

Members:

Jennifer Nash, Chair
Peter Buckley
Robert Harris
Alton Harvey, Jr.
Tom Lininger
Susan Mandiberg
Jennifer Parrish Taylor
Robert Selander
Addie Smith



Nonvoting Member:

Brook Reinhard
Jasmine Wright
Rep. Paul Evans
Sen. Floyd Prozanski

Executive Director:

Jessica Kampfe

Meeting will Occur in Person and Virtually *

Kimpton RiverPlace
1510 South Harbor Way, Hawthorne Room
Portland, Oregon 97201

March 20, 2024: 1:00 p.m. – 4:30 p.m.
March 21, 2024: 9:00 a.m. – 4:00 p.m.

Note: This will be a two-day meeting, with a private retreat Wednesday morning, followed by a public meeting Wednesday afternoon and Thursday. Specific agenda items are detailed below.

AGENDA

March 20, 2024 – Commission Private Retreat		
8:30 – 9:00	Coffee/Networking	All
9:00 – 9:15	Welcome and Overview	Chair Nash Director Kampfe Eric Deitrick
9:15 – 11:45	Designed Team Alliance Workshop	Paul Egbert, Ascent Leadership
11:45 – 12:00	Break	
12:00 – 1:00	Lunch & State Required Training (Overview of Boards & Commission)	Sherry Kudna Eric Deitrick
March 20, 2024 – Commission Public Meeting		
1:00 – 3:00	Briefing: Organizational Development, Strategic Planning, and Habits of Highly Effective Governing Bodies	Scott Simpson, Moss Adams Jessie Lenhardt, Moss Adams
3:00 – 3:15	Break	
3:15 – 4:15	Action Item: Adoption of OPDC Bylaws	Commissioner Mandiberg Eric Deitrick
4:15 – 4:30	Closing	Director Kampfe
	Public Meeting Ends	

4:30 – 5:00	IT Assistance for Commission Members	OPDC IT Staff
March 21, 204 – Commission Public Meeting		
9:00 – 9:05	Welcome	Chair Nash
9:05 – 9:25	Public Comment **	All
9:25 – 9:30	Action Item: Approval of February 7, 2024 OPDC Meeting Minutes	Chair Nash
9:30 – 10:30	Briefing: 6-Year Plan to Reduce Representation Deficiency	Scott Simpson, Moss Adams Jessie Lenhardt, Moss Adams Malia Brink, SMU Deason Center Jim Austin, JFA Institute Stephen Hanlon, Lawyer Hanlon
10:30 – 10:45	Break	
10:45 – 11:05	Action Item: Retention Incentive Payments	Kim Freeman Amy Jackson
11:05 – 11:20	Action Item: Preauthorized Expense Policy	Kim Freeman Amy Jackson
11:20 – 11:25	Action Item: Routine Expense Policy	Kim Freeman Amy Jackson
11:25 – 11:30	Action Item: Schedule of Guideline Amounts	Kim Freeman Amy Jackson
11:35 – 11:50	Update: Unrepresented Persons and Temporary Hourly Increase Program	Shannon Flowers
11:50 – 12:00	Briefing: Trial Division Pilot Program	Aaron Jeffers
12:00 – 1:00	Break for Lunch	
1:00 – 3:00	<p>Panel Discussion: Current State of Public Defense in Multnomah County</p> <ul style="list-style-type: none"> Juvenile: Maggie Carlson, YRJ; Kristy Barrett, Sage Legal; Cory Nies, PJD; Jason Pierson, PJD Case Manager: Valentin Rosales; Shannon Getman; Toni Lopez; Cory Nies, PJD; Jason Pierson, PJD Criminal: Carl Macpherson, MPD; Grant Hartley, MPD; Jon Sarre, PDC; Stacey Reding, MDI 	Shannon Flowers Christine Breton Annie Borton Dana Brandon
3:00 – 3:15	**Break**	
3:15 – 3:25	Update: OPDC Budget	Ralph Amador
3:25 – 3:40	Briefing: 2024 Legislative Session	Lisa Taylor
3:40 – 3:50	Update: Director’s Report	Jessica Kampfe
3:50 – 4:00	New Business	Chair Nash

**To join the Zoom meeting on Wednesday, click this link; <https://zoom.us/j/99071677756> on Thursday, click this link <https://zoom.us/j/99028677635>. This meeting is accessible to persons with disabilities or with additional language service needs. Our Zoom virtual meeting platform is also equipped with Closed Captioning capabilities in various languages, which agency staff can assist you with setting*

up ahead of meetings. Requests for interpreters for the hearing impaired, for other accommodations for persons with disabilities, or for additional interpreter services should be made to opds.state@opds.state.or.us. Please make requests as far in advance as possible, and at least 48 hours in advance of the meeting, to allow us to best meet your needs.

***The commission welcomes public comment in written form and will review submitted written comment prior to the meeting. There will also be a limited amount of time to provide public comment during the meeting, with each commenter allowed up to three minutes. If you are interested in providing public comment virtually to the ODSC, or if you want to submit written comment, please email opds.info@opds.state.or.us. The deadline to submit interest is 5:00 PM PT March 19, 2024. Please include your full name, organization/entity name, email, and phone number. Public comment may be limited per person if time constraints require.*

Next meeting: May 8, 2024, 9am – 1pm

Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opdc/commission/Pages/meetings.aspx>

OPDC Commission Orientation

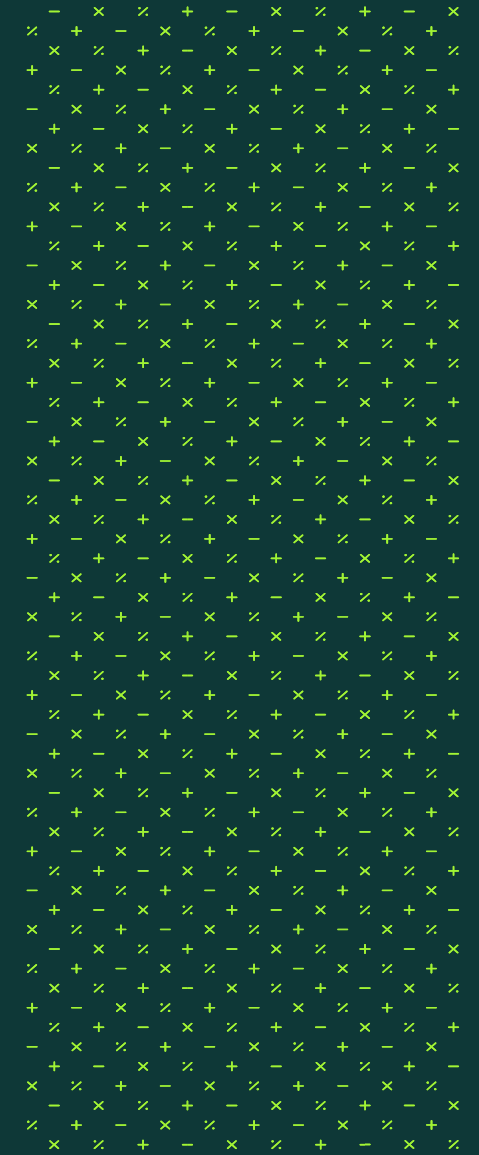


MOSSADAMS

OREGON PUBLIC DEFENSE COMMISSION

Strategic Planning Orientation

March 20, 2024



Your Team



Jessie Lenhardt
Project Manager



Annie Rose Favreau
Co- Facilitator



Scott Simpson
Engagement Partner



Colleen Rozillis
*Government Services
Practice Leader*



Emily Hayes
Data Analysis



Annie Fadely
Lead Analyst



Ben Tang
Analyst





Agenda

01:00 PM

Introductions

01:10 PM

Purpose and Role of Strategic Planning

01:25 PM

Our Process

01:40 PM

Questions

02:00 PM

Governance Overview

02:20 PM

Habits of Highly Effective Governing Bodies



Strategic Planning Overview



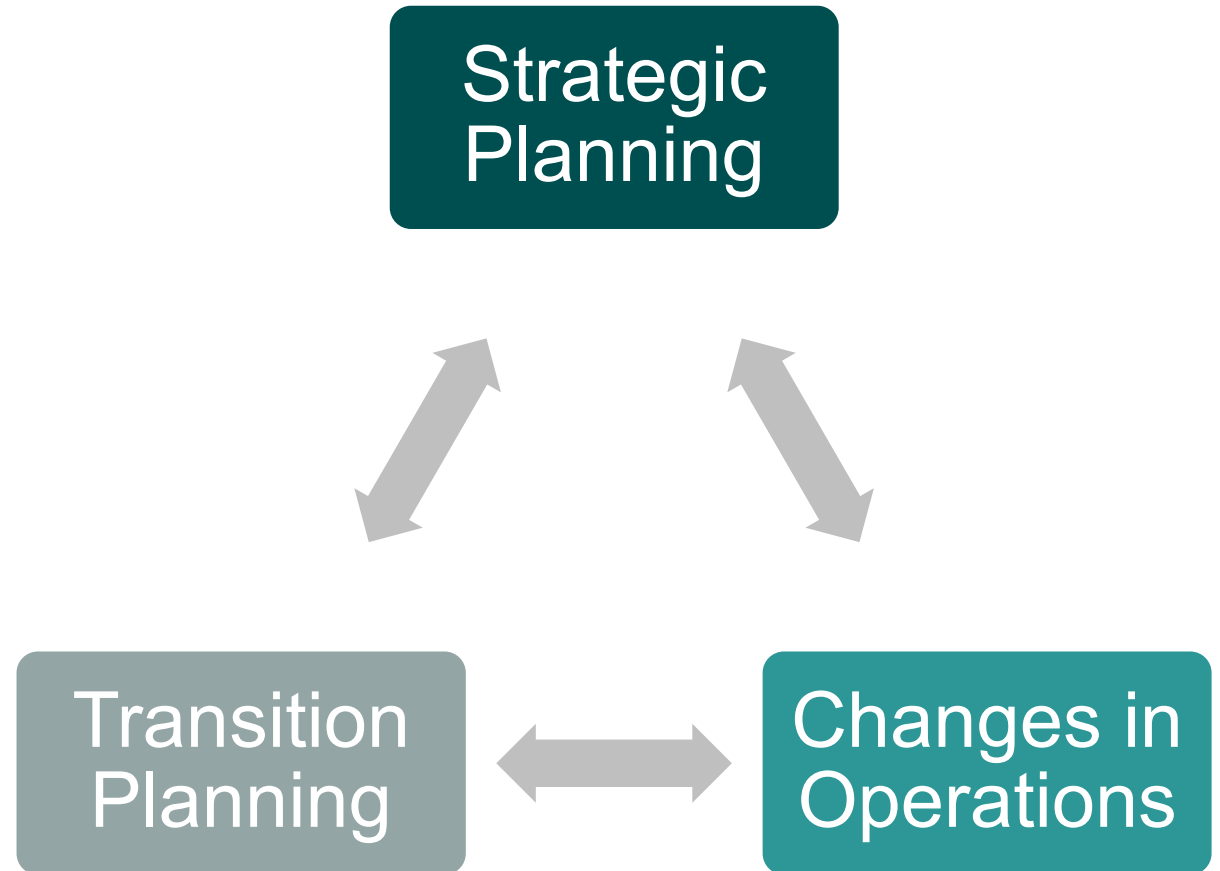
Project Overview

The Oregon Public Defense Commission is in the process of developing a new strategic plan to guide the Agency's major activities for the next five years.

The plan is designed to help the Agency establish a clear path to make, and report on, progress towards achieving its goals.

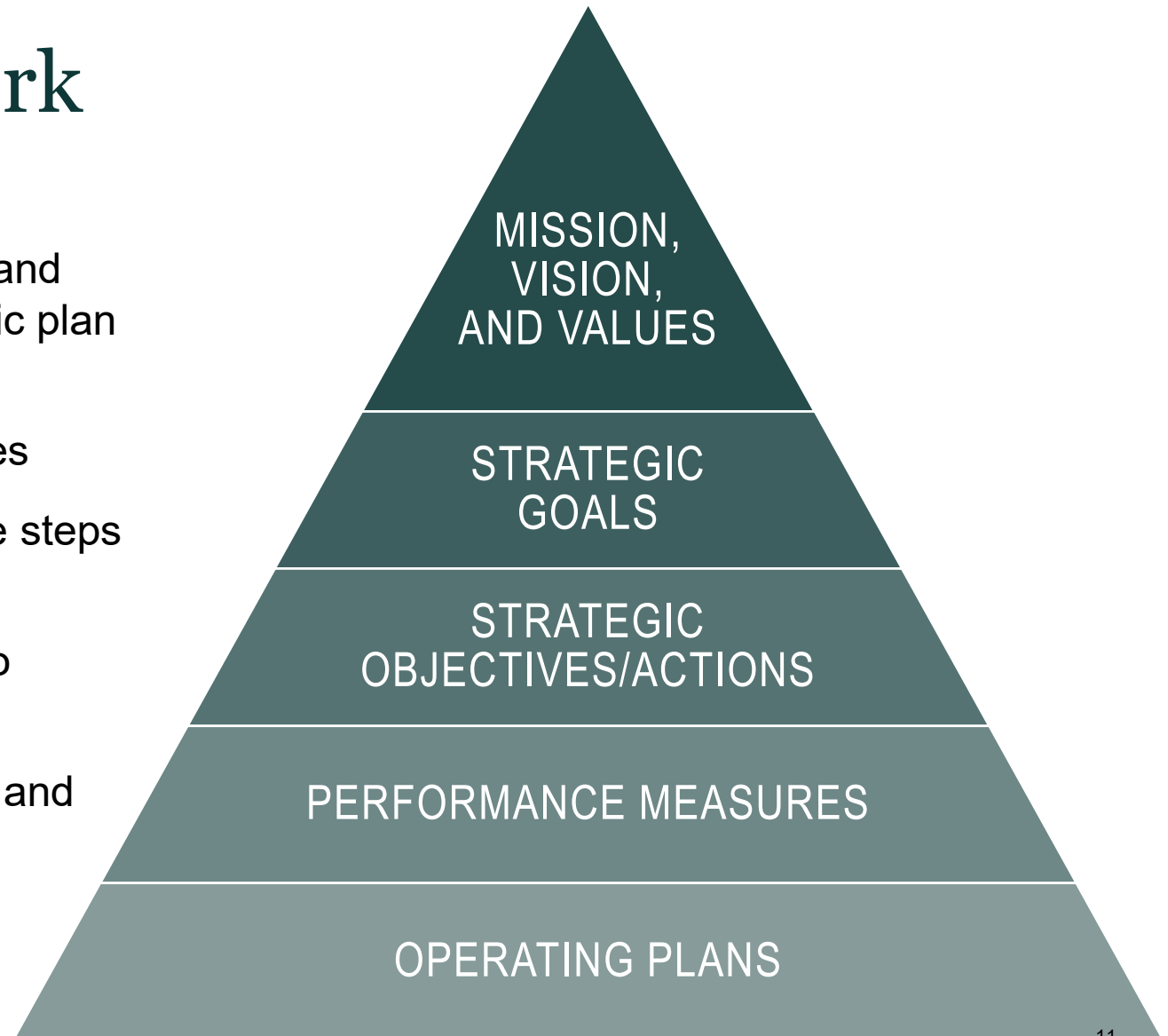


Strategic Planning & Operations



Planning Framework

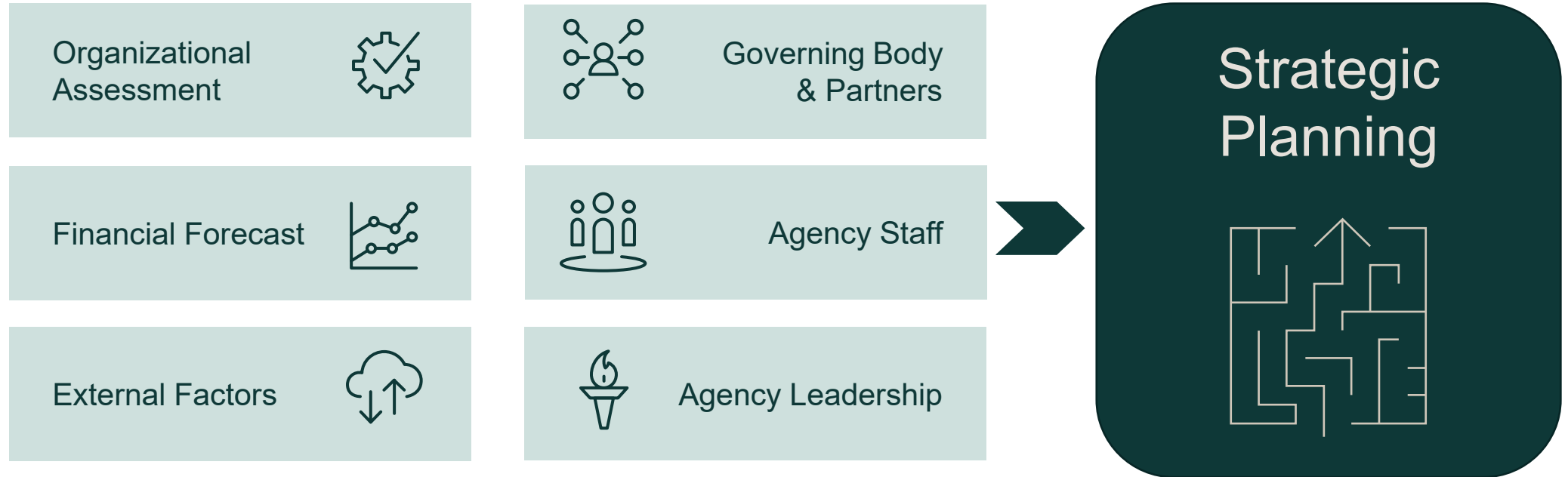
- **Vision, Mission, Values:** Ideals and principles upon which the strategic plan is built
- **Goals:** Broad, long-term outcomes
- **Objectives:** Specific, measurable steps to achieve goals
- **Actions:** Who, what, and when to accomplish objectives
- **Measures:** How to evaluate goal and objective achievement



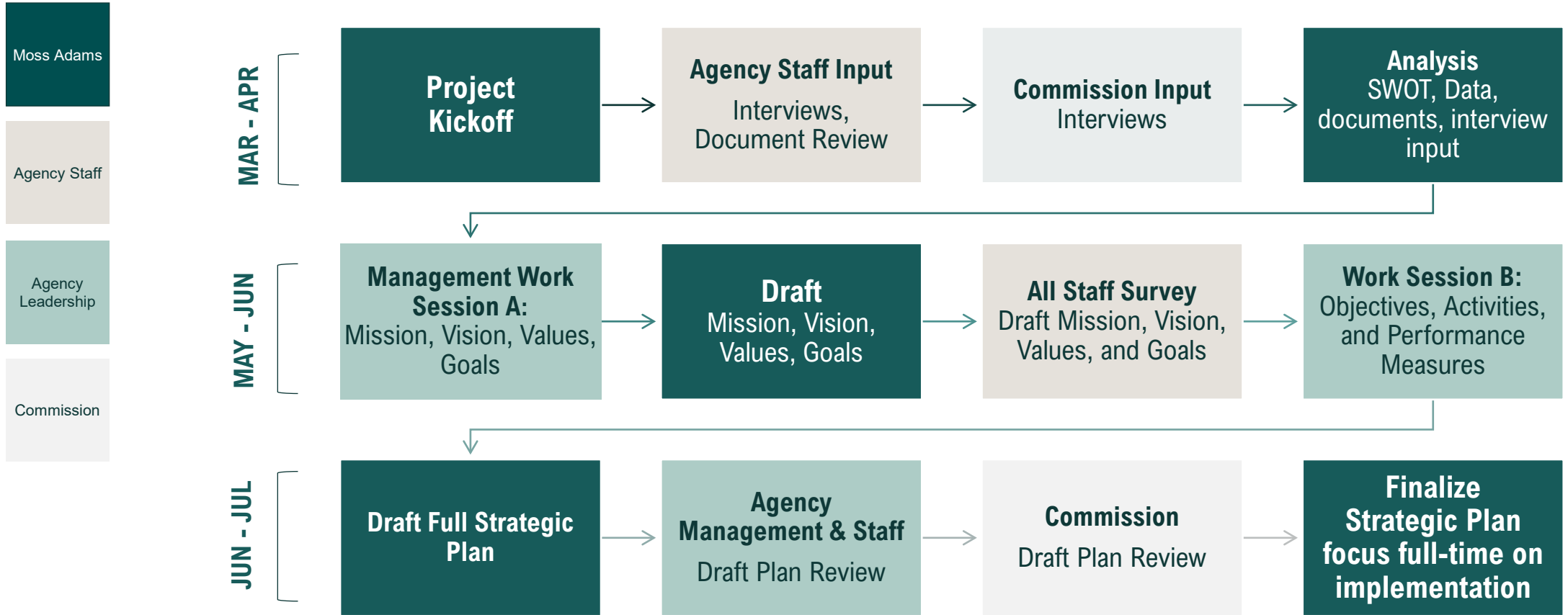
Strategic Planning Process

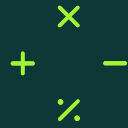


Strategic Planning Inputs



Milestones





Next Steps

01

CONTINUE DISCOVERY

Interviews, focus groups, and document review

02

INITIATE COORDINATION FOR WORK SESSION A



➤ QUESTIONS



Governance Overview





Governance

The combination of policies, systems, and structures that form a strategic/operational framework that the governing body puts in place to ensure that leadership:

1. Makes sound decisions
2. Takes appropriate actions to deliver the organization's mission in an effective and accountable manner

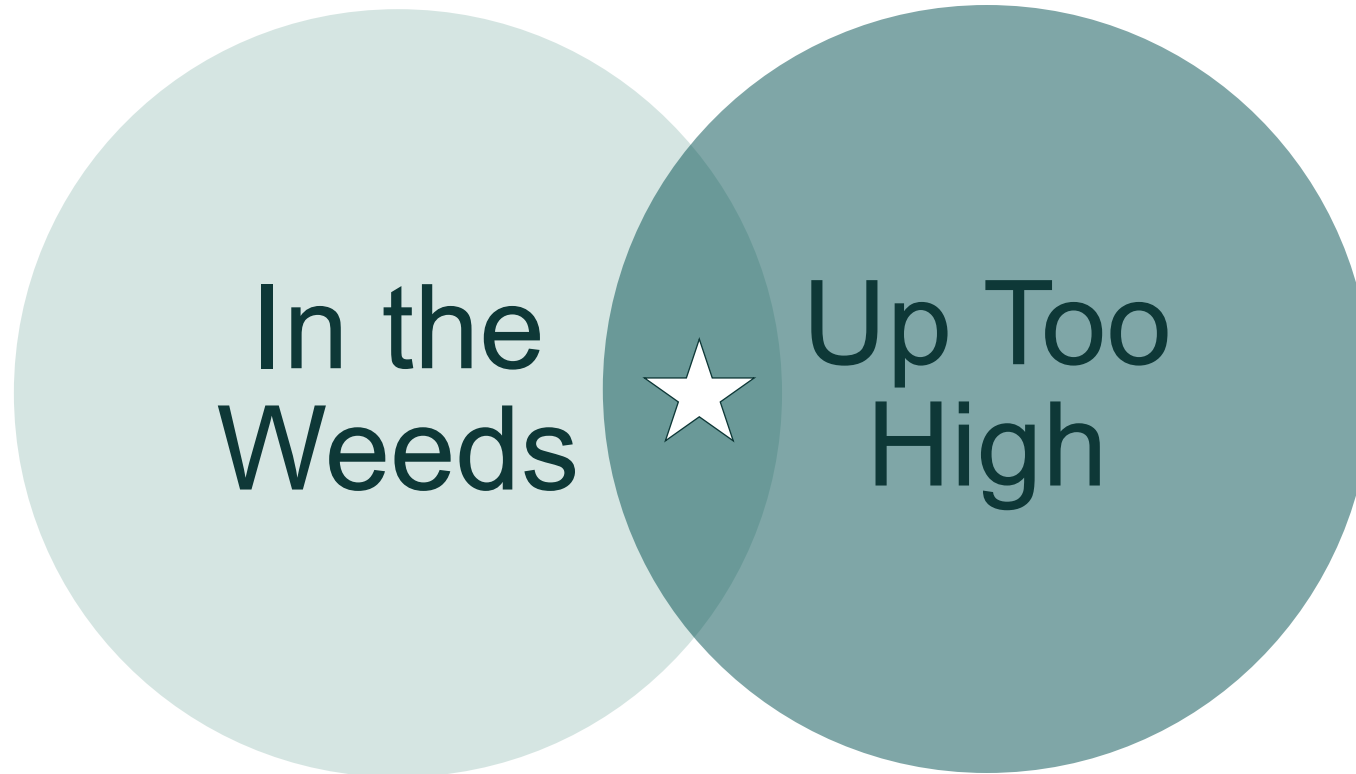


Roles and Responsibilities

- Establish the strategic **FRAMEWORK**
- Set the **DIRECTION** of the organization
- Ensure **ACCOUNTABILITY**
- Provide **GOODWILL** and **SUPPORT** for the organization



Governance Sweet Spot



Roles and Responsibilities Overview

COMMISSION	AGENCY MANAGEMENT
Govern, Guide, and Direct	Administer and Operate
<ul style="list-style-type: none"> • Decide what to implement • Provide oversight and request information • Consider issues • Create, review, and adopt strategic policy • Monitor progress • Represent public interests • Operate ethically and with integrity 	<ul style="list-style-type: none"> • Decide how to implement • Seek and provide information • Develop recommendations • Recommend and implement policy • Report on progress • Act in the public interest • Operate ethically and with integrity
The role of the commission is NOT to:	The role of staff is NOT to:
<ul style="list-style-type: none"> • Carry out or decide on how to implement policies • Set administrative policies and procedures • Direct any staff other than the Agency's Executive Director • Abdicate Commission responsibility 	<ul style="list-style-type: none"> • Set strategic policies • Direct the Commission • Assume Commission responsibilities • Circumvent Agency or Commission policies or directions



Example Roles and Responsibilities

- **Committees:** Serve on and actively participate in committees.
- **Development:** Participate in onboarding efforts, and contribute to development activities, such as training and evaluation.
- **External Relations:** Cultivate relationships with key stakeholders, including community partners.
- **Financial Oversight:** Review and approve the biennial budget. Monitor financial performance. Ensure proper financial controls are in place.
- **Governance:** Ensure compliance with legal and ethical standards. Establish policies and procedures.
- **Program Oversight:** Monitor and evaluate programs and initiatives.
- **Risk Management:** Identify and manage risks that may impact the Agency's operations or reputation.
- **Strategic Planning:** Participate in the development and review of the strategic plan.



Highly Effective Governance Habits

- Think and act strategically
- Respect “shared constituency”: what do our stakeholders need?
- Understand and demonstrate the elements of being a team and teamwork
- Master group decision-making
- Honor the Commission/Agency partnership
- Allocate time and energy appropriately
- Have clear rules and procedures for meetings
- Conduct systematic and valid assessments of policy implementation
- Regularly evaluate the Commission’s performance
- Practice continuous personal learning and development as leaders



The Commission/ Staff Partnership

Trust

Respect

Candor

Communication

- Conduct regular check-ins between the executive and chair
- Commit to “no surprises”
- Think strategically
- Work toward candid and frequent communication
- Set clear expectations
- Reflect thoughtfully on expectations and impact





Effective Meeting Logistics



Meeting Outline Example

Call to Order

- Welcome and introductions
- Group icebreaker or mission connection moment
- Approval of previous meeting minutes

Chair's Report

- Updates from Commission Chair
- Recognition of achievements and milestones

Executive Director Report

- Updates from the Executive Director on activities, programs, and initiatives
- Financial report and budget updates

Committee Report(s)

- Reports from various Commission committees (finance, governance, audit, etc.)
- Discussion and action items



Meeting Outline Example (continued)

Mid-Point Break and Check-In

Strategic Goals

- Progress updates towards strategic goal efforts
- Discussion of any new initiatives

Commission Development and Governance

- Updates on any commission recruitment/onboarding efforts
- Discussion of Commission policies, procedures, and governance matters

Open Forum, Announcements, Next Steps

- Share upcoming events, additional topics, concerns
- Recap of action items, owners, tentative deadlines

Adjournment



THANK YOU



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Commission Bylaws



**Oregon
Public
Defense
Commission**

Date: March 13, 2024
To: Jennifer Nash, Chair of OPDC
OPDC Commissioners
Cc: Jessica Kampfe, Executive Director
From: Eric Deitrick, General Counsel
Re: Commission Bylaws

Action: Approval

Background:

ORS Chapter 151, as amended by SB 337 (2023), defines the responsibilities of the agency, the commission members, and the executive director. These statutory directives provide high-level guidance to the commission's role within the overall structure of the agency. They do not, however, provide specific guidance on all roles and responsibilities, nor are they granular as to other issues, such as how the agency works with the commission to set commission meetings, determine agenda items, distribute meeting materials, conduct meetings, record votes, create subcommittees, or adjudicate complaints.

Bylaws are a best practice for government boards and commissions and are essential to establishing norms of governance. They also fill in the gaps that statutes cannot provide in establishing roles and responsibilities and can establish the agency's expectations surrounding communication.

On January 4, 2024, this Commission authorized the creation of a Subcommittee on Governance. One charge to the subcommittee was to propose a set of bylaws to the full commission. That subcommittee met on February 1 and February 29, and it will meet again on March 14. A current draft of the proposed bylaws is in the materials.

Agency Recommendation:

OPDC is recommending the commission discuss the proposed bylaws and that the commission: (1) vote to adopt the bylaws, or (2) vote to adopt the bylaws on the condition that certain language be added, or (3) continue this as an action item to the next Commission meeting.

Fiscal Impact:

No fiscal impact.

Agency Proposed Motions:

Agency recommends the commission (1) move to adopt the bylaws, or (2) move to adopt the bylaws on the condition that _____ is added to the bylaws, or (3) continue this as an action item to the next Commission meeting.

BYLAWS

Article 1

AGENCY NAME, AUTHORITY, MISSION, AND BASIC DEFINITIONS

- (1) Name.** The name of this agency is the Oregon Public Defense Commission (“OPDC”).
- (2) Authority.** The OPDC was established pursuant to ORS 151.213, as amended by SB 337 (2023), effective January 1, 2024. The OPDC is governed by a 13-member commission (“Commission Members”), which includes nine Voting Members and four Non-voting Members.
- (3) Mission.**
 - (a) The OPDC’s mission is to establish and maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution, Oregon and national standards of justice, and Oregon statutes.
 - (b) To achieve this mission, the Commission Members shall ensure furtherance of the goals articulated in ORS 151.216 by adopting policies, procedures, standards, and guidelines regarding those mandates, including the public defense service delivery model; public defense provider caseload and workload; qualification and performance standards; compensation, fees, expenses, and reimbursement; budget, resources, and funding; training, supervision, and oversight; data collection; and eligibility for court appointed counsel.
 - (c) To further achieve this mission the Commission Members, Executive Director, and OPDC Staff shall consider the perspectives of public defense providers, persons with lived experience in, or from communities impacted by, Oregon’s criminal and juvenile justice systems, and other members of the public with an interest in the provision of public defense services.
- (4) Basic Definitions.** The following definitions govern usage in these Bylaws:
 - (a) “Commission” means Voting and Non-voting Commission Members acting in their oversight capacity.
 - (b) “Staff” means OPDC employees other than the Executive Director.
 - (c) “Executive Director” means the person selected by the Commission to carry out the duties set forth in ORS 151.219 and in these Bylaws.

Article 2

COMMISSION MEMBERSHIP

- (1) Membership.** Membership is defined by ORS 151.213.
- (2) Terms of Office.** Terms of office are four years, except for the initial terms created by SB 337 (2023) to stagger appointments. Terms begin on January 1 in the first year and expire on December 31 in the final year.

(3) Appointments. Appointments are made pursuant to ORS 151.213. Commission Members may be reappointed but may serve no more than two consecutive four-year terms. Commission Members appointed to fill a vacancy assume the term for the Member they replaced. If a vacancy occurs and is not filled by the appointing authority within 45 days the remaining Voting Members of the Commission shall, by a majority vote, select a Member to fill the vacancy for the remainder of the term.

(4) Termination. A Commission Member may be removed pursuant to ORS 151.213(3) and ORS 182.010.

(5) Resignation. A Commission Member who seeks to resign shall provide written notice to the appointing authority, the Chair of the OPDC, and the Executive Director.

(6) Onboarding and Training. New appointees shall attend an onboarding session as determined by the Executive Director. Members shall attend all trainings as required by Oregon law.

(7) Chair and Vice Chair.

(d) Voting Members shall elect, by majority vote, a Chair and Vice Chair of the Commission.

(e) The Chair is the public liaison of the Commission Members. It shall be the responsibility of the Chair or other person as directed by the Chair to speak on behalf of the Commission Members for official information concerning the OPDC.

(f) The Chair shall lead and manage Commission meetings, shall coordinate the planning of Commission meeting agendas with the Executive Director, and shall join with the Executive Director to present the OPDC's annual budget to the Legislative Assembly.

(g) The Vice Chair shall lead and manage Commission meetings when the Chair is unavailable and support the Chair in furtherance of their responsibilities as requested.

(8) Ethics and Conflicts of Interest.

(a) Commission Members shall comply with the government ethics provisions of ORS Chapter 244.

(b) A Commission Member has an actual financial conflict of interest if the proposed action would provide a financial benefit or detriment to the Member, the Member's relative, or any business with which the Member or their relative is associated. When met with an actual conflict of interest, the Member must announce publicly the nature of the conflict and refrain from discussion on the issue. The Member may not vote on the issue from which the conflict arises unless the Member's vote is necessary to meet the minimum number of votes required to take official action.

(c) A Member has a potential conflict of interest if the proposed action could provide a financial benefit or detriment to the Member, the Member's relative, or any business with which the Member or their relative is associated. When met with a potential conflict of interest, the Member must announce publicly the nature of the conflict but may continue to discuss the issue. The Member may vote on the issue from which the potential conflict arises.

(9) Ex Parte Contacts. Ex parte contacts are not subject to public meeting laws.

- (a) Commission Members may communicate orally or in writing with other Commission Members to the extent that communication does not violate ORS Chapter 192.
- (b) Commission Members may communicate orally or in writing with OPDC staff on non-substantive issues, such as scheduling and IT support.
- (c) When acting in an oversight capacity Commission Members should not communicate orally or in writing with OPDC staff members regarding agency business without prior authorization from the Executive Director. The Executive Director shall communicate such authorization in writing, including by email. Individual Commission Members, in their personal capacities, may communicate orally or in writing with OPDC staff members; when doing so they shall make it clear that they do not speak for the Commission.

(10) Compensation and Expenses.

- (a) Voting and Non-voting Members are entitled to compensation and expenses as provided in ORS 151.213(8) and ORS 292.495.
- (b) Members entitled to compensation shall submit the information required by standards and procedures adopted by the Executive Director.

(11) Indemnification. OPDC Commission Members, officers, employees, and agents shall be indemnified in the manner provided by ORS 30.285.

Article 3

ROLES AND RESPONSIBILITIES GENERALLY

(1) Commission Members. Commission Members are responsible for governing and providing oversight to the OPDC, pursuant to the requirement of ORS 151.213 and 151.216.

(a) Commission Members shall:

- (i) Review, and provide input prior to an approval vote, the policies, procedures, standards, and guidelines required by ORS 151.216 regarding contracting, funding, compensation of counsel, resources, operations, caseloads and statewide workloads, data collection, training and supervision of appointed counsel, costs, overhead, pre-authorization requirements, financial eligibility of represented persons with appointed counsel, compensation plans, classification systems, and affirmative action plans.
- (ii) Review the budget of the Commission and provide input before any approval vote;
- (iii) Review the Commission's annual report prior to the vote by Voting Members;
- (iv) Meet as needed to carry out their responsibilities.
- (v) Inform the Executive Director and the Chair as soon as practicable of an inability to attend a scheduled, special, or emergency meeting.

(b) Voting Commission Members shall:

- (i) Approve by majority vote the policies, procedures, standards, and guidelines required by ORS 151.216 before they take effect;
 - (ii) Approve by majority vote the budget of the Commission before submission to the Legislative Assembly;
 - (iii) Appoint, by a two-thirds vote, an Executive Director for a term of office of four years. The term may be terminated for cause by a majority vote of the voting Members after notice and a hearing. When the term of an Executive Director ends without termination, the voting Members of the Commission may reappoint the person currently in the position by a majority vote. Upon the vacancy of the Executive Director position, the voting Members shall immediately designate an acting Executive Director by a majority vote. Commission Members may not serve as the Executive or Acting director.
 - (iv) Approve by majority vote the Commission's annual report prior to its submission pursuant to ORS 151.219.
- (c) Commission Members shall not make any decision regarding the handling of any individual case; have access to any case file or interfere with the Executive Director or OPDC staff in carrying out professional duties involving the legal representation of public defense clients.
- (d) Individual Commission Members, in their personal capacities, may advocate for or against legislation before the Legislative Assembly; when doing so they shall make it clear that they do not speak for the Commission.

(2) Executive Director.

- (a) The Executive Director is the chief executive officer for the Commission, the public liaison for OPDC, and the primary liaison between the Commission Members (voting and non-voting) and OPDC staff. The Executive Director shall ensure the agency carries out the policy directives established by the Commission.
- (b) The Executive Director of the Commission shall carry out the duties set out in ORS 151.219.
- (c) The Executive Director shall prepare an annual report covering the topics listed in Art. 3(1)(a)(i) and (ii) and submit it by December 31 of the calendar year as required by ORS 151.219.

(3) OPDC Staff.

- (a) OPDC staff is responsible for agency administration and operations, and it performs its actions through the authority of its Executive Director, as defined by ORS 151.219.
- (b) OPDC staff shall carry out the duties set out in ORS 151.216.

Article 4

MEETINGS

- (1) **Regular Meetings.** Commission Members shall meet according to a regular schedule, established at the first meeting of each calendar year.
- (2) **Special Meetings.** The Chair of the Commission may call special meetings of the Commission. These may include special meetings dedicated to gathering input from members of the public, including those with lived experience in, or from communities impacted by, Oregon’s criminal and juvenile justice systems, with regards to specific issues or regions of the State. No special meeting shall be held without the notice, agenda, and materials provided at least twenty-four (24) hours prior to the meeting. Such notice shall be provided to all Members and shall be posted to the public on the OPDC website.
- (3) **Emergency Meetings.**
 - (a) An emergency is a situation in which adhering to the notice requirements of this Article increase the likelihood or severity of injury or damage to persons or property, immediate financial loss, or disruptions to the provision of public defense services that require an immediate response.
 - (b) The Chair may only call an emergency meeting only if there is an actual emergency that renders impractical the twenty-four-hour notice required for a special meeting ~~impracticable~~. The emergency meeting notice shall state the nature of the emergency and provide the meeting date, time, place, and (in the event of a virtual meeting) access information. Notice of the meeting, the agenda, and any meeting materials shall be provided to all Members and posted to the public on the OPDC website as early as practicable prior to the meeting.
 - (c) The notice required for an emergency meeting shall include, at a minimum, the meeting date, time, place, and nature of the emergency requiring the meeting. Notice of the meeting shall be posted on the OPDC website as quickly as possible.
 - (d) The emergency meeting shall be conduct in accordance with other provisions of this Article, and the reason for the emergency shall be stated at the outset of the meeting.
- (4) **Executive Sessions.** The Commission may meet in executive session pursuant to ORS 192.660, and the notice and agenda shall state the provision of law authorizing the executive session.
- (5) **Public Meeting Laws.** All meetings and executive sessions shall comply with public meeting laws pursuant to ORS Chapter 192.
- (6) **Quorum.** A majority of Voting Members constitutes a quorum of the Commission for the transaction of business. A quorum of the Commission is required to conduct a meeting. If the Commission loses a quorum during a meeting, the meeting shall adjourn.
- (7) **Agendas, Planning, and Meeting Materials.**

(a) Agendas Generally.

- (i) Commission meeting agendas will be finalized by the Executive Director and the Chair of the Commission. Agendas shall be determined with a focus on furthering the Commission's mission as set out in Art. I of these Bylaws.
- (ii) Any Voting or Non-voting Member of the Commission may request the Chair to include an item on the agenda of an upcoming meeting no later than 10 **business** days prior to the meeting. If the item does not appear on the agenda, a majority of Voting Members may place the item on the agenda for the subsequent meeting.
- (iii) Items to be voted on at an upcoming meeting shall be labeled as action items on the meeting agenda.
- (iv) OPDC staff shall publish the agenda to Commission Members and the public one week in advance of the meeting unless good cause is shown, as jointly determined by the Executive Director and the Chair.
- (v) The Executive Director and the Chair, in agreement, may amend the agenda up until the start of the meeting. No action items may be added within one week of the meeting.
- (vi) In an emergency situation, as defined by Art. 4(3)(a), action items may be added to the agenda in accordance with Art. 4(3)(b)-(d).

(b) Action items: agenda and materials.

- (i) All action items shall be identified as such on the agenda, and no Commission action can be taken unless the proposed topic is published on the agenda as an action item. All action items shall include time for discussion before a vote occurs. A quorum of the Voting Members of the Commission is required to endorse an action item.
- (ii) OPDC staff shall publish materials corresponding to action items to Commission Members and the public one week in advance of the meeting in which they are to be considered unless good cause is shown, as jointly determined by the Executive Director and the Chair.
- (c) Non-action items: materials. OPDC staff shall publish materials corresponding to non-action items agenda to Commission Members and the public no later than one week in advance of the meeting in which they are considered unless good cause is shown, as jointly determined by the Executive Director and the Chair.
- (d) OPDC staff shall prepare meeting materials in plain English. Technical language shall be defined and clarified for ease of access to non-technical readers. All acronyms shall be explained in full the first time they are used in a document.

(8) Conduct of Meetings.

- (a) The Commission may conduct meetings in-person, virtually, or through a combination of in-person and virtual attendance. All meetings shall afford the public the opportunity to access and attend the meeting virtually.

- (b) To ensure accurate assessment of a quorum during virtual meetings, Commission Members shall have their names posted and, to the extent practicable, their cameras on. All Voting Members shall have cameras on during a vote. Commission staff shall have names posted but may turn cameras off.
- (c) The Commission will not use Robert's Rules of Order in conducting a meeting but will follow the procedural rules set out in these bylaws.
- (d) The Chair shall lead and manage the meeting, or the Vice-chair in the Chair's absence. Public comment may be allowed and shall be posted on the agenda when authorized. Deliberation of issues will only be conducted by Commission Members, but the Commission may authorize OPDC staff or members of the public to provide information on any topic.
- (e) OPDC staff shall provide and publish one or more mechanisms whereby persons requiring reasonable accommodations to fully participate in a meeting may request such accommodations no later than the close of business 48 hours prior to the meeting. OPDC staff shall take all reasonable steps to ensure that such accommodations are provided.

(9) Public Comment.

- (a) Oral. Members of the public may apply to the Commission for the opportunity to comment in person at Commission meetings. Such applications must be received by the Commission by the close of business the business day prior to the date scheduled for the meeting. The Chair shall allow all reasonable requests for public comment. Public comment shall be limited to 3 minutes unless, in the Chair's sole discretion, more time is allowed.
- (b) Written. Members of the public may submit written comments regarding items on the agenda of upcoming meetings. Submissions received by the close of business two (2) ~~the~~ business days in advance of the meeting in which they are to be considered shall be submitted to Voting and Non-voting Members and posted to the public on the OPDC website prior to the meeting. Submissions received after that time shall be submitted to Voting and Non-voting Members and posted to the public on the OPDC website after the close of the meeting; in addition, such comments shall be included in the material for the subsequent OPDC regular meeting.

(10) Motions.

- (a) Any Voting Member of the Commission may make a motion regarding a posted action item, and that motion must receive the endorsement of a second Voting Member of the Commission before a vote can occur. Once a motion has been made and received an endorsement from a second Voting Member, there shall be a period for discussion.
- (b) Following the discussion, the motion must be voted upon unless (1) the Member who made the motion withdraws the motion, or (2) the Member who provided the second endorsement withdraws that endorsement and the motion fails to get another second endorsement.

(11) Voting.

- (a) Commission Members must be present to vote.
- (b) Unless any Voting Member of the Commission requests a roll call vote, the Chair shall ask if any of the Voting Members of the Commission object to the motion. If no objections are made, the motion will pass, and it will be recorded as endorsed by all Voting Members present. If any Member of the OPDC objects to the motion, a roll call vote will be held.
- (c) Commission Members must vote yea or nay, as no abstentions are allowed. Voting Members may explain on the record their reasons for a yea or nay vote or for asserting a conflict of interest.

(12) Meeting Records and Minutes. All meeting materials, minutes, transcripts, and public comment shall be stored by OPDC and placed on the OPDC website for public access.

Article 5

SUBCOMMITTEES, AUDIT COMMITTEE, EXTERNAL ADVISORY GROUPS

(1) Subcommittees

- (a) The Commission Chair, in consultation with OPDC staff and Voting and Non-voting Members of the Commission, may create standing or *ad hoc* subcommittees to advise the Commission. The Chair shall put on the record the members of the subcommittee and the nature of the subcommittee's charge.
- (b) A subcommittee must have at least three, but no more than four, Voting Members. The Chair shall appoint subcommittee members and may ask for volunteers from among Voting and Non-voting Members.
- (c) Each subcommittee shall elect a chair to conduct the business of the subcommittee and to report to and consult with the Commission Chair.
- (d) The subcommittee chair may invite Voting and Non-voting Members, OPDC staff, staff of Oregon executive, judicial and legislative agencies, and members of the public to attend subcommittee meetings in an advisory capacity. Consideration will be given to gathering input from public defense providers and persons with lived experience in, or communities impacted by, Oregon's criminal and juvenile justice systems.
- (e) Subcommittee meetings.
 - (i) Meetings of subcommittees must comply with ORS Chapter 192 and with the provisions of Art. 4 sections (6), (7)(d), and (8)(a)-(e) of these Bylaws.
 - (ii) By 4 business days prior to a meeting, the subcommittee chair shall create an agenda. Items to be voted on at an upcoming subcommittee meeting shall be labeled as action items on the meeting agenda. At the request of any Voting or Non-voting Member of

the subcommittee, up to and including the start of a meeting, the subcommittee chair may amend the agenda to include an additional non-action item.

(iii) OPDC staff shall publish the agenda and meeting materials by 3 business days prior to a meeting unless good cause is shown, as determined by subcommittee chair.

(2) **Audit Committee.** OPDC shall approve an audit charter and advisory audit committee that is not a governing body to facilitate the OPDC's audit function. The audit committee shall provide an annual report to the Commission Members at least once per year and shall provide additional reports to the Commission Members as needed if the committee believes OPDC is engaged in an unreasonable level of risk.

(3) **Advisory Committees and Workgroups.**

(a) The Executive Director may, after consultation with the Chair, create advisory committees and workgroups as needed.

(b) At the Executive Director's discretion, advisory committees and workgroups may include Voting and Non-voting Members, OPDC staff, staff of Oregon executive, judicial and legislative agencies, and members of the public. Consideration will be given to gathering input from public defense providers, and persons with lived experience in, or communities impacted by, Oregon's criminal and juvenile justice systems.

Article 6

GRIEVANCE PROCEDURE

Persons aggrieved by OPDC actions or inaction should seek redress as follows:

(1) If the complaint is a consequence of OPDC policy, a letter should be addressed to the Chair of the Commission requesting the complaint to be placed on the Commission's meeting agenda; subject to the provisions of Art. 4(7)(a), the Chair shall have the sole discretion either to place the item on the agenda of an upcoming meeting or to refer the matter to the Executive Director for investigation.

(2) If the complaint relates to administrative practices of the OPDC, the complainant should address a letter to the Executive Director of the OPDC; a complainant who is unsatisfied with how the complaint is handled may address a letter to the Chair of the Commission requesting the complaint to be placed on the Commission's meeting agenda; the Chair shall have the sole discretion either to place the item on the agenda of an upcoming meeting or to refer the matter to the Executive Director to report to the Chair on resolution of the complaint.

(3) If a Voting or Non-voting Member is approached by an aggrieved person the Member should direct the person to the correct course of action to be pursued; the Member shall not discuss the complaint with the aggrieved person.

(4) All communications covered by sub-sections (1) through (3) shall be in writing. A Member who is approached by word of mouth shall so inform the aggrieved persons and shall send a

memorandum to the Chair identifying the aggrieved persons and indicating the time of the conversation and the instructions conveyed by the Member to the aggrieved person.

Article 7

AMENDMENTS

These bylaws may be amended by a two-thirds vote of the Voting Members at any meeting provided the topic is posted as an action item and the proposed language is provided to all Voting and Non-voting Members one week prior to the meeting.

February 7, 2024
Meeting Minutes &
Public Comment

Meeting: Oregon Public Defense Commission

Date & Time: February 7, 2024, 9:00 AM – 1:00 PM PST

Address/Platform: Meeting occurred virtually via Zoom

Commissioners Present

Peter Buckley

Robert Harris

Alton Harvey, Jr

Tom Lininger

Susan Mandiberg

Jennifer Nash, Chair

Jennifer Parrish Taylor

Brook Reinhard, Nonvoting

Jasmine Wright, Nonvoting

Commissioners Absent

Rep. Paul Evans, Nonvoting

Sen. Floyd Prozanski, Nonvoting

Adrian Smith

Robert Selander

Presenting Staff

Jessica Kampfe, Executive Director

Eric Deitrick, General Counsel

Ralph Amador, Finance Manager

Lisa Taylor, Government Relations Manager

1. Welcome

Presented by Chair Nash

Chair Nash welcomed everyone to the February 7, 2024, Oregon Public Defense Commission meeting.

2. Public Comment

Chair Nash acknowledged that the commission received a number of written comments and noted that the comments would be attached to the minutes for the next commission meeting.

Lainie Block Wilker identified herself as a former deputy DA and former DOJ attorney. She discussed the significant amount of money the state spends defending the state against civil suits arising from child welfare and foster care and suggested the state use that money to improve public defense.

Dawn Krantz-Watts identified herself as a private Investigator and noted that she was providing comment on behalf of James Comstock, who could not attend today. She discussed Mr. Comstock's comments at the January 5th OPDC meeting and the request for a formal response from the agency. She raised concerns about the agency's lack of a formal response. She also discussed the payment times and how delays impact her and other investigators.

3. *Action Item: Approve January 5, 2024, OPDC Meeting Minutes

Presented by Chair Nash

Commissioner Alton Harvey Jr. moved to approve the January 5th OPDC meeting minutes as provided. Commission Harris seconded the motion. The motion passes unanimously.

4. Budget Presentation

Presented by Ralph Amador & Director Kampfe

Mr. Amador provided a financial overview that outlined the agencies financial overview for the 2023-2025 biennium. He noted that the agency was working with the legislature on a budget rebalance amongst the various budget pots, as there were savings in some pots but deficits in others.

Chair Nash asked about the budget for preauthorized expenses (PAE), and Mr. Amador noted that PAE is consistently in a deficit. He described the agency's Approach to PAE requests and noted that most of the existing PAE authorizations are valid for two years from the date of the authorization. He also described the risks associated with the Temporary Hourly Increase Program (THIP).

Commission Lininger asked if the agency was requesting funds in the '24 legislative session, and Mr. Amador noted that it was.

5. 2024 Session Update

Presented by Director Kampfe & Lisa Taylor

Ms. Taylor presented the commission with a 2024 Legislative session update. The update provided an outline of the goals of the 2024 session requests, which included funding for SB 337 implementation, unrepresented persons, and a robust administration. Ms. Taylor also noted the agency wide budget rebalance. She also noted that other 2024 session requests include state trial offices, increase attorney capacity, strategic planning & transition, agency staffing and temporary hourly increased program (THIP).

Commissioner Harvey Jr. inquired about the structure of the new Trial Division, and Director Kampfe summarized the office. Commissioner Harris stated that the buildout of the new offices should include conversations with members of the local communities about costs. Commissioner Lininger asked about the budget for strategic planning, viewing it as rather large. Director Kampfe stated that the agency is not anticipating spending the entire amount included in the materials.

6. Unrepresented Update

Presented by Shannon Flowers

Ms. Flowers provided an update on the unrepresented persons and the work the agency has completed to date. She noted that the current OJD Dashboard states there are 2,751 persons without an attorney; 136 of those are in custody; and 29 of those have been in custody for more than 10 days. She also provided an overview of unrepresented person by county.

Ms. Flowers then moved to agency efforts to address the problem. She noted that the agency has increased its contract attorney FTS by 25% over the last 18 months. She noted that nonprofit public defenders are reporting less attrition than in the past. She also described the agency's efforts at facilitating training to assist newer public defenders, which included a training from Gideon's Promise in September, and a subsequent OCDLA Trial Skills Training, that was made available to approximately 30 newer public defenders.

7. 9.9 million Retention Incentive Policy Briefing

Presented by Director Kampfe, Kim Freeman & Amy Jackson

Director Kampfe introduced the topic by discussing the legislature's allocation of 9.9 million dollars in funding for the agency to use to incentivize attorney retention. She described staff efforts to prepare the policy for commission consideration. She noted that today's presentation was merely a briefing, and that the agency would ask the commission to approve a policy at the March meeting.

Ms. Freeman and Ms. Jackson summarized the proposed policy, which attached the proposed retention payments to provider's agreeing to new caseload reporting requirements. They then summarized the current practices of caseload reporting – the timing, the frequency, and how that data can be used. They discussed the agency's data gaps and explained how improved reporting would benefit the agency and public defense providers.

Commissioner Buckley noted that nine pieces of public comment were submitted on this policy proposal and suggested the commenters receive a personal response. Chair Nash described the legal authority for the retention payments. Commissioner Harris noted that caseload reporting obligations are already included as a contract term. Ms. Freeman and Ms. Jackson agreed and said the policy contemplates contractors would have to agree to new caseload reporting policy obligations in order to receive the retention bonuses

A lengthy discussion occurred amongst commission members about whether it was prudent to attach retention bonuses to new caseload reporting obligations. There was a consensus that the agency needs better data and that reporting needs to be improved. There was also a consensus that the retention bonuses should not attach to new reporting obligations. Chair Nash noted that the policy proposal would return for approval in March and anticipated the revised proposal would incorporate feedback from today's discussion.

8. Annual Report of Audit Committee's Activities

Presented by Director Kampfe, Latham Stack, Scott Martin, and John Hutzler

Director Kampfe introduced the agency's two internal auditors, as well as John Hutzler, the Audit Committee Chair, to present the Audit Committee's annual report. She noted that the report will also be presented to the legislature.

Mr. Hutzler described his background, the function and structure of the Audit Committee, and the activities of the Audit Committee over the past year. He noted that the agency was considering reassigning one of the two internal audit positions to another function and provided feedback on that proposal. Chair Nash discussed whether both internal auditors should be inward facing and noted that the agency was seeking clarity from LFO. Director Kampfe also discussed the importance of the audit function and getting clarity from LFO on the best use of resources to achieve that function.

Chair Nash thanked Mr. Hutzler for his presentation and noted that the Audit Committee, per its charter, required at least one commission member to serve.

9. Update on Governance Subcommittee

Presented by Eric Deitrick

Mr. Deitrick provided an update on the Commission's Subcommittee on Governance, which was authorized at the January meeting of the OPDC. The Subcommittee met on February 1, 2024 to review the current bylaws, review bylaws for other commissions and boards, and brainstorm concepts for the new bylaws. Topics discussed included roles and responsibilities, meetings, agendas and notices, quorum, distribution of meeting materials, voting, conflicts of interest, public comment, subcommittees, and grievance procedures, amongst other things. He noted that the subcommittee selected Commissioner Mandiberg as Chair.

The members are scheduled to meet on February 29 to review and discuss a draft of the bylaws and then will be meet again on March 14 to vote on recommending a set of bylaws to the full Commission.

10. Presentation on 2021 ACLU Pay Equity Complaint

Presented by Jill Goldsmith, Workplace Solutions NW

Ms. Goldsmith provided an overview of her investigation into whether the agency had paid female attorneys and male attorneys equitably for comparable work. She noted that there was a personnel investigation handled separately that would not be a part of the presentation or report.

Ms. Goldsmith summarized the process of gathering information and records from the agency, which she described as challenging and contributed to the lengthy delay in producing this report. She then provided a summary of the agency's policies on non-contract hourly rate attorneys, specifically the provision that allowed an attorney to request a rate that deviated from the standard rate when there are compelling circumstances. She noted that, in her investigation, most attorneys were not aware of this policy.

Ms. Goldsmith analyzed data from 2003 to 2020 in order to determine if there were rate disparities. She noted that there were not objective criteria to determine when a rate should be increased, and that agency staff was aware. She concluded that male attorneys received higher rates in some years, while female attorneys received higher rates in other years. She also noted that attorneys who were more familiar with agency staff and agency policy were more likely to seek such requests. She also concluded that fewer female attorneys sought rate increases but could not conclude whether that was attributable to fewer female attorneys accepting appointments to hourly rate cases or unfamiliarity with the policy.

11. **Future Business**

Presented by Director Kampfe

Director Kampfe thanked Jill Goldsmith for her diligent work to investigate the concerns raised by the American Civil Liberties Union. She stated, even though the investigation looked at the past, it provided valuable lessons that are guiding the agency's future. She also said the agency is working to improve its data collection, record keeping, and organizational transparency.

Director Kampfe explained that the agency has established protocols that attach hourly rate increases to objective standards. The pay rate criteria are now publicly available on the agency's website and have been shared with the providers in an effort to be more transparent. Director Kampfe gave an overview of the progress the agency has made that included the newly adopted attorney hourly rate program, the temporary increase hourly rate program, and the adopted a preauthorized payment rate for vendors. All of the policies can be found on the agencies website.

Director Kampfe also addressed the question raised from an investigator from the last commission meeting in regard to how the Oregon Public Defense Commission determined the rates that were set as part of the pre-authorized expense policy. She noted that the research was completed by staff by reviewing rates in neighboring states and stated that the agency needs to do better at documenting its research.

The Ninth Circuit Court of Appeals heard oral argument on the temporary restraining order granted by Federal District Court Judge McShane, which directed Oregon sheriff's to release people from pretrial detention if they were not appointed a lawyer within seven days of their arraignment. The implementation of the temporary restraining order has been stayed while the appeal is pending. At this time the agency does not have any direction on when the opinion will get issued or what that will look like.

Director Kampfe informed the commission that the agency has filled the Chief Information Officer position. David Martin will be joining OPDC on February 27. He started at Treasury and was most recently at the Oregon Military Department. She said that the agency looks forward to his arrival, and that it is currently recruiting for two project managers to support the IT transition.

Chair Nash thanked everyone for attend and adjourned the meeting.

Public Comment

From: [Daniel E. Stephens](#)
To: [OPDS info](#)
Cc: [Benjamin L. McCartney](#); [Morton Justin](#); [Amber Gilbert](#); [Jody Vaughan](#); [Jill Weygandt](#)
Subject: Incentive Policy Proposal
Date: Wednesday, February 7, 2024 5:13:39 PM

Some people who received this message don't often get email from bmd@danstephensattorney.com. [Learn why this is important](#)

To whom it may concern,

After attending the February 7th Commission meeting, there are additional comments I would like to express regarding the proposed Incentive Policy.

Firstly, I do understand the need to get timely data to OPDC. Data and funding go hand-in-hand. I can honestly say, in the last 10 years I have been managing Blue Mountain Defenders (BMD), we have *never* submitted a late monthly report. BMD takes its contractual reporting obligation seriously. It is unfortunate there are some contractors who do not. Timely delivery of data is necessary to case projections and funding.

That said, however, it is equally important that the delivery of data be accurate, particularly if OPDC is relying on such data for case projections and funding. If the data is inaccurate, so will be your projections. Moreover, for reasons indicated below, that inaccuracy will be to underestimate caseload which will have an adverse effect on funding.

In response to attorney shortages, the Sixth Judicial District has placed a renewed emphasis on verifying defendant eligibility for Court Appointed Counsel (CTA), to help reduce unnecessary court appointments. That verification process, while helping reduce caseload, has also had the unfortunate effect of slowing down the generation of Orders Appointing Counsel (ORAC). BMD attends arraignments, and gets a verbal appointment which is contingent upon verification for CTA. The court clerks will not reduce the verbal order to an ORAC until defendant completes the verification process. In the case of out-of-custody defendants, that often results in delay where defendants fail to submit paperwork necessary for the verification process. The verification process can also result in denial of CTA, where defendants do not meet the financial criteria. BMD cannot report the case to OPDC as an appointment, unless and until we have received an ORAC.

In other instances, the defendant has been verified as qualifying for CTA, yet the court clerk has simply not prepared an ORAC for the judge's signature. The BMD staff goes through great efforts, throughout the month, to remind court clerks about the need for ORAC's on specific cases that are still outstanding. Yet the Sixth Judicial District has a large amount of turnover in court staff, who are often untrained and overworked, which adds to the problem of preparing ORACs.

The result is BMD does not receive many ORACs well into the month following a verbal appointment. BMD uses every bit of calendar to the 20th of the following month to capture as many appointments as possible for inclusion into the monthly report. If BMD is required to submit the report by the 5th of the month, there will be significant inaccuracy.

Since the inaccurate report will show less cases than it should, the projections from that data will be skewed towards lesser projected case counts. That will also adversely affect funding estimates, based on those lesser case projections.

I should also note, this problem will be even more pronounced for the public defender in our region, Intermountain Public Defender (IPD). That organization gets far more appointments than BMD, and experiences the same reporting difficulties.

To address the inaccuracy of the 5th report, BMD will need to always submit an amended report later in the month, to ensure we are fulling reporting for MAC level calculations. This doubles the reporting workload of administrative staff, and does nothing to help the accuracy of projections if only the 5th report is considered for projection purposes.

It is hard to rationally understand how shortening the reporting time frame will have any significant benefit to OPDS case projections. Yet that shortened timeframe makes a world of difference to contractors who are struggling to gather and report accurate data.

This across-the-board approach to the problem of some contractors submitting late reports, is simply a punitive use of funding that was designed by the legislature to incentive attorney retention. This approach by OPDC turns a positive into a negative, and has a very disincentivizing effect. A more measured approach would simply be to deal with contractors on an individual basis who are failing to meet their 20th reporting deadline. You already have the contractual authority to do that, rather than punishing all contractors and adversely affecting all case reporting.

I agree with the comments made by Commissioners Buckley, Reinhard and Harris at the February 7th meeting, who all seem to have a good grasp of the problems associated with the present Incentive Policy proposal.

I would strongly suggest you leave the reporting deadline on the 20th, and take individual enforcement action against individual contractors who fail to meet that deadline.

Dan

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Daniel Stephens, Attorney at Law
PO Box 749, Hermiston OR 97838
Ph# (541)567-1545
Fax# (541)567-1589

Members of the Commission and Director Kampfe,

My name is James Comstock. I am a licensed investigator who works in fact and mitigation investigation on public defense cases for indigent litigants in the Oregon Circuit Courts. I am a member of Defense Investigators of Oregon, proudly affiliated with the Industrial Workers of the World.

I find it regrettable that I feel the need to share public comment with the Commission yet again regarding the same issues that I have raised in December and January¹. As I said in January, I was hopeful based on the comments at the last meeting that OPDS would take the things that I said to heart and begin making efforts to build trust between the agency and providers.

Despite the significant and well documented concerns that I have raised regarding apparent duplicity by staff at OPDC, I have heard no material response from anyone at the Agency regarding this issue.

My colleagues and I are truly at a loss on what to do at this point. We have carefully reviewed and documented the fact that OPDC staff provided information to Commissioners in the context of an important vote on fiscal issues that was, to be very frank, a material misrepresentation. It remains unclear to us who initiated this misrepresentation and why, but it appears undeniable that multiple staff people were complicit in the misrepresentation, as proposed policies in state government are rarely if ever created by a single staff person with no other input. The proposed policy clearly states that it is based on the information supposedly gathered, saying:

“This document covers rates paid by the Office of Public Defense Services to vendors for services provided in public defense cases. These rates reflect information gathered from several states including Nevada, Washington, California and Idaho and entities including United States Courts, U.S. Bureau of Labor and Statistics and follow budget constraints of the agency.”²

We know from the agency itself that the rates in the “Schedule of Guideline Amounts, Number: 404.060.002” do not, in fact reflect material information gathered from the other states and entities named. It is not possible for this policy to have been created based on information that the Agency has now admitted in writing, does not exist saying that the employee who supposedly did the research did not communicate with anyone in other states or agencies “in written or oral form”³

It shocks the conscience that despite the Agency being very aware of this misrepresentation, **the language remains in place in the policy now posted on the OPDC website** effective January 1, 2024.⁴

¹ See attached written comment from the January OPDC Meeting.

² Schedule of Guideline Amounts Number: 404.060.002

³ Email from Eric Deitrick, January 3, 2024

⁴ Link to policy on the OPDC website, 2/5/2024

<https://www.oregon.gov/opdc/provider/PoliciesProcedures/Schedule%20of%20Guideline%20Amounts%2020231214.pdf>

While I was somewhat surprised that no one from the agency contacted me about the concerns I raised, I thought that this might have been because the Agency intended to address this matter at the next Commission meeting. I was rather shocked and deeply disappointed when I saw the agenda for the meeting this week as there was nothing on the agenda that indicates that the Agency intends to address this matter at all. I am hopeful that this will be included in the Director's update, although it is not explicitly noted.

All of this continues to exacerbate the very problem that I have raised. OPDC does not appear to be willing to take the necessary steps to regain the trust of public defense providers. On the contrary, the agency seems to continue to allow staff to behave in a manner that further erodes the trust of the public and prevents the changes needed to make OPDC an asset to public defense providers, indigent defendants, and the citizens of Oregon.

To reiterate my concerns from my prior public comment:

In the December meeting, OPDS plainly stated to Commissioners in the context of a vote on an important policy that the policy was based on research⁵ that appears to have not been materially completed, despite the fact that OPDS clearly stated in the policy itself that it had been completed.

OPDS represented directly to Commissioner Buckley that the detailed information from the research would be included in a forthcoming compensation study. Based on the OPDS response, it is very clear that no material amount of information was gathered. Based on this, it is unclear what the rates in Procedure 404.060.002 which was voted on by the Commission were based on, and what the forthcoming compensation study would be based on.

Similarly, in the January meeting I noted that during the December meeting I pleaded with OPDS to engage with us regarding payment issues and rates. We have been asking OPDS to engage with us on this matter since September. In an apparent response to my request in the December meeting, Commissioner Buckley said, "My hope, or my expectation is that given the concern raised in public comment that the agency will commit to reaching out to the provider community on this process very, very soon to make sure that they understand that there will be an ability to have those discussions."⁶

My expectation was that at least based on Commissioner Buckley's request, OPDS would respond to our repeated requests for engagement. To date, we have heard nothing from OPDS in this regard. **It has been 139 days since I began asking the agency to engage with us, and 56**

⁵ Transcript excerpts are from "Meeting Transcripts 12 14 2023.pdf posted at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

"Yes. Sorry, Vice Chair Buckley. That's what we did. We took a look at surrounding states and what their rates were, and then took a look at our budget and kind of came up with a rate that seemed like we could afford. And also looked at what we have currently been paying. I didn't actually gather that information, but I am told that that's how it was gathered."

⁶ Transcript excerpts are from "Meeting Transcripts 12 14 2023.pdf posted at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

days since Commissioner Buckley asked the agency, on the record in a Commission meeting to engage with us. We are sad and befuddled at this strange aversion to engaging with providers, even when asked to do so by a Commissioner in an official meeting.

I once again ask this Commission to take immediate action and hold the Agency accountable for this reprehensible and unethical behavior and to take material steps to stop it from happening again. As demonstrated by Commissioner Buckley's request that the Agency engage with us, requests made to the Agency do not appear to suffice.

I ask the Commission to put forth a motion, and to vote on a resolution to address this pernicious and troubling problem through an independent and public outside investigation of this and all financial analysis provided to the Commission, with a public apology and public accountability for anyone involved in misrepresentation either by commission or omission. Without an outside investigation, this Commission cannot be sure of the accuracy of the material provided to them, and to past Commissioners when deciding how to vote on financial policy.

State employees have a duty to speak up and report when they see misrepresentation or unethical behavior in state government. They should be held accountable not only for misrepresentation, but for knowing about misrepresentation and doing nothing to correct it.

January 4, 2023

Members of the Commission and Director Kampfe,

My name is James Comstock. I am a licensed investigator who works in fact and mitigation investigation on public defense cases for indigent litigants in the Oregon Circuit Courts. I am a member of Defense Investigators of Oregon, proudly affiliated with the Industrial Workers of the World.

Just as I did last month, I am sending this written public comment supplementary to the abbreviated oral public comment which I will share at the January 5, 2024 OPDC meeting.

It is regrettable that I feel the need to come to you again regarding the same issues that I raised in December. I was hopeful based on the comments at the last meeting that OPDS would take the things that I said to heart and begin making efforts to build trust between the agency and providers.

At the December PDSC meeting, Representative Buckley asked the following question:¹
“Madam Chair, just the introduction on the document. These rates are that information gathered from several states including Nevada, Washington, California, and Idaho. I’m not sure what that means. I’m not sure whether the agency came up with these based off of kind of looking at the other states and seeing how we compare. I’m just not sure what that means.”

My colleagues and I were quite surprised to hear that OPDS had gathered information from Nevada, Washington, California, Idaho, the Federal Courts and the US Bureau of Labor and Statistics, as we have been gathering this information ourselves over the last three years. We are very aware of how tedious and complex gathering this information has been, as most of these states do not have a uniform state rate and rates vary by county.

Amy Jackson, OPDS Program Analyst replied to Representative Buckley’s question saying:
“Yes. Sorry, Vice Chair Buckley. That’s what we did. We took a look at surrounding states and what their rates were, and then took a look at our budget and kind of came up with a rate that seemed like we could afford. And also looked at what we have currently been paying. I didn’t actually gather that information, but I am told that that’s how it was gathered.”

¹ Transcript excerpts are from “Meeting Transcripts 12 14 2023.pdf posted at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

Representative Buckley went on to ask:

“Thank you. And so just a note, when we get the compensation study, we’ll have that detailed out for us?”

To which Ms. Jackson replied:

“Yes”

Based on this, and given the deep interest by me and my colleagues in what numbers the agency was using to establish rates in the “Scheduled of Guideline Amounts, Number 404.060.002” which the Commission voted on, the same day I made a public records request which stated:

“I am requesting the information gathered by OPDS from surrounding states regarding rates for investigators performing fact and mitigation work. This was referenced by Amy Jackson in the PDSC meeting on 12/14. I am requesting any correspondence sent by OPDS staff asking for information on rates, any responses received, any reports based on other kinds of inquiry into rates in other states as it relates to the comments by Ms. Jackson in the 12/14 meeting.”²

On January 3, 2023 I received the following response to my public records request from OPDS:

“The agency does not have any records to disclose. At the commission meeting, I believe Amy Jackson mentioned that the person previously working on the project had looked at rates in other states. That employee is not presently at the agency. Following up with her supervisor, my understanding is that the employee looked at the federal fee schedule as well as published rates from a couple of other states. But I do not believe she was in communication with anyone in written or oral form.”³

This is deeply, deeply troubling to me, my colleagues, and other public defense providers. I imagine it is troubling to this Commission as well.

In the December meeting, OPDS plainly stated to Commissioners in the context of a vote on an important policy that the policy was based on research that appears to have not been materially completed, despite the fact that OPDS clearly stated in the policy itself that it had been completed.

OPDS represented directly to Commissioner Buckley that the detailed information from the research would be included in a forthcoming compensation study. Based on the OPDS response, it is very clear that no material amount of information was gathered. Based on this, it is unclear

² Public records request sent by James Comstock to OPDS on December 14, 2023.

³ Email from Eric Deitrick, January 3, 2024

what Procedure 404.060.002 which was voted on by the Commission was based on, and what the forthcoming compensation study would be based on.

While this level of misrepresentation regarding a critical financial policy which was in the process of being voted on by a public body shocks the conscience on the face, it is even more egregious in that it happened in the very meeting where I pleaded very specifically with OPDS to work to fix the trust issues that plague the agency.

If we cannot trust OPDS to be honest with the Commission in the context of a vote on provider rates, when and how can we trust this agency?

The OPDS response to my public records request appears to place blame for this misrepresentation on a single unnamed employee who is no longer with the agency. This explanation strains credibility to the breaking point.

The language which prompted Commissioner Buckley's question is at the top of proposed Procedure 404.060.002. It states:

*"This document covers rates paid by the Office of Public Defense Services to vendors for services provided in public defense cases. These rates reflect information gathered from several states including Nevada, Washington, California and Idaho and entities including United States Courts, U.S. Bureau of Labor and Statistics and follow budget constraints of the agency."*⁴

This proposal and language were included in meeting materials presented to the Commission for consideration for the October 26, 2023 meeting⁵, the November 16, 2023 meeting⁶, and the December 14, 2023 meeting⁷.

The OPDS explanation which blames the misrepresentation on a single employee is frankly implausible. It appears that we are to believe that a single rogue employee did minimal or cursory information gathering regarding rates, then conducted analysis (or purported to)

⁴ Introduction section of "Schedule of Guideline Amounts, Number 404.060.002", page 20, Page 27 of pdf file named PDSC Agenda & Material 12_14_2023, found at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

⁵ Introduction section of "Schedule of Guideline Amounts, Number 404.060.002", page 1 of 9, Page 128 of pdf file named PDSC Agenda & Materials 10_26_2023, found at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

⁶ Introduction section of "Schedule of Guideline Amounts, Number 404.060.002", page 1 of 9, Page 59 of pdf file named PDSC Agenda & Material 11_16_2023, found at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

⁷ Introduction section of "Schedule of Guideline Amounts, Number 404.060.002", page 20, Page 27 of pdf file named PDSC Agenda & Material 12_14_2023, found at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

themselves alone and created the policy, again, alone – and then that person gave Ms. Jackson the impression that a more robust investigation and analysis had been done as Ms. Jackson represented to Commissioner Buckley.

To be clear, this issue is not just about Ms. Jackson's answers to Commissioner Buckley. It is far deeper than that. The larger issue is the fact that proposed Procedure 404.060.002 was sent to the Commission for three consecutive meetings, with a preamble and explanation regarding the analysis used which was clearly a misrepresentation.

We are well aware that in reality, **policy creation of this type involves multiple people.** Anyone who worked on this policy should have been using the information ostensibly gathered to determine the rates. The fact that there is no written record of ANY rate analysis means that anyone who worked on this policy is complicit in an effort to misrepresent to providers, the Commission and the public the process used to arrive at proposed rates.

The OPDS response which attempts to blame this on a single unnamed employee no longer with the agency is at best “spin”, and at worst further dishonesty by the agency – again misrepresenting to cover up misrepresentation.

I do not believe the explanation provided by OPDS, and as a Commission, neither should you.

Again, it is important to note that OPDS spent time creating proposed Procedure 404.060.002, and published it to the Commission for three consecutive meetings. We presume that the proposed Procedure, or at the very least the proposed rates were shared with the Legislative Fiscal Office as well. It is improbable that a single unnamed rouge employee was responsible for doing the research, conducting the analysis based on that research, setting rates based on that analysis, and placing the clarifying preamble regarding methods used at the top of the proposed policy.

As a person who has worked extensively in state government, it is obvious to me that multiple people were involved in the creation, editing, and dispersal of this document to the Commission. OPDS even acknowledges the involvement of the supervisor of the person who they blame for the lack of material investigation into the rates paid in other states in their response. Any person engaged in determining the proposed rates should have used the information referenced in the statement at the top of the proposed policy to set the rates. The fact that this information does not exist makes anyone who worked on setting the rates complicit in the deception.

I call on this Commission to conduct an independent investigation to reveal:

- Which people worked on Procedure 404.060.002, so that those people can explain how they arrived at the rates proposed?

- What analysis was used to set the rates? (Since ostensibly there was no data written down to use in analysis.)
- Why OPDS included the preamble that Commissioner Buckley asked about if they never received the information purportedly gathered?
- Why no OPDS employee brought this to the attention of anyone above them?

I trust Director Kampfe. I do not believe that she was aware of this misrepresentation. I believe that OPDS staff made misrepresentations to her, to the Commission (repeatedly in the materials), and possibly to the Legislative Fiscal Office.

I cannot overstate the gravity of an agency misrepresenting information regarding financial analysis to a Commission in the context of a vote. I can think of few things that are a greater example of the willful dereliction of duty on the part of a state agency.

The agency routinely tells us that they have or do not have money for certain things. At this time, I don't know that I believe anything that isn't proven. At some point, if you must verify every single thing that an agency says, what is the point of even having the agency?

This breach of trust is not a one-off event. This caps years of clear and direct examples of behavior by the agency that has eaten away at the trust between the agency and providers. I laid out examples of this in my public comment at the last meeting. I could give you even more examples going back to 2019.

Leadership has changed over time, and to that point I want to reiterate that I **do** have trust in Director Kampfe and in some other members of OPDS management. That said, it is painfully obvious that there is a consistent problematic thread in the agency that stretches from at least 2019 to today. I do not know if this is an issue of culture in the agency, or if it is related to people who have remained at the agency throughout the last 5 years despite changes in leadership. Regardless of why this continues to happen, what is important is that it must stop - at once.

The behavior and apparent culture of the agency is a direct and material contribution to the public defense crisis that we find ourselves in now. The agency cannot "spin" itself out of this crisis. It must stop the problematic behavior, take accountability for its failures, root out the causes of the problem and do better going forward.

Some things are hard to change. Changes can take time. Honesty is not one of those things. Being honest costs zero money and can be implemented today.

In a similar vein – during the December meeting I frankly plead with OPDS to engage with us regarding payment issues and rates. We have been asking OPDS to engage with us on this matter since September. In an apparent response to my request in the December meeting, Commissioner Buckley said, *“My hope, or my expectation is that given the concern raised in public comment that the agency will commit to reaching out to the provider community on this process very, very soon to make sure that they understand that there will be an ability to have those discussions.”*⁸

My expectation was that at least based on Commissioner Buckley’s request, OPDS would respond to our repeated requests for engagement. To date, we have heard nothing from OPDS in this regard.

When we asked about the oddly sudden and unannounced change to the rate for mitigation investigation in the December meeting, we were told that the \$65/hr. rate included in the materials from the prior two meetings was a “typo” that had been discovered in December. In the context of what we have now seen, I am doubtful that OPDS was candid about the reasons and context of that change.⁹

The discovery that OPDS had quietly changed the Mitigation rate to \$70/hr. in the proposed payment policy, and the discovery that OPDS had not in fact investigated rates in other states as represented in Procedure 404.060.002 were both serendipitous. This leaves us all wondering what other misrepresentations has the OPDS made which have not yet been discovered. In particular, the representations made by OPDS to the Commission regarding the cost of travel time in the December meeting are particularly suspect, and there seemed to be a reluctance to share information that Commissioners asked for.

As providers, we are exasperated by our continued problematic interactions with OPDS.

We have done all we can to engage with an agency that on the one hand begs us to work with them, and on the other hand presents misleading or even wholly untruthful information in response to questions that they don’t seem inclined to answer.

⁸ Transcript excerpt from “Meeting Transcripts 12 14 2023.pdf posted at <https://www.oregon.gov/opds/commission/pages/meetings.aspx>

⁹ From the transcript of the 12 14 2023 meeting, regarding the change in rate, Amy Jackson stated: *“There have been questions about the mitigation rate and how it went from 65 to 70. I can very easily explain that. It’s a typographical error that originally started out at 70. When it was presented to the executive team here in the office, it was \$70 an hour, and somehow over the course of three iterations it made its way down to 65, and we caught it. So, it’s not... It was already budgeted at \$70 an hour. Budget was already aware that that’s what it was going to be. I don’t know how it happened. I can’t explain it, but it happened.”*

Ms. Jackson says that she can very easily explain the change, but then says that she cannot explain it. These kinds of “non explanations” and contradictory comments make providers feel like OPDS is gaslighting us, and are utterly lacking any kind of professional respect.

My colleagues have spoken to OPDS and to the prior Commission in a candid and vulnerable way, sharing how their passion for public defense combined with low pay rates and poor treatment have caused them to struggle to pay for basic needs. People have sat in front of the Commission shedding literal tears as they explained the struggles of surviving as a public defense provider. Contrasting that with the cavalier handling of the payment policy displayed by OPDS in misrepresenting how they have determined which rates to propose is a clear demonstration of OPDS' contribution to the ongoing public defense crisis in Oregon.

Since 2019 we have been concerned that a material number of OPDS staff do not believe in the work that we are doing. At times, it has seemed that staff have conflated us with the people who we represent, treating us as suspected thieves trying to steal money from the public. Providers are held to a high level of honesty and accountability in billing, with bills being delayed or denied due to relatively small issues which are obvious scriveners' errors. In contrast, OPDS seems to believe that major misrepresentation in financial policy merits a "spin" response which minimizes the importance of this indiscretion and appears to materially misrepresent what happened when confronted.

As we stand at the beginning of 2024, we look back on the troubled past of an agency that has repeatedly demonstrated a culture of disrespect and dishonesty toward providers and even its own Commissioners. This was capped by what may be the most egregious example to date from the December PDSC meeting.

I ask this new Commission to take immediate action and hold OPDS accountable for this reprehensible and unethical behavior and to take material steps to stop it from happening again.

As demonstrated by Commissioner Buckley's request that OPDS engage with us, requests made to OPDS do not appear to suffice.

I ask the Commission to put forth a motion, and to vote on a resolution to address this pernicious and troubling problem through an independent and public outside investigation of this and all financial analysis provided to the Commission, with a public apology and public accountability for anyone involved in misrepresentation either by commission or omission.

State employees have a duty to speak up and report when they see misrepresentation or unethical behavior in state government. They should be held accountable not only for misrepresentation, but for knowing about misrepresentation and doing nothing to correct it.



PROCEDURE NAME:	Schedule of Guideline Amounts (Credentials included)	Number: 404.060.002
RESPONSIBLE SECTION:	Pre-Authorized Expenses Division	Effective Date: 1/1/2024

INTRODUCTION

This document covers rates paid by the Office of Public Defense Services to vendors for services provided in public defense cases. These rates reflect information gathered from several states including Nevada, Washington, California and Idaho and entities including United States Courts, U.S. Bureau of Labor and Statistics and follow budget constraints of the agency.

ATTORNEY FEES (Temporary Hourly Increase for Unrepresented list)	
Misdemeanor, contempt, and probation violation, any Class C felony and felony drug possession	\$164/hr. soft cap \$10k
Class A and B felony, juvenile dependency, termination of parental rights, juvenile delinquency, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases (PSRB), material witness, extradition/fugitive, appeals, waiver co-counsel; discretionary co-counsel	\$164/hr. soft cap \$50k
Ballot Measure 11 and felony sex offenses (Class A, B & C)	\$175/hr. soft cap \$50k
Murder and Jessica’s law (including mandatory co-counsel and cases subject to ORS 137.719	\$200/hr. soft cap \$75k

INVESTIGATION (Temporary Hourly Increase for Unrepresented list)	
All case types. No rate exception for bilingual	\$75/hr.



James Comstock <jamesbcomstock@gmail.com>

Confirmation: OPDS Public Records Request

oregon-gov-web-services@egov.com <oregon-gov-web-services@egov.com>
To: jamesbcomstock@gmail.com

Thu, Dec 14, 2023 at 3:01 PM

Thank you for submitting a public records request. The request has been sent to the General Counsel at OPDS for review. Pursuant to ORS 192.324, you will receive a written confirmation within 5 days of this request that confirms whether OPDS is the custodian of the public record requested. OPDS may charge fees reasonably calculated to reimburse the agency for actual costs associated with making public records available. OPDS will inform you of the cost for providing these public records and may require prepayment as a condition of receiving these records.

Requestor Name:	James Bryce Comstock
Organization:	Insight Legal Investigation
Address:	PO Box 230204
Address2:	
City:	TIGARD
State:	OR
Zip:	97281
Phone:	5035100559
Email:	jamesbcomstock@gmail.com
Describe Your Request:	I am requesting the information gathered by OPDS from surrounding states regarding rates for investigators performing fact and mitigation work. This was referenced by Amy Jackson in the PDSC meeting on 12/14. I am requesting any correspondence sent by OPDS staff asking for information on rates, any responses received, any reports based on other kinds of inquiry into rates in other states as it relates to the comments by Ms. Jackson in the 12/14 meeting.
If you are seeking a fee waiver or reduction, please explain how making the requested records available is in the public interest and how you will disseminate the information contained in the records.	

Submission ID: 27b107f5-2b69-42ad-ad7c-ce6a48c64b47

Record ID:



James Comstock <jamesbcomstock@gmail.com>

Confirmation: OPDS Public Records Request

Eric J. Deitrick <Eric.J.Deitrick@opds.state.or.us>
To: James Comstock <jamesbcomstock@gmail.com>

Wed, Jan 3, 2024 at 1:35 PM

James –

I am following up on this. The agency does not have any records to disclose. At the commission meeting, I believe Amy Jackson mentioned that the person previously working on the project had looked at rates in other states. That employee is not presently at the agency. Following up with her supervisor, my understanding is that the employee looked at the federal fee schedule as well as published rates from a couple of other states. But I do not believe she was in communication with anyone in written or oral form.

Thanks,

Eric

Eric J. Deitrick

General Counsel

Oregon Public Defense Commission

eric.j.deitrick@opds.state.or.us

503-910-0434

*****CONFIDENTIALITY NOTICE*****

This e-mail may contain information that is privileged, confidential, or otherwise exempt from disclosure under applicable law. If you are not the addressee or it appears from the context or otherwise that you have received this e-mail in error, please advise me immediately by reply e-mail, keep the contents confidential, and immediately delete the message and any attachments from your system.

Thank you!

[Quoted text hidden]

From: [Guy Greco](#)
To: [Mona Riesterer](#)
Cc: [Amy J. Jackson](#); [OPDS info](#)
Subject: Re: Inaccuracy of OECI
Date: Tuesday, February 6, 2024 10:24:33 AM
Attachments: [CaseDetail.aspx.pdf](#)

You don't often get email from greco@pioneer.net. [Learn why this is important](#)

Here is the screenshot which I converted to .pdf for your convenience. It is not the only appointment yesterday that was listed as "retained." It has been an ongoing problem for years. It appears they log in the attorney before the order of appointment is signed.

Guy B. Greco
Tidewater, Oregon
541-270-2043

From: Mona Riesterer <Mona.Riesterer@opds.state.or.us>
Date: Tuesday, February 6, 2024 at 8:37 AM
To: Guy Greco <greco@pioneer.net>
Cc: "Amy J. Jackson" <Amy.J.Jackson@opds.state.or.us>, OPDS info <OPDS.info@opds.state.or.us>
Subject: FW: Inaccuracy of OECI

Good morning,

Thank you for the information. Our IT department has looked at the information and advised because this appears to be a HTML page that was saved from your information, it may not display properly. Is it possible for you to send it as a screenshot or possibly can you put it into a pdf document?

Thank you,

Mona Riesterer

Executive Assistant to: Jessica Kampfe, Executive Director | Emese Perfecto, Deputy Director
Oregon Public Defense Commission

Effective January 1, 2024, our name has changed to Oregon Public Defense Commission

From: Guy Greco <greco@pioneer.net>

Sent: Monday, February 5, 2024 2:33 PM
To: OPDS info <OPDS.info@opds.state.or.us>
Cc: Amy J. Jackson <Amy.J.Jackson@opds.state.or.us>
Subject: Inaccuracy of OECl

Some people who received this message don't often get email from greco@pioneer.net. [Learn why this is important](#)

Please forward this message to the OPDC for Wednesday's meeting.

This is an example of how OECl does not accurately record court appointments. This appointment was made today, but my attorney is listed in OECl as "retained." It happens very often and misleads the courts if they rely on this data.

Guy B. Greco
Tidewater, Oregon
541-270-2043

REGISTER OF ACTIONS

[CASE NO. 24CR05767](#)

State of Oregon vs Jeremy Lynn Blumenshine

§
§
§
§
§
§

Case Type: **Offense Misdemeanor**
 Date Filed: **02/02/2024**
 Location: **Lincoln**
 District Attorney Number: **072500**

PARTY INFORMATION

Defendant	Blumenshine, Jeremy Lynn 955 NW Mill ST #C 10 Waldport, OR 97394 SID: OR16803219	Male White DOB: 1970 5' 11", 180 lbs	Attorneys David G Arganian <i>Retained</i> 206 660-3607(W)
Plaintiff	State of Oregon		Carly R Cannon 503 701-5081(W)

CHARGE INFORMATION

Charges: Blumenshine, Jeremy Lynn	Statute	Level	Date
1. Failure to Perform Duties of Driver-Property Damage	811.700	Misdemeanor Class A	01/27/2024

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
02/05/2024	Plea (Judicial Officer: Benjamin, Amanda R.) 1. Failure to Perform Duties of Driver-Property Damage Not Guilty Created: 02/05/2024 8:44 AM
OTHER EVENTS AND HEARINGS	
02/02/2024	Information Created: 02/02/2024 9:50 AM
02/05/2024	Arraignment (8:30 AM) (Judicial Officer Benjamin, Amanda R.) Result: Held Created: 02/02/2024 9:49 AM
02/05/2024	Order (Judicial Officer: Benjamin, Amanda R.) <i>DEF to apply for CTA / report to Jail for B&R / sign a conditional release : report any changes of phone or contact information to PO,PTS and court</i> Signed: 02/05/2024 Created: 02/05/2024 2:23 PM
03/18/2024	Hearing - Early Resolution Conference (8:30 AM) (Judicial Officer Bachart, Sheryl) Created: 02/05/2024 2:22 PM

Date: February 6th, 2024

Attn. OPDC

Re: Public Comment

Greetings OPDC Commissioners and Executive Director Jessica Kampfe,

I am a mitigation specialist with 22 years' experience working indigent defense cases in Oregon. I am also a member of Defense Investigators of Oregon. I am writing today to address three things.

1. To continue to bring awareness to the ongoing problem of communication and transparency with OPDS.
2. To request that the new "expiration date" for PAEs be changed to 360 days.
3. To ask about the payment schedule and posting of payment times.

Concerning the first issue: I wish to share my own examples and I have also been asked to share some from an attorney's perspective. Recently I reached out to Mr. Amador with some questions and a request in light of the botched timing and communication regarding the raise for mitigation specialists. That was at the beginning of January. I was asked to allow him "a few days" to do some research into it. I have heard nothing. It has been a month. This is not the first time I tried to contact OPDC and simply never heard back.

While there certainly have been some, quick communications with OPDC, many other times I have sent questions/called and left messages that were never returned. I understand that each of the individual exchanges may have their own explanation, as to why they were delayed or deferred or lost, but it is hard not to see this as an overall agency problem when it keeps happening. In prior experiences with previous administrations and also with this one, we continue in the same dynamic of a promise of communication and inclusion that goes without follow-through. It tends to feel as if the promises have been made in bad faith. I am certain that this is simply an organizational problem, as there are good people at OPDC, but you need to do better.

An attorney asked that I bring up the fact that they have been waiting for responses on certain PAE requests for over a month, and have never heard back from other requests for clarification, concerns regarding appointments and other matters. They indicated that they felt there is not a clear "point person" to go to. In these last examples, the lack of communication has created a stall on progress in cases, and it erodes trust. It sends the message that our concerns are not important enough to warrant a response.

In reference to the new "expiration dates" for PAE's, I am sure you will receive much feedback as to why this is too short. There are many reasons that casework can take over 180 days to

complete- and sometimes working with OPDC is one of those reasons. Our overburdened public defense system has created a logjam of cases that have been delayed, and will continue to experience and create other delays. I recognize that this expiration is for benefit of financial planning, but it should not create more work for investigators and attorneys in this current defense crisis. I suggest that a 360 days expiration could be a fair compromise.

Regarding payment schedules. This is not a new issue, and for a while it looked like things were improving. However, I note that am not seeing OPDC post their times between invoice submission and payment and our community reports up to 40 days or more after submission. I would like to urge OPDC to determine what is holding up processing payments, and I would like OPDC to resume reporting payment times. I'm sure all of you can imagine the difficulties that delays and unpredictability in payment/reimbursement could cause in your own lives.

In conclusion: I'd like to see OPDC work toward prompt response in communication with promised follow through, changing the policy to a 12-month expiration for PAEs, and resume publishing payment times while continuing to work toward paying bills within 30 days.

Thank you,

Laura Rittall

From: [Lainie Block Wilker](#)
To: [OPDS info](#)
Subject: OPDS Feb 7 mtg - public comment
Date: Monday, February 5, 2024 10:30:55 AM

Some people who received this message don't often get email from lainie.block.wilker@comcast.net. [Learn why this is important](#)

Dear OPDS,
Please sign me up for public comment on 2/7 (oral & written - see email to OPDS commission below).

Thank you,
Lainie Block Wilker
Attorney & Strategic Consultant
Lainie.block.wilker@comcast.net
503-754-9084
Sent from my iPad

Begin forwarded message:

From: lainie.block.wilker@comcast.net
Date: January 16, 2024 at 6:54:00 PM EST
To: jnash@jinnopc.com, tobinsmithconsulting@gmail.com,
alton.harvey2011@gmail.com, breinhard@lanepds.org, floyd@efn.org,
jenniferparrishtaylor@yahoo.com, john.p.evans@opds.state.or.us, Robert Harris
<RHarris@harrislawsite.com>, sfm@lclark.edu, lininger@uoregon.edu
Subject: **\$30M+ for PDs, Legal Aid, Access to Justice**

Dear OPDC Members,

We share many common colleagues in Oregon's legal community and I appreciate your service on OPDC to ensure access to justice. I thought you might be interested in info on reallocating \$30M Oregon's AG has paid to a private law firm to seal foster care abuse and for Cover Oregon – that could have funded much needed public defenders, legal aid, and other true public interest work. With the AG retiring, the Legislature convening in February, and the ongoing PD crisis, now is a good time to raise this issue and put pressure on the legislature to reallocate budget moving forward. For example, the Legislature will be considering changes to the school funding formula and may consider changing the PD budget to achieve parity with prosecutors. "[Changes to school funding formula, teacher licensing agency on tap for legislative session.](#)" The Oregonian 1/12/24; Brennan Center "[New Paper Calls for Reforms, Funding to Put Public Defenders' Resources on Par with Prosecutors' Offices](#)"

Please see more info with sources below and I am happy to discuss further.

At a time when Oregon cannot provide constitutionally required public defense and cannot provide adequate foster care staffing, \$30M paid to Markowitz could have funded much needed public defenders and foster care caseworkers. [On the federal foster care lawsuit, the AG has hired the Markowitz firm to seal court records over the objections of attorneys representing foster children. Taxpayers have so far paid \\$11M for Markowitz Herbold to defend the state in a case brought by children's advocates Disability Rights Oregon, according to OPB and The Oregonian.](#) [Meanwhile, foster care is severely understaffed by ~800 caseworkers/support staff, according to Secretary of State audits. Foster kids are being sent out-of-state to repurposed jails due to lack of foster homes and residential treatment beds.](#)

[Why is the AG outsourcing work to a private firm, particularly after Markowitz billed the state \\$21.6M for bad results on Cover Oregon per Forbes? Oregon accepted a \\$60M settlement, Cover Oregon cost \\$300M.](#) Why isn't the AG handling this work in-house, [when the Oregon AGs office has the 3rd highest budget nationally per Ballotpedia?](#) \$30M paid to Markowitz could have funded much needed foster care caseworkers, public defenders, and public interest services.

With AG Rosenblum retiring and the Legislature convening, now is a good time to raise issues about this \$30M in outside contracts that should be handled in-house by DOJ – with funding reallocated to PDs, legal aid, true access to justice. Thank you again for your public service to ensure access to justice.

Best,
Lainie Block (former AAG, DDA)
OSB #942528
503-754-9084

AG hires private firm to **block public records** on foster care lawsuit. \$11M to Markowitz to seal court records over objections of attorneys representing foster children.

<https://www.oregonlive.com/pacific-northwest-news/2019/08/oregon-officials-want-to-seal-off-much-of-federal-child-welfare-lawsuit-from-public-view.html>

Markowitz Herbold PC received \$21.6 million in state payments since 2012 – the most outsourced legal work of any firm. Also during this period, Markowitz Herbold PC or affiliates donated \$16,395 to the governor's campaign.

<https://www.forbes.com/sites/adamandrzejewski/2018/10/31/oregon-gov-kate-brown-reaped-2-6m-in-campaign-cash-from-557-state->

[vendors-who-pocketed-4-4b/#3b1ecd803c96](#)

Oregon AG office top 3 highest budget nationally (below California and Texas)

https://ballotpedia.org/Attorney_General_office_comparison

Cover Oregon costs \$300M. State accepts \$60M in Oracle software from company it accused of incompetence and racketeering.

<https://www.wweek.com/portland/article-24754-making-the-law-pay.html>

Foster care understaffed with chronic mismanagement

Child Welfare needs 570 additional caseworkers + 800 support workers

Kids sent out-of-state to repurposed jails due to lack of foster homes

Residential treatment beds

<https://www.opb.org/news/article/oregon-child-welfare-dhs-audit/>

<https://www.opb.org/news/article/audit-oregon-child-welfare-computer-system-problems/>

OREGON COAST DEFENDERS, INC.

**P.O. BOX 102
TIDEWATER, OREGON 97390
541-270-2043**

**GUY B. GRECO
ADMINISTRATOR**

To: Oregon Public Defense Commission

From: Guy B. Greco

Re: Proposed Policy 9.9 Retention Incentive

My name is Guy Greco. I am the administrator of Oregon Coast Defenders, Inc., which provides adult criminal public defense services in Lincoln County. I have administered public defense consortia for nearly 30 years. I provided public defense representation for 43 years, since 1977. I have seen every iteration of service provision over that time.

I urge the Commission to reject the proposed Policy 9.9 Retention Incentive. The policy is impractical and unnecessary. I note that the policy proposes to distribute \$9.9 million of previously appropriated funds as incentive compensation to retain experienced contract providers. On the contrary, this policy is an attempt to force contract providers to provide data on an expedited basis, creating further stressors on our already overburdened providers.

The policy proposes “retention” payments on a quarterly basis through the current contract period ending in June 2025. The first set of payments will be paid on April 15, 2024, without any preconditions. However, the remaining quarterly payments become relabeled “incentive” rather than “retention” payments. Those payments are conditioned upon submission by contract providers of required data reports within five calendar days of the end of the preceding month each month preceding a quarterly payment. These reports are currently due on the 20th day of the succeeding month. While that deadline ostensibly remains in place, contract providers forfeit their right to an “incentive” payment if any reports are not filed within the shorter deadline. Instead of serving to retain providers, this policy will have the opposite effect for several reasons:

First, most providers do not know the extent of their court appointments before the end of a calendar month. Most courts make appointments the entire month and many appointments are made up to and including the last day of every month. Accordingly, the earliest a provider can finalize an accurate data report is the first day of the following month. And that assumes the provider is 1) not in trial, 2) not on vacation, 3) not ill, or 4) does not have other commitments. It further assumes that every provider has the capacity to finalize a report within 24 hours.

Second, the provider in a consortium then must transmit the data to the administrator who must compile, correct, and consolidate the reports of each provider. And that assumes that the administrator is 1) not in trial, 2) not on vacation, 3) not ill, or 4) had no other commitments. Submission then must occur almost immediately thereafter.

This policy is unfair to many providers. It means that if one member of a consortium is late in submitting data which causes the consortium to submit data after the deadline, every member of the

consortium is punished for that failure. So, no one had better be in trial, on vacation or sick, or the entire consortium will suffer. Instead of retaining providers, this policy will have the opposite effect: many providers will simply stop providing indigent defense rather than deal with the increasing amount of stress imposed by the agency. Indeed, one day after I circulated the proposed policy to our members, one of them resigned.

The memorandum accompanying the proposed policy fails to state a reason for it. If it is to compel chronic non-complying providers to submit timely reports, the approach misses the mark. In my 30 years of administering indigent defense consortia, we have *never* missed a data submission deadline. A 20-day deadline allows busy providers to submit their data to me and allows me enough time to compile and submit it to the agency. This proposed policy, in effect, punishes compliant providers by denying additional payments unless they comply with a new, more punitive deadline. Why not simply condition the payments to providers who meet the 20-day deadline in three consecutive months?

If, and this is simply speculation, the agency somehow needs the monthly data sooner, why not simply say so? All the agency would need to do is develop a web portal and have each provider fill in the data on a daily basis as appointments are made and cases are closed. In that way the agency would have real-time data and would not need to compel compliance with a financial incentive/reward. Since the initiation of a monthly MAC quota, I currently provide the courts daily MAC data on each of my providers to enable the courts to apportion case assignments in accordance with each providers' individual MAC. This takes me about five minutes per day.

If you want to financially incentivize retention, creating further stressors do so is not the way to proceed. I am certain that the overwhelming majority of my colleagues would agree that this proposed policy should not be enacted.

From: [Cory Nies](#)
To: [Alena Haines](#)
Cc: [OPDS info](#); [Cory Nies](#)
Subject: Re: Retention Incentive Policy Inquiry
Date: Friday, February 2, 2024 1:10:33 PM

Some people who received this message don't often get email from cory@nieslawllc.com. [Learn why this is important](#)

Hi,

I am following up on Ms. Haines' email regarding my concerns with the current planning for the Retention Incentive Program as it pertains to my consortium (Portland Juvenile Defenders, Inc. ["PJD"]). I am the administrator for PJD. I'd request that the Retention Incentive Program apply to individual firms within our consortium because should one member firm/attorney choose not to participate in the program, the entire group of seven (7) other attorneys would be penalized, despite the others' desire to engage in the Retention Incentive Program/Policy.

Additionally, because there are no administrative funds allocated for the program, it makes it more cumbersome for me to monitor and police all our members so that each attorney or firm files a report within the Retention Incentive guidelines. Frankly, I really don't have a way to compel other members of our consortium to participate in this voluntary program.

Given the above, can you please let me know whether we at PJD can count on the Retention Incentive Program/Policy applying to each of the member firms individually so as to not penalize the whole due to the actions of one firm? (Similar to how one firm may choose to not participate, even if every firm commits to participating one or more may file reports that don't meet the Retention Incentive timelines, thereby penalizing the entirety of the group who may have filed timely reports.)

I look forward to hearing back from you on these matters.

Best regards,

Cory

On Tue, Jan 30, 2024 at 12:37 PM Alena Haines <Alena.Haines@opds.state.or.us> wrote:

Good afternoon,

I just had a call with Cory Nies, who is the contract administrator for Portland Juvenile Defenders, Inc. (PJD); A PCRCP consortium in Multnomah County.

He would like to clarify whether the reporting deadline to qualify for the incentive is a requirement of the whole consortium or individual firms within a consortium? For example, say their consortium has a firm that is not interested in participating and opts not to submit their monthly reporting early, does that mean that all the other firms within the consortium,

who would like to participate and do submit their caseload information by the earlier reporting date are excluded from eligibility for the incentive?

Mr. Nies is copied on this thread if there are any further clarifying questions.

Thank you,

Alena Haines (she/her)

Program Analyst 4, Trial Support & Development

Oregon Public Defense Commission

198 Commercial Street SE, Suite 205

Salem, Oregon 97301

(971) 701-5967

www.oregon.gov/OPDS/

Effective January 1, 2024, our name has changed to Oregon Public Defense Commission

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Nies Law, LLC
Corin Nies, Attorney at Law
PJD Administrator
422 NW 8th Ave., Suite B
Portland, OR 97209
ph/text: (503) 989-0314
fax: (503) 427-9773
email: cory@nieslawllc.com
nieslawllc.org

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From: [Adelina Hernandez](#)
To: [Alan Reynoldson](#)
Cc: [OPDS info](#)
Subject: RE: Retention Incentive
Date: Thursday, February 1, 2024 1:18:20 PM

Alan,

Thank you for your feedback regarding the policy. In case you haven't already, I am forwarding your feedback to the OPDS email.

Adelina Hernandez
Program Analyst 4-Trial Support and Development
Oregon Public Defense Commission
[198 Commercial St. SE, Suite 205](#)
[Salem OR 97301](#)
(971)382-2110
www.oregon.gov/OPDS/

****Effective January 1, 2024 our name has changed to Oregon Public Defense Commission.****

From: Alan Reynoldson <alan.reynoldson@gmail.com>
Sent: Thursday, February 1, 2024 11:27 AM
To: Adelina Hernandez <Adelina.Hernandez@opds.state.or.us>
Subject: Re: Retention Incentive

Adelina, As attorneys we are always excited at the prospect of additional revenues. I forwarded your email above to the other members of our Consortium. They are equally interested however there were some strong reservations at the 5-day filing requirement. The contract we now have says 20 days. No one is opposed to shortening that for the agencies convenience with a little financial incentive but 5 days seems unreasonable. 15 days is what I am hearing from a number of people. When you consider the number of immediate issues

we deal with professionally as well as staff issues that come up from time to time, 5 days is awfully tight to get this done, even if you're not counting weekends.

Clear, we are interested in shortening the timeline with financial incentives, we just want to make sure we're not setting ourselves up for unreasonable expectations and time limits.

Alan

Alan D. Reynoldson
Attorney at Law
148 SE 1st St
Newport, OR 97365
541-265-6554

On Mon, Jan 29, 2024 at 12:54 PM Adelina Hernandez <Adelina.Hernandez@opds.state.or.us> wrote:

Dear Provider,

We know that many of you have been anxiously awaiting information about how the Oregon Public Defense Commission (OPDC) will distribute the \$9.9 million in retention incentive funds that the legislature allocated during the 2023 legislative session. Please find attached the agency's draft policy and accompanying memo to commissioners. Commissioners will be briefed on the draft policy at their meeting on February 7th and will vote on the policy at the March meeting.

There are at least a few ways for you to learn more and provide feedback regarding this draft policy. First, as noted above, commissioners will be briefed on and discuss the policy at **the next commission meeting scheduled for February 7th at 10:00 a.m.**; you may submit public comment at this meeting by emailing OPDS.info@opds.state.or.us. The agency will also host a **[feedback session regarding the policy on Tuesday, February 13th at noon](#)** (click the link to join the Microsoft Teams meeting). This will provide an opportunity for staff to hear directly from you. Finally, you can provide feedback to agency staff regarding this policy at any time by **sending an email to OPDS.info@opds.state.or.us**.

Please share this information with any other members of your organization who may be interested.

Thank you,

Adelina Hernandez
Program Analyst 4-Trial Support and Development
Oregon Public Defense Commission
198 Commercial St. SE, Suite 205
Salem OR 97301
(971)382-2110
www.oregon.gov/OPDS/

****Effective January 1, 2024 our name has changed to Oregon Public Defense Commission.****

From: [Marianne Pearson-Poole](#)
To: [OPDS info](#)
Subject: Retention Incentive
Date: Tuesday, January 30, 2024 4:25:01 PM

Some people who received this message don't often get email from marianne97448@yahoo.com. [Learn why this is important](#)

Hi, I have a question. Our office is in Linn County and is part of a consortium.

My question is, are we to do this as a group or each attorney should send there own to you to get it there faster? Right now we all send to an individual in our group and then she organizes for the group of appx 18 different attorneys. This seems to me to be an extra step that could potentially slow down the process. If we could send it directly to you like the juvenile contract here in Linn County does, we could probably get it to you faster.

What do you think is best?

From: [Jill Weygandt](#)
To: [OPDS info](#)
Subject: Comment on retention incentive policy draft
Date: Tuesday, January 30, 2024 3:31:27 PM

Some people who received this message don't often get email from jmw.veygandtlaw@gmail.com. [Learn why this is important](#)

Good afternoon.

I have reviewed the draft of the policy and I have at least 1 major objection. A significant change to the existing policy of reporting requires that reports be submitted 15 days earlier than the existing policy. This raises several concerns.

1 - depending on the size of the office, many public defenders do not have a dedicated person to complete and submit reports. For example, my office of two attorneys shares staff with Pendleton Law Office - an office with one attorney. We have a total of two support staff. Of that staff, our office lead, Amber, drafts and submits the monthly reports, but she also assigns cases within the offices, coordinates with the courts; is responsible for client billing - as well as internal billing.

2 - One of the reasons that a change to reporting dates would cause substantial problems is that we are not receiving ORACs in a timely manner from the courts. That is, in fact, a lot of the coordination responsibility Amber is shouldering. The courts and/or court staff is still experiencing some confusion regarding ORACs - especially now that verification is again required - and Amber is struggling to get the ORACs in time to complete the reports as things are.

3 - Your draft fails to explain the necessity of changing the deadline for the reports. It mentions incentivizing an early submission, but as I read the draft, that is disingenuous. It does not appear to be the case that those entities able to meet an earlier deadline will benefit in some manner - earlier or larger bonuses, for example - but rather those entities who cannot meet the new deadline will not be eligible for the bonuses.

This seems like another situation where OPDC is attempting to implement a policy and is unable to do so within its own existing timelines. It further appears that OPDC's solution to this problem is to shift the responsibility of the time constraints to the providers and their staffs.

Thank you for your consideration.

--

Jill M. Weygandt, Esq.

Weygandt Law, LLC
Office: 541-612-0941
Cell: 541-377-0128

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From: [Alena Haines](#)
To: [OPDS info](#)
Cc: cory@nieslawllc.com
Subject: Retention Incentive Policy Inquiry
Date: Tuesday, January 30, 2024 12:37:50 PM

Good afternoon,

I just had a call with Cory Nies, who is the contract administrator for Portland Juvenile Defenders, Inc. (PJD); A PCRCP consortium in Multnomah County.

He would like to clarify whether the reporting deadline to qualify for the incentive is a requirement of the whole consortium or individual firms within a consortium? For example, say their consortium has a firm that is not interested in participating and opts not to submit their monthly reporting early, does that mean that all the other firms within the consortium, who would like to participate and do submit their caseload information by the earlier reporting date are excluded from eligibility for the incentive?

Mr. Nies is copied on this thread if there are any further clarifying questions.

Thank you,

Alena Haines (she/her)
Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(971) 701-5967
www.oregon.gov/OPDS/

Effective January 1, 2024, our name has changed to Oregon Public Defense Commission

From: [Mona Riesterer](#)
To: [Amy J. Jackson](#); [Kimberley A. Freeman](#)
Subject: FW: 9.9 Million Retention Incentive Policy
Date: Tuesday, January 30, 2024 8:15:00 AM

Another one.

Thank you,

Mona Riesterer

Executive Assistant to: Jessica Kampfe, Executive Director | Emese Perfecto, Deputy Director
Oregon Public Defense Commission

Effective January 1, 2024, our name has changed to Oregon Public Defense Commission

From: Megan A. Doak <Megan.A.Doak@opds.state.or.us>
Sent: Tuesday, January 30, 2024 8:13 AM
To: Cole Chase <cole@attorneycolechase.com>
Cc: OPDS info <OPDS.info@opds.state.or.us>
Subject: RE: 9.9 Million Retention Incentive Policy

Your understanding is correct. You take the rate times your FTE and that is how much of the incentive you would receive.

Thanks!

Megan Doak
Lead Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(503) 871-3039
www.oregon.gov/OPDS/

From: Cole Chase <cole@attorneycolechase.com>
Sent: Monday, January 29, 2024 4:49 PM
To: Megan A. Doak <Megan.A.Doak@opds.state.or.us>
Subject: RE: 9.9 Million Retention Incentive Policy

Hi Megan

Can I get some clarification please?

Phil and I have read this differently. He thinks it is an additional full-month contract payment. I see it as \$2980 x FTE.

I have 1FTE, so my April 15 payment would be \$2980.

Phil has less than one FTE, so his payment would be whatever fraction of a FTE he has (x \$2980).

Who is correct?

Cole Chase
Attorney at Law
LMT Defenders
Tele: 541-887-0208

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From: Megan A. Doak <Megan.A.Doak@opds.state.or.us>

Sent: Monday, January 29, 2024 2:03 PM

To: Megan A. Doak <Megan.A.Doak@opds.state.or.us>

Subject: 9.9 Million Retention Incentive Policy

Good Afternoon,

We know that many of you have been anxiously awaiting information about how the Oregon Public Defense Commission (OPDC) will distribute the \$9.9 million in retention incentive funds that the legislature allocated during the 2023 legislative session. Please find attached the agency's draft policy and accompanying memo to commissioners. Commissioners will be briefed on the draft policy at their meeting on February 7th and will vote on the policy at the March meeting.

There are at least a few ways for you to learn more and provide feedback regarding this draft policy. First, as noted above, commissioners will be briefed on and discuss the policy at the next commission meeting scheduled for February 7th at 10:00 a.m.; you may submit public comment at this meeting by emailing OPDS.info@opds.state.or.us. The agency will also host a [feedback session regarding the policy on Tuesday, February 13th at noon](#) (click the link to join the Microsoft Teams meeting). This will provide an opportunity for staff to hear directly from you. Finally, you can provide feedback to agency staff regarding this policy at any time by sending an email to OPDS.info@opds.state.or.us.

Please share this information with any other members of your organization who may be

interested.

Thanks!

Megan Doak
Lead Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(503) 871-3039
www.oregon.gov/OPDS/

From: [Benjamin L. McCartney](#)
To: [OPDS info](#)
Cc: [Dan Stephens](#)
Subject: FW: Incentive Payments & Reporting Timelines
Date: Monday, January 29, 2024 10:40:33 PM

Good evening,

Please see the response below to the draft incentive payment from Dan Stephens, one of our contract administrators in Umatilla and Morrow counties, below. Dan provides context and detail to the experiences of all of our contractors as well as some unique challenges presented by the way the jurisdiction functions.

Thank you,

BJ McCartney (*he/him*)
Program Analyst 4, Trial Division
Oregon Public Defense Commission
Contract Services
198 Commercial Street SE, Suite #205
Salem, OR 97301
(503) 991-9417 (cell)
www.oregon.gov/OPDC

From: Daniel E. Stephens <bmd@danstephensattorney.com>
Sent: Monday, January 29, 2024 3:03 PM
To: Benjamin L. McCartney <Benjamin.L.McCartney@opds.state.or.us>
Subject: Incentive Payments & Reporting Timelines

BJ -

Looking at the meeting materials for February 7th, the draft proposal establishes an impossible timeline for data submission by contractors.

Eligibility for incentive funding requires the monthly report data be submitted by the 5th or 6th of the next month. So, March 2024 report data must be submitted by April 5th, etc.

This, once again, reflects decisions by decision makers who have no concept of how contractors do their job.

BMD does NOT get timely Orders Appointing Counsel (ORAC) from the courts. If we are appointed to a case on the last day of the month, it sometimes takes more than a week to receive an ORAC for the case. BMD does not receive all our appointments by the 5th of any given month, let alone be in a position to report those appointments. That is why the contract allows contractors until the 20th of the following month, to report the prior month's appointment.

If BMD is required to report by the 5th to qualify for the incentive payment, we will do so. However, the report will be inaccurate and will necessitate a later amended report to ensure all our appointments are credited. Putting contractors into a more restrictive timeline makes no sense, and will only skew the data accuracy. There seems to be, as there usually is, some thought at OPDC that these lazy-good-for-nothing contractors needs to act more promptly, when the reality is contractors are most often wafting for the courts to do their job, so we can do ours. It would be nice if, just once in a while, the Policy Division and the Executive Committee understood some realities.

Perhaps thoughtful persons like yourself can inject some rationality into the process of incentive funding.

Dan

--

Daniel Stephens, Attorney at Law
PO Box 749, Hermiston OR 97838
Ph# (541) 567-1545
Fax# (541) 567-1589



AMERICAN CIVIL LIBERTIES UNION

Oregon

May 22, 2023

Senate Committee on Rules
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Support of SB 337 with -5 Amendment, with concern about maintaining constitutional independence and request that the Governor's unlimited powers over PDSC and OPDS be temporary

Chair Lieber, Vice-Chair Knopp, and Committee Members,

The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights with more than 27,000 members statewide.

The purpose of this letter is to provide our position on the -5 amendment which incorporates the following requests made by the Governor as part of SB 337's transfer of oversight of public defense from the judiciary to the executive branch:

- Allow the Governor to appoint the director with confirmation by the Senate. The director would serve at the pleasure of the Governor. This would bring the agency in line with other public safety agencies in the executive branch.
- Allow the Governor to remove Commission members at her discretion.
- Require that the agency be subject to the same human resources guidelines and policies as other executive branch agencies.
- Empower an implementation workgroup composed of members of the executive, legislative, and judicial branches to monitor the progress of the commission and agency.

The ACLU of Oregon supports SB 337 with the -5 amendment. However, we are concerned about the Governor's request that the director of the Office of Public Defense Services (OPDS) serve at her pleasure and that she have the power to remove members of the Public Defense Services Commission (PDSC) at her discretion.

The independence of the public defense system is constitutionally mandated. *Polk County v. Dodson*, 454 U.S. 312 (1981). For decades, public defense experts have emphasized the need for the public defense function to be free from the whims of politics so that public defenders can zealously advocate for their clients and for state accountability to constitutional safeguards. The critical value of independence should not be compromised lightly, and all government leaders should remain vigilant in building a public defense system grounded in the American Bar Association Principles for the public defense system, which start with independence.¹

So that our state does not eschew its constitutional mandate, we request that the Governor only hold such immense power over public defense on a temporary basis while she engages in the urgent oversight needed to ensure that the public defense system transitions effectively to the executive branch and is brought into compliance with other constitutional mandates, as well as legal mandates to ensure public systems are equitable and fair.

- I. We agree with the Governor that at the current time, she needs sufficient oversight tools to create necessary change and accountability with public defense; indeed, in our experience, PDSC and OPDS’s internal legal compliance, risk management, and accountability mechanisms appear to be broken.**

The Governor is requesting additional oversight powers over PDSC and the OPDS ED because she believes such powers are necessary to address the level of dysfunction that currently exists with our state’s public defense agency. Although we have concerns about the impact of such unlimited powers on the constitutionally-required independence of public defense, we do not disagree with the Governor’s position that such powers may be necessary as public defense transitions to be overseen by her office. The ACLU of Oregon’s own experience with PDSC and OPDS indicates that the agency has been unable to meet basic and core organizational requirements such as legal compliance, risk management, and accountability mechanisms.

- ❖ ***Our experience with the agency indicates that entrenched senior leadership may not take seriously their responsibility to comply with the law and ensure appropriate accountability; the agency has failed to fully and timely investigate and address significant concerns about potential unlawful practices such as retaliation and gender-related pay inequities.***

¹ [ABA Ten Principles of a Public Defense Delivery System](#)

During 2021, ten people – mostly women defense attorneys – communicated with the ACLU of Oregon about significant concerns in two main areas: (1) that many of these individuals had faced serious situations of retaliation from OPDS, including multiple situations of retaliation by the same leadership-level male employee of OPDS, and (2) that there appeared to be systemic issues of OPDS paying women defense attorneys less pay than male defense attorneys for comparable work.

We communicated these concerns to PDSC and OPDS in August 2021, and Ed Jones, the Interim ED at that time, initiated an investigation via a third party investigator.

It is deeply troubling that as of today – almost 22 months after we raised the concerns to PDSC – the investigation still has not been finished and no actions have been taken to address the significant concerns raised by so many women attorneys.

After we asked PDSC for an update about the investigation in October 2022, the Oregon Department of Justice let us know, “The investigation was paused because of a **delay in OPDS producing information** responsive to Ms. Goldsmith’s [the investigator’s] requests.” [Bolding added]

The current Executive Director, Jessica Kampfe, was hired in October 2022 and was not at OPDS when we initially communicated the concerns to PDSC in August 2021. However, there are other senior leaders at PDSC and OPDS who have long held positions of power, and the lack of a completed investigation indicates little to no apparent effort by these senior leaders to facilitate oversight. This deteriorates public trust and raises questions about why some might be uninvested in reaching answers and accountability.

The fact that entrenched senior leadership at PDSC and OPDS is unable to or refuses to ensure that the agency completes a full investigation of serious, potentially unlawful conduct so that they can appropriately address the situation is consistent with the Governor’s observation that this agency is “not fully functioning.” Indeed, this situation indicates that the agency’s leadership is unable to ensure basic and core functions such as legal compliance, risk management, and accountability mechanisms. As such, we support, on a temporary basis, the Governor’s request for the oversight powers that she has requested to address the very troubling lack of accountability and basic functioning for the agency charged to provide such a critical constitutional right.

❖ ***Our collective experience indicates that PDSC’s senior leadership may not have necessary competence in hiring and management practices to effectively oversee and ensure a functioning public defense agency.***

It is no secret that before Ms. Kampfe was hired into the executive director position in October 2022, there were multiple situations involving OPDS’s two prior executive directors that raised serious concerns about lack of effective and competent management at PDSC and OPDS. The following are some of the news headlines about these situations along with links to the articles in the footnotes:

- June 19, 2019: “A New Bar Complaint Against the State’s Top Public Defender Comes as His Agency Seeks a Total Revamp—and a Lot More Money; Metropolitan Public Defender has fought to keep the details of the bar complaint secret”²
- June 14, 2021: “Oregon Office of Public Defense Services out of money: ‘It’s a tough thing to try to explain’”³
- August 15, 2022: “Dysfunction at Oregon public defense agency revealed in memo”⁴
- August 18, 2022: “The head of Oregon’s public defense system is fired, after months of tumult”⁵
- October 11, 2022: “Former Oregon public defense leader files lawsuit over firing”⁶

The fact that between 2018 and 2023, OPDS has had three executive directors and one interim – and that one of these EDs was in the position for less than eight months and has a current lawsuit against the State of Oregon – also raises significant questions about whether PDSC has been able to engage in effective hiring and management practices regarding OPDS’s executive director.

In most situations, the ACLU of Oregon would not support a proposal by the Governor that the OPDS executive director serve at her pleasure and that she be able to remove PDSC members at her discretion. But independence also cannot become a shield for evading accountability for a constitutional crisis and serious allegations of retaliation and discrimination.

² [June 19, 2019 Willamette Week article.](#)

³ [June 14, 2021 Oregonian article.](#)

⁴ [August 15, 2022 Oregonian article.](#)

⁵ [August 18, 2022 OPB article.](#)

⁶ [October 11, 2022 OPB article.](#)

Unfortunately, Oregon’s collective experience with PDSC and OPDS over the past five years consists of multiple alarming situations demonstrating this agency’s inability to navigate basic and core organizational functions including legal compliance, risk management, and accountability mechanisms.

We are hopeful that Ms. Kampfe’s leadership will help repair and restore these basic functions. We also agree with the Governor that in order to best ensure needed change with this agency, the Governor should be provided with what we consider to be emergency powers that are necessary for effective oversight of this agency at this time.

We only support the Governor having such powerful tools on a temporary basis, and we believe that strong and effective leadership of public defense in Oregon will find a path that is constitutional, grounded in care and equity, and invested in decreasing Oregon’s overreliance on the criminal legal system.

II. In order to meet constitutional requirements, there should be a clear and timely transition plan to create independence for PDSC and OPDS.

Experts on constitutional requirements and public defense are clear that:

- “Professional and political independence of public defender services is required to ensure that clients receive constitutional representation and that the results produced by the criminal legal system are valid and reliable.”⁷
- “The primary structural method of ensuring independence is the creation of a nonpartisan Governing Board that oversees the delivery of defender services and does not interfere with the individual representation of clients.”⁸
- “The public defense function, including the selection, funding, and payment of defense counsel, is independent.”⁹
- “... national standards call for states to create independent statewide commissions in which members are selected by diverse appointing authorities, so that no single branch of government has the ability to usurp power over the chief defender or exert outsized influence over the delivery of public defense services.”¹⁰

⁷ [NAPD Policy Statement.](#)

⁸ *Id.*

⁹ [ABA Ten Principles of a Public Defense Delivery System](#)

¹⁰ [Sixth Amendment Center. “The Right to Counsel in Oregon.”](#)

We believe that Oregon's leaders, including the Governor, embrace constitutional requirements, best practices, and truly wish to establish a public defense system in Oregon that meets the state's constitutional and moral obligations to Oregonians.

We request that the Governor and legislative leaders work together to ensure that the powers requested by the Governor are granted on a temporary basis and that the state engage in steps before the end of the Governor's current term to provide independence to public defense consistent with constitutional principles and best practices.

III. Important reminder: we cannot address the public defense emergency in Oregon without creating necessary checks and balances on unnecessary prosecutions in our criminal legal system.

As the Legislature acts, it is important to keep in mind why our public defense system is unable to meet the constitutional rights of Oregonians who cannot afford a lawyer.

The fundamental challenges faced by public defense in Oregon arise from our state's failure to create necessary checks and balances on prosecutions in our criminal legal system, as well as a general overreliance on the system to respond to public health needs. Like most other states in our country, Oregon has continued to increase its criminal codes and increase the number of people who are arrested, charged, convicted, and incarcerated. Instead of focusing our criminal legal system resources on crimes that actually affect public safety, the system is too often used to police and lock up people who are of color, poor, homeless, have physical or mental disabilities, have health situations involving substance abuse, hold other marginalized identities, or have otherwise fallen through our society's lack of effective social safety nets.

If our state is unable to fix the fundamental problem of over-criminalization instead of providing strong social safety nets, Oregon will continue to see an under-resourced, unconstitutional public defense system.

Please contact us if you have any questions or we can be of assistance.

Thank you,

Jessica Maravilla
Policy Director, ACLU of Oregon

Sandy Chung
Executive Director, ACLU of Oregon

Enclosures: Our communications regarding the women attorneys' concerns are at www.aclu-or.org/en/campaigns/fighting-gender-based-discrimination-public-defense-system

From: [Jessica Kampfe](#)
To: [Mona Riesterer](#)
Subject: FW: ACLU of Oregon Request for Investigation into Pay Inequity and Retaliation Against Women
Date: Tuesday, February 6, 2024 11:58:41 AM
Attachments: [image003.png](#)
[ACLU of Oregon Position on SB 337, -5 Amendment \(5.22.23\).pdf](#)
[Letter to PDSC about investigation - with attachment \(10.5.22\).pdf](#)

This appears to be public comment for the commission meeting

From: Kelly Simon <KSimon@aclu-or.org>
Sent: Tuesday, February 6, 2024 10:16 AM
To: Adrian Tobin-Smith <Adrian.Tobin-Smith@opdc.state.or.us>; Alton Harvey <Alton.Harvey@opdc.state.or.us>; Bob Selander <Bob.Selander@opdc.state.or.us>; Brook Reinhard <Brook.Reinhard@opdc.state.or.us>; Floyd Prozanski <Floyd.Prozanski@opdc.state.or.us>; Jasmine Wright <Jasmine.Wright@opdc.state.or.us>; Jennifer Nash <Jennifer.Nash@opdc.state.or.us>; Jennifer Parrish-Taylor <Jennifer.Parrish-Taylor@opdc.state.or.us>; Paul Evans <Paul.Evans@opdc.state.or.us>; Peter Buckley <Peter.Buckley@opdc.state.or.us>; Robert Harris <Robert.Harris@opdc.state.or.us>; Susan Mandiberg <Susan.Mandiberg@opdc.state.or.us>; Tom Lininger <Tom.Lininger@opdc.state.or.us>
Cc: Sandy Chung <SChung@aclu-or.org>; Jessica Kampfe <Jessica.Kampfe@opds.state.or.us>; Jill <jill@workplacesolutionsnw.com>; Wilson Margaret J <margaret.j.wilson@doj.state.or.us>
Subject: ACLU of Oregon Request for Investigation into Pay Inequity and Retaliation Against Women

You don't often get email from ksimon@aclu-or.org. [Learn why this is important](#)

Dear OPDC Members,

The ACLU of Oregon writes to ensure that you have context for the [agenda](#) item titled “Presentation on 2021 ACLU Pay Equity Complaint” that appears in the meeting materials for this Wednesday, February 7, 2024.

In August 2021, the ACLU of Oregon called on OPDS to investigate potential situations of pay inequity *and retaliation* against women defense attorneys. We made this request with your predecessors after multiple women defense attorneys shared deeply concerning information with us – including that a current senior staff member at the agency had engaged in retaliatory type conduct towards them after the women made complaints or shared concerns related to their OPDS work. The conduct included efforts to interfere with their economic relationship with OPDS.

This context is a significant part of why the ACLU of Oregon took the extraordinary step to temporarily support strong executive branch oversight of OPDS, despite the risks that such power poses to the ability of the state’s public defense system to remain independent as the constitution demands. As we emphasize in the attached letters, we have serious concerns about the several-year duration of this investigation and a strong interest in seeing that the investigation’s considerations and conclusions are transparent for the public.

We are relieved that some information will finally be coming to light, and we urge the Commission to push strongly for as much transparency as possible. We also urge the Commission to seek transparent information about OPDS staff engagement with the investigation (which may have involved obstruction), as well as information about the retaliation component of the investigation that does not appear to be on this week’s agenda.

Finally, we note that Ms. Kampfe was not the director during much of the investigation period and appreciate her leadership in seeing the investigation through to completion.

Sincerely,

Kelly Simon

Pronouns: she, her

Legal Director

American Civil Liberties Union of Oregon

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aclu-or.org  



Addressing Oregon's drug addiction crisis with justice, equity, and care is one of our top priorities as we head into the new year and upcoming legislative session. Check out our [resource hub on real Solutions for Safe and Just Communities](#) to learn more. [Join or renew your membership](#) to sustain this important work today!

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AMERICAN CIVIL LIBERTIES UNION

Oregon

May 22, 2023

Senate Committee on Rules
Oregon State Legislature
900 Court St. NE
Salem, OR 97301

RE: Testimony in Support of SB 337 with -5 Amendment, with concern about maintaining constitutional independence and request that the Governor's unlimited powers over PDSC and OPDS be temporary

Chair Lieber, Vice-Chair Knopp, and Committee Members,

The ACLU of Oregon is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights with more than 27,000 members statewide.

The purpose of this letter is to provide our position on the -5 amendment which incorporates the following requests made by the Governor as part of SB 337's transfer of oversight of public defense from the judiciary to the executive branch:

- Allow the Governor to appoint the director with confirmation by the Senate. The director would serve at the pleasure of the Governor. This would bring the agency in line with other public safety agencies in the executive branch.
- Allow the Governor to remove Commission members at her discretion.
- Require that the agency be subject to the same human resources guidelines and policies as other executive branch agencies.
- Empower an implementation workgroup composed of members of the executive, legislative, and judicial branches to monitor the progress of the commission and agency.

The ACLU of Oregon supports SB 337 with the -5 amendment. However, we are concerned about the Governor's request that the director of the Office of Public Defense Services (OPDS) serve at her pleasure and that she have the power to remove members of the Public Defense Services Commission (PDSC) at her discretion.

The independence of the public defense system is constitutionally mandated. *Polk County v. Dodson*, 454 U.S. 312 (1981). For decades, public defense experts have emphasized the need for the public defense function to be free from the whims of politics so that public defenders can zealously advocate for their clients and for state accountability to constitutional safeguards. The critical value of independence should not be compromised lightly, and all government leaders should remain vigilant in building a public defense system grounded in the American Bar Association Principles for the public defense system, which start with independence.¹

So that our state does not eschew its constitutional mandate, we request that the Governor only hold such immense power over public defense on a temporary basis while she engages in the urgent oversight needed to ensure that the public defense system transitions effectively to the executive branch and is brought into compliance with other constitutional mandates, as well as legal mandates to ensure public systems are equitable and fair.

- I. We agree with the Governor that at the current time, she needs sufficient oversight tools to create necessary change and accountability with public defense; indeed, in our experience, PDSC and OPDS’s internal legal compliance, risk management, and accountability mechanisms appear to be broken.**

The Governor is requesting additional oversight powers over PDSC and the OPDS ED because she believes such powers are necessary to address the level of dysfunction that currently exists with our state’s public defense agency. Although we have concerns about the impact of such unlimited powers on the constitutionally-required independence of public defense, we do not disagree with the Governor’s position that such powers may be necessary as public defense transitions to be overseen by her office. The ACLU of Oregon’s own experience with PDSC and OPDS indicates that the agency has been unable to meet basic and core organizational requirements such as legal compliance, risk management, and accountability mechanisms.

- ❖ ***Our experience with the agency indicates that entrenched senior leadership may not take seriously their responsibility to comply with the law and ensure appropriate accountability; the agency has failed to fully and timely investigate and address significant concerns about potential unlawful practices such as retaliation and gender-related pay inequities.***

¹ [ABA Ten Principles of a Public Defense Delivery System](#)

During 2021, ten people – mostly women defense attorneys – communicated with the ACLU of Oregon about significant concerns in two main areas: (1) that many of these individuals had faced serious situations of retaliation from OPDS, including multiple situations of retaliation by the same leadership-level male employee of OPDS, and (2) that there appeared to be systemic issues of OPDS paying women defense attorneys less pay than male defense attorneys for comparable work.

We communicated these concerns to PDSC and OPDS in August 2021, and Ed Jones, the Interim ED at that time, initiated an investigation via a third party investigator.

It is deeply troubling that as of today – almost 22 months after we raised the concerns to PDSC – the investigation still has not been finished and no actions have been taken to address the significant concerns raised by so many women attorneys.

After we asked PDSC for an update about the investigation in October 2022, the Oregon Department of Justice let us know, “The investigation was paused because of a **delay in OPDS producing information** responsive to Ms. Goldsmith’s [the investigator’s] requests.” [Bolding added]

The current Executive Director, Jessica Kampfe, was hired in October 2022 and was not at OPDS when we initially communicated the concerns to PDSC in August 2021. However, there are other senior leaders at PDSC and OPDS who have long held positions of power, and the lack of a completed investigation indicates little to no apparent effort by these senior leaders to facilitate oversight. This deteriorates public trust and raises questions about why some might be uninvested in reaching answers and accountability.

The fact that entrenched senior leadership at PDSC and OPDS is unable to or refuses to ensure that the agency completes a full investigation of serious, potentially unlawful conduct so that they can appropriately address the situation is consistent with the Governor’s observation that this agency is “not fully functioning.” Indeed, this situation indicates that the agency’s leadership is unable to ensure basic and core functions such as legal compliance, risk management, and accountability mechanisms. As such, we support, on a temporary basis, the Governor’s request for the oversight powers that she has requested to address the very troubling lack of accountability and basic functioning for the agency charged to provide such a critical constitutional right.

❖ ***Our collective experience indicates that PDSC’s senior leadership may not have necessary competence in hiring and management practices to effectively oversee and ensure a functioning public defense agency.***

It is no secret that before Ms. Kampfe was hired into the executive director position in October 2022, there were multiple situations involving OPDS’s two prior executive directors that raised serious concerns about lack of effective and competent management at PDSC and OPDS. The following are some of the news headlines about these situations along with links to the articles in the footnotes:

- June 19, 2019: “A New Bar Complaint Against the State’s Top Public Defender Comes as His Agency Seeks a Total Revamp—and a Lot More Money; Metropolitan Public Defender has fought to keep the details of the bar complaint secret”²
- June 14, 2021: “Oregon Office of Public Defense Services out of money: ‘It’s a tough thing to try to explain’”³
- August 15, 2022: “Dysfunction at Oregon public defense agency revealed in memo”⁴
- August 18, 2022: “The head of Oregon’s public defense system is fired, after months of tumult”⁵
- October 11, 2022: “Former Oregon public defense leader files lawsuit over firing”⁶

The fact that between 2018 and 2023, OPDS has had three executive directors and one interim – and that one of these EDs was in the position for less than eight months and has a current lawsuit against the State of Oregon – also raises significant questions about whether PDSC has been able to engage in effective hiring and management practices regarding OPDS’s executive director.

In most situations, the ACLU of Oregon would not support a proposal by the Governor that the OPDS executive director serve at her pleasure and that she be able to remove PDSC members at her discretion. But independence also cannot become a shield for evading accountability for a constitutional crisis and serious allegations of retaliation and discrimination.

² [June 19, 2019 Willamette Week article.](#)

³ [June 14, 2021 Oregonian article.](#)

⁴ [August 15, 2022 Oregonian article.](#)

⁵ [August 18, 2022 OPB article.](#)

⁶ [October 11, 2022 OPB article.](#)

Unfortunately, Oregon’s collective experience with PDSC and OPDS over the past five years consists of multiple alarming situations demonstrating this agency’s inability to navigate basic and core organizational functions including legal compliance, risk management, and accountability mechanisms.

We are hopeful that Ms. Kampfe’s leadership will help repair and restore these basic functions. We also agree with the Governor that in order to best ensure needed change with this agency, the Governor should be provided with what we consider to be emergency powers that are necessary for effective oversight of this agency at this time.

We only support the Governor having such powerful tools on a temporary basis, and we believe that strong and effective leadership of public defense in Oregon will find a path that is constitutional, grounded in care and equity, and invested in decreasing Oregon’s overreliance on the criminal legal system.

II. In order to meet constitutional requirements, there should be a clear and timely transition plan to create independence for PDSC and OPDS.

Experts on constitutional requirements and public defense are clear that:

- “Professional and political independence of public defender services is required to ensure that clients receive constitutional representation and that the results produced by the criminal legal system are valid and reliable.”⁷
- “The primary structural method of ensuring independence is the creation of a nonpartisan Governing Board that oversees the delivery of defender services and does not interfere with the individual representation of clients.”⁸
- “The public defense function, including the selection, funding, and payment of defense counsel, is independent.”⁹
- “... national standards call for states to create independent statewide commissions in which members are selected by diverse appointing authorities, so that no single branch of government has the ability to usurp power over the chief defender or exert outsized influence over the delivery of public defense services.”¹⁰

⁷ [NAPD Policy Statement.](#)

⁸ *Id.*

⁹ [ABA Ten Principles of a Public Defense Delivery System](#)

¹⁰ [Sixth Amendment Center. “The Right to Counsel in Oregon.”](#)

We believe that Oregon's leaders, including the Governor, embrace constitutional requirements, best practices, and truly wish to establish a public defense system in Oregon that meets the state's constitutional and moral obligations to Oregonians.

We request that the Governor and legislative leaders work together to ensure that the powers requested by the Governor are granted on a temporary basis and that the state engage in steps before the end of the Governor's current term to provide independence to public defense consistent with constitutional principles and best practices.

III. Important reminder: we cannot address the public defense emergency in Oregon without creating necessary checks and balances on unnecessary prosecutions in our criminal legal system.

As the Legislature acts, it is important to keep in mind why our public defense system is unable to meet the constitutional rights of Oregonians who cannot afford a lawyer.

The fundamental challenges faced by public defense in Oregon arise from our state's failure to create necessary checks and balances on prosecutions in our criminal legal system, as well as a general overreliance on the system to respond to public health needs. Like most other states in our country, Oregon has continued to increase its criminal codes and increase the number of people who are arrested, charged, convicted, and incarcerated. Instead of focusing our criminal legal system resources on crimes that actually affect public safety, the system is too often used to police and lock up people who are of color, poor, homeless, have physical or mental disabilities, have health situations involving substance abuse, hold other marginalized identities, or have otherwise fallen through our society's lack of effective social safety nets.

If our state is unable to fix the fundamental problem of over-criminalization instead of providing strong social safety nets, Oregon will continue to see an under-resourced, unconstitutional public defense system.

Please contact us if you have any questions or we can be of assistance.

Thank you,

Jessica Maravilla
Policy Director, ACLU of Oregon

Sandy Chung
Executive Director, ACLU of Oregon

Enclosures: Our communications regarding the women attorneys' concerns are at www.aclu-or.org/en/campaigns/fighting-gender-based-discrimination-public-defense-system

OPDC 6 Year Plan to Reduce the Public
Defender Deficit Final Report



FINAL REPORT

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

March 15, 2024

This report has been produced by Moss Adams LLP and the JFA Institute. The findings, views, and opinions expressed in this report are those of the authors.

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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

ACKNOWLEDGMENTS

This report would not be possible without the expertise and collaboration of several individuals whose expertise and assistance greatly enriched this work. Their support, guidance, and commitment were invaluable throughout the process.

First and foremost, Moss Adams LLP (Moss Adams) would like to sincerely thank the Oregon Public Defense Commission (OPDC) for their engagement throughout this project. Eric Deitrick, K.O. Berger, Gabriel Dougherty, Jessica Kampfe, and many others at OPDC contributed their time and expertise. Their leadership and engagement were critical in making this report possible.

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*.

James Austin, Ph.D. is the President of the JFA Institute. He is the former director of the Institute on Crime, Justice and Corrections at George Washington University in Washington, D.C., and former Executive Vice President for the National Council on Crime and Delinquency. He has served as director for several large U.S. Department of Justice-funded research and evaluation programs and has served as the project director of the Bureau of Justice Assistance projects. James provides technical assistance to state and local jails, probation, parole, and prison systems.

Malia Brink serves as Senior Policy Attorney at the Deason Criminal Justice Reform Center at SMU Dedman School of Law. Malia has spent more than 20 years working in criminal justice research and reform advocacy. Prior to joining the Deason Center, she served as the Counsel for Indigent Defense to the American Bar Association (ABA) Standing Committee on Legal Aid and Indigent Defense (SCLAID). While at the ABA, Malia served as Deputy Director for the ABA SCLAID's Public Defender Workload Study Projects and the Misdemeanor Court Observation Projects. She is the co-author of the National Public Defense Workload Study published by the RAND Corporation in 2023.

Stephen F. Hanlon is a nationally recognized indigent defense expert who served as the Project Director for seven ABA workload studies from 2012 to 2022, including *the Oregon Project*. In 2014, while serving as General Counsel for the National Association for Public Defense (NAPD), he initiated groundbreaking reforms in public defense workload standards that led to the publication of the National Public Defense Workload Study (NPDWS) in 2023. The NPDWS replaced the half-century-old 1973 National Advisory Commission (NAC) Standards. Stephen served as the Pro Bono Partner at Holland & Knight for 23 years, from 1989 to 2012.

Additional contributions were provided by the Oregon Office of Economic Analysis (OEA) and the Oregon Criminal Justice Commission.

This work is possible because of the foundational *The Oregon Project* report.

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

¹ 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](#).

² 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.

³ 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
Percent Adult Criminal Attorney Deficiency at End of Year	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)⁴ 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
OPDC Total Operating Budget Trend	\$576,276,124	\$709,626,419	\$873,833,972	\$1,076,039,153
Cost to Fund Additional Attorney FTE		\$77,189,760	\$154,379,520	\$231,569,280
Total Funding Needs by Year		\$786,816,179	\$1,028,213,492	\$1,307,608,433
Percent Additional Budget to be Requested from the State		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).

⁴ 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
Decriminalization Impact on Attorney FTE		
Total 2022 Charges Filed:	293,205	
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%
Reduced Defense FTE (18,526 x 22.26 hrs. per case/2080 hrs. per FTE)		198 FTE

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
Net Reduction	-(\$215,000,000)

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
Forecasted 2031 Attorney FTE need and FY2029–2031 Funding Need	986	\$1,307,608,433
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)
Updated Attorney Need for 2031 and Estimated Operating Budget	583	\$1,224,797,579
Total Difference Between 2031 Forecast, and Impact of Policy and Staffing Interventions	- (403)	- (\$82,810,854)

Estimated cost impacts are a calculation of the annual attorney contract amount and the number of attorney FTEs. It does not reflect the fully burdened⁵ 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.

⁵ 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*.⁶ *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

⁶ 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).⁷ *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*⁸ 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.

⁷ 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.

⁸ *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,⁹ 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.¹⁰

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.

⁹ 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/.

¹⁰ 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.¹¹ 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 ¹²	Estimated Annual Caseload (2023 Data) ¹³	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
Total Adult Criminal		72,823	2,226,394

¹¹ 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.

¹² Per the Adult Criminal Delphi panel results, see *The Oregon Project*.

¹³ 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
ADULT CRIMINAL CASELOAD HOURS							
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
ADULT CRIMINAL STAFFING IMPACTS							
Additional Funded Attorney FTE		80	80	80	80	80	80
TOTAL IMPACT ON ADULT CRIMINAL ATTORNEY DEFICIENCY							
Adult Criminal Attorney FTE Need	1,070	1,056	1,041	1,027	1,013	999	986
Current Adult Criminal FTEs ¹⁴	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

¹⁴ 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
OPDC Total Operating Budget Trend	\$576,276,124	\$709,626,419	\$873,833,972	\$1,076,039,153
Cost to Fund Additional Attorney FTE		\$77,189,760	\$154,379,520	\$231,569,280
Total Funding Needs by Year		\$786,816,179	\$1,028,213,492	\$1,307,608,433
Percent Additional Budget to be Requested from the State		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.¹⁵ 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

¹⁵ 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 110¹⁶ 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
Recommended Decriminalization of Low-Level Non-Violent Misdemeanors		
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%

¹⁶ 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%
Subtotal of Recommended Decriminalization:	22,294	7.6%
Other Crimes to be Revised by Legislature		
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%
Subtotal of Other Crimes:	4,315	1.5%
“Other Crimes” Subtotal Reduced by 80%:	863	0.3%
Decriminalization Impact on Attorney FTE		
Total 2022 Charges Filed:	293,205	
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%
Reduced Defense FTE (18,526 x 22.26 hrs. per case/2080 hrs. per FTE)		198 FTE

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 11.¹⁷ 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.¹⁸ 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%
Total percent of Measure 11 Cases that Could be Reduced to Mid-Level-Felonies			66%
IMPACT ANALYSIS OF RECLASSIFICATION RECOMMENDATION			
Delphi – Avg. Hours per High-Level Felony Case:			148.95
Delphi – Avg. Hours per Mid-Level Felony Case:			47.73
Difference (Hours Savings) per Case:			101.22

¹⁷ 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.

¹⁸ 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
Total Hours Savings for Average Annual Caseload:			107,901
Annual FTE Savings:			51.88
Annual Cost Savings¹⁹:			\$12,543,336

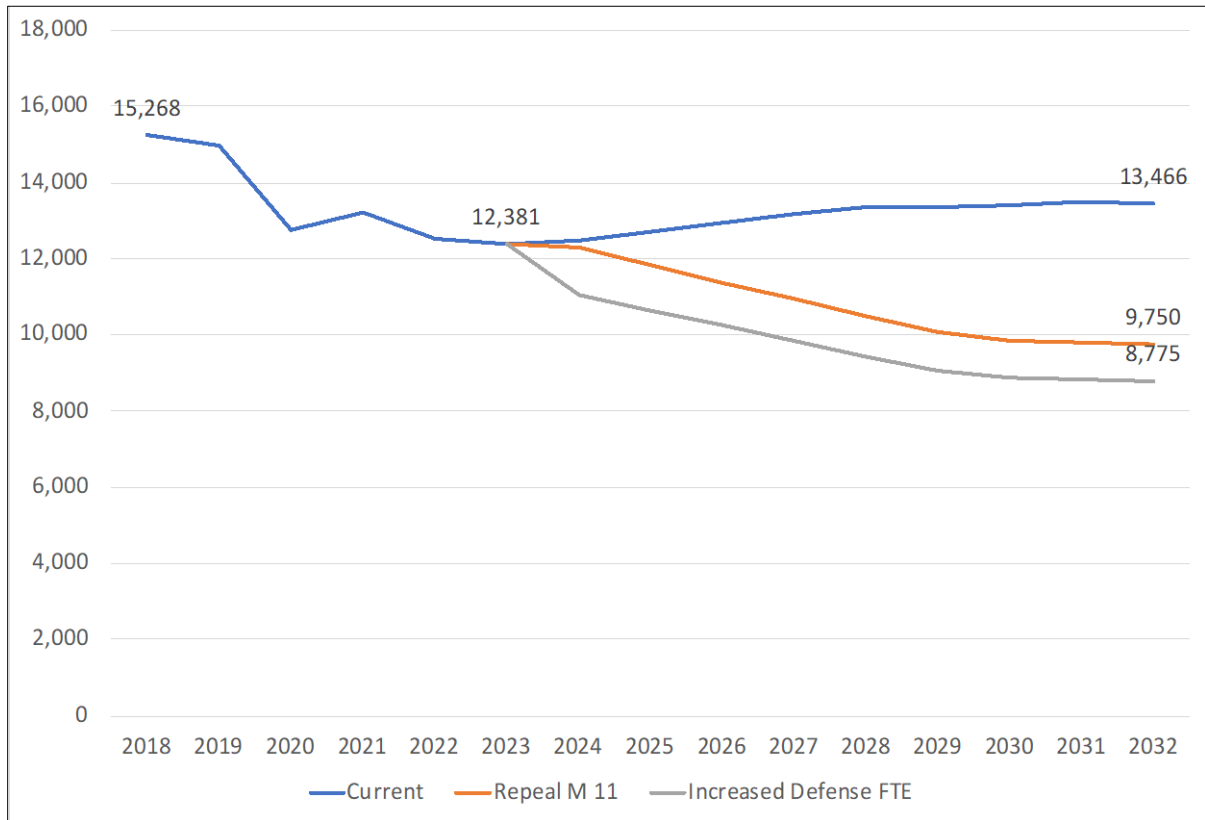
The cases above represent 66% of Measure 11 High-Level Felony cases. High-Level Felony cases have the second-highest number of case hours required. If the following cases were exempted from Measure 11 sentencing, they would instead be classified as Mid-Level Felony. This would result in a reduction of 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).²⁰

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

²⁰ 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.²¹ 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.²² Overall, there would be a net reduction of about \$215 million (Table 13).²³

²¹ Ibid.

²² 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>.

²³ 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>	-(\$215,000,000)

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%.²⁴

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.²⁵

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.

²⁴ 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>.

²⁵ 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 2020²⁶ 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).

²⁶ "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.

TABLE 15: OPERATIONAL STAFFING RATIOS

STAFF TYPE	RATIO (OPERATION STAFF: TOTAL EMPLOYEE COUNT)
HR ²⁷	2:125
IT ²⁸ (for organizations less than 500)	1:18
Finance²⁹ 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>
Total Adult Criminal Caseload Hours:	2,226k	2,196k	2,166k	1,766k
Current Attorney FTE:	506	506	586	586
Additional Attorney FTEs:	-	80	-	-
Remaining Attorney FTE Deficiency:	564	470	455	263

²⁷ "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>.

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

²⁹ "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%		
Annual Reduction in Attorney FTE Need Through Recruitment of Case Support Personnel:				192

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
Forecasted 2031 Attorney FTE need and FY2029–2031 Funding Need	986	\$1,307,608,433
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)
Updated Attorney Need for 2031 and Estimated Operating Budget	583	\$1,224,797,579
Total Difference Between 2031 Forecast, and Impact of Policy and Staffing Interventions	- (403)	- (\$82,810,854)

Estimated cost impacts are a calculation of the annual attorney contract amount and the number of attorney FTEs. It does not reflect the fully burdened³⁰ 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

³⁰ 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.”³¹ 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.³²

- **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.

³¹ 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

³² 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.³³ Examples of these uses of Delphi were conducted by both the National Association of Court Management and the National Center for State Courts.³⁴ These efforts were principally focused on assessing judicial and court support staff needs.³⁵ 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*.^{36, 37}

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)

³³ 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.

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

³⁵ 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).

³⁶ Moss Adams LLP, 2022.

³⁷ 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.

Adult Criminal and (2) Juvenile.³⁸ These two panels correspond to the areas of specialization most often practiced by defense attorneys in Oregon.³⁹ 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

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

³⁸ 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.

³⁹ 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*,⁴⁰ 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.⁴¹ 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.⁴² 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 Conduct⁴³ 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...⁴⁴

⁴⁰ *Strickland v. Washington*, 466 U.S. 668, 690 (1983).

⁴¹ *Padilla v. Kentucky*, 559 U.S. 356, 367 (2010).

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

⁴³ Oregon first adopted the ABA Model Rules of Professional Conduct in 2005.

⁴⁴ 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.⁴⁵

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,

⁴⁵ 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.

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

SUPPORT RESOURCE	SUPPORT TYPE	IMPACTED TASK CATEGORY	CASE TYPE
			Dependency Case Types
	<ul style="list-style-type: none"> Write reports as directed by the attorney Point of contact (as appropriate) with family/friends/defense witnesses. Serve subpoenas as needed 	Court Prep	Adult Criminal and Juvenile Dependency Case Types
	<ul style="list-style-type: none"> Ensure experts have all materials needed as determined/approved by the attorney 	Experts	Adult Criminal and Juvenile Dependency Case Types
	<ul style="list-style-type: none"> Meet with client and attorney to develop an investigation plan 	Miscellaneous Administrative work	Adult Criminal and Juvenile Dependency Case Types
	<ul style="list-style-type: none"> Meet/interview witnesses at the direction of the attorney Develop sources of information 	Attorney Investigation/Interviews	Adult Criminal and Juvenile Dependency Case Types
Interpreters	<ul style="list-style-type: none"> 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). Point of contact (as appropriate) with family/friends/defense witnesses as needed. 	Client Communication	All Case Types
	<ul style="list-style-type: none"> Attend interviews with attorneys and/or investigators as needed Help with incoming phone calls if other staff is unable to communicate. 	Miscellaneous Administrative work	All Case Types
	<ul style="list-style-type: none"> Help interpret simple written documents 	Client Communication	All Case Types
Non-PCRP Case Managers	<ul style="list-style-type: none"> Help determine service needs of parents, youth, and families. Assistance with finding and obtaining services 	Client Support Services	Juvenile Dependency Case Types
	<ul style="list-style-type: none"> Work up release plans/service plans Assist with collecting historical records 	Discovery/Case Preparation	Juvenile Dependency Case Types

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

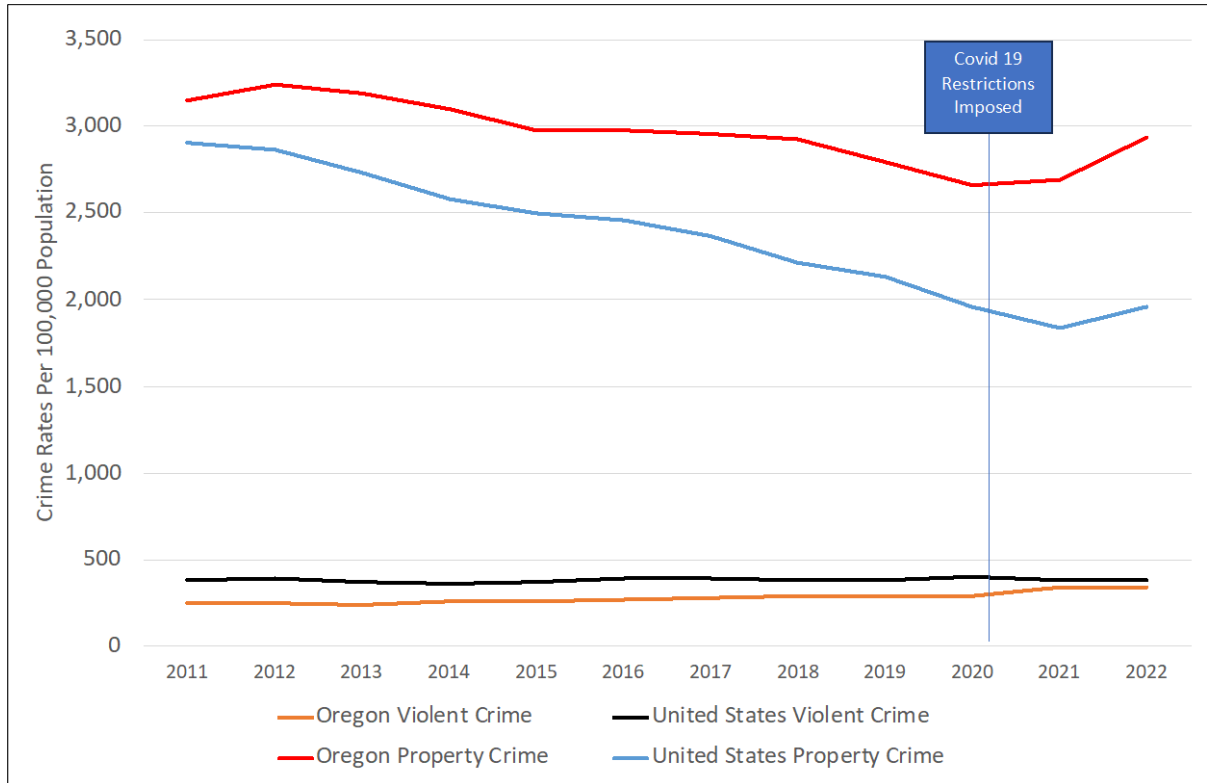
Outcomes	Case Type	Case Task	Time	Frequency	Total	Reduction %	Reduced Hours by Outcome
Plea / Otherwise Resolve	Homicide and Sex Cases	Court Prep	25.00	100%	25.00	10%	269
Plea / Otherwise Resolve	Homicide and Sex Cases	Court Time	23.00	100%	23.00	0%	-
Plea / Otherwise Resolve	Homicide and Sex Cases	Sentencing / 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
Total Annual Hours Reduction							410,969
Reduction as a Percent of Total Annual Caseload Hours							18.5%

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 AGENCIES⁴⁶

First Nine Months in 2022 versus 2023⁴⁷

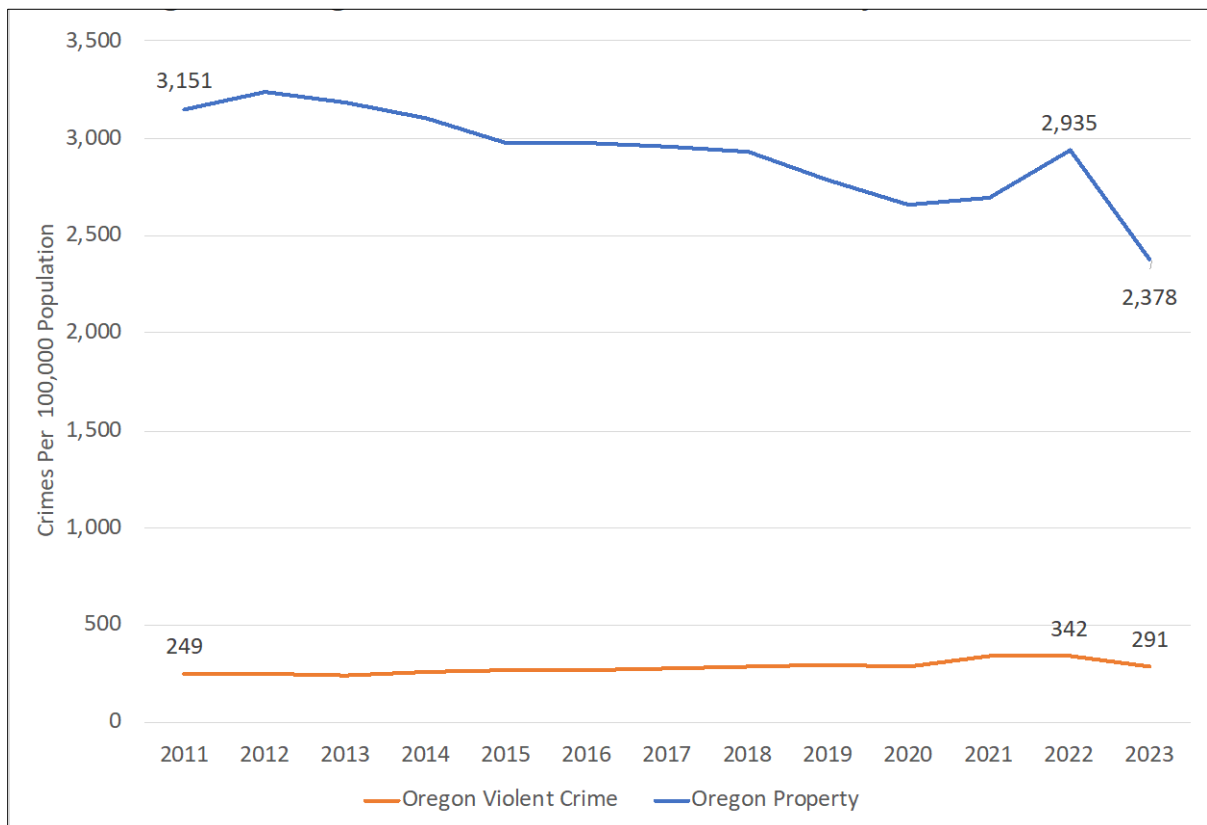
YEAR	2022	2023	DIFFERENCE
Violent	5,748	5,041	-707
Murder	95	72	-23

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

⁴⁷ 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)

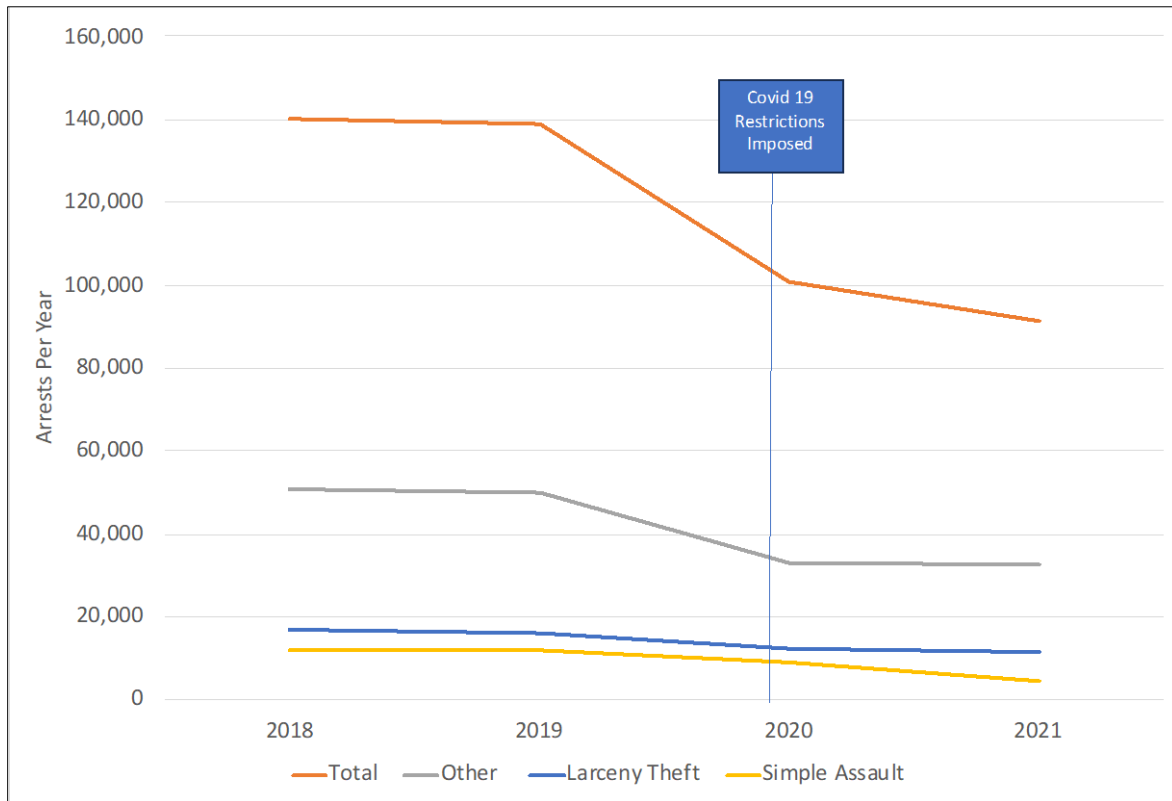


The decline in 2023, which is occurring nationally, is directly linked to two highly related major socio-economic factors: the recovery from the COVID-19 pandemic and the declining inflation rate. It has been well established that there is a strong association between inflation rates and crime rates.⁴⁸ 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

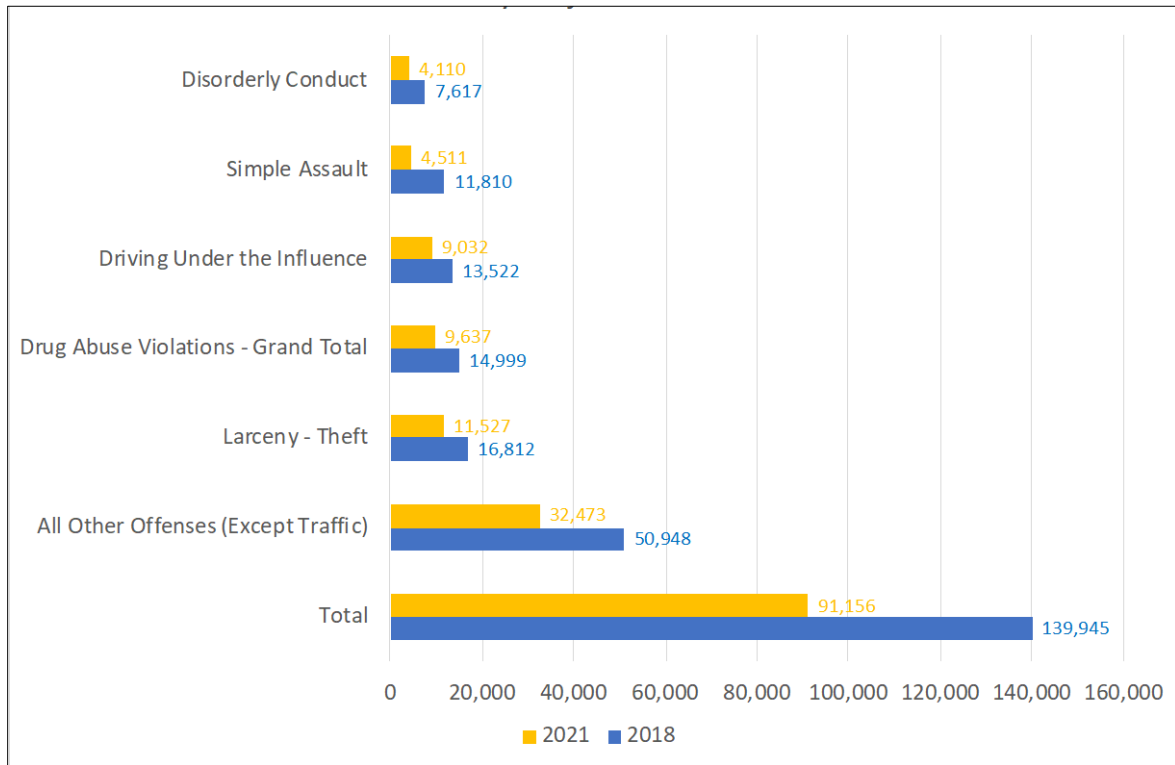
One of the major consequences of the COVID-19 pandemic was the sharp decline in arrests (Figures 4 and 5). Prior to 2020, there were about 140,000 arrests per year in the state. The largest category by far is “other,” which consists largely of non-violent, minor misdemeanor-level offenses. Law enforcement 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)



⁴⁸ 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	
Stats Case Group	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
Civil	130,194		130,487	0.2%	130,294	-0.1%	80,030	-38.6%	86,062	7.5%	96,289	11.9%
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%
Criminal	544,812		578,483	6.2%	520,744	-10.0%	311,622	-40.2%	340,525	9.3%	324,881	-4.6%
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%
Domestic Relations	43,592		44,177	1.3%	42,250	-4.4%	38,774	-8.2%	40,670	4.9%	41,249	1.4%
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%
Other	30,949		29,281	-5.4%	28,623	-2.2%	26,187	-8.5%	26,642	1.7%	27,740	4.1%
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%
Total	749,547		782,428	4.4%	721,911	-7.7%	456,613	-36.7%	493,899	8.2%	490,159	-0.8%

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).⁴⁹

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

⁴⁹ 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 11.⁵⁰ 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.^{51,52}

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,⁵³ 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

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

⁵¹ 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.

⁵² 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).

⁵³ “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
Total	1,953	1,922
Crime Rates		
Violent	342	381
Property	2,935	1,954
Total	3,277	2,335

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

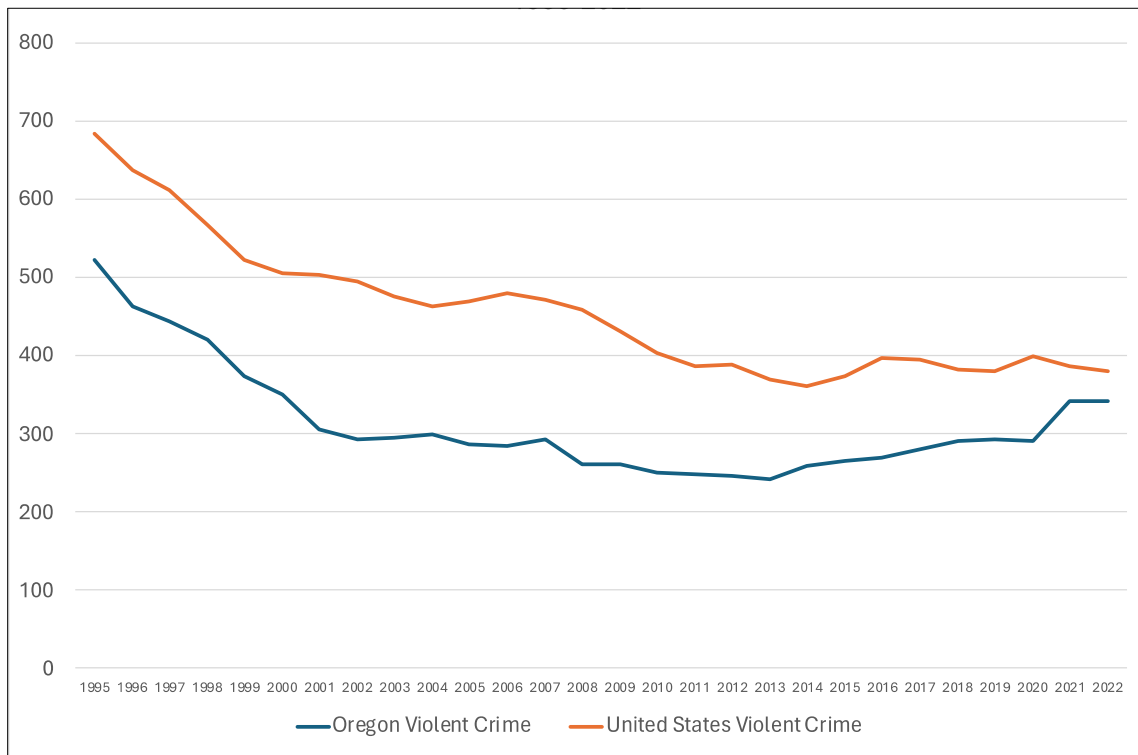


FIGURE 7: OREGON THREE-YEAR RECIDIVISM RATES FOR RELEASED PRISONERS (1998 – 2020)

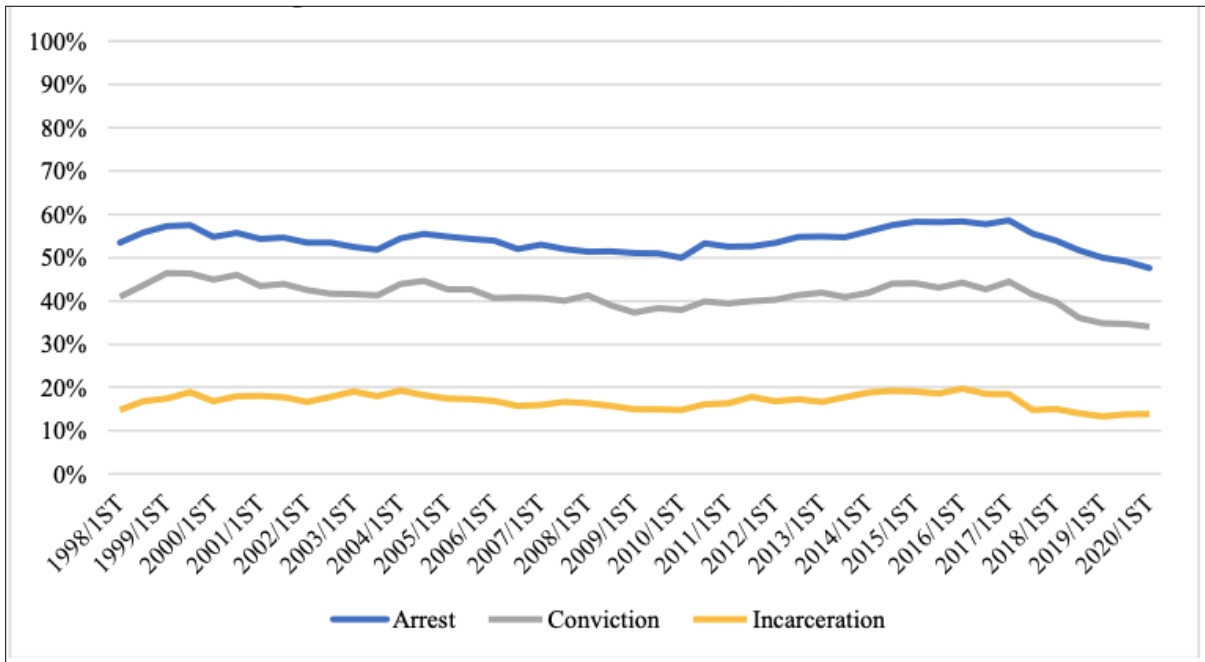
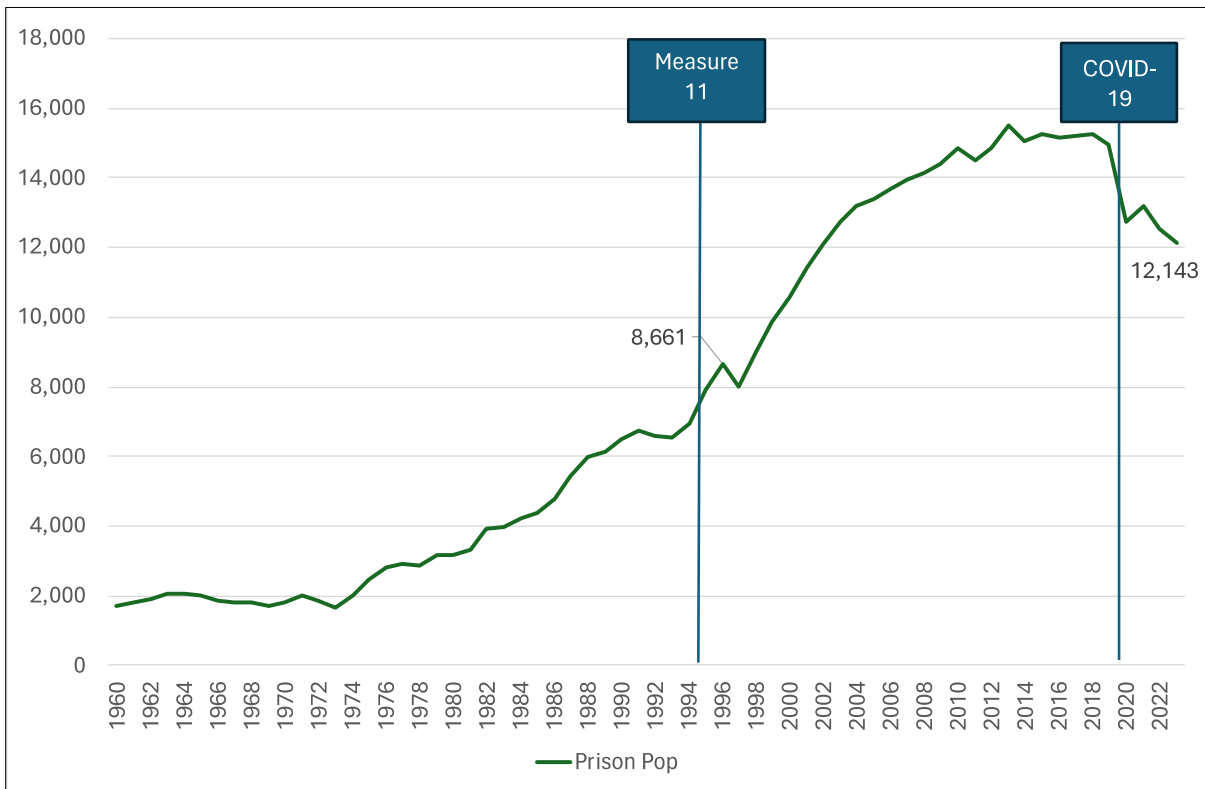


FIGURE 8: OREGON PRISON POPULATION (1960 – 2023)



Approval of Policies:
Retention Incentive Payments,
Pre-Authorized Expense,
Routine Expense, & Schedule
of Guideline Amounts



Date: March 21, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Kimberley Freeman, CAP Manager
Amy Jackson, Senior Policy Analyst

Re: 9.9 million retention incentive payments

Action: Approval

Background:

SB 337 appropriated out of the General Fund \$7,406,190 for Adult (Criminal) Trial Division, \$1,234,365 for the Parent Child Representation Program and \$1,234,365 for the Juvenile Trial Division to provide incentive compensation for retention of both recently hired contract providers as well as experienced contract providers.

At the February 7, 2024, Commission meeting the agency presented a draft policy that tied payments directly to the early submission of caseload reports. The Commission directed the agency to solicit stakeholder feedback. On February 13, 2024, the agency held a stakeholder feedback and listening session. Stakeholders are aware of OPDC's need for accurate and reliable data however, many felt that the accuracy of the data would be inadequate given the short timeline of the 5th of the month for caseload reports to be due.

Agency Recommendation:

OPDC has prepared two policy options for dispersal of the 9.9 million retention incentive funding.

- Option A - 2 disbursements (April 2024 & October 2024) (Pros: 2 larger payments all within 2024, less administrative cost for OPDC. Cons: All incentive money is expended and nothing available in 2025)
- Option B - 5 disbursements (April 2024, July 2024, October 2024, January 2025, April 2025) (Pros: disbursal of 5 payments spread out over time ensures caseload reports are submitted and funds are available for attorney retention over a longer period. Cons: Smaller payments and greater administrative cost for OPDC)

To be eligible for incentive funding, contactor shall not have any outstanding monthly caseload reports. The monthly caseload submissions must be complete and successfully received by the 20th of the month pursuant to Section XII of the contract.

The dispersal amounts in both policies are subject to change. If the agency can fill additional FTE positions allocated by the 2024 legislature OPDC would expect the dollar figure to decrease accordingly.

Fiscal Impact:

Funds have been appropriated out of the General Fund, SB 337. No incremental costs.

Agency Proposed Motion:

Agency recommends the commission review proposed Option A and/or Option B Retention Incentive Policy and make a motion to approve one of the two policies presented.

<u>POLICY NAME:</u> 9.9 RETENTION INCENTIVE	Number: 404.070.006
<u>DIVISION:</u> ADMINISTRATIVE SERVICES DIVISION	Effective Date: 4/1/2024
<u>RESPONSIBLE SECTION:</u> COMPLIANCE, AUDIT & PERFORMANCE	
<u>APPROVED:</u> OPDC Approval Date:	

PURPOSE: Establishes time frames and criteria for receiving one-time incentive compensation for the retention of both recently hired contract providers as well as experienced contract providers: \$9.9 million General Fund for Services and Supplies for Professional Services.

AUTHORITY: SB 337

APPLICABILITY: This policy applies to all contracts for public defense services. (Criminal Trial Division - \$7,406,190. Parent Child Representation Program - \$1,234,365, and Juvenile Trial Division - \$1,234,365)

POLICY: OPDC will disseminate two [2] payments from the 9.9 million General Fund for Services and Supplies for Professional Services. Payments will be issued on April 15, 2024, and October 15, 2024, will be proportionate with the FTE of the Contract excluding Administration, Supervision, and any vacancies as of April 1, 2024, and October 1, 2024. Amounts are subject to availability of funds.

Adult Criminal Trial Division – Actual FTE of the contract excluding Administration, Supervision & vacancies x \$7,450.

Parent Child Representation Program - Actual FTE of the contract excluding Administration, Supervision & vacancies x \$7,345.

Juvenile Trial Division - Actual FTE of the contract excluding Administration, Supervision & vacancies x \$6,262.

To be eligible for incentive funding, contractor shall not have any outstanding monthly caseload reports. The monthly caseload submissions must be complete and successfully received by OPDC on or before the 20th of the month pursuant to Section XII of the contract. Contractor will be required to report back to OPDC regarding how the funds were spent, whether on attorney compensation, staff compensation, additional staff hours, or other overhead and expenses.

Approved by: OPDC
 Prepared by: Policy Division
 Reviewed by: Executive Team
 Publish: Internally & Externally

9.9 Retention Incentive

<u>POLICY NAME:</u> 9.9 RETENTION INCENTIVE	Number: 404.070.006		
<u>DIVISION:</u> ADMINISTRATIVE SERVICES DIVISION	Effective Date: 4/1/2024		
<u>RESPONSIBLE SECTION:</u> COMPLIANCE, AUDIT & PERFORMANCE			
<table style="width: 100%;"> <tr> <td style="width: 50%;"><u>APPROVED:</u> OPDC</td> <td style="width: 50%;">Approval Date:</td> </tr> </table>		<u>APPROVED:</u> OPDC	Approval Date:
<u>APPROVED:</u> OPDC	Approval Date:		

PURPOSE: Establishes time frames and criteria for receiving one-time incentive compensation for the retention of both recently hired contract providers as well as experienced contract providers: \$9.9 million General Fund for Services and Supplies for Professional Services.

AUTHORITY: SB 337

APPLICABILITY: This policy applies to all contracts for public defense services. (Criminal Trial Division - \$7,406,190. Parent Child Representation Program - \$1,234,365, and Juvenile Trial Division - \$1,234,365)

POLICY: OPDC will disseminate five [5] payments from the 9.9 million General Fund for Services and Supplies for Professional Services. Amounts are subject to availability of funds. Payments will be issued on:

- April 15, 2024 (based on April 1, 2024, FTE of the contract excluding Administration, Supervision & vacancies)
- July 15, 2024 (based on April 1, 2024, FTE of the contract excluding Administration, Supervision & vacancies)
- October 15, 2024 (based on October 1, 2024, FTE of the contract excluding Administration, Supervision & vacancies)
- January 15, 2025 (based on October 1, 2024, FTE of the contract excluding Administration, Supervision & vacancies)
- April 15, 2025 (based on October 1, 2024, FTE of the contract excluding Administration, Supervision & vacancies)

Adult Criminal Trial Division – Actual FTE of the contract excluding Administration, Supervision & vacancies x \$2,980.

Parent Child Representation Program - Actual FTE of the contract excluding Administration, Supervision & vacancies) x \$2,938.

Juvenile Trial Division - Actual FTE of the contract excluding Administration, Supervision & vacancies) x \$2,505.

9.9 Retention Incentive

To be eligible for incentive funding, contractor shall not have any outstanding monthly caseload reports. The monthly caseload submissions must be complete and successfully received by the 20th of the month pursuant to Section XII of the contract. Contractor will be required to report back to OPDC regarding how the funds were spent, whether on attorney compensation, staff compensation, additional staff hours, or other overhead and expenses.

Approved by: OPDC
Prepared by: Policy Division
Reviewed by: Executive Team

Publish: Internally & Externally

DRAFT



**Oregon
Public
Defense
Commission**

Date: March 21, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Kimberley Freeman, CAP Manager
Amy Jackson, Senior Policy Analyst

Re: Pre-Authorized Expense (PAE) policy

Background:

On December 14, 2023, the Commission approved the PAE policy. Since that time, the Policy team has received both internal and external feedback. The changes reflected in the policy before the Commission today are due to that feedback. However, more work remains to be done and the agency continues to be committed to bringing the policy back on a quarterly basis. Over the next 90 days the agency will be reviewing additional feedback received specifically regarding the 180-day rule and interpreters as well as any other feedback received prior to April 4, 2024. Any additional provider feedback should be submitted prior to that date.

The following sections of the policy have been changed:

- Section 1.1 – Language was added to clarify that PAE’s do not transfer from one assigned counsel to the next.
- Section 2.1 – correction from approval to effective date
- Section 2.4 – correction in language
- Section 3.1 – added (OPE) to match Schedule of Guideline Amounts
- Section 3.3 – added “Mileage and/or”
- Section 3.17 – Section title changed. Policy regarding missed evaluations or examinations changes from 3 to 2. Language added regarding investigators and mitigators.
- Section 3.20 – Language added. Policy changes to allow flat rate providers to bill for travel time.
- Section 3.24 – correction from excluding to including.

Agency Recommendation:

Approve Pre-Authorized Expense policy changes.

Fiscal Impact:

Unknown. Some fiscal impact will occur due to Section 3.20 changes. However, the agency expects to see a cost savings due to the changes made in section 3.17.

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the Pre-Authorized Expense (PAE) Policy effective April 1, 2024.



<u>POLICY NAME:</u>	Pre-Authorized Expenses	Number: 404.060.001
<u>DIVISION:</u>	Administrative Services	Effective Date: 3/21/2024
<u>RESPONSIBLE SECTION:</u>	Pre-Authorized Expenses Division	

<u>APPROVED:</u>	Oregon Public Defense Commission	Approval Date:
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PURPOSE: Establishes eligibility, criteria, service types and time frames for which authorization of Pre-Authorized Expenses (PAE) (formerly Case Support Services) will be considered.

AUTHORITY: ORS 151.216, 151.225(1)(c), 419A.211, 419B.201, 419B.518, 419C.206

APPLICABILITY: This policy applies to all requests for authorization of Pre-Authorized Expenses (PAE) submitted to OPDC.

POLICY

SECTION 1 – IN GENERAL

Persons determined to be eligible for court-appointed counsel are entitled to necessary and reasonable fees and expenses for investigation, preparation, and presentation of the case for trial, negotiation, and sentencing. This includes persons who are *pro se* or have retained counsel but who are found by the court to be financially eligible for appointed counsel. OPDC does not need a copy of the order authorizing expenses, but the order must be reflected in OEI.

By accepting any public defense case assignment or related work, vendors agree to comply with all OPDC policies and procedures as may be amended from time to time.

Requests for authorization of expenses must be submitted by Counsel other than where statute specifically allows otherwise.

The total anticipated service fees and out of pocket expenses that will be incurred between the effective and expiration date of an Authorization must be outlined in the submitted request. Authorizations may include services hours to be performed out of the state of Oregon. A separate request must be submitted for any case related travel expenses, not included on the original Authorization, referencing the related PAE number.

OPDC shall review each request and determine whether the amount is necessary, reasonable, and properly payable from public defense funds. Pre-authorization does not guarantee payment

Policy Name: Pre-Authorized Expenses

of any fee or expense that is later determined to not be necessary or reasonable at the time the fee or expense was incurred. If the expense is determined to not be necessary or reasonable the invoice may be denied.

The Schedule of Guideline Amounts establishes expected rates for most fees and expenses. The amounts shown are not equivalent to a pre-approved cost and is not a substitute for pre-authorization.

Services must be obtained within the parameters outlined in the Schedule of Guideline Amounts whenever possible. Counsel should first attempt to secure providers within their jurisdiction or a neighboring jurisdiction. A qualified in-state Service Provider or expert is required unless none are available, or the use of an out-of-state expert is more economical and has been authorized by OPDC.

OPDC will fund expenses only if the expense was preauthorized and it is at the rate indicated in Schedule of Guideline Amounts or, if at a higher rate, only when Counsel has shown compelling circumstances and OPDC has authorized the higher rate.

1.1 Responsibilities of Counsel or Person Who Is *Pro Se*

Counsel and *pro se* persons who receive authorization for services must:

- **Before incurring costs for services expected to be paid from public defense funds**, ensure that any prospective Service Providers are aware of OPDC policies and the Schedule of Guideline Amounts.
- Forward a copy of the Authorization form from OPDC to the Service Provider.
- Maintain oversight of services and provide ongoing communication with the Service Provider regarding the status of the case, including when a case has been closed and services are no longer required.
- Certify completed services. Once OPDC has developed a formal process and implemented a case management system, counsel shall review service provider's invoice to verify that services performed are consistent with that approved in the pre-authorized expense request. Certification will be accepted via signature on the invoice, or an email attached to the invoice that notes the client's name, case number, and service start and end dates shown on the invoice. This requirement does not apply to *pro se* persons.
- **Authorizations do not transfer. If Counsel withdraws or new Counsel is appointed, any unused PAE shall be inactivated, and new counsel shall seek pre-authorization of any reasonable and/or necessary expenses. Any PAE that has had work performed shall be submitted for payment within 180 days.**

1.2 Responsibilities of Service Providers

Service Providers must obtain and review a copy of the Authorization. The Authorization is sent to and should be obtained from Counsel that requested the service. The Authorization will specify the service hours and expenses authorized and should be reviewed prior to performing any services. The Service Provider must submit a copy of the Authorization with their invoice. The Authorization is sent to and can be obtained from the Counsel who requested the service.

Service providers must perform the services and submit the bill within 180 days of the authorization date unless an exception has been granted on the Authorization.

Service Providers who perform services are responsible for complying with all applicable requirements, including but not limited to, licensing that the State of Oregon or another state or country may require for the performance of services in those jurisdictions.

1.3 Engaging Relatives for Compensable Services

Prior to engaging any relative or member of the household, as defined by ORS 244.020, counsel should first provide notification of the relationship and potential services to OPDC.

An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay, and may not be paid from public defense funds.

1.4 Expenses Incurred Prior to Authorization

Under limited circumstances, OPDC may authorize an expense after the expense has been incurred. An explanation of the exigent circumstances that required the expense to be incurred before requesting pre-authorization or before OPDC could act on a request is required. Exigent circumstances DO NOT include requests that Counsel failed to submit before services were needed.

1.5 Rush Requests

Requests to “rush” processing of a request for pre-authorization will only be considered for trial or other major court events impacting the case in two weeks or less, or when an expert services appointment is available in the next two weeks and must be booked to preserve it.

1.6 Contact Information

Pre-Authorized Expense Requests & Reconsideration Inquiries: CSS@opds.state.or.us

SECTION 2 – REQUESTS FOR PRE-AUTHORIZATION OF EXPENSES

A request for pre-authorization of expenses must be submitted on the Pre-Authorized Expense Request form. The request must include the total expected maximum number of hours of services, maximum amount of fees and expenses including any anticipated need for travel to be completed during the term of the Authorization. All requests are subject to review. OPDC will determine whether the request for services and the outlined expense is necessary, reasonable, and properly payable from public defense funds. Requests will be reviewed within 5 business days of receipt as staffing allows.

Authorizations may include fees for services performed out of the state of Oregon. A separate request must be submitted for any case related travel expenses, not included on the original Authorization, referencing the original related PAE number.

The form submitted must be the most current version available on the OPDC website (<http://www.oregon.gov/opds/provider/pages/forms.aspx>) all information must be completed on the form, including the highest case type of all related cases, and it must be signed by Counsel, or the request will be denied.

The Pre-Authorized Expense Request form is submitted by clicking the “Click here to email this request to OPDC” button at the end of the form. This generates an email to the OPDC PAE team with the form attached for processing. The form may also be submitted by email to OPDC at CSS@opds.state.or.us. The case information (case name, number, county, highest case type) must be entered on the form and will be verified with the Oregon eCourt Case Information (OECI).

Each Authorization can only be invoiced against once. Any invoice submitted a second time on a single Authorization will be denied.

Requests for authorization of services may be submitted as often as needed to provide necessary and reasonable services including for additional services on the same case during the original Authorization term.

Court-appointed Counsel must have submitted an Attorney Qualification form within the previous two years and been approved by OPDC to accept appointments for specified case types in order to process the requests for Authorizations.

2.1 Authorization Effective Date and Expiration

If a request is authorized, OPDC will generate a Pre-Authorized Expenses Authorization with the effective date. This Authorization must be submitted with the related invoice. The Authorization effective date will generally be no earlier than the date counsel was appointed.

Authorizations expire 180 days from the **effective [approval]** date of the Authorization unless counsel has provided sufficient reason for OPDC to grant an extension. Providers shall complete services and bill on the invoice within 180 days of the **effective date [approval date]** on the Authorization. Invoices for services for which the Authorization has expired will not be paid.

2.2 Overhead Expenses

Overhead expenses, including services performed by an employee or an independent contractor of Counsel or Service Provider, are not reimbursable, except in extraordinary circumstances with the pre-authorization of OPDC. Overhead expenses, except as otherwise expressly provided in this policy, include, but are not limited to:

1. Travel time and expense between home and office
2. Paraprofessional Services (law clerk, legal assistant, paralegal, administrative, and secretarial services)
3. Timekeeping and bill preparation
4. Rent and utilities
5. Office equipment and supplies, including flash drives and other storage devices or other item purchased in bulk that cannot be associated with a specific case.
6. Library materials
7. Computerized legal research software, installation, and monthly access fees.

Overhead expenses will only be authorized as pre-authorized expenses if OPDC determines that the expense is necessary and reasonable, and the agency concludes funding the requested expense would be more cost-effective than not doing so.

PAE requests for paraprofessional services in Murder cases are typically allowed.

2.3 Amendment of Authorization

OPDC will consider requests for amendment of an Authorization only when the request to amend the Authorization is made within 30 days of issuance and no payment has been made on the Authorization for approved services.

PAE authorizations that have been paid in part shall NOT be sent back to the PAE division for reconsideration or amendment. A new PAE request shall be prepared by Counsel and submitted.

If there is a change in Service Provider a new request for authorization must be submitted.

2.4 Reconsideration

If a request for pre-authorization is denied or **approved in part** [if an amount different from the original request is authorized,] it will be reflected on the Pre-Authorized Expense Authorization.

Counsel may request reconsideration of the denial or **partial approval** [rate adjustment] via email at CSS@opds.state.or.us . The email must have **RECONSIDERATION REQUEST** in the subject line. The request must include the PAE authorization number and any additional rationale or documentation, and it must be submitted within 30 days of the denial or **processed** [Authorization effective] date. It will be reviewed by the Reconsideration Panel for approval or denial within 10 business days.

The reconsideration panel will consist of representatives from the Pre-Authorized Expense Division, General Counsel and Budget. All decisions of the reconsideration panel are the final decision of the agency.

Pursuant to ORS 135.055, an appeal of the panel's decision must be submitted to the Presiding Judge in the court in which the subject case is pending or the Chief Judge or Chief Justice when the request involves an appellate case. All motions requesting the court's review must be in writing, filed with the court within 21 days of the date of the reconsideration denial, and served on OPDC via email at CSS@opds.state.or.us. The court shall review the agency's decision pursuant to an abuse of discretion standard. The court shall notify the provider and OPDC when a decision has been made.

2.5 Confidentiality

ORS 135.055(9) prohibits disclosure of requests and administrative orders for pre-authorization of non-routine fees and expenses, and billings for such fees and expenses, to the district attorney before the conclusion of the case.

ORS 135.055(10) permits disclosure to the district attorney of the total amount of moneys determined to be necessary and reasonable for non-routine fees and expenses at the conclusion of the trial in the circuit court.

ORS 40.225(5) provides that the lawyer-client privilege is maintained for communications made to OPDC for the purpose of seeking pre-authorization for, or payment of, non-routine fees or expenses.

ORS 192.355(4) exempts from disclosure under the Public Records Law information submitted to a public body in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential, the public body has obliged itself in good faith not to disclose the information, and when the public interest would suffer by the disclosure.

- 1) OPDC will keep confidential all information regarding the cost of representation of a client and Pre-Authorized Expenses in a particular case, except as follows:
- 2) OPDC may release, upon request at the conclusion of the case, the total amount of money paid for representation in the case.
- 3) OPDC shall disclose information regarding the cost of representation and Pre-Authorized Expense requests in a particular case to:
 - (a) Counsel who represents or represented the Client in the case.
 - (b) Counsel who represents the Client in a matter arising out of a particular case.

- (c) To the client, upon written request from the Client, except that OPDC shall not disclose information to the Client that it is prohibited from disclosing under state or federal law.
- 4) OPDC may disclose to appropriate authorities' information regarding the cost of representation and Pre-Authorized Expense requests when such information is reasonably believed to be evidence of, or relevant to, alleged criminal activity on the part of the court-appointed Counsel or other OPDC paid Providers.
 - 5) OPDC may disclose information regarding the cost of representation and Pre-Authorized Expense requests in a particular case in response to a subpoena for records following the conclusion of the case if the court issues a protective order.
 - 6) OPDC shall disclose information regarding the cost of representation and Pre-Authorized Expense requests as otherwise required by law.

This policy does not prohibit OPDC from disclosing statistical information that cannot be identified with any particular case.

SECTION 3 – EXPENSES THAT REQUIRE PRE-AUTHORIZATION

The following services may be funded if the agency, after having reviewed the request for Pre-Authorized Expenses, concludes the proposed service and expenditure is necessary and reasonable for investigation, preparation, and presentation of the case for trial, negotiation, and sentencing.

PERSONNEL:

3.1 Alternative Sentencing Evaluation (OPE)

An Alternative Sentencing Evaluation consists of a client interview, LS/CMI risk assessment, and ASAM evaluation and concludes with a written report. OPDC will consider requests for Alternative Sentencing Evaluations only when the presumptive sentence is a prison sentence.

3.2 American Society for Addiction Medicine (ASAM)

OPDC will authorize an ASAM evaluation to assess and diagnose the client's chemical dependency when it is reasonable and necessary to investigate, prepare, and present the case. OPDC will not authorize an ASAM evaluation as a substitute for another agency (*e.g.*, Oregon Department of Human Services) fulfilling its obligation under statute, regulation, or court order to provide this service. An ASAM evaluator must have their current license on file with OPDC.

3.3 Case Managers and Social Workers

Case managers and social workers may be authorized when necessary and reasonable. Case managers and social workers must have:

- a Bachelor's or higher level degree in Social Work/Human Services or a closely related field; OR
- a Bachelor's degree in a field not closely related to Social Work/Human Services and one year of human services related experience (*i.e.*, work providing assistance to individuals and groups with issues such as being economically disadvantaged, unemployment, abuse and neglect, substance abuse, aging, disabilities, inadequate housing).

Mileage and/or time spent transporting a client is not compensable.

3.4 Dual Diagnosis Evaluation

An evaluation consisting of a client interview, multi-level assessments, and possible interviews of others to determine if a person meets the criteria for a diagnosis of both a substance abuse disorder and a mental health disorder.

3.5 Expert Services (Attorney)

In post-conviction relief cases, or other cases in which a lawyer's duties or standard of care is an issue of fact, Counsel may seek funding for an attorney to serve as an expert. Additionally, Counsel may seek funding for an attorney if the case requires specialized legal advice.

Counsel may secure immigration advice for their clients, in accord with *Padilla v. Kentucky*, through the agency's designated immigration counsel vendor. An attorney other than the agency's designated vendor will only be funded if a legal conflict of interest exists.

Ethics counsel is an overhead expense and will not be funded.

3.6 Forensic Experts

An expert from one of the many different fields of science that can be applied for forensic investigations including but not limited to:

- Accident Reconstruction
- Arson
- Ballistics
- Biology
- Biomechanical Engineer
- Computer
- Criminalist
- Fingerprint
- Handwriting
- Linguistics
- Toxicologist
- Traffic Engineer
- Use of Force

Overhead expenses such as photocopies, postage or telephone calls are considered part of the Provider's rate and not subject to reimbursement.

3.7 Interpreters and Assistive Communication Devices

Counsel must request pre-authorization for interpreters only when rates exceed the Schedule of Guideline Amounts amount. Pre-Authorization is not needed for interpretation within the guideline rates for authorized investigation, mitigation, psychiatric and polygraph services.

Mileage out of the state of Oregon over 100 miles must be preauthorized.

Except as provided in ORS 45.275(7) (Appointment of interpreter for non-English-speaking party, witness, or victim), an interpreter is subject to the provisions of the Oregon Evidence Code relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Interpreters who are certified by the Office of the State Court Administrator, under ORS 45.291 for out-of-court attorney/client communication, must be used unless none are available. The State Court Administrator establishes categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for persons with

disabilities and non-English-speaking persons. If no certified interpreter is available, counsel must use a qualified interpreter, as defined in ORS 45.275(8)(c).

If no OJD Certified or Registered Interpreter is available and outside sources are needed, pre-authorization is required.

3.8 Investigators

Counsel shall submit requests for investigation using the case number with the highest charge. Only one request shall be submitted. Counsel should not submit a request for each case number. To be funded for investigation services the person must be licensed by the Department of Public Safety Standards & Training.

All requests for and approvals of investigation services must include a conservative, projected maximum expense for services and number of hours. The hourly rate includes all overhead expenses. Travel time is included in the hours authorized. Mileage outside of the state of Oregon over 100 miles must be preauthorized.

To receive reimbursement to counsel for investigation, the services requested and performed must be for an employee, that is not already funded under contract. OPDC will only reimburse counsel at the rates set in the Schedule of Guideline Amounts.

3.9 Medical Experts

Medical experts include, but are not limited to, doctors, nurse practitioners, nurses, physical therapists, occupational therapists, chiropractors, speech therapists, hematologists, radiologists, sleep pathologists, veterinarians, pharmacists, and geneticists.

3.10 Mental Health Professionals

Mental health professionals include psychiatric nurse practitioners, psychologists, psychiatrists, and neuropsychiatrists. OPDC will authorize an evaluation by such a mental health professional when it is reasonable and necessary to investigate, prepare, and present the case. OPDC will not authorize a mental health, psychological, neuropsychological, psychiatric, or neuropsychiatric evaluation as a substitute for another agency (*e.g.*, Oregon Department of Human Services) fulfilling its obligation under statute, regulation, or court order to provide the service. When a mental health expert is required to testify, trial Counsel should accommodate those witnesses, and whenever possible, attempt to take their testimony out of order.

In jurisdictions with a Rapid Aid and Assist Docket, attorneys must submit a PAE request. However, the mental health professional can proceed with the forensic evaluation once the request is submitted and do not need to wait for approval before work can begin.

3.11 Mitigators

Mitigation specialists gather and investigate historical data and anecdote into a client and their life. The client background research includes but not limited to, investigating a client's formative experiences including traumas, cognitive functioning, mental health, physical health, addiction, religious background, traumatic brain injuries, substances/toxin exposure in utero and through life, genetics, environmental factors, and family health histories. A mitigation specialist assists the attorney by documenting these factors through records and interviews to integrate this information into the client's defense. Mitigators shall, at the minimum, be licensed by the Department of Public Safety Standards & Training. Mitigators may be available in cases where it's reasonable and necessary, *i.e.*, murder, juvenile waiver, cases subject to ORS 137.719 and 137.725, Jessica's Law cases or any case in which OPDC deems a mitigator is reasonable and necessary.

3.12 Paraprofessional Services

OPDC will consider requests from non-contract hourly counsel for paraprofessional services, such as legal assistants, law clerks, legal secretaries, paralegals (non-attorney & attorney), litigation support & data management, to assist Counsel with non-legal services, including file redaction and file organization.

Contract counsel is required to secure, at their expense in whole or in part from contract funds, any support services necessary to perform contract obligations.

Contract counsel may be reimbursed for paraprofessional services as a Pre-Authorized Expense at the rate shown in the Schedule of Guideline Amounts only when OPDC determines there are extraordinary circumstances as outlined in the Overhead section of this policy. To receive reimbursement to counsel, the paraprofessional services requested and performed must be for counsel's employee. Counsel may not seek reimbursement for an employee that is already funded through overhead under contract. OPDC will only reimburse counsel at the rates set in the Schedule of Guideline Amounts. In all other instances payment shall be paid directly to the service provider.

Any request for authorization must include a description of the tasks to be assigned.

3.13 Polygraph Examinations

Polygraph services will only be authorized when the service is necessary for case negotiation and resolution.

OPDC will not authorize polygraph expenses for testing the truthfulness of communications between a client and appointed counsel.

3.14 Process Servers and Other Personnel to Secure Witnesses

Counsel shall use the most economic method available for process service. Service may be effectuated by the Sheriff pursuant to ORS 21.300, an investigator, or a process server.

In circumstances where counsel needs an out-of-state court order to compel the appearance of an out-of-state witness, counsel may retain the services of an out-of-state attorney at the hourly attorney rates published in this policy.

3.15 Transcription Services

Transcription is the process of converting a stenographic or electronically recorded word into a written document. The rate for transcription services of court proceedings is set by ORS 21.345. A rate exception may be made for audio transcription that is a rush and/or inaudible. Rate exceptions shall not exceed \$1.00 above the rate set by statute, even if both exceptions are applicable.

OPDC may pay additional rates for transcription of recorded word that is not associated with a court proceeding, but only if it is requested before the expense is incurred and only when appointed Counsel has shown compelling circumstances and authorization is granted by OPDC.

In addition to the page rate, OPDC may reimburse a person providing transcription services for:

- Costs incurred attending depositions
- Appearance fees
- Time spent reviewing notes or similar tasks related to preparing transcripts

OPDC will pay for one original but no copies of a transcript.

Grand Jury transcripts are considered routine expenses and do not require pre-authorization.

3.16 Translation and Transcription Services

Interpretive services not related to attorney-client or court communication, such as translation and transcription of recorded discovery, interviews, or other audio or video, must be preauthorized. A Forensic Transcription Translation will only be provided if the service is reasonable and necessary.

3.17 Cancellations and Missed Evaluations and/or Examinations [Appointments]

In the event any Service Provider schedules an evaluation or examination with a client and the client fails to appear, OPDC will pay the following amounts:

- A maximum of 2 hours at half of the approved hourly rate, OR
- 50% of the flat rate amount approved

OPDC will not pay for a missed appointment that is attributable to Counsel. Once a client misses **two [three]** appointments, Service Provider shall submit the PAE for payment, and Counsel and Service Provider shall not schedule another appointment without submitting a new PAE request.

Note that section 3.17 does not apply to investigators or mitigators.

SERVICES:

3.18 Client Clothing

OPDC may authorize the purchase of appropriate attire for court appearances for a client. Counsel must contact contractors who maintain “clothing rooms” to determine whether suitable clothing is available prior to submitting a request to OPDC. If Counsel receives pre-authorization to purchase clothing for a client, that clothing must be provided to a “clothing room” upon completion of the case. Dry cleaning or commercial laundering of purchased or borrowed clothing, prior to return or donation to a “clothing room,” is reimbursable without pre-authorization.

3.19 Lay Witness Travel Expenses

All lay witness related travel expenses including meals, lodging, rental car, rideshare and/or airfare require pre-authorization.

3.20 Travel-Related Compensable Time

Travel time must be pre-authorized. Except as limited by this section, hours spent in-transit between a specified point of departure and destination may be invoiced as travel time at the provider’s full rate. If the service requested is a flat rate **travel time shall not exceed \$75/hr. [the service provider is not eligible for travel time.]**

Once the destination has been reached, hours spent at the destination may not be counted as hours in-transit. However, service hours spent working on a case at the specified destination, may be invoiced accordingly.

Time in transit between home and office, home and a court, or office and a court within assigned jurisdiction are not compensable for Counsel. Assigned jurisdiction is defined as the county where Counsel’s office is, as reflected in Counsel’s business registration with the Secretary of State.

Time in transit between home and office is not compensable, but time in transit between office and a court is compensable for Service Providers.

Time spent transporting a client is not compensable.

Time spent in or awaiting transit is compensable. When possible, case work should be done in transit.

3.21 Travel Expenses

Travel expenses must be authorized before the expenses are incurred. Mileage, meals, lodging, airfare, and other similar travel costs must be pre-authorized except for mileage and parking specifically outlined in the Routine Expenses Policy.

All out-of-state travel related expenses (i.e., airfare, lodging, car rental, etc.) and mileage 100 miles or more must be preauthorized.

Traveler must plan with establishments that offer General Services Administration (GSA) or commercial rates where available. GSA rates can be reviewed at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. **If GSA rates are unavailable, written documentation from the hotel or car rental establishment should be requested when informed that a higher rate will be necessary due to a lack of availability at approved rates.** Documentation, with an explanation of what exigent circumstances exist that required you to incur the expense without requesting pre-authorization, must be submitted with the invoice.

OPDC does not amend travel Authorizations for GSA rates. Please request written documentation **from the hotel or car rental establishment** when you are informed that a higher rate will be necessary due to a lack of availability at approved rates. Please include that documentation and an explanation when you submit your invoice. This will provide the documentation we need to consider payments over the preauthorized amount. Submitting this with your invoice will eliminate the need for our accounts payable team to reach out for clarification which slows processing time.

3.22 Airfare

Traveler must fly coach regardless of funding source unless the difference is paid from the traveler's personal funds.

Arrangements for airfare must be made through OPDC and the expense will be sent directly to OPDC. When a request for airfare is preauthorized, OPDC will notify the travel agency that holds the state contract that the expense has been approved. OPDC will provide the travel agency with the pertinent information regarding the trip. Counsel or the Service Provider must contact the travel agency to make the travel arrangements.

Travel arrangements must be booked within **60 days** of the PAE Authorization effective date.

Airfare may be purchased outside the state contract only with prior approval from OPDC. The purchase price of the ticket must be less than the available contract price and the ticket must be paid for in advance. Cancellation insurance is suggested. Additional costs incurred because the Provider failed to obtain cancellation insurance are not reimbursable.

3.23 Car Rental

Arrangements for a rental car may be made through the travel agency that holds the state contract for airfare.

Travelers must rent a compact car from the least expensive rental agency. Rental of any other size or type of vehicle must be specifically justified and approved. Any insurance costs related to the car rental are the responsibility of the vendor. **If a compact car is unavailable, written documentation from the car rental establishment should be requested.**

OPDC will reimburse for fuel, not mileage, upon submission of an original receipt.

Policy Name: Pre-Authorized Expenses

3.24 Lodging

Lodging expenses must be preauthorized. Original receipts must be submitted with the Mileage and Travel worksheet. If lodging is required in multiple cities, separate Authorizations must be requested.

Lodging will be reimbursed for total cost of lodging, **including [excluding]** taxes and incidentals using the Federal GSA per diem amounts.

The traveler must request a government or commercial rate. If the hotel requires proof of state affiliation, OPDC can provide a letter on the traveler's behalf.

Non-commercial lodging may be claimed if it is more economical, and the traveler arranges for the accommodations. The traveler must submit a brief written explanation as to the types of alternate accommodations used unless it was specifically authorized.

The OPDC accounts payable manager may approve direct billing from a hotel. Direct billing must be approved in advance and is reviewed on a case-by-case basis. If approved, Counsel will be responsible for facilitating the lodging arrangements. The direct bill is only valid for that specific lodging and does not include incidentals. Counsel should send requests for direct billing to AccountsPayable@opds.state.or.us (Attention: Accounts Payable manager).

3.25 Meals

Meals must be pre-authorized. Generally, a meal allowance will be approved only when lodging is authorized. If lodging was not authorized but the traveler's departure or return time and the distance traveled are such that lodging would be justified, meals may be reimbursed if OPDC determines it reasonable.

To be eligible to request day trip meal reimbursement, travel must be more than 100 miles one way, departure and arrival times are reasonable and align with time(s) services are provided.

Travel times must be provided, meals will be reimbursed at GSA per diem rates applicable to the geographic area and time of travel.

3.26 Mileage

Reimbursable mileage is paid at the rate shown in the Schedule of Guideline Amounts and must be submitted with all information on the Mileage and Travel worksheet.

Mileage over 100 miles out of the state of Oregon must be pre-authorized.

If a private vehicle is used for a trip when the use of a rental car or air travel is an option and is more economical than personal vehicle mileage, OPDC will pay the traveler the amount of the most economical method of travel. When determining the amount to pay, OPDC will consider the overall cost of the trip, including travel time.

Mileage related to transporting a client for any reason including to Counsel's or Service Provider's office, appointments of any kind, the courthouse or other location where a hearing or judicial appearance is scheduled is not an allowable expense and will not be reimbursed.

Approved by: OPDC
Prepared by: Policy Division
Reviewed by: Executive Team

Publish: Internally & Externally



Date: March 21, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Kimberley Freeman, CAP Manager
Amy Jackson, Senior Policy Analyst

Re: Routine Expenses policy

Background:

On December 14, 2023, the Commission approved the Routine Expenses policy. Since that time, the Policy team has received both internal and external feedback. The changes reflected in the policy before the Commission today are due to that feedback. More work remains to be done and the agency continues to be committed to bringing the policy back on a quarterly basis. Over the next 90 days the agency will be reviewing additional feedback received as well as any other feedback received prior to April 4, 2024. Any additional provider feedback should be submitted prior to that date.

The following sections of the policy have been changed:

- Added “Contract” and increased out of pocket expenses to \$100.00 minimum threshold.
- Section 1.5 (C) – Clarified that interpreters also qualify for travel time.
- Section 1.14 – New - Appellate Transcripts
- Section 1.15 – New – Court Ordered Psychological Examinations
- Section 1.15 – New – Hourly Attorney Billings

Agency Recommendation:

Approve Routine Expenses policy changes.

Fiscal Impact:

None.

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the Routine Expenses Policy effective April 1, 2024.



<u>POLICY NAME:</u>	Routine Expenses	Number: 404.050.001
<u>DIVISION:</u>	Administrative Services	Effective Date: 3/21/2024
<u>RESPONSIBLE SECTION:</u>	Accounts Payable	
<u>APPROVED:</u>	Oregon Public Defense Commission	Approval Date:

PURPOSE: Establishes eligibility and criteria for which Routine Expenses will be paid.

AUTHORITY: ORS 151.216, 151.225(1)(c), 419A.211, 419B.201, 419B.518, 419C.206

APPLICABILITY: This policy applies to all requests for reimbursement of routine expenses submitted to OPDC.

EXPENSES REIMBURSABLE WITHOUT PREAUTHORIZATION

Reasonable and necessary case related out of pocket expenses will be reimbursed where it is not considered overhead and/or part of the hourly rate of a specific service type.

OPDC will consider out of pocket expenses not shown in policy with a written explanation and any other necessary documentation that show the expense to be reasonable, necessary, and properly payable from public defense funds.

Contract Counsel should submit billings every 90 days or whenever the out-of-pocket expenses total \$100.00 [\$25.00] or more.

Out of pocket expenses include the following:

1.1 Cleaning Costs for Client Clothing

Dry-cleaning fees for client clothing following the conclusion of trial, when supported by a receipt.

1.2 Discovery

The custodian’s actual cost of printing electronic discovery, but not more than a reputable private vendor would charge for making copies. In lieu of obtaining printed copies, OPDC will reimburse counsel for flash drives, CD’s, or other storage devices up to \$10.00 without a receipt. In addition, OPDC will pay for one copy for the client. Any additional copies must be preauthorized. OPDC

will not pay premiums for expedited copies unless appointed counsel gives a reasonable explanation of why this situation could not have been avoided.

- A. For criminal cases, discovery is material obtained from the District Attorney, Department of Justice, or prosecuting authority.
- B. For a juvenile case, discovery is material obtained from the District Attorney, County Juvenile Department, Department of Justice, Department of Human Services, or any other party to a dependency case.
- C. For post-conviction relief cases, discovery is a copy of trial counsel's file, appellate counsel's file, the District Attorney's file, the court file, and the material obtained from the defendant in the post-conviction case (e.g., the Superintendent of the Department of Corrections).
- D. Discovery materials include audio and video media, photographs and other similar items obtained from the sources described above.

1.3 Fax

Fax transmittals will be reimbursed at the rate of a regular international telephone call. Vendor may request reimbursement at the same rate as for in-house black and white copies for faxes received.

1.4 Grand Jury Transcripts

Grand Jury transcripts will be reimbursed at the rate set by ORS 21.345.

1.5 Interpreter Services:

Counsel must request preauthorization for interpreters only when rates exceed the Schedule of Guideline Amounts amount.

Except as provided in ORS 45.275(7) (Appointment of interpreter for non-English-speaking party, witness, or victim), an interpreter is subject to the provisions of the Oregon Evidence Code relating to qualification as an expert and the administration of an oath or affirmation that the interpreter will make a true and impartial interpretation of the proceedings in an understandable manner using the interpreter's best skills and judgment in accordance with the standards and ethics of the interpreter profession.

Interpreters who are certified by the Office of the State Court Administrator, under ORS 45.291 for out-of-court attorney/client communication, must be used unless none are available. The State Court Administrator establishes categories of certificates based on the nature of the interpreter services to be provided, including categories for interpreters for persons with disabilities and non-English-speaking persons. If no certified interpreter is available, counsel must use a qualified interpreter, as defined in ORS 45.275(8)(c).

If no OJD Certified or Registered Interpreter is available and outside sources are needed, preauthorization is required.

- A. Mileage out of the state of Oregon over 100 miles must be preauthorized.

- B. OPDC will pay a one-hour minimum if the service provided requires less than one hour.
- C. Mileage will be reimbursed on actual miles traveled. **Travel time will be paid pursuant to section 3.20 of the Pre-Authorized Expenses policy.**
- D. If the interpretation service is provided by telephone or video and the interpreter is not at the same location as counsel when the service is provided, the interpreter should indicate that on the Interpreter Fee Statement worksheet and fill in the name of counsel for whom the service was provided. Indicating “telephone approval” on the signature line is NOT sufficient.
- E. OPDC will not pay for counsel to use an interpreter to deliver a message to or request information from the client unless counsel or counsel’s staff person participates in the communication.
- F. An interpreter may not bill OPDC more than once for the same period of time.
- G. Actual time of service must be recorded even if an appointment was less than one hour and the interpreter is claiming the fee for one hour of service.
- H. OPDC will pay for actual time worked for services that combine translation and transcription of written communications between the attorney and the client or the court and the client.
- I. Interpreters shall bill for time and expenses on the Interpreter Fee Statement form and the Interpreter’s Travel Worksheet and shall bill no more than every two weeks and not later than 180 days after service date.
- J. Counsel, or a person designated by counsel, must certify the interpreter’s time by signing the Interpreter Fee Statement form.
- K. Other interpreter services not related to attorney/client communication or court/client communication, such as translation and transcription of recorded interviews must be preauthorized.
- L. If the interpretation is in conjunction with an in-custody polygraph or psychological evaluation, OPDC will pay a four-hour minimum regardless of time spent interpreting. Actual interpretation time must still be documented. Interpreters must notate on the interpreter worksheet the name of the facility where services took place and identify the type of service, i.e., polygraph, psychological evaluation.

1.6 Mileage

Routine mileage does not include travel between counsel’s office and the courthouse or other location where a hearing or judicial appearance is required unless the appearance or hearing is outside of counsel’s assigned jurisdiction. Assigned jurisdiction is defined as the county where counsel’s office is, as reflected in counsel’s business registration with the Secretary of State. Mileage out of the state of Oregon over 100 miles must be preauthorized. Allowable routine mileage is outlined in the sections below:

- A. The departure and destination city are required for mileage reimbursement.
- B. Qualifying case related attorney or attorney staff mileage that is out of county, or in a county that exceeds 100 miles round trip, is routine mileage. This mileage applies specifically to actual location of the travel and not the county assigned to the case.

The General Services Administration (GSA) rates for mileage can be reviewed at [Privately owned vehicle \(POV\) mileage reimbursement rates | GSA](#).

1.7 Parking

Parking costs may be reimbursed, without specific preauthorization, when incurred during case related travel that qualifies for mileage reimbursement or if other travel expenses have been preauthorized and it does not exceed the Schedule of Guideline Amounts. The actual cost of parking, when the travel qualifies for mileage payment, may be reimbursed.

1.8 Photocopies and Document Scanning

Actual costs supported by detailed documentation at rates outlined in the Schedule of Guideline Amounts. Reimbursement for services provided by a third party must be supported by a receipt.

1.9 Postage

The most economical method of shipping must be used. Standard postage and shipping materials will be reimbursed. Expenses for First-class mail, Express mail, or to insure will only be considered when supported by an explanation and is determined to be reasonable by OPDC. Receipt required if the cost to send an individual item exceeds \$25.00.

1.10 Process Service:

Counsel shall use the most economic method available for process service. Service may be effectuated by the Sheriff pursuant to ORS 21.300, an investigator, or a process server.

- A. ORS 21.300(1)(a) provides that no fee shall be charged to the state by the county sheriff for cases in which the party requesting service has court-appointed counsel.
- B. If the investigator for the case, who is paid from the PSA, perfects service, the investigator will be paid the hourly rate for time spent locating and serving or attempting to serve a witness if the number of hours does not exceed the total hours preauthorized.
- C. If a different investigator is used for the sole purpose of providing process service, the investigator will be paid the amount in the schedule for each location where service is made or attempted.

1.11 Records

The cost of an individual medical, school, birth, DMV, and other similar record including records obtained from the Oregon State Bar, 911 Recordings and Emergency Communication Recording Logs that do not exceed the Schedule of Guideline Amounts.

The cost for 911 recordings and Emergency Communication Recording Logs, including film, film developing, photos, audio and video tapes, compact discs, and exhibit materials that do not exceed the Schedule of Guideline Amounts.

1.12 Telephone calls

Collect calls and international telephone charges to Counsel or a Service Provider from a client in a jail, prison, hospital, or other similar government institution will be reimbursed.

1.13 Witness fees/mileage

Counsel or the witness shall submit the subpoena which indicates the number of days the witness' attendance was required as well as the total mileage amount unless the mileage was previously approved through Case Support Services. Lay witness fees and mileage expense for attendance will be reimbursed at the rate set by statute.

The following expenses are considered Routine:

1.14 Appellate Transcripts

Transcription is the process of converting a stenographic or electronically recorded word into a written document. The rate for transcription services of court proceedings is set by ORS 21.345.

OPDC will pay for one original but no copies of a transcript.

1.15 Court Ordered Psychological Examinations

Costs associated with court-ordered psychiatric or psychological evaluations to determine if a defendant is fit to proceed unless the evaluation was requested by the prosecution [ORS 161.365(7)]. If the evaluation is conducted by a certified evaluator in private practice, OPDC shall pay a reasonable fee including travel time and mileage. If the evaluation is conducted by a certified evaluator employed by the Oregon Health Authority or a community mental health program established under ORS 430.610-670, OPDC shall pay all costs including transportation of the defendant.

1.16 Hourly Attorney Billings

Counsel appointed to a case on an hourly basis shall submit billings every 30 days or whenever the amount is \$130.00 or more. The amount requirement does not apply to the final billing on the case.

Approved by: OPDC
Prepared by: Policy Division
Reviewed by: Executive Team

Publish: Internally & Externally



**Oregon
Public
Defense
Commission**

Date: March 21, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Kimberley Freeman, CAP Manager
Amy Jackson, Senior Policy Analyst

Re: Schedule of Guideline Amounts

Background:

On December 14, 2023, the Commission approved the Schedule of Guideline Amounts. Since that time, the Policy team has received both internal and external feedback. The changes reflected in the Schedule of Guideline Amounts before the Commission today are due to that feedback. More work remains to be done and the agency continues to be committed to bringing the schedule back on a quarterly basis. Over the next 90 days the agency will be reviewing additional feedback received as well as any other feedback received prior to April 4, 2024. Any additional provider feedback should be submitted prior to that date.

The following sections of the policy have been changed:

- Removed second sentence in opening paragraph.
- Transcriptionist – added “rate set by statute”
- Records – added to Schedule
- Meal Allowance Day Trips – corrected mileage from 60 to 100

Agency Recommendation:

Approve Schedule of Guideline Amounts changes.

Fiscal Impact:

None.

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the Schedule of Guideline Amounts effective April 1, 2024.



PROCEDURE NAME:	Schedule of Guideline Amounts (Credentials included)	Number: 404.060.002
RESPONSIBLE SECTION:	Pre-Authorized Expenses Division	Effective Date: 3/21/2024

INTRODUCTION

This document covers rates paid by the Oregon Public Defense Commission to vendors for services provided in public defense cases. [These rates reflect information gathered from several states including Nevada, Washington, California and Idaho and entities including United States Courts, U.S. Bureau of Labor and Statistics and follow budget constraints of the agency.]

ATTORNEY FEES (Temporary Hourly Increase for Unrepresented list)	
Misdemeanor, contempt, and probation violation, any Class C felony and felony drug possession	\$164/hr. soft cap \$10k
Class A and B felony, juvenile dependency, termination of parental rights, juvenile delinquency, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases (PSRB), material witness, extradition/fugitive, appeals, waiver co-counsel; discretionary co-counsel	\$164/hr. soft cap \$50k
Ballot Measure 11 and felony sex offenses (Class A, B & C)	\$175/hr. soft cap \$50k
Murder and Jessica’s law (including mandatory co-counsel and cases subject to ORS 137.719	\$200/hr. soft cap \$75k

INVESTIGATION (Temporary Hourly Increase for Unrepresented list)	
All case types. No rate exception for bilingual	\$75/hr.

ATTORNEY FEES Effective date: 10/1/2023 (Applies to all appointments not subject to the Unrepresented list)	
Tier 1 – Murder, JLAW, Measure 11, AFEL, BFEL, and all Juvenile cases	\$145/hr.
Tier 2 – All other case types	\$130/hr.

ALL OTHER SERVICE PROVIDERS			
Service	Guideline Amount	Hourly Guideline	Required Credentials
Accountant	\$200/hr. - \$270/hr.		Accountant or forensic accounting degree
Alternative Sentencing Evaluation (OPE)	\$40/hr. \$450/flat rate	7-12 hrs. Flat rate must be approved and is not guaranteed.	
Arson Expert	\$160/hr. - \$515/hr.	20 hrs.	
American Society for Addiction Medicine (ASAM) evaluation	\$435/flat rate		QMHA/QMHP/CADC certification
Audio, Video, or Photo Analyst Digital Forensic Analyst	\$165/hr. - \$300/hr.	20 hrs.	
Ballistics/Firearms Expert	\$165/hr. - \$300/hr.	20 hrs.	AA or higher degree in related field or direct ballistics and or firearm investigation field experience

Service	Guideline Amount	Hourly Guideline	Required Credentials
Biomechanical Engineer	\$165/hr. - \$420/hr. \$5,400/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	B.S., MSME, PhD, MD (pay scaled to degree)
Case Manager	\$45/hr.	20 hrs.	A Bachelor's or higher-level degree in Social Work/Human Services or a closely related field; or a bachelor's degree in a field not closely related to Social Work/Human Services and one year of human services related experience
Chemist Expert	\$40/hr.	20 hrs.	BA minimum
Criminalist Expert	\$100/hr. - \$220/hr.	20 hrs.	AA to BA education, or DPSST certification for law enforcement experience
DNA Expert	\$190/hr. - \$435/hr.	20 hrs.	Licensed professional
Doctor - General	\$110/hr. - \$270/hr.	20 hrs.	Licensed professional
Doctor - Specialist	\$165/hr. - \$380/hr.	20 hrs.	Licensed professional
Dual Diagnoses/Mitigation reports for mental health and drug addiction	\$130/hr. \$1,300/flat rate	10 hrs. Flat rate must be approved and is not guaranteed.	QMHA/QMHP and CADC minimum

Service	Guideline Amount	Hourly Guideline	Required Credentials
Eyewitness/Memory Perception	\$165/hr. - \$325/hr.	10 hrs.	PhD or equivalent doctorate level degree
File Organization	\$45/hr.	10 hrs.	
Fingerprint Analyst Expert	\$245/hr.	20 hrs.	BA or BS in relevant field (forensic science, biology, criminal justice)
Forensic Expert Computer/Cellphone Analyst Expert	\$165/hr. - \$300/hr. \$2,175 (per unit for information extraction)	25 hrs.	BS in related field (computer science, computer forensics, cybersecurity)
Gang Expert	\$110/hr. - \$270/hr.	20 hrs.	PhD or engagement experience
Guardian Ad Litem	\$130/hr. (attorney) \$50/hr. (non attorney)	10 hrs.	Attorney non-attorney providers
Geneticist	\$45/hr. - \$320/hr. \$1,090 - \$3,265/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	Licensed Professional (MD or PhD)
Handwriting Analyst Expert	\$135/hr. - \$165/hr.	10 hrs.	Direct certification or BA/BS in forensic related field
Hematologist	\$380/hr.	10 hrs.	Licensed professional
Interpreter/Translator and Assistive Communication Devices (spoken languages)	\$57/hr. – certified \$42/hr. – registered \$34/hr. – non-certified		OPDS follows the State Court Administrator’s rates and qualifications.
Interpreter - American Sign Language – (OJD Certified)	\$74/hr. - certified	N/A	ORS 45.291 and ORS 45.275

Service	Guideline Amount	Hourly Guideline	Required Credentials
Investigator	\$55/hr. -monolingual \$60/hr. -bilingual	Varies	DPSST certification
Jury Consultant	\$50/hr.	10 hrs.	
Law Student / Clerk	\$15/hr. - \$30/hr.	Varies	
Legal Expert/Consultant Attorney	\$155/hr.		JD
Linguist Expert	\$110/hr. - \$165/hr.	15 hrs.	
Litigation Support Expert	\$70/hr. - \$150/hr.	50 hrs.	
Mitigation Specialist	\$70/hr.	25 hrs.	Mitigators shall, at the minimum, be licensed by DPSST.
Neurologist (MD)	\$165/hr. - \$435/hr.	20 hrs.	Licensed professional
Neuropsychologist (PhD/ PsyD)	\$165/hr. - \$435/hr. \$2,180 - \$2,720/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	Licensed professional
Nurse	\$55/hr. - \$135/hr.	20 hrs.	Licensed professional
Nurse Practitioner	\$110/hr. - \$165/hr.	20 hrs.	Licensed professional
Occupational Therapist	\$220/hr.	20 hrs.	Licensed professional
Other Medically licensed Expert (MD, DO)	\$270/hr. - \$410/hr.	20 hrs.	Licensed professional
Paraprofessional Services (Legal assistant, paralegal and secretarial services)	\$30/hr. - \$55/hr.	Varies	

Service	Guideline Amount	Hourly Guideline	Required Credentials
Pharmacist	\$165/hr. - \$325/hr.	20 hrs.	PharmD
Physical Therapist	\$165/hr.	20 hrs.	Licensed professional
Plethysmography	\$315/hr.	20 hrs.	OHA certification
Polygrapher	\$435/flat rate - \$545/flat rate		DPSST certification
Process Server	\$35/per location	N/A	Service may be effectuated by the Sheriff pursuant to ORS 21.300, an investigator, or a process server.
Psychiatrist (MD)	\$160/hr. - \$380/hr.	20 hrs.	Licensed professional
Psychologist (PhD) (Certified forensic) Rate is based on years of experience	0-7 yrs. = \$190/hr. 8-15 yrs. = \$200/hr. 16+ yrs. = \$220/hr. Bilingual receives \$25/hr. more	20-25 hrs.	Licensed professional
Psychologist (PhD) (Non-certified forensic) Rate is based on years of experience	0-7 yrs. = \$165/hr. 8-15 yrs. = \$175/hr. 16+ yrs. = \$190/hr. Bilingual receives \$25/hr. more	20-25	Licensed professional
Radiologist	\$270/hr. - \$380/hr.	20 hrs.	Licensed professional
Redaction/Document processing	\$40/hr. - \$130/hr.	15 hrs.	
Sleep Pathologist	\$165/hr. - \$520/hr. \$2,015 - \$6,050/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	Licensed professional

Service	Guideline Amount	Hourly Guideline	Required Credentials
Social Worker (forensic)	\$80/hr. - \$110/hr.	10 hrs.	MSW licensed
Speech Therapist Expert	\$95/hr. - \$245/hr.	10 hrs.	Licensed professional
Toxicologist	\$165/hr. - \$545/hr.	20 hrs.	
Traffic Engineer Expert	\$110/hr. - \$190/hr. \$4,320/flat rate	10 hrs. Flat rate must be approved and is not guaranteed.	
Transcriptionist	\$4.25 per page (rate set by statute)	N/A	Must have completed a training program through a court reporting school, approved by National Court Reporting Association (NCRA)
Transcriptionist/Translation	\$34/hr. - \$74/hr.	20 hrs.	A forensic transcription translation will only be provided if the service is reasonable and necessary.
Use of Force Expert	\$95/hr. - \$325/hr.	30 hrs.	DPSST certification for law enforcement; JD for higher rate
Veterinarian	\$165/hr. - \$270/hr.	10 hrs.	Licensed professional

ROUTINE CASE EXPENSES FOR COUNSEL & INVESTIGATORS (PAE not required)		
Blank CD/DVD, case, and label	\$1.00 each	For media, case, and label
Discovery	Actual cost	Receipt required.
Mileage	Mileage will be paid at the GSA rate at the time of travel	Excludes counsel's trips between office and courthouse unless authorized.
OECI Searches	\$0.25 per minute of usage	When provider has subscription for OECI
Parking	Actual Cost	Trip must qualify for mileage payment. Receipt required if over \$25.00.
Photocopies, in-house, B&W Photocopies, in-house, Color Scanning, In-house	Max. \$0.10 per page Max. \$0.50 per page Max. \$0.05 per page	Also applies to in-coming faxes.
Photocopies & Scanning by Vendor	Actual cost	Receipt required.
Photocopies, State Court/Other Government entities	Actual cost	Certified copy costs also paid if necessary. Receipt required.
Photograph production, in-house and vendor	In-house: \$0.40 for 3x5 or 4x6 \$1.20 for full page Actual cost if vendor	In-house must be produced on photo quality paper, otherwise in-house color copy rate. Receipt required if produced by vendor.
Postage	First-class mail	No receipt required.
Process Service	\$35/per location	Service may be effectuated by the Sheriff pursuant to ORS 21.300, an investigator, or a process server.

Records	\$300/per record (all case types except murder) \$500/per record (any level of murder)	See Routine Expense policy
ROUTINE CASE EXPENSES FOR COUNSEL & INVESTIGATORS (PAE not required)		
Special Delivery	UPS, Fed Ex, USPS Express mail, messenger service	Receipt & explanation required.
Telephone	Actual Cost	International charges, including those for faxes, and charges for collect calls from client at an institution. Receipt required.

TRAVEL EXPENSES															
Airfare	Must be arranged through state contract. Contact information will be on the PAE Approval.		Varies												
Meal Allowance: Day Trips	Breakfast: \$14.00 (departure before 6 am) Lunch: \$17.00 (departure before 6 am/ return after 2 pm) Dinner: \$28.00 (return after 8 pm) (Justification must be provided & distance must be more than <u>100 [60]</u> miles one way)		Travel times must be reported.												
Meal Allowance: Overnight (no time provided)	First day: Dinner only: \$28.00 Second & subsequent full days: \$59.00 Last day: Breakfast & Lunch: \$31.00		No departure or return times provided												
Meal Allowance: Overnight (time provided)		<table border="1" style="width: 100%;"> <thead> <tr> <th></th> <th>Departure time:</th> <th>Return time:</th> </tr> </thead> <tbody> <tr> <td>Breakfast: \$14.00</td> <td>Before 6:00 am</td> <td>After 9:00 am</td> </tr> <tr> <td>Lunch: \$17.00</td> <td>Before 11:00 am</td> <td>After 2:00 pm</td> </tr> <tr> <td>Dinner: \$28.00</td> <td>Before 5:00 pm</td> <td>After 8:00 pm</td> </tr> </tbody> </table>		Departure time:	Return time:	Breakfast: \$14.00	Before 6:00 am	After 9:00 am	Lunch: \$17.00	Before 11:00 am	After 2:00 pm	Dinner: \$28.00	Before 5:00 pm	After 8:00 pm	Travel times must be reported.
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Dinner: \$28.00	Before 5:00 pm	After 8:00 pm													

Mileage	See PAE & Routine Expense policies	GSA rates apply
Parking	Receipt required if over \$25.00. Must have qualifying mileage.	Actual cost
Rental Car	Compact vehicle (unless otherwise pre-authorized) plus fuel with submission of original receipts. Insurance costs will not be reimbursed.	Varies

Unrepresented Crisis Plan -
March 2024 (Oregon Judicial
Department)



Oregon Judicial Department

Unrepresented Crisis Plans – March 2024 Update

Key Insights

Unrepresented Trends

- The number of unrepresented individuals continues to increase, although the rate of growth has stabilized ([Figure 1](#)).

Lever 1 – Add Attorneys

- Although attorneys have been added to existing contracts ([Figure 2](#)), the total appointments taken under contract has decreased ([Figure 5](#)).
- The OPDC Trial Division opened two regional offices ([Figure 6](#)). As contract attorneys are hired into OPDC regional trial division offices, a transition plan with the court and local public defense providers would benefit the clients OPDC serves.

Lever 2 – Attorney Capacity

- Courts continue to see the lack of standardized, objective contract MAC expectations resulting in variation in the caseload that individual attorneys can manage. This makes it difficult to predict whether the number of contracted attorneys in a district is adequate to keep up with case filings.

Lever 3 – Decrease Filings

- Criminal case filings remain more than 20% below pre-pandemic levels but they have been on the rise for two consecutive years ([Figure 8](#)).

Lever 4 – Increase Dispositions

- More cases are being filed than are closed each month ([Figure 11](#)).
- People with out of custody felony and misdemeanor cases are waiting longer for an attorney which delays resolution of their cases ([Figure 12](#)).

Local Court Spotlights

- Clatsop, Multnomah, and Washington County Circuit Courts shared their local experiences with the unrepresented crisis.

Data-Driven Decision Making

- Statewide, there are systemic gaps in data collection that prevent OPDC from tracking attorney availability, attorney qualification, and attorney capacity.
- OJD and OPDC are sharing data and have created dashboards on public defense caseloads, but more work needs to be done to address the systemic gaps in data collection.

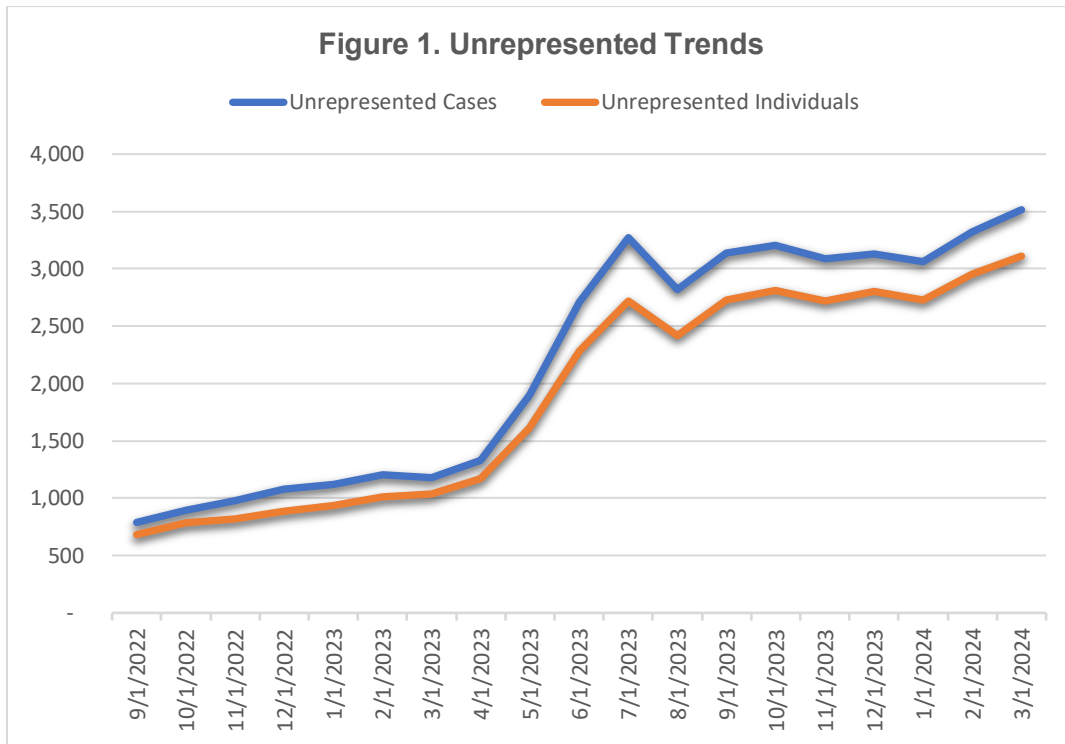
Unrepresented Trends

Figure 1 shows the unrepresented trendline since OJD began tracking the crisis 18 months ago. For daily updates, you can access the [Unrepresented Dashboard](#) on the OJD website.

- Even as the number of criminal case filings remains more than 20% below pre-pandemic levels and the number of contracted attorneys has increased since July 2023, the number of unrepresented individuals continues to increase.
- Overall, the rate of growth has slowed but continues to increase even as new attorneys are added, this looks to be due to a decrease in appointments taken over the last few months.
- Some attorneys have reported to the courts that the monthly and annual contracts limits prohibit them from taking new appointments when they have the capacity to take additional appointments.



Judges continue to hear from attorneys that removing administrative barriers to taking appointments at the hourly rate could increase participation in the program.



Source: OJD Odyssey Data (eCourt).

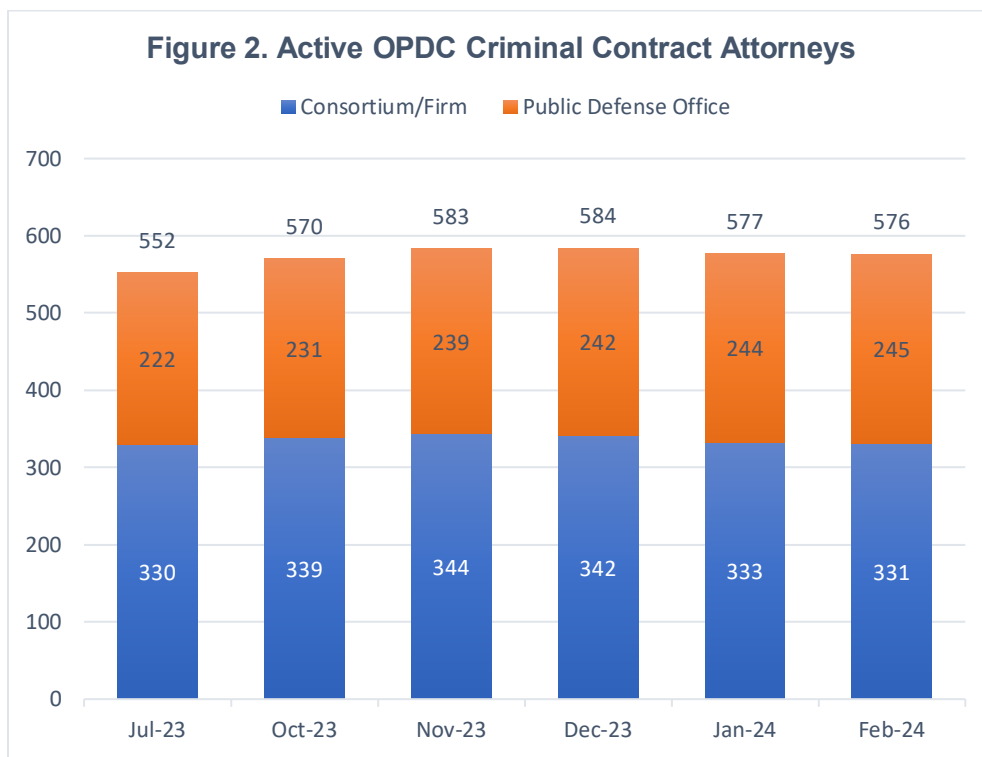
Unrepresented Crisis Plans – The Four Levers

The unrepresented crisis plans focused on the four levers that could impact the crisis. Many of these “levers” are not within the court’s authority but require action from other stakeholders. While specific entities hold different kinds of authority, each crisis plan assumes that system change - and progress - requires a shared vision, shared goals, and a group effort.

Lever 1 - Add Attorneys

Figure 2 shows the number of active attorneys on criminal contract in July 2023, and then monthly from October 2023 through February 2024.

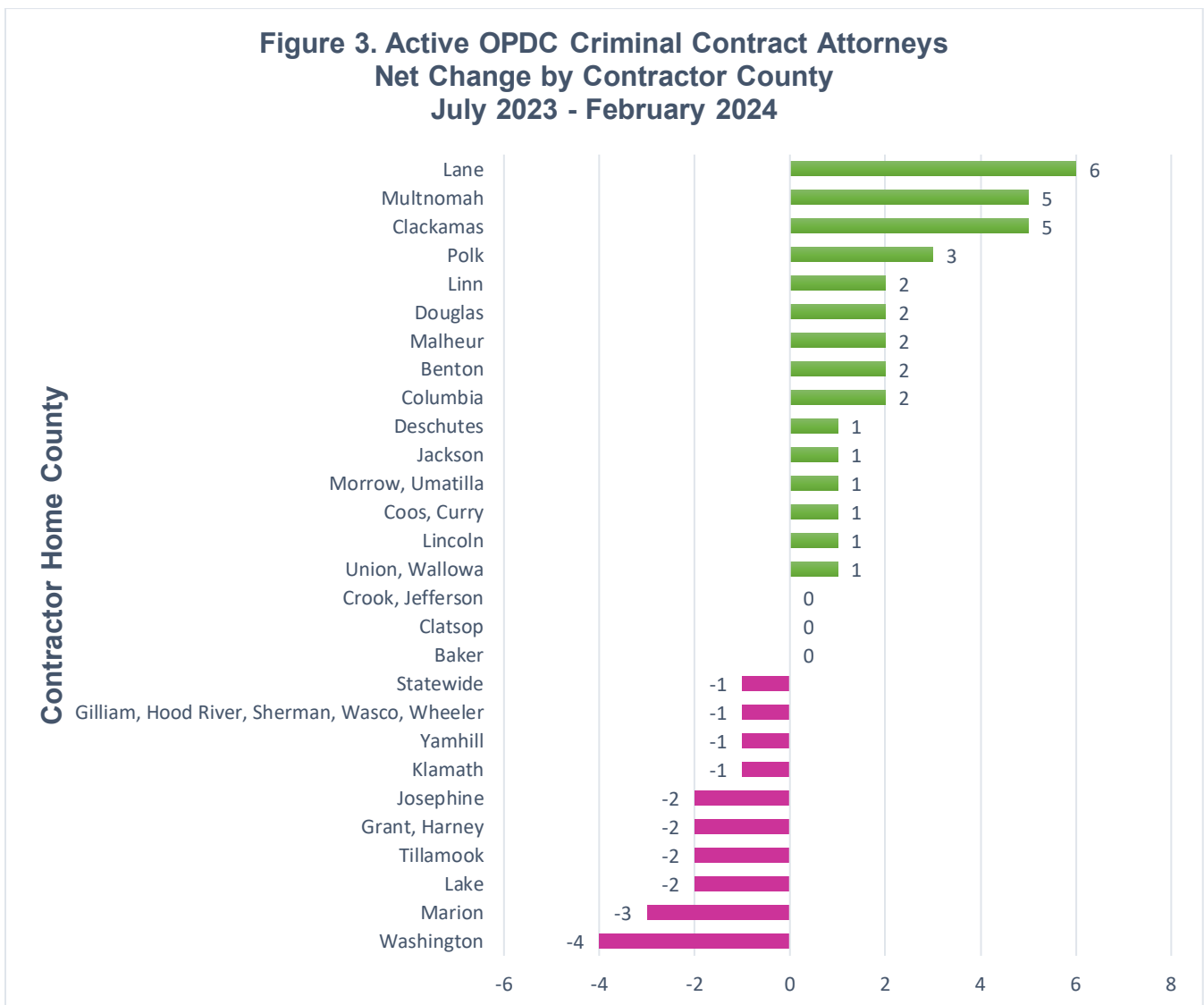
- There has been a net increase of 24 attorneys added to criminal contracts between July 2023 and February 2024.
- Consortia gained one attorney and public defense offices gained 23 attorneys.



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

Figure 3 shows the net change in contract attorneys by county since July 2023.

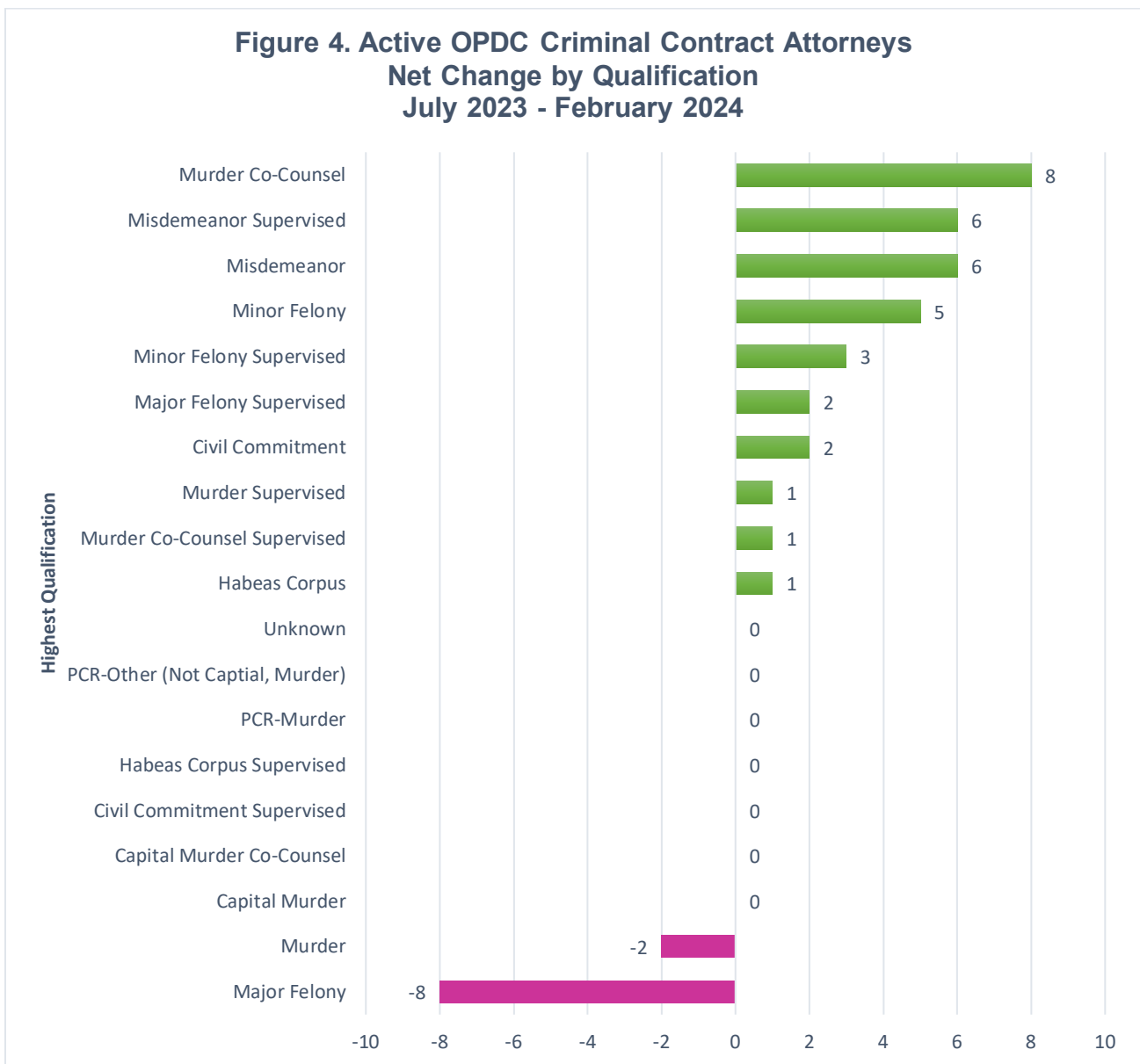
- Attorneys have been added in 15 judicial districts, including in three unrepresented hotspots (Douglas, Jackson, and Multnomah).
- In 3 judicial districts there has been no change in the number of attorneys (although there could have been changes in their contract MAC over this time).
- There was also a net loss of attorneys in 10 judicial districts, particularly in the unrepresented hotspots of Marion and Washington and in smaller counties where losing attorneys can create a crisis overnight, which happened in Clatsop County when they lost an attorney in August.
- Some new hires in the OPDC regional trial division offices were losses to contract attorneys in Marion (2) and Grant/Harney (1).



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

In Figure 4, the net change in contract attorneys is listed by attorney qualification.

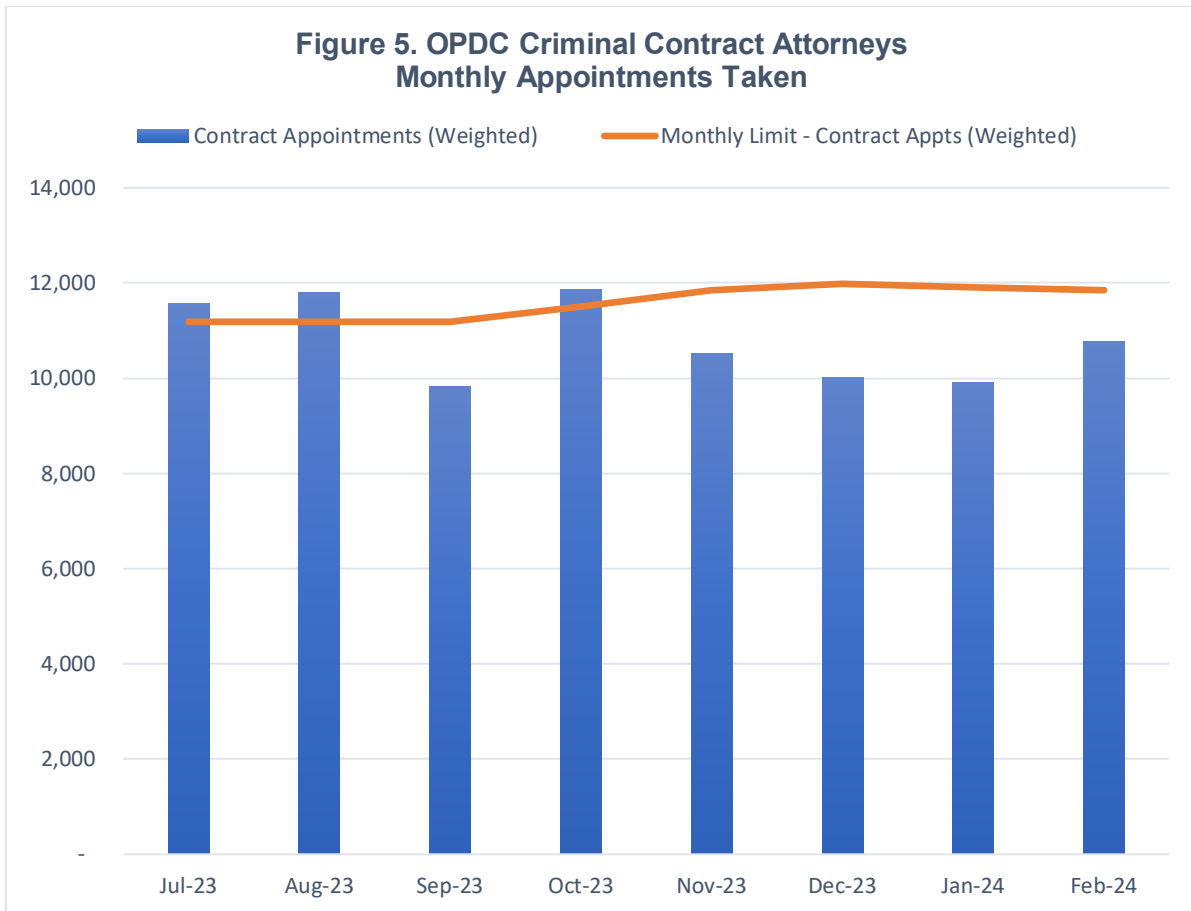
- Most new attorneys added since July 2023 have been misdemeanor qualified, and they are most likely newer attorneys who may not be able to take their full MAC (maximum caseload).
- There was also a net decrease of 8 major felony qualified attorneys between July 2023 and February 2024.
- Courts are concerned about a lack of attorneys qualified to represent persons accused of a felony, as well as the time it takes for less-experienced attorneys to be qualified by OPDC for certain case types.



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

Figure 5 shows the number of monthly appointments taken under contract this fiscal year for contract attorneys in each month compared to their monthly contract limits (1/12 of annual maximum attorney caseload).

- Although attorneys have been added to existing contracts, the total appointments taken under contract has decreased.



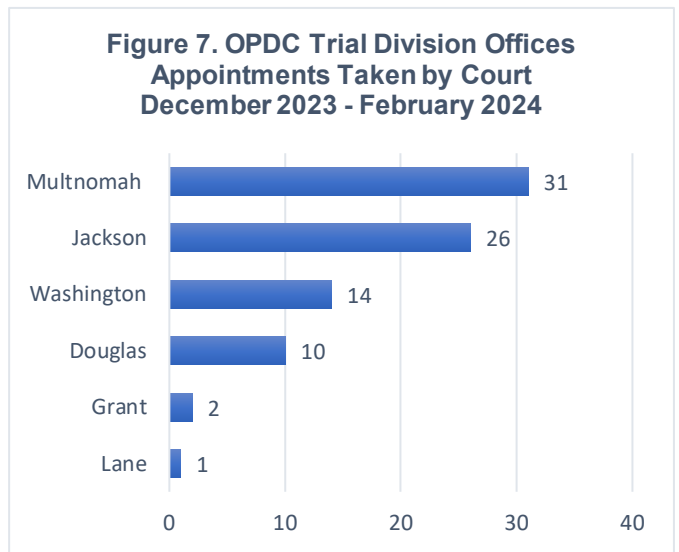
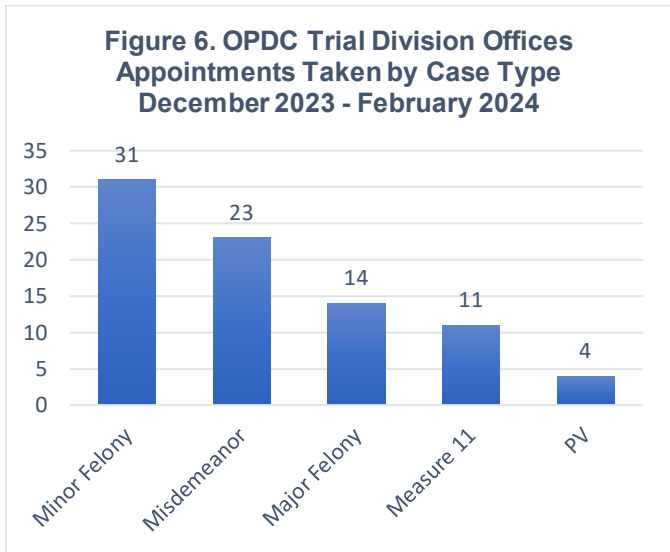
Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024 and OJD Odyssey Data (eCourt).

Figure 6 and Figure 7 show the new appointments taken by the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.

- Eight new attorneys took 84 new appointments from December 2023 through February 2024.
- Three new hires in the OPDC regional trial division offices were losses to contract attorneys in Marion County (2) and Grant/Harney Counties (1).
- In Grant and Harney Counties, the loss of the local consortium attorney left the small jurisdiction’s remaining public defense providers on the brink of collapse and sixteen children were left without representation in their dependency cases.



As contract attorneys are hired into OPDC regional trial division offices, a transition plan with the court and local public defense providers would benefit the clients OPDC serves.



Source: OJD Odyssey Data (eCourt).

Lever 2 - Attorney Capacity

Increased attorney capacity could be gained through prioritizing the assignment of cases to use attorney MAC more efficiently (e.g., ensuring felony-qualified attorneys are appointed on felonies before misdemeanors), as well as ways to reclaim attorney time (e.g., better administrative methods for payment and qualifications).

Many unrepresented crisis plans recommended OPDC move away from the MAC model to an open caseload, or workload model that would allow a more accurate reflection of an attorney’s workload at any given time. The current MAC contract model only weights new appointments taken during the contract period, but attorneys carry open caseloads from prior contract periods which could, in part, explain why less appointments are taken each month as more attorneys are added to the contract.

- As of March 1, 2024, about 18% of open caseloads are from the prior contract period and are not reflected in the current contract MAC (and some of that open caseload from the prior contract period are cases in warrant status).
- The number of open appointments in warrant status is decreasing but still make up about 17% of open caseloads as of March 6, 2024.
- There are about 1,800 appointments in warrant status for more than 180 days, the contract requires attorneys withdraw from those cases in warrant status for more than 180 days, but those appointments remain open.

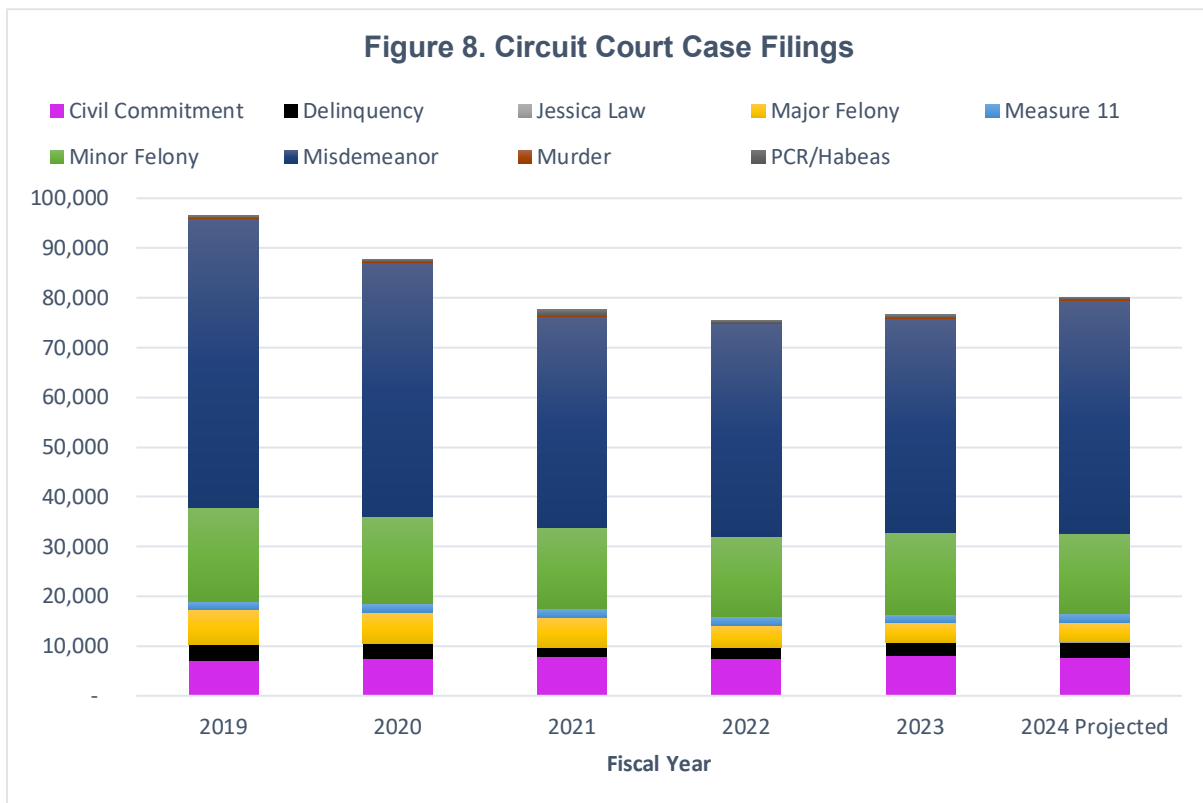


Ideally, OPDC would have a way to track and monitor open caseloads to determine attorney capacity and to enforce contract provisions.

Lever 3 - Decrease Filings

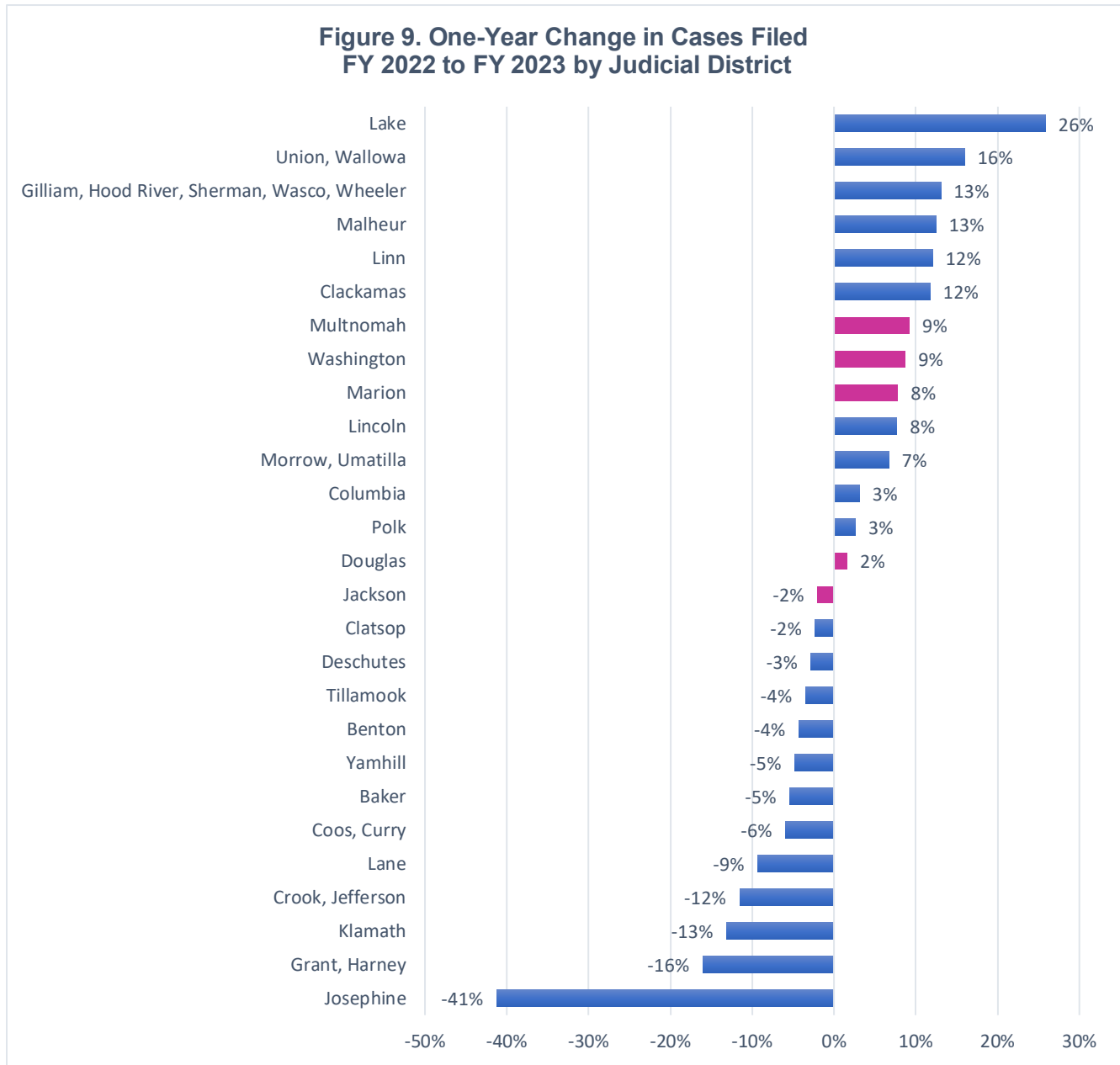
Figure 8 shows circuit court case filing trends.

- Filings remain more than 20% below 2019 levels but have started to increase in fiscal year 2023.
- In fiscal year 2023, case filings increased statewide by 1.4% over the prior year and in fiscal year 2024 case filings are projected to increase by another 5%.



Source: OJD Odyssey Data (eCourt).

Figure 9 shows the one-year change in cases filed by judicial district, the unrepresented hot spots are highlighted in pink.



Source: OJD Odyssey Data (eCourt).

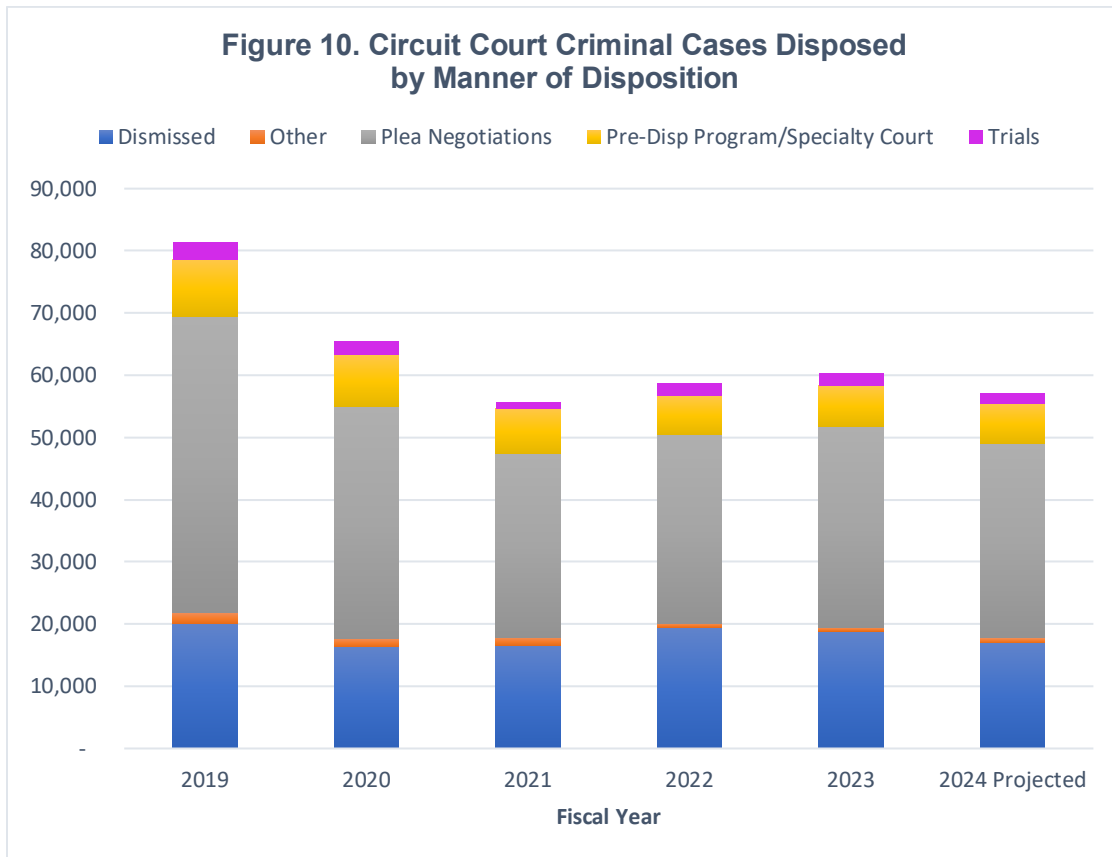
Lever 4 - Increase Dispositions

Figure 10 shows case dispositions since fiscal year 2019 by the manner of disposition.

- Like filings, case dispositions are well below 2019 levels.
- Case dispositions increased by almost 3% in fiscal year 2023 over the prior year.
- In fiscal year 2024 case dispositions are projected to decrease by 5% due to delays caused by the unrepresented crisis.
- Case dismissals are increasing while plea agreements are declining. Trial rates, diversions, and treatment court programs remained unchanged compared to 2019.



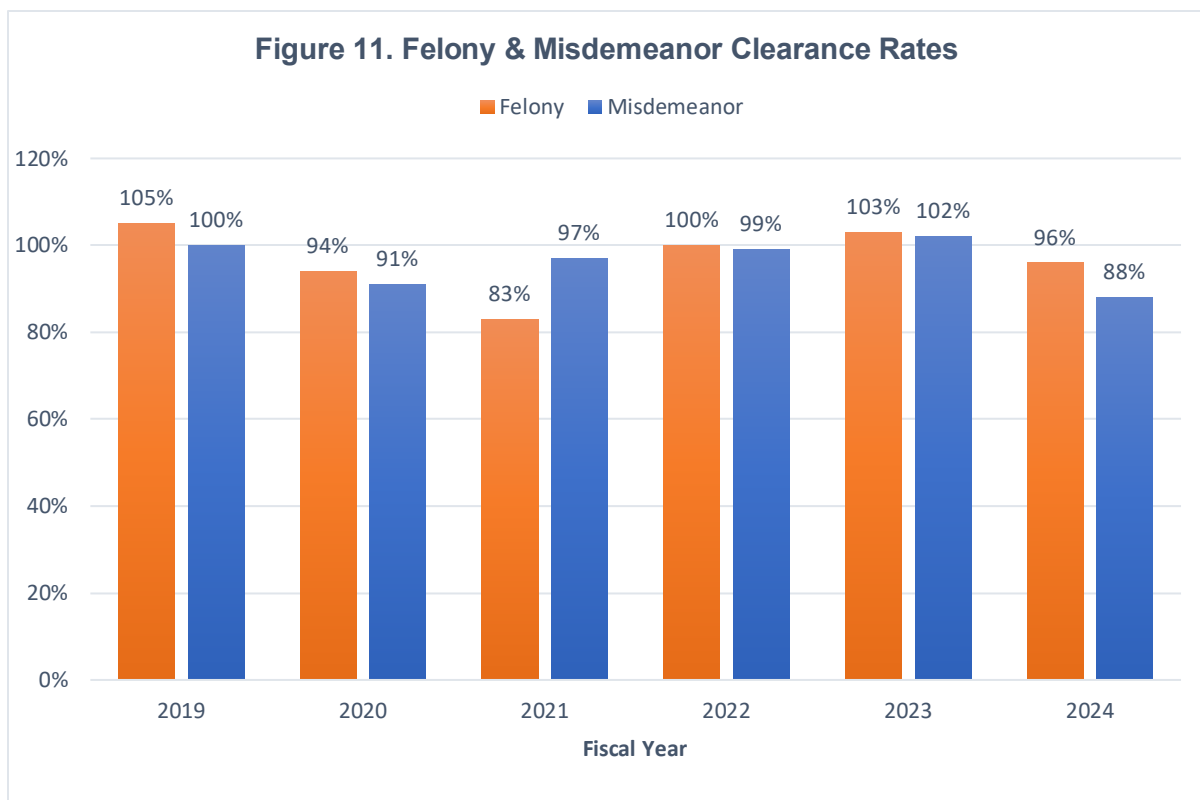
Courts across Oregon have increased their use of remote appearances to increase efficiencies with case resolutions and many courts are increasing their use of settlement conferences to increase early disposition of cases, to expedite plea negotiations and avoid a trial.



Source: OJD Odyssey Data (eCourt).

Figure 11 shows the statewide clearance rates for criminal cases since fiscal year 2019 through March 6, 2024.

- Clearance rates measure whether courts are keeping up with incoming caseload (cases closed divided by cases filed).
- When clearance rates are at or above 100%, open caseloads decrease and when clearance rates are below 100%, open caseloads increase.
- As the unrepresented crisis continues it will impact the courts' ability to resolve cases.
- In fiscal year 2024 to date, clearance rates have fallen below 100% for both felony and misdemeanor cases.



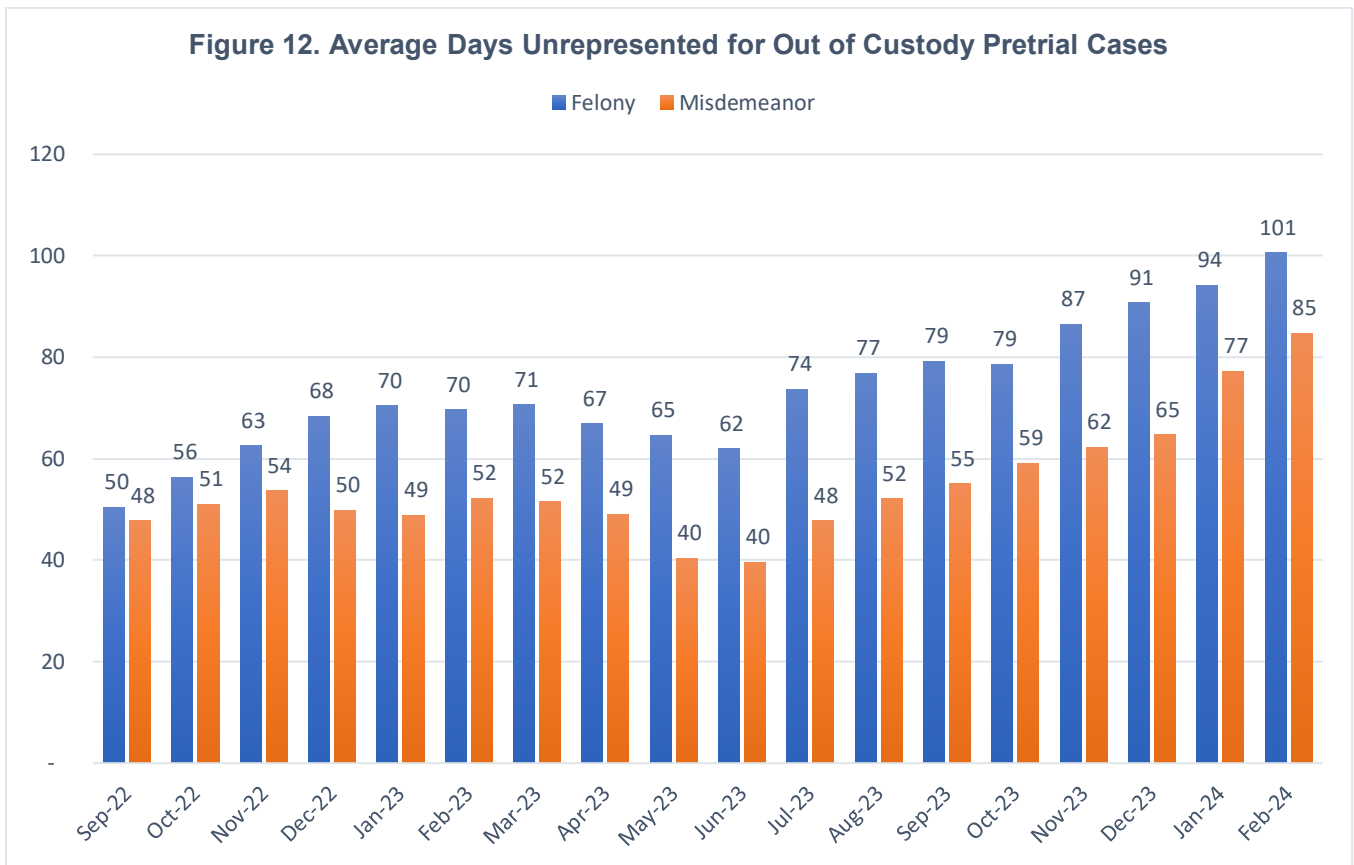
Source: OJD Odyssey Data (eCourt).

Figure 12 shows that people with out of custody felony and misdemeanor cases are waiting longer for an attorney which delays resolution of their cases.

- People with felony cases are unrepresented longer, on average, than people with misdemeanor cases.



Multiple providers expressed frustration about the difficulty accessing clients who are in custody. Improvements to the jail access, prosecutors reducing the time in providing discovery, and data sharing were all mentioned in unrepresented crisis plans as ways to improve system efficiency.



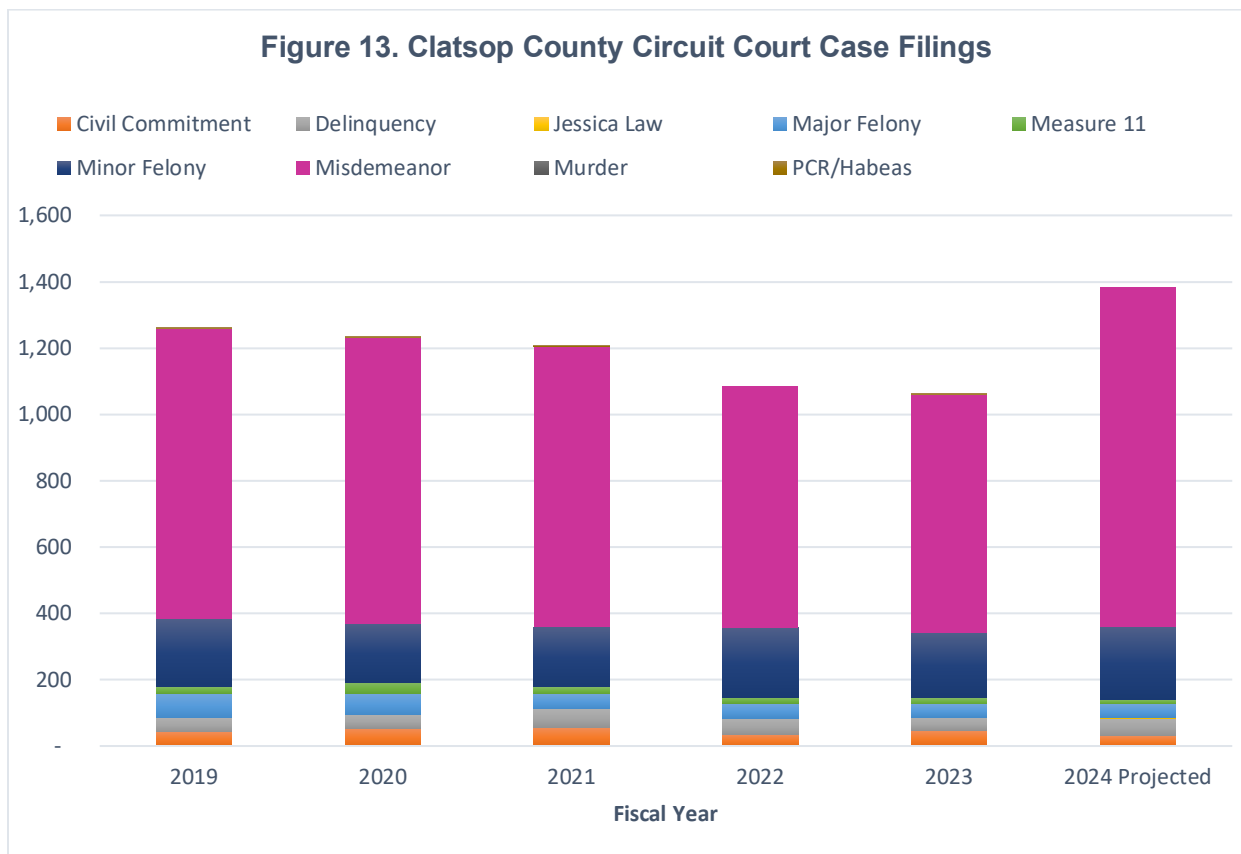
Source: OJD Odyssey Data (eCourt).

Local Court Spotlights

Clatsop County Circuit Court

Figure 13 shows filings by fiscal year since 2019 in Clatsop County Circuit Court.

- Filings for fiscal year 2024 are projected to be 31% more than fiscal year 2023, driven by an increase in misdemeanor filings. Unrepresented cases in Clatsop account for 14% of the court’s open criminal caseload.
- The court has been operating with about two fewer attorneys than are needed and one attorney has recently taken leave for a serious health issue; the court is now struggling to find representation for the attorney’s open caseload, approximately 50 more unrepresented cases.



Source: OJD Odyssey Data (eCourt).

To ensure that the most serious cases are receiving attorneys the court has been prioritizing in custody individuals. This has led to a concentration of more serious matters for public defense attorneys, more 60-day trial issues, and a serious and substantial risk of attorney burnout in the county.

Even on cases that have counsel, requests for investigative expenses and experts are taking several weeks to get approved which creates delays in the docket and adds time, and frustration to an already overburdened system.



The court is attempting to build a resolution docket to resolve the backlog of unrepresented and out of custody cases. OPDC was able to confirm funding of the soon to be retired defense lawyer that is willing to handle docket.

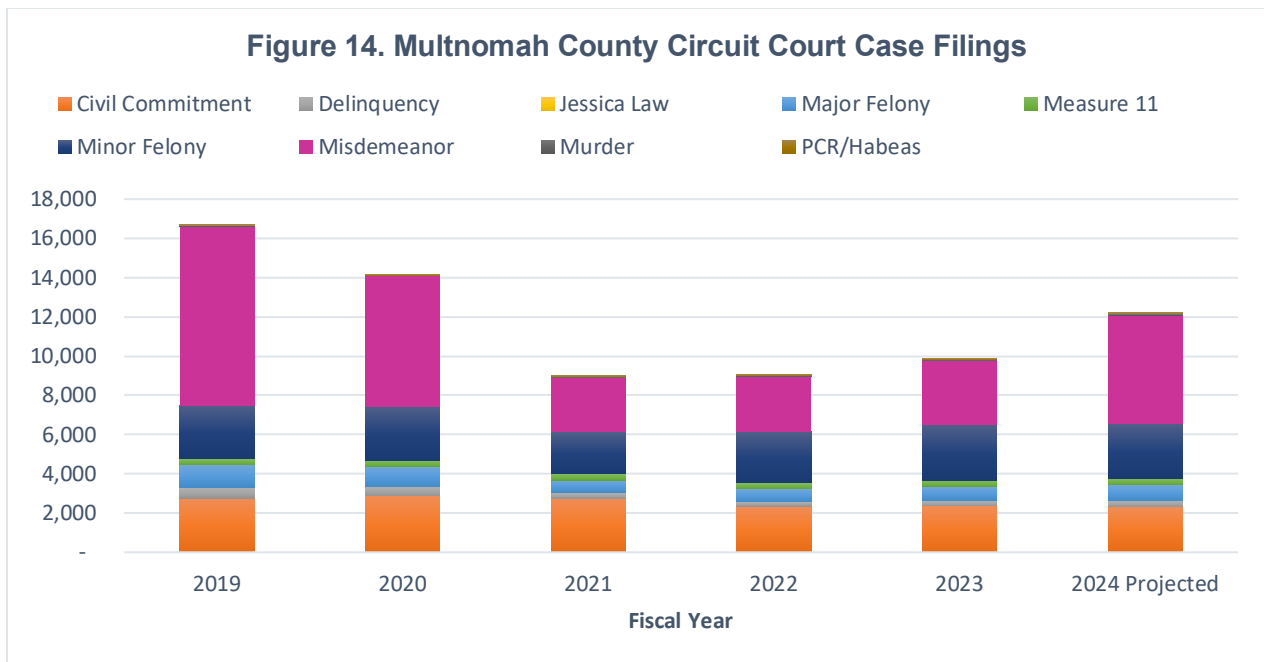
Managing unrepresented cases requires substantial staff time to monitor, track, and prioritize the unrepresented caseload, identify attorneys who can take new appointments, appoint the attorneys, and reschedule hearings when multiple appearances are required before an attorney can be appointed.

The court cannot move these cases forward without attorneys to appoint, as a result, time to disposition and clearance rates are being impacted by the delays created by the unrepresented crisis.

Multnomah County Circuit Court

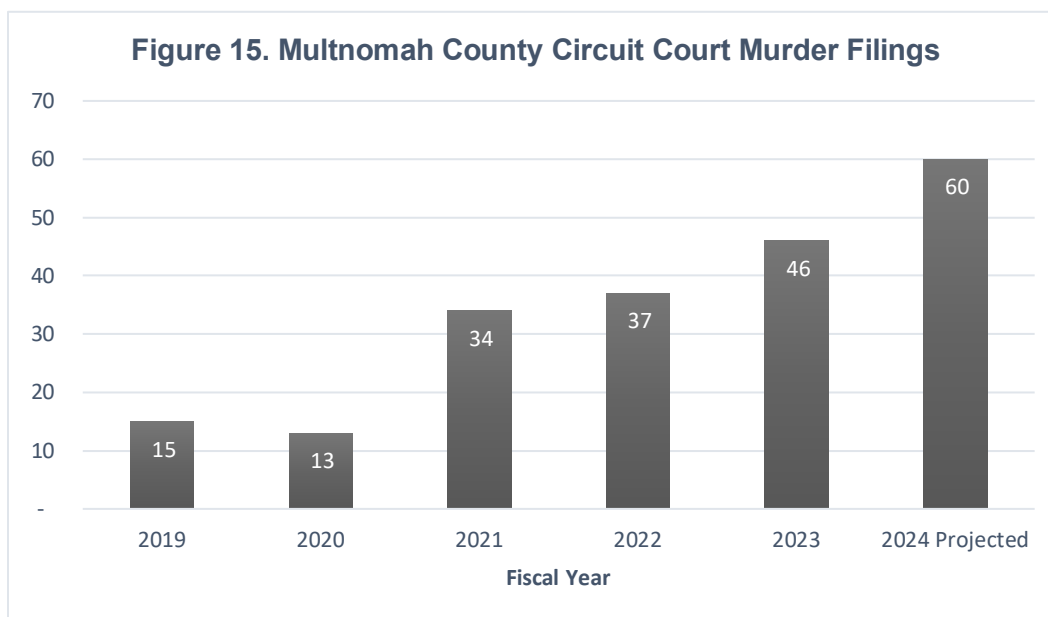
Figure 14 shows filings by fiscal year in Multnomah County Circuit Court.

- Criminal filings are down substantially compared to 2019 but they are increasing (9% increase in FY 2023 and another 24% increase projected in FY 2024).



Source: OJD Odyssey Data (eCourt).

Figure 15 shows Murder charges are historically high in recent years.



Source: OJD Odyssey Data (eCourt).

The court is particularly concerned about increasing levels of Murder charges and the projected impact of the passage of HB 4002 (2024) exacerbating the unrepresented crisis in Multnomah.

Since 2022, turnover has improved substantially in the public defense offices, vacancies are lower, and 5 attorneys have been added in Multnomah County.

- The number of out of custody unrepresented individuals eligible for public defense counsel is as high as it has ever been - 569 on 9/15/22 (almost 18 months ago) and 587 on 3/7/24.
- Public defense offices are consistently below the contractual MAC while consortium attorneys are consistently at or above their monthly MAC and continue to meet specialized and critical needs for representation of major felonies.
- The court supports maintaining the structure and funding for the Portland Defense Consortium (PDC) if possible. PDC attorneys work collaboratively with the court to resolve minor felonies and all criminal cases through representation in the early resolution docket and other specialized programs.
- The District Attorney’s office should be staffed at a level suitable for a jurisdiction the size of Multnomah County and to accommodate timely discovery, timely communication with opposing counsel, timely settlement offers, and adequate levels of staffing for docket appearances to resolve cases efficiently.

The court recommends a new open caseload/workload contracting model be developed.

- Development of objective criteria to determine when contracting lawyers and law firms have reached their ethical limits will improve the OPDC's ability to project public defense need in each jurisdiction.
- Tracking and monitoring open caseloads (and workload) per attorney would allow OPDC to know how many cases each attorney is managing and to what extent their open caseload includes cases that are in bench warrant status.
- An additional recommendation is for OPDC to consider innovative ways to free up attorney time such as providing funding for trained case managers and social workers who can effectively and efficiently provide critical services currently provided by attorneys and paralegals.



Considerations for evaluating public defense workload and capacity should include the number of clients in-custody versus out-of-custody (jail access issues), discovery needs including lab reports and body camera video that can impact timeframes, and time to disposition standards to keep cases moving towards disposition.

Washington County Circuit Court

Washington County Circuit Court has had several successful interventions to the public defense crisis including:

- Continued Arraignment docket shaped the Wingspan 2.0 – Settlement Resolution Docket.
 - Wingspan 2.0 Settlement Resolution Dockets resolved approximately 686 out of 1,210 eligible cases. In cases where the defendant did appear, resolution rate was about 77%.
 - Wingspan 3.0 resolved another 62 unrepresented cases.
- Hired analyst to analyze data, communicate with partner agencies, perform research assignments, and provide recommendations for prioritization of appointments.
- Steady and sustained decline of in-custody and unrepresented since August 2023.
- Increased efficiency and timeliness when processing orders appointing counsel, improving defense firms' ability to track cases and meet with clients.
- Increased collaboration with Multnomah and Clackamas for global resolutions.



Automated check-in or telephonic check-in process for people with unrepresented cases waiting on appointment of counsel, has reduced docket time and FTAs while increasing convenience and accessibility for the participants.

The court has also experienced several challenges implementing local crisis plans including:

- Unable to accurately calculate and view attorney availability and workload.
- Difficulty finding attorneys willing to take out of custody cases above the C Felony level, especially Jessica's Law and sex abuse cases.
- Attorneys are taking newer cases over older cases, and engagement with provider staff is mixed.
- There are not enough experienced attorneys.
- The court needs more proactive engagement from OPDC.
- Early Case Resolution (ECR) cases have increased by approximately 30% since 2022 and there are not enough attorneys to accommodate the increase, which means fewer cases settling. The cases are set over, which increases risk of FTA and overloads the docket.
- Capacity issues at the jail create delays for attorneys to meet with clients.
- Wingspan type settlement dockets need buy-in from DA, Defense, and Judges.

The court will focus on the following goals in the next few months to continue implementation of their crisis plan:

- Increase clearance rates and reduce FTAs.
- Establish regular meetings with community partners.
- Continue efforts to analyze unrepresented data to determine the best course of action to prioritize appointment of counsel, increase efficiency, and clear the unrepresented out of custody caseload.



The court found that a quarterly docket to address driving/motor vehicle offenses would reduce out of custody unrepresented cases by 26%. This type of specialized docket would be an excellent use of a CLS or newer attorney.

Eligible persons who may have a single, stand-alone offense and have not reoffended may be eligible for a quicker resolution based on the DA's approval and recommendation.

Data-Driven Decision Making

OJD continues to work closely with OPDC to provide data to identify in-custody and out-of-custody unrepresented individuals, manage efficient appointment of counsel, and improve contract oversight by OPDC. Statewide, there are systemic gaps that prevent OPDC from tracking attorney availability, attorney qualification, and representation capacity.

The public defense system is severely compromised, with a growing number of individuals who have a right to counsel but remain unrepresented across the state. The need for accurate and reliable data continues and is necessary to make data-informed decisions to address the current crisis and ensure representation in the future. OJD is committed to continuing its efforts to work efficiently at the local level and to working with OPDC and providers to develop comprehensive data sets that provide real-time data to better understand current capacity, produce accurate forecasts, and ensure that each person entitled to court appointed counsel has representation as required by law.

Budget Update

Budget Update

Ralph Amador

Ralph.Amador@opds.state.or.us

March 6, 2024



FINANCIAL OVERVIEW

Public Defense Services Commission 2023 - 2025 Biennium			General Fund Authority	Other Funds Limitation	Executive Division	Compliance, Audit, and Performance	Appellate Division	Adult Trial Division	Juvenile Trial Division	Juvenile Trial Division
					General	General	General	General	General	Other
Legislatively adopted budget			557,105,356	21,769,668	4,163,436	6,400,917	24,491,812	267,580,283	50,356,700	4,352,000
Legislatively adopted budget			557,105,356	21,769,667	4,163,436	6,400,917	24,491,812	267,580,283	50,356,700	4,352,000
Expenditures for fiscal month period ended:*										
2023	July	Actuals	18,397,197	11	133,733	225,176	959,453	9,842,138	1,927,864	
	August	Actuals	21,238,779	11	138,461	225,195	959,306	9,813,558	1,916,717	
	September	Actuals	21,374,508	167,441	165,462	229,263	958,893	9,721,761	1,897,407	
	October	Actuals	26,050,538	355,304	201,947	223,275	953,914	13,052,269	2,579,912	
	November	Actuals	24,035,662	11	165,482	243,026	1,063,627	10,928,274	2,117,035	
	December	Actuals	21,794,481	174,224	137,895	251,809	1,086,112	10,927,748	2,079,809	
2024	January	Actuals	24,296,700	11	157,759	226,119	1,060,402	10,899,192	2,098,779	
	February	Projections	23,838,678	0	158,026	321,225	1,051,651	11,396,216	2,164,132	
	March	Projections	23,845,305	0	159,054	321,225	1,053,299	11,396,216	2,164,132	
	April	Projections	23,849,232	0	159,054	322,679	1,053,299	11,396,216	2,164,132	
	May	Projections	23,852,915	0	160,341	323,594	1,054,781	11,396,216	2,164,132	
	June	Projections	23,855,199	0	160,341	324,602	1,056,056	11,396,216	2,164,132	
Budget authority or limitation remaining as of June 30, 2024			280,676,161	21,072,655	2,265,881	3,163,730	12,181,018	135,414,267	24,918,517	4,352,000
Forecast for fiscal year ended June 30, 2025 (Fiscal Year 2025)			(293,623,071)	0	(2,397,437)	(4,135,282)	(13,444,599)	(135,511,213)	(27,203,949)	0
Pending expenditure reclassifications and other adj. (rev. shortfall, etc.)			17,320,000	(17,320,000)	0	0	0	0	4,352,000	(4,352,000)
Projected authority or limitation ending balance			4,373,089	3,752,655	(131,555)	(971,551)	(1,263,580)	(96,947)	2,066,568	0

FINANCIAL OVERVIEW

Public Defense Services Commission 2023 - 2025 Biennium			General Fund Authority	Other Funds Limitation	Preauthorized Expenses	Preauthorized Expenses	Court Mandated Expenses	Court Mandated Expenses	Parent Child Rep. Program	Parent Child Rep. Program	Administrative Services Division	Special Progs., Contracts, and Distr.	Special Progs., Contracts, and Distr.
					General	Other	General	Other	General	Other	General	Other	General
Legislatively adopted budget			557,105,356	21,769,668	54,837,645	1	67,113,611	4,449,667	48,710,092	11,968,000	24,568,388	8,882,472	1,000,000
Legislatively adopted budget			557,105,356	21,769,667	54,837,645	1	67,113,611	4,449,667	48,710,092	11,968,000	24,568,388	8,882,472	1,000,000
Expenditures for fiscal month period ended:*													
2023	July	Actuals	18,397,197	11	1,644,355		941,325	11	1,890,658		648,220	184,275	
	August	Actuals	21,238,779	11	3,164,237		1,591,745	11	2,199,444		678,382	551,734	
	September	Actuals	21,374,508	167,441	3,133,654		2,165,245	167,441	2,089,771		568,823	444,230	
	October	Actuals	26,050,538	355,304	2,564,593		2,182,911	355,304	2,884,438		1,235,332	171,948	
	November	Actuals	24,035,662	11	3,536,400		2,069,392	11	2,318,500		733,791	860,135	
	December	Actuals	21,794,481	174,224	2,659,938		1,641,831	174,224	2,138,915		668,333	202,093	
2024	January	Actuals	24,296,700	11	3,583,763		2,957,462	11	2,469,724		610,852	232,648	
	February	Projections	23,838,678	0	2,129,971		2,842,666	0	2,269,723	0	955,069	550,000	
	March	Projections	23,845,305	0	2,129,971		2,842,666	0	2,269,723	0	959,019	550,000	
	April	Projections	23,849,232	0	2,129,971		2,842,666	0	2,269,723	0	961,492	550,000	
	May	Projections	23,852,915	0	2,129,971		2,842,666	0	2,269,723	0	961,492	550,000	
	June	Projections	23,855,199	0	2,129,971		2,842,666	0	2,269,723	0	961,492	550,000	
Budget authority or limitation remaining as of June 30, 2024			280,676,161	21,072,655	23,900,851	1	39,350,369	3,752,654	21,370,025	11,968,000	14,626,091	3,485,411	1,000,000
Forecast for fiscal year ended June 30, 2025 (Fiscal Year 2025)			(293,623,071)	0	(28,850,198)	0	(34,111,992)	0	(28,545,245)	0	(12,713,157)	(6,710,000)	0
Pending expenditure reclassifications and other adj. (rev. shortfall, etc.)			17,320,000	(17,320,000)	5,162,279	0	(5,162,279)	0	11,968,000	(11,968,000)	0	1,000,000	(1,000,000)
Projected authority or limitation ending balance			4,373,089	3,752,655	212,932	1	76,098	3,752,654	4,792,779	0	1,912,934	(2,224,589)	0

2024 Legislative Session Report

2024 Legislative Session Report

Oregon Public Defense
Commission

March 21, 2024

Lisa Taylor, Government Relations Manager
Lisa.Taylor@opds.state.or.us



2024 Legislative Session

Budget

- Rebalance
- Budget Requests vs. Legislative Allocations
- Budget Notes and Reports

Policy

- Bills of Note
- HB 4002 (Recriminalization)
 - Policy
 - Impacts
 - Fiscal
 - Budget

Budget

Budget Asks 2024

Agency Rebalance (Net Zero Cost)

SB 337 Implementation

- State Trial Offices Expansion (\$4.96 million)
- Executive Transition and Strategic Plan (\$1.75 million)

Unrepresented Persons

- Additional Contracted Attorneys (\$3 million)
- Temporary Hourly Increase Program (THIP) (\$3.1 m SPA, \$4.3 m Carryforward)

Robust Administration

- Strategic Agency Staffing (\$1.9 million)

Budget Goals:

- **SB 337 implementation;**
- **Unrepresented persons;**
- **Robust administration.**

All requests are funded through Special Purpose Appropriations (SPA) or 21-23 Carryforward, no additional general funds are requested.

SPECIAL PURPOSE APPROPRIATIONS

SPA Allocation Based on 2024 Session Requests

SPA Name	Purpose	Available (Millions)	Request (Millions)	Remain (Millions)
Executive Branch Transfer	Allocated for the transfer of the Oregon Public Defense Commission to the executive branch.	5	2.4	2.6
Caseload Costs	Supplemental funding for Adult and Juvenile Trial Division for caseload costs the Commission is unable to mitigate during the interim legislative periods.	3	3	0
Unrepresented Expenses	Expenses related to the unrepresented defendants/persons crisis.	5	5	0
Related to Public Defense	Public defense contingency, expenses related to public defense.	6.17	3.54	2.63
	Total	19.17	13.94	5.23

Rebalance

Goal: Rebalance current agency savings to fully fund existing contract supervision, training, and investigation for the second year of the biennium.

Process: OPDC worked closely with the Legislative Fiscal Office (LFO) on this rebalance. Moved funds from Juvenile, PCRCP, and Special Programs and Contracts into Adult Trial Division.

Outcome: OPDC can fully fund existing contracts for the full 2 years of the biennium, including training, supervision, and investigation.

REBALANCE

	Adult Trial Division	Juvenile Trial Division	Parent Child Rep. Program	Special Programs & Contracts
Legislatively adopted budget	255,217,575	53,474,335	59,443,727	
Estimated PDLSC procurement	262,107,980	49,752,439	55,106,865	
Budget surplus / (deficit)	(6,890,405)	3,721,896	4,336,862	
Budget contingency to PDLSC LAB	(1,148,479)	(240,635)	(267,497)	
Budget resources available / (needed)	(8,038,884)	3,481,261	4,069,365	
Budget rebalance (contracts)	(8,133,907)	(3,481,261)	(4,069,365)	(583,281)
Budget rebalance (positions)				
Budget resources available / (needed) after rebalance	95,023	0	0	

State Trial Office Expansion and Staffing

Request: \$4.96 million (\$1.42 m Unrepresented SPA, \$3.54 m General Public Defense SPA), 11.71 FTE.

Allocation: \$3.46 million (\$1.42 m Unrepresented SPA, \$3.3 m GF), 7.56 FTE

- Establishes Mid-Willamette Valley State Trial Office in April 2024 with 3 attorneys and support staff.
- Additional Funding for Metro and Southern Pilot Offices and an Admin Specialist for each office.
- Agency Staffing:
 - Training Coordinator for CAP & THIP Coordinator for ATD.

Not Funded

- **2 Salem Attorneys**
- **3 Procurment Staff**
- **1 Compliance CAP Position**
- **1 HR Position**

Executive Branch Transition and Organizational Development

Request: \$1.75 million from Executive Branch Transfer SPA.

Allocation: \$500,000 from Executive Branch Transfer SPA.

- OPDC reduced this request once a contractor was chosen and price established.
- Moss Adams will be contracted to help the agency successfully transition to the Executive, including strategic planning, process improvement, and project management.

Unrepresented Persons Requests

Additional Contracted Attorneys

Request: \$3 million Caseload SPA

Allocation: \$3 million Caseload SPA

- 10 more Maximum Attorney Caseloads (MAC) (6.25 FTE equivalent) to take on cases.

Temporary Hourly Increase Program (THIP)

Request: \$7.4 million (\$3.1 m Unrepresented SPA, \$4.3 m Carryforward)

Allocation: \$7.4 million (\$3.58 m Unrepresented SPA, \$3.82 m GF)

- Extends THIP for in-custody unrepresented cases through June 30, 2024.

Strategic Agency Staffing

Request: \$1.23 million Executive Branch Transfer SPA.

Allocation: \$1.23 million Executive Branch Transfer SPA.

- 6 positions identified through a gap analysis to improve the Commission's administrative function.
 - 1 Office Specialist for Multnomah Courthouse office;
 - 1 HR analyst;
 - 1 IT Server Support;
 - 1 IT Microsoft support;
 - 1 IT webservices support;
 - 1 IT Mobile device support.

SPECIAL PURPOSE APPROPRIATIONS

SPA Allocation Based on 2024 Session Legislative Allocations

SPA Name	Purpose	Available (Millions)	Request (Millions)	Remain (Millions)
Executive Branch Transfer	Allocated for the transfer of the Oregon Public Defense Commission to the executive branch.	5	1.23	3.76
Caseload Costs	Supplemental funding for Adult and Juvenile Trial Division for caseload costs the Commission is unable to mitigate during the interim legislative periods.	3	3	0
Unrepresented Expenses	Expenses related to the unrepresented defendants/persons crisis.	5	5	0
Related to Public Defense	Public defense contingency, expenses related to public defense.	6.17	0	6.17
	Total	19.17	9.24	9.93

Budget Notes and Reports

Budget Report

OJD is directed to continue providing IT services through the end of contract in June 2025.

Budget Note

Status report on move to the Executive Branch in May and September.

Reports

New Reports Due May 2024

- Audit Report
- Quality Management
- FCMS Report
- Executive Branch Move

Existing Reports Due May 2024

- Remediation Plan III
- Comprehensive Public Defense Report

Policy

Bills of Note

SB 1574 Omnibus Bill: Interest On Lawyer Trust Accounts (IOLTA);

HB 4043 animal abuse. Expands crime and increases penalties;

HB 4008 assault against hospital workers. Expands crime and increases penalties;

HB 4145 animal crushing. Expands crime and creates new crime;

HB 4146 intimate images and restraining orders;

HB 4156 expands crime of stalking;

SB 1553 expands crime of drug use on public transportation;

SB 1580 create new crime of fraudulent misrepresentation by employers to reduce workers compensation.

HB 4002 Drug Policy

Policy

Section 24: Delivery of Controlled Substances (Delivery Based on Boyd Standard)

Section 25: Delivery in Certain Locations

Section 26-27: Reevaluation of Release Guidelines

Section 34-35: Possession of Controlled Substances (Drug Enforcement Misdemeanor Provisions)

Section 51-52: Conditional Discharge

Impacts Delivery

Section 24: Boyd Standard

- Compared 2019 numbers to 2023 numbers
- Inflated to account for population and fentanyl

Section 25: Delivery in Certain Locations

- Indeterminate, but will impact hourly cases and ethical MAC

Section 26-27 Reevaluation of Release Guidelines

- None, but reevaluation could impact THIP and in-custody numbers.

	Delivery charges as reported by providers
2019	1551
2023	195
10% Inflation	135
New Charges From 4002	1541

Case Type	Estimated case count
Class A/B Felony	1480
Class C Felony	18
Probation Violations	43

Impacts Possession

Section 34-35 Possession

- Used 2019 Possession numbers
- Inflated to account for population and fentanyl
- Added 5% collateral charges

Section 51-52 Conditional Discharge

- Indeterminate, but could impact time to close and hourly work.

	Delivery charges as reported by providers
2019	9673
10% Inflation	967
Deflection (25%)	-2428
New Charges From 4002	8212

Case Type	Estimated case count
Misdemeanor	7284
Probation Violations	928

HB 4002 Fiscal

OPDC's goal was to create a clear record of the fiscal and workforce need HB 4002 would create.

Priced by both MAC and Hourly.

Chair Nash testified twice to workforce impacts.

Sent a letter to the committee chairs.

Provided a thorough and extensive fiscal to LFO.

Ultimately the discussion was, even if we were fully funded, the workforce needed doesn't exist.

Budgeted Resources

Since the budget nor the workforce existed to meet our fiscal, we worked with LFO to create an implementation strategy.

This strategy was about mitigating the impacts of 4002.

We provided options that could increase attorney capacity in a realistic way.

Implementation Strategy

- **MAC**
- **Hourly**
- **State Employees**
- **Case Managers**
- **Preauthorized Expenses**
- **Unrepresented**

Budgeted Resources

\$3 million for MAC

\$3 million for Hourly Attorneys

\$2.5 million for additional State Employees

\$2 million for Contract Case Managers

\$1.7 for Preauthorized Expenses

**HB 4002 will grow the
unrepresented list.**

**These resources
will only provide
representation
for a portion of
the potential
cases created by
HB 4002.**

**The rest of the
cases will go
onto the
unrepresented
list.**

Type	Rate (Year or Hourly)	MAC/FTE/Hours /Amount	23-25 Cost	25-27 Cost
Hourly (Court Mandated Expenses)	\$130	23,076.92	\$3,000,000	\$6,527,999
MAC (Adult Trial Division)	\$223,739	13.40	\$2,998,103	\$6,523,871
State Employees				
Deputy Defender	\$190,697	8	\$1,525,576	\$3,319,653
Legal Secretaries	\$93,489	4	\$373,956	\$813,728
Discovery Clerk (OS2)	\$100,468	3	\$301,404	\$655,855
Case Worker	\$105,516	3	\$316,548	\$688,808
	Total	42.18	\$2,517,484	\$5,478,045
Contracted Case Manager	\$92,179	22	\$2,027,942	\$4,412,803
Preauthorized Expenses			\$1,647,542	\$3,585,051
Total			\$12,191,070	\$26,527,769

Budgeted Resources

\$2.1 million for Public Defense Law School Clinics

- U of O, Lewis & Clark, Willamette;
- Partner with public defender offices;
- 60 law students;
- Between 300-400 misdemeanors/year;
- One-time funds.

CONCLUSION

2024 Session Overall

Impacts

- 4002 will increase unrepresented numbers;
- Investments in contracted case managers an important step;
- Additional state trial employees helps build to SB 337 goals;
- No procurement staff could be detrimental to implementing contracts under DAS rules.

Accomplished

- ✓ Rebalance approved
- ✓ Requests Funded
- ✓ IOLTA fix
- ✓ 4002 Planned For

Thank you



Directors Report

Directors Report

Director Kampfe
Update (10 minutes)

- New Agency Staff
- Commercial St remodel for Mid-Willamette Valley Office
- Increased engagement through proactive 2024 Legislative wrap-up report
- Pre-Authorized Expense & Accounts Payable processing time
- Financial & Case Management Systems project update
- Re-launched internal newsletter to better communicate with staff