels, with separate surveys, was first utilized in Texas and proved not only more manageable, but also more reflective of current public defense practice.

ADULT CRIMINAL	
Mid-Level Felony	Attorney Investigation/Attorney Interviews
High-Level Felony	Experts
Homicide and Sex Cases	Legal Research, Motions Practice, Other Writing
Probation Violations	Negotiations
	Court Preparation
	Court Time
	Sentencing/Mitigation
	Post-Judgment

TABLE 20: DESCRIPTIONS OF ADULT CRIMINAL CASE TYPES

ADULT CRIMINAL	
Case Type	Description
Low-Level Misdemeanor	All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals
Complex Misdemeanor	Misdemeanors related to DUIs, domestic violence, sexual abuse, and animals (abuse of animals and game violations charged as misdemeanor)
Low-Level Felony	Presumptive probation and prison grid felonies that do not include mandatory minimums
Mid-Level Felony	Property and drug felonies that include possible mandatory minimum sentences, ballot Measure 57 cases, and level 10 drug crimes
High-Level Felony	Measure 11 felonies (excluding homicide cases), sex cases (excluding sex cases with potential for 25+ years), and gun minimum cases
Homicide and Sex Cases	All homicide cases (excluding death penalty cases), Jessica’s law cases, 3rd strike sex cases, and Measure 73 sex cases
Probation Violations	Probation violation cases

## APPENDIX B: OREGON RULES OF ETHICS AND PROFESSIONAL STANDARDS

The Sixth Amendment of the U.S. Constitution guarantees anyone facing criminal charges the right to a speedy and public trial by an impartial jury and legal counsel. With its 1963 decision in *Gideon v. Wainwright*, the Supreme Court ruled that anyone charged with a serious crime had a “fundamental” right to counsel, no matter their ability to pay. Because many of the people charged with crimes cannot afford to engage an attorney, it was necessary to establish and fund public defender agencies

to meet the Sixth Amendment requirements. At issue is whether the number of public defense providers in Oregon is able to meet the needs of those entitled to appointed counsel.

In 1983, in *Strickland v Washington*,<sup>40</sup> the Supreme Court held that lawyers must provide “reasonably effective assistance of counsel pursuant to prevailing professional norms” to their clients. Importantly, the Court specifically cited the ABA Defense Function Standards as guides to determine what is reasonable. The Court later emphasized that these standards are “valuable measures” of such prevailing norms.<sup>41</sup> These standards cover, among other things:

- Establishing client trust
- Advocacy on pretrial detention and conditions of release
- Duty to keep the client informed
- Duty to investigate
- Consultation with experts
- Preparation for court appearances
- Sentencing and mitigation responsibilities

All lawyers in Oregon are required to abide by the Oregon Rules of Professional Conduct.<sup>42</sup> The rules not only address the responsibilities of lawyers in representing a particular client, but also concern when a lawyer is not permitted to represent a client or must withdraw. Pertinent and identical rules in the Oregon Rules of Professional Conduct and the ABA’s Model Rules of Professional Conduct<sup>43</sup> applicable to this study include the following:

- Rule 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- Rule 1.3 Diligence: A lawyer shall not neglect a legal matter entrusted to the lawyer.
- Rule 1.7 Conflict of Interest: Current Clients: (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client[.]
- Rule 1.16 Declining or Terminating Representation: Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law...Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests...<sup>44</sup>

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<sup>40</sup> *Strickland v. Washington*, 466 U.S. 668, 690 (1983).

<sup>41</sup> *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010).

<sup>42</sup> “Oregon Rules of Professional Conduct,” Oregon State Bar, amended effective January 1, 2024, <https://www.osbar.org/docs/rulesregs/orpc.pdf>.

<sup>43</sup> Oregon first adopted the ABA Model Rules of Professional Conduct in 2005.

<sup>44</sup> Guideline 6 of the ABA Eight Guidelines, *supra* n. 3, provides in pertinent part that in such cases, in addition to moving to withdraw from representation in certain cases, a lawyer should also move to suspend new case assignments and request that charges against those clients the lawyer can no longer represent be dismissed due to the failure of the government to provide effective assistance of counsel as required by federal and state law.

- An ABA Ethics Opinion interprets these ethical rules to require public defenders to limit workloads to ensure that they can represent each client with the competence and diligence required.<sup>45</sup>

In Formal Opinion No. 2007-178, Entitled “Competence and Diligence: Excessive Workloads of Indigent Defense Providers,” the Oregon State Bar stated that “if an attorney believe[s] that their workload prevents them from fulfilling their ethical obligations to each client, then their workload ‘must be controlled so that each matter may be handled competently.’” The Formal Opinion concluded that “a lawyer who is unable to perform these duties (e.g., adequately investigate, analyze and prepare cases) may not undertake or continue with representation of a client. Oregon RPC1.16(a).” Id. at 3.

The Rules of Professional Conduct also place responsibility on supervising attorneys to ensure that the rules are followed within their organization.

Rule 5-1: Responsibilities of partners, managers, and supervisory lawyers.

A lawyer shall be responsible for another lawyer’s violation of these Rules of Professional Conduct if:  
 . . . (b) the lawyer is a partner or has comparable managerial authority in the law firm in which the lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at the time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

Moreover, Rule 5-1 provides that lawyers having managerial authority for the conduct of another lawyer (such as a Chief Public Defender or lawyer members of the OPDC) “shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.” *The Oregon Project* and this Six-Year Plan give such lawyers with managerial authority the information and guidance needed to fulfill this important professional obligation.

In August 2023, the (ABA adopted the revised “Ten Principles of a Public Defense Delivery System” (Ten Principles) and recommended that each jurisdiction swiftly assess its compliance with the Ten Principles and implement any necessary legal and policy changes where deficiencies now exist. Specifically, the ABA added an entirely new section on Data Collection and Transparency, directing states to “collect reliable data on public defense, regularly review such data, and implement necessary improvements...(including) data on caseloads and workloads...” Again, *The Oregon Project* and this six-year plan give OPDC the information and guidance needed to meet this important new professional directive.

## APPENDIX C: ADDITIONAL RESOURCES FOR CASE SUPPORT ANALYSIS

The following is an analysis of the activities that could reasonably be managed by each case support resource. The analysis is based on an understanding of the skills, competencies, and requirements for each task, and the associated known competencies of case support personnel such as paralegals,

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<sup>45</sup> ABA Ethics Committee, “Formal Ethics Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation,” (Chicago: American Bar Association, May 13, 2026).  
[https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ethics\\_opinion\\_defender\\_caseloads\\_06\\_441.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf).

investigators, case navigators, and administration. The analysis is informed by a reviewer from the Deason Criminal Justice Reform Center, representatives at OPDC, as well as a third-party reviewer.

**TABLE 21: CASE SUPPORT ROLES AND RESPONSIBILITIES ANALYSIS**

SUPPORT RESOURCE	SUPPORT TYPE	IMPACTED TASK CATEGORY	CASE TYPE
<b>Paralegal/Legal Assistant</b>	<ul style="list-style-type: none"> <li>Point of contact with family/friends/defense witnesses</li> <li>Supplement attorney/client visits</li> <li>Initiate and compose client and case-related correspondence for attorney approval</li> </ul>	Client Communication	All Case Types
	<ul style="list-style-type: none"> <li>Preparing Court Support Services authorizations as needed</li> </ul>	Client Support Services	All Case Types
	<ul style="list-style-type: none"> <li>Assemble trial notebooks, preparation for motion hearings, marking of exhibits</li> <li>Prepare defense subpoenas and collect all proof of service</li> <li>Coordinate witness appearances</li> </ul>	Court Prep	All Case Types
	<ul style="list-style-type: none"> <li>Discovery management</li> <li>Obtaining discovery</li> <li>Keeping discovery log, if needed</li> <li>Redaction of discovery for client</li> <li>Uploading and organizing discovery, including reformatting to meet needs</li> <li>Review, summarize, and note significant events in discovery.</li> </ul>	Discovery/Case Preparation	All Case Types
	<ul style="list-style-type: none"> <li>Research possible experts</li> <li>Ensure experts have all the materials needed as determined/approved by the attorney</li> <li>Coordinate and set up expert witness scheduling/payment.</li> </ul>	Experts	All Case Types
	<ul style="list-style-type: none"> <li>E-filing documents</li> <li>Editing/formatting motions</li> <li>Legal research</li> </ul>	Legal Research	All Case Types
	<ul style="list-style-type: none"> <li>Communication with representatives of opposing parties and court officials as requested by attorney</li> </ul>	Negotiations Court Prep	All Case Types
	<ul style="list-style-type: none"> <li>Opening and maintaining client files and case management system</li> <li>Assistance during Trial</li> <li>Maintain calendars</li> </ul>	Miscellaneous Administrative work	All Case Types
	<b>Investigators</b>	<ul style="list-style-type: none"> <li>Supplement attorney/client visits</li> </ul>	Client Communications



SUPPORT RESOURCE	SUPPORT TYPE	IMPACTED TASK CATEGORY	CASE TYPE
			Dependency Case Types
	<ul style="list-style-type: none"> <li>Write reports as directed by the attorney</li> <li>Point of contact (as appropriate) with family/friends/defense witnesses.</li> <li>Serve subpoenas as needed</li> </ul>	Court Prep	Adult Criminal and Juvenile Dependency Case Types
	<ul style="list-style-type: none"> <li>Ensure experts have all materials needed as determined/approved by the attorney</li> </ul>	Experts	Adult Criminal and Juvenile Dependency Case Types
	<ul style="list-style-type: none"> <li>Meet with client and attorney to develop an investigation plan</li> </ul>	Miscellaneous Administrative work	Adult Criminal and Juvenile Dependency Case Types
	<ul style="list-style-type: none"> <li>Meet/interview witnesses at the direction of the attorney</li> <li>Develop sources of information</li> </ul>	Attorney Investigation/Interviews	Adult Criminal and Juvenile Dependency Case Types
<b>Interpreters</b>	<ul style="list-style-type: none"> <li>In areas with a large population of non-English speaking clients/witnesses (or those who speak English as a second language), having an in-house interpreter (or bilingual staff) allows for improved client contact. Without in-house interpreters, lawyers must schedule time with an interpreter for every client contact. In rural areas, this causes significant delays (or no interpreter an inappropriate interpreter is used).</li> <li>Point of contact (as appropriate) with family/friends/defense witnesses as needed.</li> </ul>	Client Communication	All Case Types
	<ul style="list-style-type: none"> <li>Attend interviews with attorneys and/or investigators as needed</li> <li>Help with incoming phone calls if other staff is unable to communicate.</li> </ul>	Miscellaneous Administrative work	All Case Types
	<ul style="list-style-type: none"> <li>Help interpret simple written documents</li> </ul>	Client Communication	All Case Types
<b>Non-PCRP Case Managers</b>	<ul style="list-style-type: none"> <li>Help determine service needs of parents, youth, and families.</li> <li>Assistance with finding and obtaining services</li> </ul>	Client Support Services	Juvenile Dependency Case Types
	<ul style="list-style-type: none"> <li>Work up release plans/service plans</li> <li>Assist with collecting historical records</li> </ul>	Discovery/Case Preparation	Juvenile Dependency Case Types

SUPPORT RESOURCE	SUPPORT TYPE	IMPACTED TASK CATEGORY	CASE TYPE
	<ul style="list-style-type: none"> <li>Supplement attorney/client visits</li> </ul>	Miscellaneous Administrative work	Juvenile Dependency Case Types
	<ul style="list-style-type: none"> <li>Point of contact (as appropriate) with family/friends</li> </ul>	Client Communications	Juvenile Dependency Case Types
	<ul style="list-style-type: none"> <li>Advocate for the client's position at meetings after consultation with the attorney when appropriate</li> </ul>	Client Advocacy and Support	Juvenile Dependency Case Types
<b>Social Workers</b>	<ul style="list-style-type: none"> <li>Perform assessments, as needed for entry into services/programs etc.</li> </ul>	Client Support Services	All Case Types
<b>Mitigation Specialists</b>	<ul style="list-style-type: none"> <li>Investigate all aspects of the client's life, including gathering all of the client's records</li> <li>Write a life story of the client</li> </ul>	<ul style="list-style-type: none"> <li>Sentencing/Mitigation</li> <li>Discovery/Case Preparation</li> </ul>	Adult Criminal and Juvenile Delinquency Case Types
	<ul style="list-style-type: none"> <li>Work with attorney/defense team on making mitigation part of case-in-chief</li> </ul>	Case Prep	Adult Criminal and Juvenile Delinquency Case Types
	<ul style="list-style-type: none"> <li>Supplement attorney/client visits</li> <li>Point of contact (as appropriate) with family/friends/defense witnesses</li> </ul>	Client Communication	Adult Criminal and Juvenile Delinquency Case Types
	<ul style="list-style-type: none"> <li>Make sure relevant expert has relevant mitigation information</li> </ul>	Expert	Adult Criminal and Juvenile Delinquency Case Types
<b>Tech Support</b>	<ul style="list-style-type: none"> <li>Assist with technology issues</li> <li>Assist with technology needs during trial</li> <li>Training of all lawyers and support staff on software capabilities</li> </ul>	Miscellaneous Administrative work	All Case Types
	<ul style="list-style-type: none"> <li>Prepare electronic evidence/displays for trial</li> </ul>	Court Prep	All Case Types
<b>Office Support</b>	<ul style="list-style-type: none"> <li>Point of contact (as appropriate) with family/friends/defense witnesses, court staff</li> </ul>	Client Communication	All Case Types
	<ul style="list-style-type: none"> <li>Billing</li> <li>Timekeeping, if needed</li> <li>Case reporting</li> <li>Preparing CSS requests as needed</li> <li>Point of contact with OPDC</li> </ul>	Miscellaneous Administrative work	All Case Types

## APPENDIX D: WORKLOAD REDUCTION ANALYSIS

The following is a complete analysis of the estimated workload reduction for attorneys by Case Task per Case Type. The analysis is based on an understanding of the skills, competencies, and requirements for each task, and the associated known competencies of case support personnel such as paralegals, investigators, case navigators, and administration. The estimates are highly conservative and may vary from actual reductions based on competencies per individual. Some individuals may be highly tenured and offer more support than depicted in the analysis. Conversely, less experienced individuals may provide less support. The analysis is informed by a reviewer from the Deason Criminal Justice Reform Center, representatives at OPDC, as well as a third-party reviewer.

TABLE 22: ESTIMATE OF CASE OUTCOMES AND IMPACTED CASELOADS BY TYPE

Case Type	Estimated Annual Caseload (Case Weight)	% Should Plea/ Otherwise Resolve	% Should Go To Trial	# Should Plea/ Otherwise Resolve	# Should Go To Trial
Low-Level Misdemeanor	23,683	69%	31%	16,341	7,342
Complex Misdemeanor	8,919	55%	45%	4,906	4,014
Low-Level Felony	18,419	70%	30%	12,893	5,526
Mid-Level Felony	2,088	80%	20%	1,671	418
High-Level Felony	2,030	75%	25%	1,522	507
Homicide and Sex Cases	161	67%	33%	108	53
Probation Violations	17,523	70%	30%	12,266	5,257

TABLE 23: ESTIMATE OF WORKLOAD REDUCTION PER CASE TASK BY CASE TYPE AND CASE OUTCOME

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Go to Trial	Low-Level Misdemeanors	Client Communication	6.00	100%	6.00	25%	11,013
Go to Trial	Low-Level Misdemeanors	Client Support Services	1.70	75%	1.28	50%	4,699
Go to Trial	Low-Level Misdemeanors	Discovery / Case Prep	5.50	100%	5.50	20%	8,076

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Go to Trial	Low-Level Misdemeanors	Attorney Investigation / Interviews	2.40	84%	2.02	60%	8,898
Go to Trial	Low-Level Misdemeanors	Experts	2.70	26%	0.70	25%	1,285
Go to Trial	Low-Level Misdemeanors	Legal Research, Motions Practice	4.10	100%	4.10	10%	3,010
Go to Trial	Low-Level Misdemeanors	Negotiations	1.00	100%	1.00	0%	-
Go to Trial	Low-Level Misdemeanors	Court Prep	10.00	100%	10.00	25%	18,355
Go to Trial	Low-Level Misdemeanors	Court Time	12.50	100%	12.50	0%	-
Go to Trial	Low-Level Misdemeanors	Sentencing / Mitigation	1.20	100%	1.20	60%	5,286
Go to Trial	Low-Level Misdemeanors	Post Judgment	80%	100%	80%	15%	881
Plea / Otherwise Resolve	Low-Level Misdemeanors	Client Communication	3.20	100%	3.20	30%	15,688
Plea / Otherwise Resolve	Low-Level Misdemeanors	Client Support Services	1.00	75%	0.75	75%	9,192
Plea / Otherwise Resolve	Low-Level Misdemeanors	Discovery / Case Prep	1.80	100%	1.80	10%	2,941
Plea / Otherwise Resolve	Low-Level Misdemeanors	Attorney Investigation / Interviews	1.20	40%	0.48	75%	5,883
Plea / Otherwise Resolve	Low-Level Misdemeanors	Experts	1.80	24%	0.43	25%	1,757
Plea / Otherwise Resolve	Low-Level Misdemeanors	Legal Research, Motions Practice	2.10	40%	0.84	10%	1,373

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	Low-Level Misdemeanors	Negotiations	0.75	100%	0.75	0%	-
Plea / Otherwise Resolve	Low-Level Misdemeanors	Court Prep	1.00	100%	1.00	10%	1,634
Plea / Otherwise Resolve	Low-Level Misdemeanors	Court Time	1.50	100%	1.50	0%	-
Plea / Otherwise Resolve	Low-Level Misdemeanors	Sentencing / Mitigation	0.75	100%	0.75	60%	7,354
Plea / Otherwise Resolve	Low-Level Misdemeanors	Post Judgment	0.50	100%	0.50	15%	1,226
Go to Trial	Complex Misdemeanors	Client Communication	6.00	100%	6.00	25%	6,021
Go to Trial	Complex Misdemeanors	Client Support Services	2.00	75%	1.50	50%	3,010
Go to Trial	Complex Misdemeanors	Discovery / Case Prep	8.00	100%	8.00	15%	4,816
Go to Trial	Complex Misdemeanors	Attorney Investigation / Interviews	3.00	90%	2.70	55%	5,960
Go to Trial	Complex Misdemeanors	Experts	3.50	75%	2.63	25%	2,639
Go to Trial	Complex Misdemeanors	Legal Research, Motions Practice	6.00	100%	6.00	10%	2,408
Go to Trial	Complex Misdemeanors	Negotiations	1.25	100%	1.25	0%	-
Go to Trial	Complex Misdemeanors	Court Prep	12.00	100%	12.00	25%	12,041
Go to Trial	Complex Misdemeanors	Court Time	18.00	100%	18.00	0%	-

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Go to Trial	Complex Misdemeanors	Sentencing / Mitigation	2.00	100%	2.00	60%	4,816
Go to Trial	Complex Misdemeanors	Post Judgment	1.00	100%	1.00	15%	602
Plea / Otherwise Resolve	Complex Misdemeanors	Client Communication	3.00	100%	3.00	30%	4,415
Plea / Otherwise Resolve	Complex Misdemeanors	Client Support Services	1.30	75%	0.98	75%	3,606
Plea / Otherwise Resolve	Complex Misdemeanors	Discovery / Case Prep	3.00	100%	3.00	10%	1,472
Plea / Otherwise Resolve	Complex Misdemeanors	Attorney Investigation / Interviews	1.75	50%	0.88	65%	2,806
Plea / Otherwise Resolve	Complex Misdemeanors	Experts	2.50	50%	1.25	25%	1,533
Plea / Otherwise Resolve	Complex Misdemeanors	Legal Research, Motions Practice	2.00	75%	1.50	10%	736
Plea / Otherwise Resolve	Complex Misdemeanors	Negotiations	1.00	90%	0.90	0%	-
Plea / Otherwise Resolve	Complex Misdemeanors	Court Prep	1.50	100%	1.50	10%	736
Plea / Otherwise Resolve	Complex Misdemeanors	Court Time	1.50	100%	1.50	0%	-
Plea / Otherwise Resolve	Complex Misdemeanors	Sentencing / Mitigation	2.00	100%	2.00	60%	5,887
Plea / Otherwise Resolve	Complex Misdemeanors	Post Judgment	0.75	100%	0.75	15%	552

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Go to Trial	Low-Level Felony	Client Communication	7.00	100%	7.00	25%	9,670
Go to Trial	Low-Level Felony	Client Support Services	2.50	80%	2.00	50%	5,526
Go to Trial	Low-Level Felony	Discovery / Case Prep	10.00	100%	10.00	10%	5,526
Go to Trial	Low-Level Felony	Attorney Investigation / Interviews	3.50	90%	3.15	55%	9,573
Go to Trial	Low-Level Felony	Experts	3.50	55%	1.93	25%	2,666
Go to Trial	Low-Level Felony	Legal Research, Motions Practice	8.00	100%	8.00	10%	4,420
Go to Trial	Low-Level Felony	Negotiations	1.50	100%	1.50	0%	-
Go to Trial	Low-Level Felony	Court Prep	15.00	100%	15.00	20%	16,577
Go to Trial	Low-Level Felony	Court Time	24.00	100%	24.00	0%	-
Go to Trial	Low-Level Felony	Sentencing / Mitigation	2.50	100%	2.50	60%	8,288
Go to Trial	Low-Level Felony	Post Judgment	1.25	100%	1.25	10%	691
Plea / Otherwise Resolve	Low-Level Felony	Client Communication	4.00	100%	4.00	25%	12,893
Plea / Otherwise Resolve	Low-Level Felony	Client Support Services	1.75	75%	1.31	60%	10,134
Plea / Otherwise Resolve	Low-Level Felony	Discovery / Case Prep	4.50	100%	4.50	10%	5,802
Plea / Otherwise Resolve	Low-Level Felony	Attorney Investigation / Interviews	2.00	80%	1.60	60%	12,377

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	Low-Level Felony	Experts	2.50	45%	1.13	25%	3,642
Plea / Otherwise Resolve	Low-Level Felony	Legal Research, Motions Practice	4.50	85%	3.83	10%	4,938
Plea / Otherwise Resolve	Low-Level Felony	Negotiations	1.50	100%	1.50	0%	-
Plea / Otherwise Resolve	Low-Level Felony	Court Prep	1.50	100%	1.50	10%	1,934
Plea / Otherwise Resolve	Low-Level Felony	Court Time	1.50	100%	1.50	0%	-
Plea / Otherwise Resolve	Low-Level Felony	Sentencing / Mitigation	2.50	100%	2.50	60%	19,340
Plea / Otherwise Resolve	Low-Level Felony	Post Judgment	0.75	100%	0.75	15%	1,450
Go to Trial	Mid-Level Felony	Client Communication	9.00	100%	9.00	25%	940
Go to Trial	Mid-Level Felony	Client Support Services	3.00	80%	2.40	50%	501
Go to Trial	Mid-Level Felony	Discovery / Case Prep	12.00	100%	12.00	10%	501
Go to Trial	Mid-Level Felony	Attorney Investigation / Interviews	4.50	100%	4.50	30%	564
Go to Trial	Mid-Level Felony	Experts	5.00	70%	3.50	25%	365
Go to Trial	Mid-Level Felony	Legal Research, Motions Practice	13.00	100%	13.00	10%	543



Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Go to Trial	Mid-Level Felony	Negotiations	3.00	100%	3.00	0%	-
Go to Trial	Mid-Level Felony	Court Prep	20.00	100%	20.00	15%	1,253
Go to Trial	Mid-Level Felony	Court Time	24.00	100%	24.00	0%	-
Go to Trial	Mid-Level Felony	Sentencing / Mitigation	2.50	100%	2.50	30%	313
Go to Trial	Mid-Level Felony	Post Judgment	1.25	100%	1.25	10%	52
Plea / Otherwise Resolve	Mid-Level Felony	Client Communication	5.00	100%	5.00	25%	2,088
Plea / Otherwise Resolve	Mid-Level Felony	Client Support Services	2.50	75%	1.88	60%	1,884
Plea / Otherwise Resolve	Mid-Level Felony	Discovery / Case Prep	8.00	100%	8.00	10%	1,336
Plea / Otherwise Resolve	Mid-Level Felony	Attorney Investigation / Interviews	3.00	90%	2.70	30%	1,353
Plea / Otherwise Resolve	Mid-Level Felony	Experts	3.00	60%	1.80	25%	752
Plea / Otherwise Resolve	Mid-Level Felony	Legal Research, Motions Practice	5.00	100%	5.00	10%	835
Plea / Otherwise Resolve	Mid-Level Felony	Negotiations	2.50	100%	2.50	0%	-
Plea / Otherwise Resolve	Mid-Level Felony	Court Prep	2.50	100%	2.50	10%	418
Plea / Otherwise Resolve	Mid-Level Felony	Court Time	3.00	100%	3.00	0%	-

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	Mid-Level Felony	Sentencing / Mitigation	2.50	100%	2.50	30%	1,253
Plea / Otherwise Resolve	Mid-Level Felony	Post Judgment	1.00	100%	1.00	15%	251
Go to Trial	High-Level Felony	Client Communication	30.00	100%	30.00	25%	3,806
Go to Trial	High-Level Felony	Client Support Services	7.00	100%	7.00	50%	1,776
Go to Trial	High-Level Felony	Discovery / Case Prep	60.00	100%	60.00	10%	3,045
Go to Trial	High-Level Felony	Attorney Investigation / Interviews	16.00	100%	16.00	30%	2,436
Go to Trial	High-Level Felony	Experts	15.00	95%	14.25	25%	1,808
Go to Trial	High-Level Felony	Legal Research, Motions Practice	35.00	100%	35.00	10%	1,776
Go to Trial	High-Level Felony	Negotiations	6.00	100%	6.00	0%	-
Go to Trial	High-Level Felony	Court Prep	50.00	100%	50.00	15%	3,806
Go to Trial	High-Level Felony	Court Time	40.00	100%	40.00	0%	-
Go to Trial	High-Level Felony	Sentencing / Mitigation	8.00	100%	8.00	30%	1,218
Go to Trial	High-Level Felony	Post Judgment	3.00	100%	3.00	10%	152
Plea / Otherwise Resolve	High-Level Felony	Client Communication	14.00	100%	14.00	25%	5,328
Plea / Otherwise Resolve	High-Level Felony	Client Support Services	5.00	95%	4.75	50%	3,615

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	High-Level Felony	Discovery / Case Prep	24.00	100%	24.00	10%	3,653
Plea / Otherwise Resolve	High-Level Felony	Attorney Investigation / Interviews	10.00	100%	10.00	30%	4,567
Plea / Otherwise Resolve	High-Level Felony	Experts	9.00	90%	8.10	25%	3,083
Plea / Otherwise Resolve	High-Level Felony	Legal Research, Motions Practice	22.00	100%	22.00	10%	3,349
Plea / Otherwise Resolve	High-Level Felony	Negotiations	4.00	100%	4.00	0%	-
Plea / Otherwise Resolve	High-Level Felony	Court Prep	8.00	100%	8.00	10%	1,218
Plea / Otherwise Resolve	High-Level Felony	Court Time	7.00	100%	7.00	0%	-
Plea / Otherwise Resolve	High-Level Felony	Sentencing / Mitigation	5.00	100%	5.00	30%	2,283
Plea / Otherwise Resolve	High-Level Felony	Post Judgment	2.00	100%	2.00	10%	304
Go to Trial	Homicide and Sex Cases	Client Communication	80.00	100%	80.00	25%	1,060
Go to Trial	Homicide and Sex Cases	Client Support Services	20.00	100%	20.00	50%	530
Go to Trial	Homicide and Sex Cases	Discovery / Case Prep	180.00	100%	180.00	10%	954
Go to Trial	Homicide and Sex Cases	Attorney Investigation / Interviews	40.00	100%	40.00	30%	636

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Go to Trial	Homicide and Sex Cases	Experts	45.00	100%	45.00	25%	596
Go to Trial	Homicide and Sex Cases	Legal Research, Motions Practice	120.00	100%	120.00	10%	636
Go to Trial	Homicide and Sex Cases	Negotiations	16.00	100%	16.00	0%	-
Go to Trial	Homicide and Sex Cases	Court Prep	180.00	100%	180.00	15%	1,431
Go to Trial	Homicide and Sex Cases	Court Time	140.00	100%	140.00	0%	-
Go to Trial	Homicide and Sex Cases	Sentencing / Mitigation	35.00	100%	35.00	30%	556
Go to Trial	Homicide and Sex Cases	Post Judgment	6.00	100%	6.00	10%	32
Plea / Otherwise Resolve	Homicide and Sex Cases	Client Communication	60.00	100%	60.00	25%	1,614
Plea / Otherwise Resolve	Homicide and Sex Cases	Client Support Services	13.00	100%	13.00	50%	699
Plea / Otherwise Resolve	Homicide and Sex Cases	Discovery / Case Prep	100.00	100%	100.00	10%	1,076
Plea / Otherwise Resolve	Homicide and Sex Cases	Attorney Investigation / Interviews	27.00	100%	27.00	30%	871
Plea / Otherwise Resolve	Homicide and Sex Cases	Experts	30.00	100%	30.00	25%	807
Plea / Otherwise Resolve	Homicide and Sex Cases	Legal Research, Motions Practice	80.00	100%	80.00	10%	861
Plea / Otherwise Resolve	Homicide and Sex Cases	Negotiations	12.00	100%	12.00	0%	-

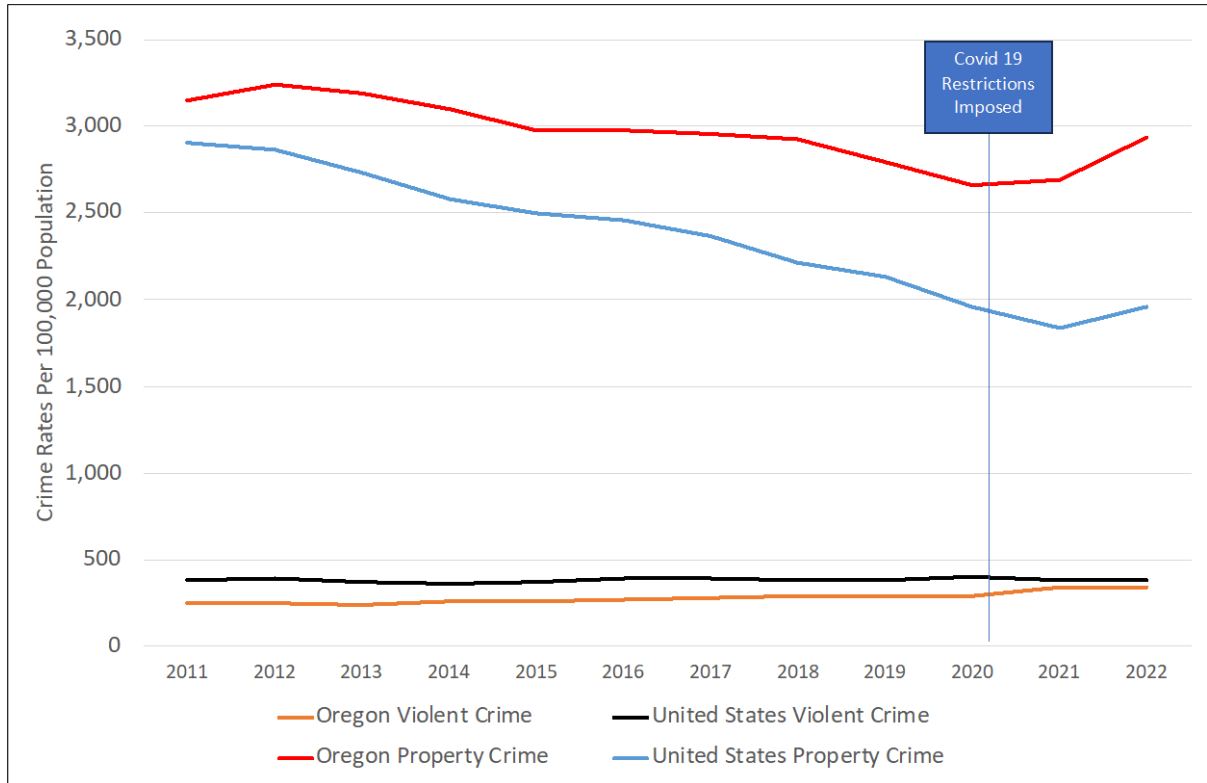
Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	Homicide and Sex Cases	Court Prep	25.00	100%	25.00	10%	269
Plea / Otherwise Resolve	Homicide and Sex Cases	Court Time	23.00	100%	23.00	0%	-
Plea / Otherwise Resolve	Homicide and Sex Cases	Sentencing / Mitigation	25.00	100%	25.00	30%	807
Plea / Otherwise Resolve	Homicide and Sex Cases	Post Judgment	5.00	100%	5.00	10%	54
Go to Trial	Probation Violations	Client Communication	1.90	100%	1.90	25%	2,497
Go to Trial	Probation Violations	Client Support Services	1.00	90%	0.90	50%	2,366
Go to Trial	Probation Violations	Discovery / Case Prep	1.50	100%	1.50	10%	789
Go to Trial	Probation Violations	Attorney Investigation / Interviews	1.10	75%	0.83	30%	1,309
Go to Trial	Probation Violations	Experts	1.00	25%	0.25	25%	329
Go to Trial	Probation Violations	Legal Research, Motions Practice	1.00	85%	0.85	10%	447
Go to Trial	Probation Violations	Negotiations	0.75	100%	0.75	0%	-
Go to Trial	Probation Violations	Court Prep	1.50	100%	1.50	15%	1,183
Go to Trial	Probation Violations	Court Time	1.75	100%	1.75	0%	-
Go to Trial	Probation Violations	Sentencing / Mitigation	0.75	100%	0.75	30%	1,183
Go to Trial	Probation Violations	Post Judgment	50%	100%	0.50	10%	263

Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	Probation Violations	Client Communication	1.40	100%	1.40	25%	4,293
Plea / Otherwise Resolve	Probation Violations	Client Support Services	0.80	75%	0.60	50%	3,680
Plea / Otherwise Resolve	Probation Violations	Discovery / Case Prep	1.00	100%	1.00	10%	1,227
Plea / Otherwise Resolve	Probation Violations	Attorney Investigation / Interviews	0.75	55%	0.41	50%	2,515
Plea / Otherwise Resolve	Probation Violations	Experts	1.00	13%	0.13	25%	399
Plea / Otherwise Resolve	Probation Violations	Legal Research, Motions Practice	0.75	25%	0.19	10%	233
Plea / Otherwise Resolve	Probation Violations	Negotiations	0.50	100%	0.50	0%	-
Plea / Otherwise Resolve	Probation Violations	Court Prep	0.75	100%	0.75	10%	920
Plea / Otherwise Resolve	Probation Violations	Court Time	0.75	100%	0.75	0%	-
Plea / Otherwise Resolve	Probation Violations	Sentencing / Mitigation	0.75	100%	0.75	30%	2,760
Plea / Otherwise Resolve	Probation Violations	Post Judgment	0.50	100%	0.50	10%	613
<b>Total Annual Hours Reduction</b>							<b>410,969</b>
<b>Reduction as a Percent of Total Annual Caseload Hours</b>							<b>18.5%</b>

## APPENDIX E: OREGON CRIME TRENDS

Over the past ten years, Oregon's crime rates have varied by the types of crimes reported to police. Property crime rates (crimes per 100,000 population) steadily declined until 2022 when there was an uptick. The 2022 rates were well below the 2011 rate (Figure 2). However, it is noteworthy that Oregon property crime rates have always been higher than the US property rate, which is driven by higher theft and motor vehicle rates. The latter had significant increases beginning in 2016.

FIGURE 2: OREGON V. U.S. CRIME RATES (2011 – 2022)



Notably, the increase in 2022 property crime rates has been reversed. In the first nine months of 2023, there were significant decreases in all crimes, which researchers attribute to declining inflation rates and stabilization in the economy and other facets of social life as the COVID-19 restrictions were removed (Table 24). Assuming the numbers for the first nine months of 2023 continue, one would expect significant declines in 2023 (Figure 3).

TABLE 24: CRIMES REPORTED TO OREGON POLICE AGENCIES<sup>46</sup>

First Nine Months in 2022 versus 2023<sup>47</sup>

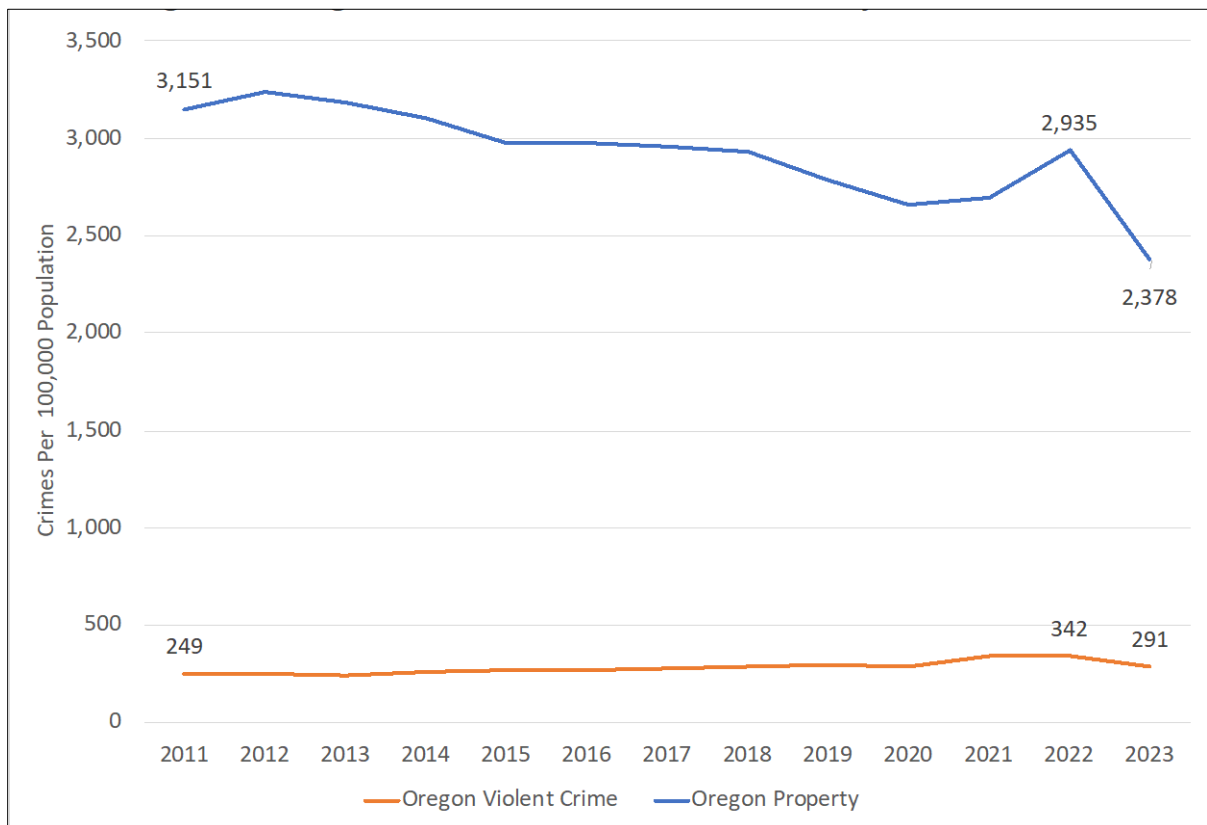
YEAR	2022	2023	DIFFERENCE
<b>Violent</b>	5,748	5,041	-707
<b>Murder</b>	95	72	-23

<sup>46</sup> Based on data from Portland, Salem, Eugene, Bend, Gresham, and Hillsborough Police Departments.

<sup>47</sup> Source: <https://cde.ucr.cjis.gov/LATEST/webapp/#/pages/explorer/crime/crime-trend>.

YEAR	2022	2023	DIFFERENCE
Rape	532	411	-121
Robbery	1,431	1,249	-182
Agg. Assault	3,690	3,309	-381
Property	46,027	40,056	-5,971
Burglary	5,514	5,229	-285
Larceny-theft	29,629	26,212	-3,417
Motor Vehicle Theft	10,884	8,615	-2,269
Arson	455	473	18
Total Crime	51,775	45,097	-6,678

FIGURE 3: OREGON CRIME RATES (2011 – 2022 AND PROJECTED FOR 2023)



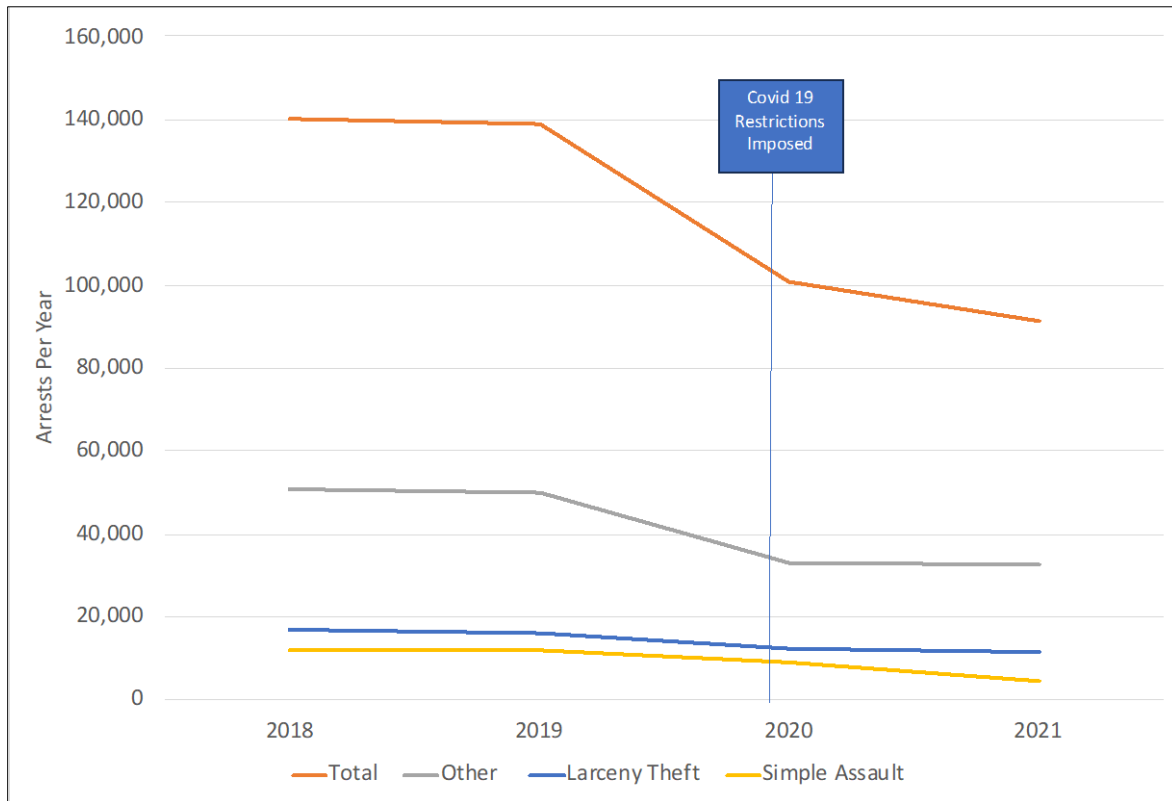


The decline in 2023, which is occurring nationally, is directly linked to two highly related major socio-economic factors: the recovery from the COVID-19 pandemic and the declining inflation rate. It has been well established that there is a strong association between inflation rates and crime rates.<sup>48</sup> Along with other demographic factors (declining birth rates, reduced household size, an aging population, and declining Juvenile arrest rates), one can reliably project that Oregon’s crime rates will not approach the high crime rate levels that existed in the 1990s and will either remain at the 2023 levels or slightly decline independent of any changes in criminal justice policies.

## Oregon Arrests

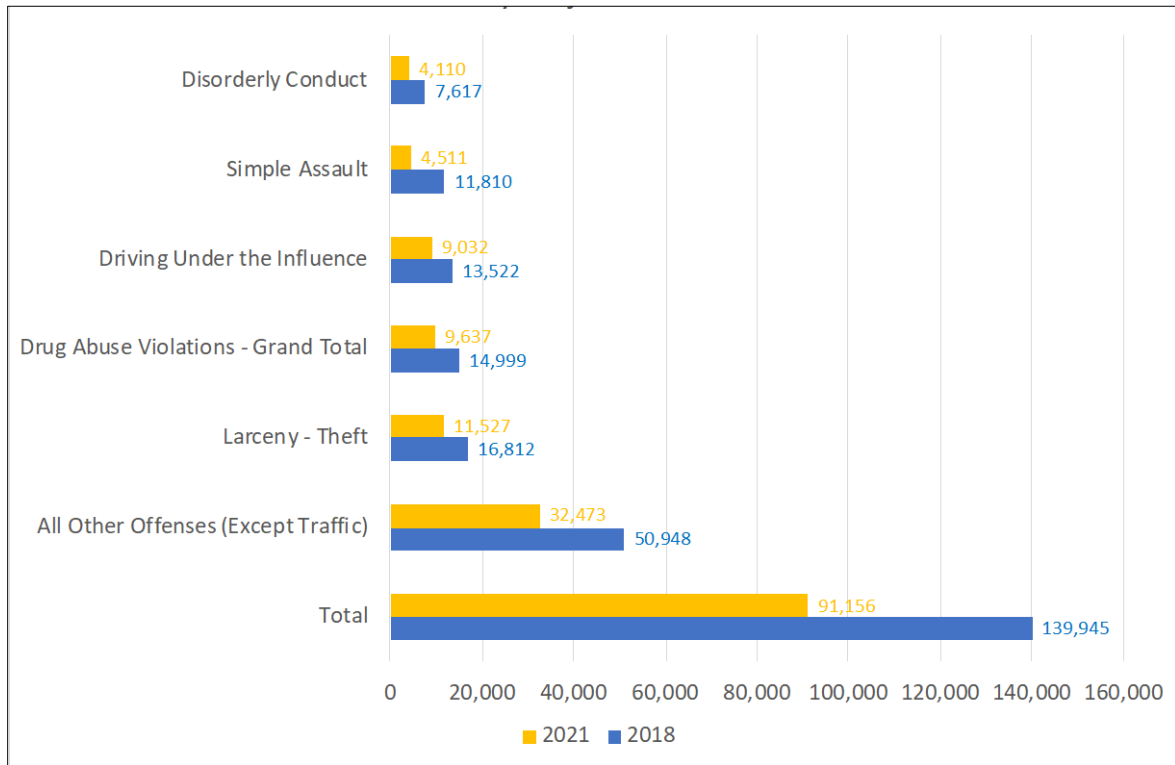
One of the major consequences of the COVID-19 pandemic was the sharp decline in arrests (Figures 4 and 5). Prior to 2020, there were about 140,000 arrests per year in the state. The largest category by far is “other,” which consists largely of non-violent, minor misdemeanor-level offenses. Law enforcement has reprioritized the need to enforce and or arrest people for these types of crimes. It also appears that based on current trends there will be an effort to reverse these policies. In effect, COVID-19 has served to decriminalize many “crimes” that are no longer being processed by the criminal justice system.

**FIGURE 4: OREGON ARRESTS (2018 – 2021)**



<sup>48</sup> James Austin and Richard Rosenfeld, “Forecasting US Crime Rates and the Impact of Reductions in Imprisonment: 1960–2025” (New York: Harry Frank Guggenheim Foundation, 2023).

**FIGURE 5: OREGON ARRESTS (2018 – 2021) BY MAJOR CRIMES**



Passed in 2021, Measure 110 makes possession of small amounts of cocaine, heroin, LSD, and methamphetamine, among other drugs, punishable by a civil citation and a \$100 fine. This legislation should also serve to further reduce arrests and court filings and may also reduce probation and post-prison supervision violations.

### Criminal Court Trends

Consistent with the decline in arrests, there has been a significant decline in criminal court filings (Table 25). The largest numeric drops were for violations of court orders (from 222,231 to 132,636), parking violations (234,761 to 125,805), and misdemeanor crimes (from 48,418 to 36,678). In total, there were 219,931 fewer criminal court filings between 2017 and 2022.

TABLE 25: CRIMINAL AND OTHER COURT FILINGS 2017 – 2022

Year	2017		2018		2019		2020		2021		2022	
	Cases Filed	1-Yr % Change	Cases Filed	1-Yr % Change	Cases Filed	1-Yr % Change	Cases Filed	1-Yr % Change	Cases Filed	1-Yr % Change	Cases Filed	1-Yr % Change
<b>Civil</b>	<b>130,194</b>		<b>130,487</b>	<b>0.2%</b>	<b>130,294</b>	<b>-0.1%</b>	<b>80,030</b>	<b>-38.6%</b>	<b>86,062</b>	<b>7.5%</b>	<b>96,289</b>	<b>11.9%</b>
Civil	55,380		58,144	5.0%	55,528	-4.5%	45,968	-17.2%	48,582	5.7%	43,212	-11.1%
Landlord Tenant	19,095		18,250	-4.4%	18,675	2.3%	6,119	-67.2%	7,947	29.9%	18,900	137.8%
Small Claims	55,719		54,093	-2.9%	56,091	3.7%	27,943	-50.2%	29,533	5.7%	34,177	15.7%
<b>Criminal</b>	<b>544,812</b>		<b>578,483</b>	<b>6.2%</b>	<b>520,744</b>	<b>-10.0%</b>	<b>311,622</b>	<b>-40.2%</b>	<b>340,525</b>	<b>9.3%</b>	<b>324,881</b>	<b>-4.6%</b>
Felony	31,506		26,265	-16.6%	26,598	1.3%	24,283	-8.7%	22,096	-9.0%	21,921	-0.8%
Misdemeanor	48,418		54,459	12.5%	51,536	-5.4%	40,143	-22.1%	36,977	-7.9%	36,678	-0.8%
Parking	234,761		271,796	15.8%	238,514	-12.2%	87,081	-63.5%	117,748	35.2%	125,805	6.8%
Procedural Matters	7,796		7,692	-1.3%	7,565	-1.7%	6,626	-12.4%	7,678	15.9%	7,841	2.1%
Violation	222,331		218,271	-1.8%	196,531	-10.0%	153,489	-21.9%	156,026	1.7%	132,636	-15.0%
<b>Domestic Relations</b>	<b>43,592</b>		<b>44,177</b>	<b>1.3%</b>	<b>42,250</b>	<b>-4.4%</b>	<b>38,774</b>	<b>-8.2%</b>	<b>40,670</b>	<b>4.9%</b>	<b>41,249</b>	<b>1.4%</b>
Dissolution	16,207		16,462	1.6%	16,136	-2.0%	14,196	-12.0%	14,911	5.0%	14,250	-4.4%
Other Domestic Relations	12,447		11,825	-5.0%	9,921	-16.1%	9,341	-5.8%	9,022	-3.4%	8,754	-3.0%
Protective Order	14,938		15,890	6.4%	16,193	1.9%	15,237	-5.9%	16,737	9.8%	18,245	9.0%
<b>Other</b>	<b>30,949</b>		<b>29,281</b>	<b>-5.4%</b>	<b>28,623</b>	<b>-2.2%</b>	<b>26,187</b>	<b>-8.5%</b>	<b>26,642</b>	<b>1.7%</b>	<b>27,740</b>	<b>4.1%</b>
Civil Commitment	7,693		7,243	-5.8%	7,084	-2.2%	7,872	11.1%	7,386	-6.2%	8,010	8.4%
Juvenile	11,150		10,178	-8.7%	9,449	-7.2%	7,087	-25.0%	5,892	-16.9%	6,036	2.4%
Probate	12,106		11,860	-2.0%	12,090	1.9%	11,228	-7.1%	13,364	19.0%	13,694	2.5%
<b>Total</b>	<b>749,547</b>		<b>782,428</b>	<b>4.4%</b>	<b>721,911</b>	<b>-7.7%</b>	<b>456,613</b>	<b>-36.7%</b>	<b>493,899</b>	<b>8.2%</b>	<b>490,159</b>	<b>-0.8%</b>

## Correctional Population Trends

The large declines in reported crimes, arrests, and criminal court filings have been associated with declines in the probation, prison, and jail populations. The post-prison supervision population has declined, but at a much slower pace (Table 26).<sup>49</sup>

TABLE 26: OREGON CORRECTIONAL POPULATIONS 2016–2023

YEAR	PROBATION	POST-PRISON SUPERVISION	PRISON	JAILS	TOTAL
2016	35,938	24,077	15,166	NA	NA
2017	36,658	24,992	15,218	NA	NA
2018	35,732	24,183	15,268	6,766	81,949
2019	35,732	23,832	14,961	6,406	80,931
2020	35,732	24,183	12,753	3,677	76,345
2021	29,818	22,528	13,198	4,261	69,805
2022			12,518	4,655	
2023			12,143	4,714	

Another way to look at these populations is the rate per 100,000 population and compare the Oregon rates with the U.S. rates, as well as the crime rates. As shown in Table 27, the prison rate is slightly

<sup>49</sup> Statewide local and state probation populations data come from the U.S. Department of Justice Bureau of Justice Statistics (BJS) while the jail population data come from the Oregon Crime Commission.

below the U.S. rate while the probation rate is well below the U.S. rate. The post-prison supervision population rate is almost three times the U.S. rate while the jail rate is well below the U.S. rate.

What these data suggest is that probation is being under-utilized at the expense of higher prison and post-prison supervision rates. The higher prison and post-prison supervision rates are due in large part to the passage of Ballot Measure 11, which created mandatory minimums and longer prison sentences. Table 27 also shows the 2022 crime rates for Oregon as compared to the U.S. Significantly, the overall crime rate for Oregon is virtually the same as the U.S. with a higher property and lower violent crime rate.

Passage of Measure 11 had a predictable increase in the prison and post-prison supervision populations and was supposed to have a major impact on violent crime rates. While there has been a decrease in crime rates, that decline is similar to national crime reductions including in states that did not implement measures like Measure 11 (Figure 4). A comprehensive study by RAND was unable to conclude that Measure 11 had any impact on violent crime rates because there needs to be a “control” state that is comparable to Oregon in terms of socio-economic factors that did not implement legislation like Measure 11.<sup>50</sup> For example, California has reduced its prison population by 80,000 (from 178,000 to 94,000) and crime rates have declined. Similarly, New York has reduced its prison population from 73,000 to 32,000 even as crime rates have declined. In fact, since 2013, Oregon’s violent crime rate has been increasing while the U.S. rate has been stable (Figure 4).

The primary reason why Measure 11 has not had an impact on violent crime is that its principal effect was to increase the length of stay (LOS) rather than to increase the probability of receiving a prison sentence. There is overwhelming scientific evidence that increasing (or lowering) the LOS does not impact recidivism rates and thus cannot impact aggregate crime rates.<sup>51,52</sup>

This finding also applies to Oregon where prison recidivism rates have not changed since Measure 11 was passed (Figure 5). The only accomplishment of Measure 11 since its passage has been a dramatic increase of over 4,000 inmates in the Oregon prison system (Figure 6). Today about 5,600 prisoners, or nearly half, have been sentenced under Measure 11.

Based on the current annual cost of \$51,400 per year,<sup>53</sup> Measure 11 is now costing about \$205 million per year with no measurable impact on recidivism or violent (or even property) crime rates.

**TABLE 27: OREGON VS. U.S. CORRECTIONAL POPULATION AND CRIME RATES PER 100,000 POPULATION**

DESCRIPTION	OREGON	US
Prison	300	315

<sup>50</sup> Nancy Merritt, Terry Fain, and Susan Turner, “Oregon’s Measure 11 Sentencing Reform: Implementation and System Impact,” (RAND Corporation, TR-142-NIJ, 2004).

<sup>51</sup> William Rhodes, Gerald G. Gaes, Ryan Kling, and Christopher Cutler, “Relationship Between Prison Length of Stay and Recidivism: A Study Using Regression Discontinuity and Instrumental Variables with Multiple Break Points.” *Criminology & Public Policy*. Vol 17, No 3, 2018, 731-769.

<sup>52</sup> James Austin, Todd R. Clear, Roger Ocker, and David Olson, “The Impact of Reducing Length of Stay on the Illinois Prison Population and Associated Cost Benefits” (JFA Institute, October 15, 2019).

<sup>53</sup> “Issue Brief,” Oregon Department of Corrections, October 2022, <https://www.oregon.gov/doc/Documents/agency-quick-facts.pdf>.

DESCRIPTION	OREGON	US
Probation	878	1,138
Post-prison supervision	663	270
Jails	112	199
<b>Total</b>	<b>1,953</b>	<b>1,922</b>
<b>Crime Rates</b>		
Violent	342	381
Property	2,935	1,954
<b>Total</b>	<b>3,277</b>	<b>2,335</b>

FIGURE 6: OREGON AND U.S. VIOLENT CRIME RATES (1995 – 2022)

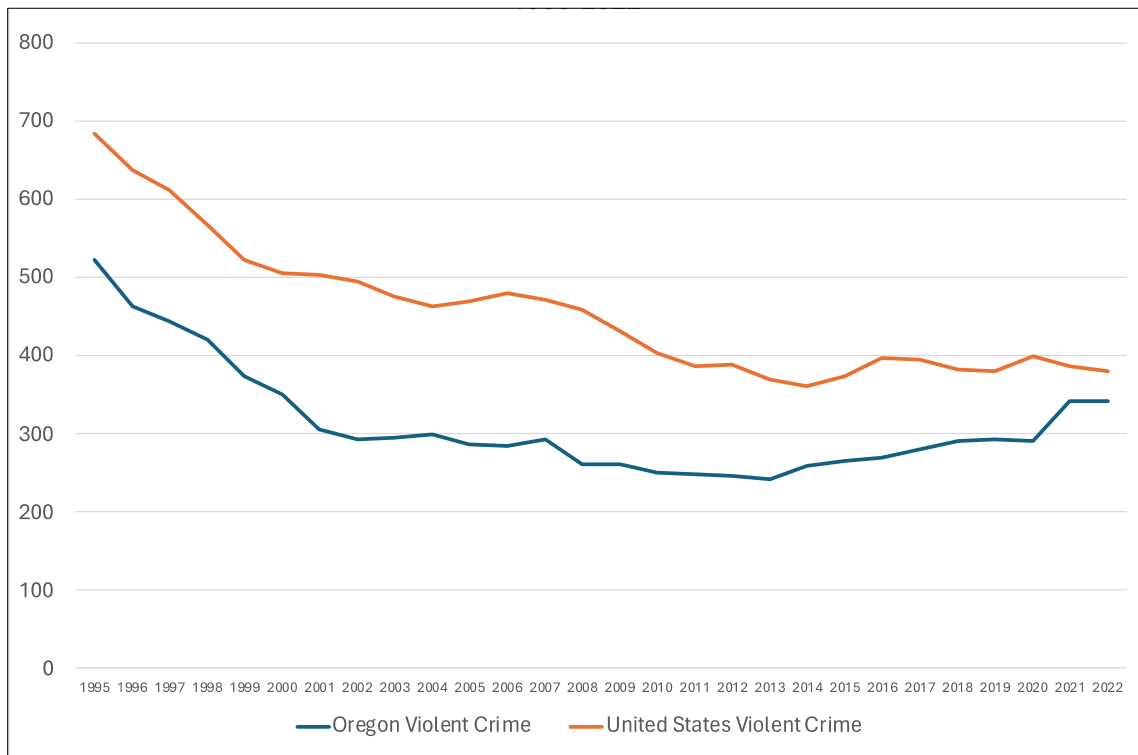


FIGURE 7: OREGON THREE-YEAR RECIDIVISM RATES FOR RELEASED PRISONERS (1998 – 2020)

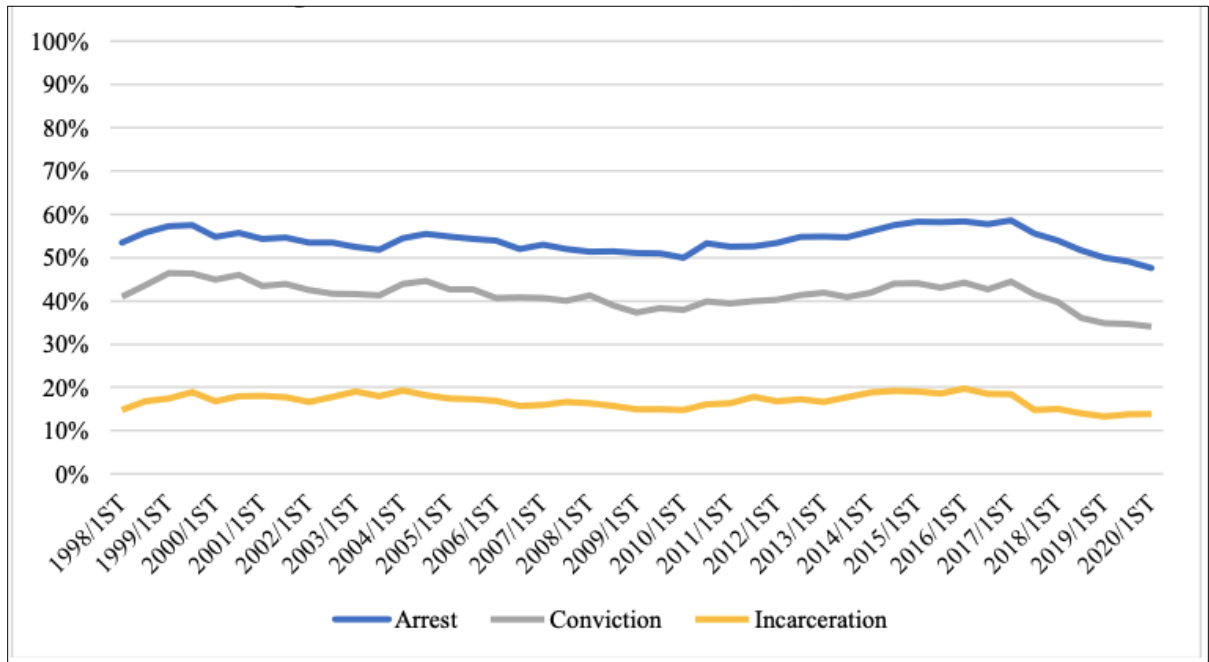


FIGURE 8: OREGON PRISON POPULATION (1960 – 2023)

