

**Members:**

Jennifer Nash, Chair  
 Susan Mandiberg, Vice Chair  
 Peter Buckley  
 Robert Harris  
 Alton Harvey, Jr.  
 Tom Lininger  
 Jennifer Parrish Taylor  
 Robert Selander  
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**Nonvoting Member:**

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

**Executive Director:**

Jessica Kampfe

**Oregon Public Defense Commission**

*Meeting will occur virtually.  
 Wednesday, May 8, 2024  
 9:00 AM – approx. 1:30 PM PST - Amended  
 Via Zoom\**

# AGENDA

<b>9:00–9:30</b>	Executive Session**	Chair Nash
<b>9:30-9:35</b>	Welcome	Chair Nash
<b>9:35-10:05</b>	Public Comment	Chair Nash
<b>10:05-10:30</b>	<b>Update: Unrepresented Persons</b> <ul style="list-style-type: none"> <li>Status update <a href="#">page 3</a></li> <li>Next steps (Intake Pilot Project) <a href="#">page 9</a></li> </ul>	Jessica Kampfe Harry Noone
<b>10:30-11:00</b>	<b>Update: Budget <a href="#">page 28</a></b> <ul style="list-style-type: none"> <li>Current Service Level (CSL) budget build for 2025-2027</li> <li>Policy Option Packages (POP's) budget build for 2025-2027</li> <li>Update on Accounts Payable</li> <li>Update on Preauthorized Expenses</li> </ul>	Ralph Amador Jessica Kampfe
<b>11:00-11:45</b>	<b>Briefing:</b> Moss Adams Hourly Rate and Economic Survey <a href="#">page 35</a>	Jessica Kampfe Jessie Lenhardt
<b>11:45-11:55</b>	<b>***Break***</b>	
<b>11:55-12:55</b>	<b>Update:</b> Six-Year Plan – Commission discussion regarding <a href="#">page 64</a> annual caseload and workload standards <b>Action Item:</b> Direct OPDC Staff to work with Moss Adams to update Six-Year Plan with annual caseload and workload standard	Jessica Kampfe Eric Deitrick Jessie Lenhardt

12:55-1:15	<b>Action Item:</b> Approval of Comprehensive Public Defense Report <a href="#">page 68</a>	Jessica Kampfe Lisa Taylor
1:15-1:30	<b>Update:</b> Director’s Report	Jessica Kampfe
1:30	<b>***Adjourn***</b>	

*\*To join the Zoom meeting, click this link. <https://zoom.us/j/92768806910>. 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](mailto: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. Listed times are an estimate, and the Chair may take agenda items out of order and/or adjust times for agenda items as needed.*

***\*\*The commission will meet in executive session pursuant to ORS 192.660(2)(h) to consult with counsel concerning the legal rights and duties of a public body with regard to current litigation. Representatives of the news media and designate staff shall be allowed to attend the executive session. All other participants may not attend. Representatives of the news media are specifically directed not to report on or otherwise disclose any of the deliberations or anything said about these subjects during the executive session, except to state the general subject of the session as previously announced. No decision may be made in executive session. At the end of the executive session, we will return to open session and welcome the audience back into the room.***

*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 OPDC, or if you want to submit written comment, please email [opds.info@opds.state.or.us](mailto:opds.info@opds.state.or.us). The deadline to submit interest is 5:00 PM PT May 7, 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: June 13, 2024, 8am – 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>*

# **Update on MAC utilization in 337 Crisis Counties**

Jessica Kampfe, Executive Director

# What is MAC?

## Maximum not a Mandate.

- If MAC were a mandate, it would be a flat fee model;
- Ethical standards of representation apply to public defence caseloads. (OSB Formal Op. No. 2007-178 (2007))

## 300 misdemeanors/year weighted.

- Based on 2021 the ABA Oregon Study + Washington's annual caseload limits;
  - In 2021 Washington had an annual caseload maximum of 300 misdemeanors, which Oregon adopted as the baseline for MAC. In 2024, WA adopted the Rand study which is approximately 150 annual misdemeanors;
  - ABA Oregon study was used to apply case weighting to the 300 misdemeanor baseline.

**Maximum Attorney Caseload (MAC) is the maximum number of cases a lawyer can take per year based on the percentage of their time devoted to public defense.**

# What is MAC?

## 1 MAC does not mean 1 FTE ... but it can.

- Attorney who works full-time on public defence cases is considered a 1.0 MAC, but if that full-time public defender joins a one-year contract halfway through then they can only take 6 months of a MAC (150 weighted misdemeanors).
- Many MAC changes occur outside of normal contract cycle. In 2022-23 the agency had approximately 175 contracts for public defence services and managed 496 amendments to those contracts.

**FTE is an attorney and their time, MAC is the caseload limit that they can take associated with that time.**

# OPDC's Caseload Report data has limits

## **Qualitative limits:**

OPDC caseload report data does not measure whether Oregon's public defenders provide competent and effective legal representation for the clients they serve.

## **Quantitative limits:**

OPDC contractor caseload reports do not equate to overall county case filings.

OPDC's caseload report data is for the 2023-25 contract cycle and does not include April reports.

# SB 337 Crisis Counties: Contract Utilization and Unrepresented Stats



7/1/2023 3/31/2024



## OPDC Criminal Contract Capacity SB 337 Crisis Team Counties

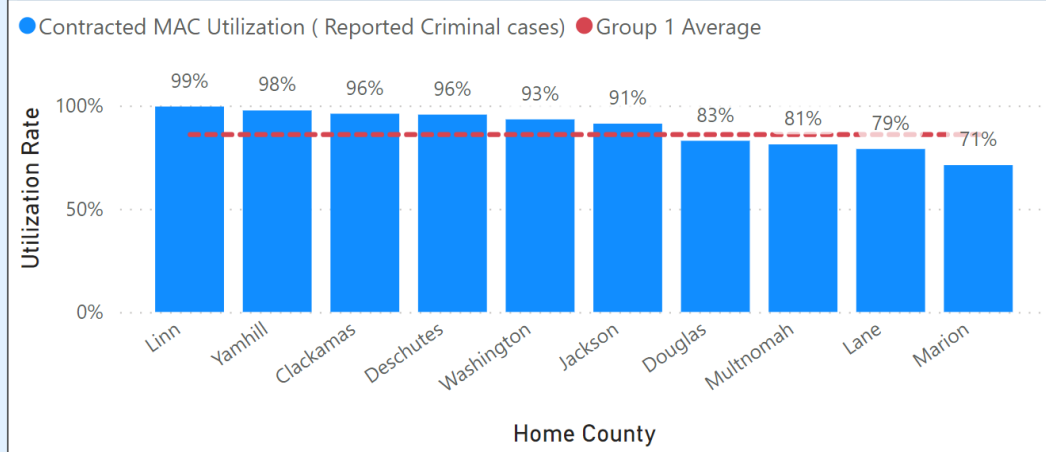
Data Source:

- OPDC Contractor Submitted Caseload Reports
- OPDC Contracts Database

### 337 Group 1

Home County	Distinct Atty Count	Prorated MAC	Reported MAC	Utilization Rate	3/29/24 OJD Unrep Count
Clackamas	35	20.475	19.657	96%	40
Deschutes	29	15.979	15.271	96%	10
Douglas	18	7.563	6.269	83%	274
Jackson	26	15.565	14.193	91%	1093
Lane	42	24.217	19.113	79%	6
Linn	20	10.196	10.142	99%	17
Marion	62	28.641	20.368	71%	734
Multnomah	111	58.845	47.749	81%	1086
Washington	76	33.013	30.786	93%	439
Yamhill	13	7.815	7.626	98%	3
<b>Total</b>	<b>423</b>	<b>222.310</b>	<b>191.173</b>	<b>86%</b>	<b>3702</b>

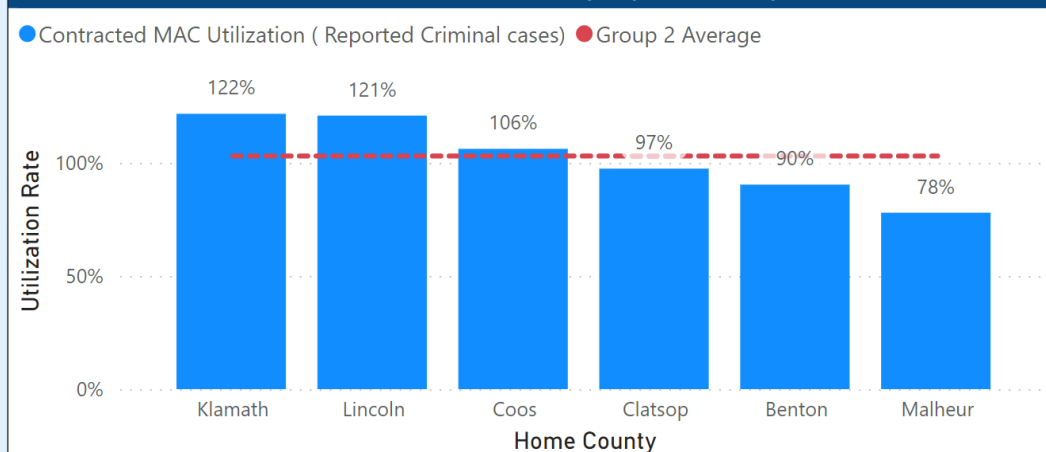
### Criminal Contracted MAC Utilization (337 Group 1)



### 337 Group 2

Home County	Distinct Atty Count	Prorated MAC	Reported MAC	Utilization Rate	3/29/24 OJD Unrep Count
Benton	9	6.273	5.669	90%	33
Clatsop	9	4.140	4.034	97%	117
Coos	9	4.657	4.944	106%	35
Klamath	11	7.109	8.649	122%	108
Lincoln	10	4.515	5.456	121%	31
Malheur	13	5.417	4.223	78%	22
<b>Total</b>	<b>61</b>	<b>32.111</b>	<b>32.974</b>	<b>103%</b>	<b>346</b>

### Criminal Contracted MAC Utilization (337 Group 2 plus Clatsop)



# DISCUSSION





**Date:** May 1, 2024

**To:** Jennifer Nash, Chair  
OPDC Commissioners

**Cc:** Jessica Kampfe, Executive Director

**From:** Harry Noone, Research Analyst

**Re:** Enhancing Service Delivery on Cases with Unrepresented Persons

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**Action:** Briefing

**Background:** This report outlines the development of a new software tool the Oregon Public Defense Commission (OPDC) is using to aid the appointment of counsel on unrepresented persons cases. This program will be mostly centered on the cases of the unrepresented in custody population, the current focus of the Temporary Hourly Increase Program (THIP), which is designed to incentivize attorney willingness to accept such appointment. It will describe: (1) the communication and data issues which required revision of current processes; (2) the development of the new alternative assignment scheme, with stakeholder inputs involved both internally (OPDC staff from Data and Research, Information Technology, and the Trial Support and Development team) and externally (OJD staff from the State Court Administrator’s Office and from several Circuit Courts, and from partners in the provider community); (3) the mechanics of the new workflow; and (4) the benefits that it is expected provide to the agency and our partners, especially as they pertain to communication and data collection.

The outward facing Nintex form we have created and the internal OPDC workflow it initiates should enable more efficient service delivery on unrepresented persons cases by collecting notices of pending case assignments into a visible, churnable, queue which agency analysts can use to more swiftly locate attorneys willing to accept those assignments. It will also generate better data, establish clearer lines of communication, and increase the transparency of this process to all stakeholders.

### 1. *Current THIP Communication and Data Collection Problems*

Since the beginning of THIP in August of 2022, the program has relied exclusively upon communication by phone and email. Communication is generated by three groups: court staff, public defense attorneys in the field, and the unrepresented persons themselves. Court staff around the state routinely contact OPDC staff dedicated to THIP seeking clarity on where particular case assignments stand, or to note other things such as errors in OJD’s dataset affecting the assignment of counsel (such as the custody status of the defendant). Public defense attorneys in the field also routinely reach out to OPDC wanting to know whether they are approved to take cases and what the approved rates are for those cases, among other questions. Finally, a high volume of phone calls from unrepresented persons themselves have come to the

agency as potential clients want to know when they will be provided an attorney.

OPDC analysts were in place to receive this communication and to respond to pending notices of assignment within the program. Yet, this wave of communication is overwhelming and has not yielded a clear and efficient assignment process. Dedicated program voicemail and email inboxes saw a high volume of messages without enough staff to meet the need. Overall, this has limited OPDC's ability to direct and swiftly connect qualified attorneys willing to accept hourly appointments on unrepresented cases.

## 2. *Development of a Nintex Unrepresented Persons Intake Form and Workflow*

A project to explore improvements to the process by which OPDC handles pending THIP case assignments began in December 2023. OPDC Data and Research staff began working with the Unrepresented Persons Analyst and other Trial Support and Development staff to understand the current process (described in part above) and use this understanding to identify opportunities to increase the efficiency of the program. The manual nature of this communication presented the most obvious starting place. As OPDC already utilizes Nintex (a software program used to create forms and collect data) to take in stakeholder communication in other areas, it became evident that a workflow based on an external facing form could be useful.

A move towards a simple Nintex form, which can be made available to stakeholders who provide a few simple details on unrepresented cases with an urgent need, also means a move away from manual phone and email communication which has previously defined THIP. As the external form was being developed, OPDC has deprioritized incoming phone communication. OPDC Trial Support and Development staff developed a flier to give to unrepresented clients at their hearings, which provides clear guidance on their situation and how they should understand the identification of OPDC as the attorney of record on their case. This will presumably reduce the number of incoming phone calls to a more manageable amount and allow staff to focus on using the new workflow.

The idea of this form was also shared with stakeholders outside of the agency whose feedback continue to be useful. OPDC discussed the idea in numerous meetings with partners from the State Court Administrator's Office, who offered have offered additional data resources. One of the main concerns they shared was that the form may be too burdensome for court staff to use, which has resulted in the highly simplistic nature of the specific data points which the form is intended to collect.

OPDC has also heard concerns that the form merely recreates data that is already available. It is important here to note one major problem which OPDC analysts and OJD court staff alike have run into is the sometimes questionable validity of the OJD Unrepresented Persons dashboard especially as it pertains to custody status, a key piece of information needed for analysts to make THIP case approvals. The OJD Unrepresented Persons dashboard sometimes may simply show custody status which is not accurate (i.e., an in-custody defendant being shown as out of custody). In other situations, a person may not appear on the list who should appear. The form can be a way to provide current and accurate custody status on cases where the OJD Unrepresented Persons dashboard may not be helpful in real time. The idea is that people can use the form in these instances, or more generally in instances where they may have previously felt the need to reach out to OPDC by phone or email.

OPDC has also engaged partners in Douglas, Linn, Coos, and Curry counties to better understand their experiences contacting OPDC on these cases, and how we can improve the

process going forward. As of May 1<sup>st</sup>, 2024, court and provider staff in these jurisdictions have begun using the form in a piloting phase the agency hopes to use to work through some of the technical and policy challenges which will arise. The agency also intends, as it moves closer to rolling out the service statewide by the beginning of June 2024, to host open house events where stakeholders can ask questions, learn about the new process, and offer feedback to help ensure the service is effective and meets their needs.

### *3. The Mechanics of the Nintex Form and Corresponding OPDC Workflow*

The goal of the Nintex form is that it will be a clear entry point for stakeholders in the public defense community to THIP's attorney assignment and approval process. It is a clear and simple way for OJD court staff, public defense attorneys with a signed hourly agreement, and agency staff to ping OPDC staff with a quick notice that contains the most current and accurate information on custody status, a crucial data point which can help solve some of the problems with the OJD Unrepresented persons dashboard noted above. Whenever a user submits a notice, they will automatically receive an email letting them know their specific entry has been received.

As these notices are submitted to OPDC, they form a queue, or a set of tasks for OPDC analysts to respond to. This queue is a churnable list that will impose order and greater consistency over the process of finding an attorney, appropriate to that case type and location, who then agrees to be appointed to a given case. OPDC analysts will cross-reference the queue with other pre-existing internal data tools to identify local pools of attorneys, and when they eventually approve an attorney, this generates automatic email communication to that attorney as well as to court staff pertinent to that jurisdiction. The emails will contain simple messages to the effect that "*Attorney Perry Mason has been approved to the following case: 24CR12345, an AFEL, in Multnomah County.*" This is intended to increase transparency and cut through much of the confusion on where agency action on case approvals stand (a common reason stakeholders reach out to OPDC).

The data generated from this process will be collected and stored on a SharePoint list and eventually written to a SQL server to meet agency reporting needs. While very little of *what* data OPDC collects on this program will change, it is *how* the agency collects THIP data which will undergo change. It will become more convenient for OPDC analysts to produce the data on the program: whereas before they manually entered case assignment data into an antiquated Access database sometime after the assignment is approved, instead they will be generating data simply as they go along churning through the queue of pending assignments. As we enhance the technological infrastructure of this process, we can also better reflect these case assignments back to OJD in a more systematic way as we take greater advantage of data sharing opportunities across agencies. Additionally, there has been feedback from stakeholders who are interested in being able to explore the queue and view where a particular notice stands. OPDC has taken interest of this idea and will explore this ability.

### *4. The Benefits this New Form and Workflow will Provide*

The Nintex form will not be the only way an attorney can be assigned to a THIP case, nor will court staff be expected to submit every single unrepresented case through the form. Each jurisdiction appears to have somewhat differing processes and customs, relevant to local attorneys, contract entities, court staff, and prosecutor's offices, when it comes to how THIP case assignments get made. OPDC analysts will still approve and collect data on the cases which go through more normal processes. However, if these regular channels tend to work in most cases but leave others to fall through the cracks of the system resulting in unrepresented

persons, the form provides opportunity for OPDC to become aware of those cases which have slipped away from normal processes and respond to them in a more effective way that meets the urgent needs of particular cases.

Public defense stakeholders from all over the state are already routinely contacting OPDC on unrepresented persons case assignments every day. As they have already proven this, there is no real need to compel to them to communicate with OPDC, and the new form and workflow need not be construed as an attempt to do so. We are not “creating more work” by asking that some of these notices be put through this process. The form is merely enabling an easier and more efficient way to engage in this communication, in a way that is more likely to lead to the swift location of an attorney to be assigned to unrepresented persons cases. This new workflow will make it easier for court staff and public defense providers alike to learn of the result of their request for approval on a given case, as OPDC analysts will more easily work through what has previously been a challenging and burdensome process.

Overall, we expect that clearer and more consistent communication on unrepresented persons cases will take place, that this communication can generate a queue of pending cases for OPDC analysts to work through, and that this queue will enable more consistent and effective service delivery on eligible cases involving unrepresented persons at the same time as it more easily generates useful data. As this service is rolled out statewide, we should expect that OPDC will deliver a higher daily volume of case assignments and THIP should become a more effective program.

**Agency Recommendation:**

OPDC staff will continue to update the Commission on efforts to enhance service delivery on cases with unrepresented persons.

**Fiscal Impact:**

None.

**Agency Proposed Motions:**

None.

# Oregon Public Defense Commission


- **Unrepresented Persons Service Delivery Enhancement**


- May 8, 2024

- **Harry Noone, OPDC Sr. Research Analyst**
- [harry.i.noone@opdc.state.or.us](mailto:harry.i.noone@opdc.state.or.us)



# Unrepresented Persons Contact Form

For development use only



## Unrepresented Persons Pending Attorney Assignment

### Submitter Information

First Name * Learned	Last Name * Hand
Submitter * Judge/Court Staff	Email * harry.i.noone@opdc.state.or.us

### Case Details

Unrepresented Person's First Name * John	Unrepresented Person's Last Name * Doe
Case Number * 24CR223344	Custody Status * In Custody

*Please enter the case number of the highest charge*

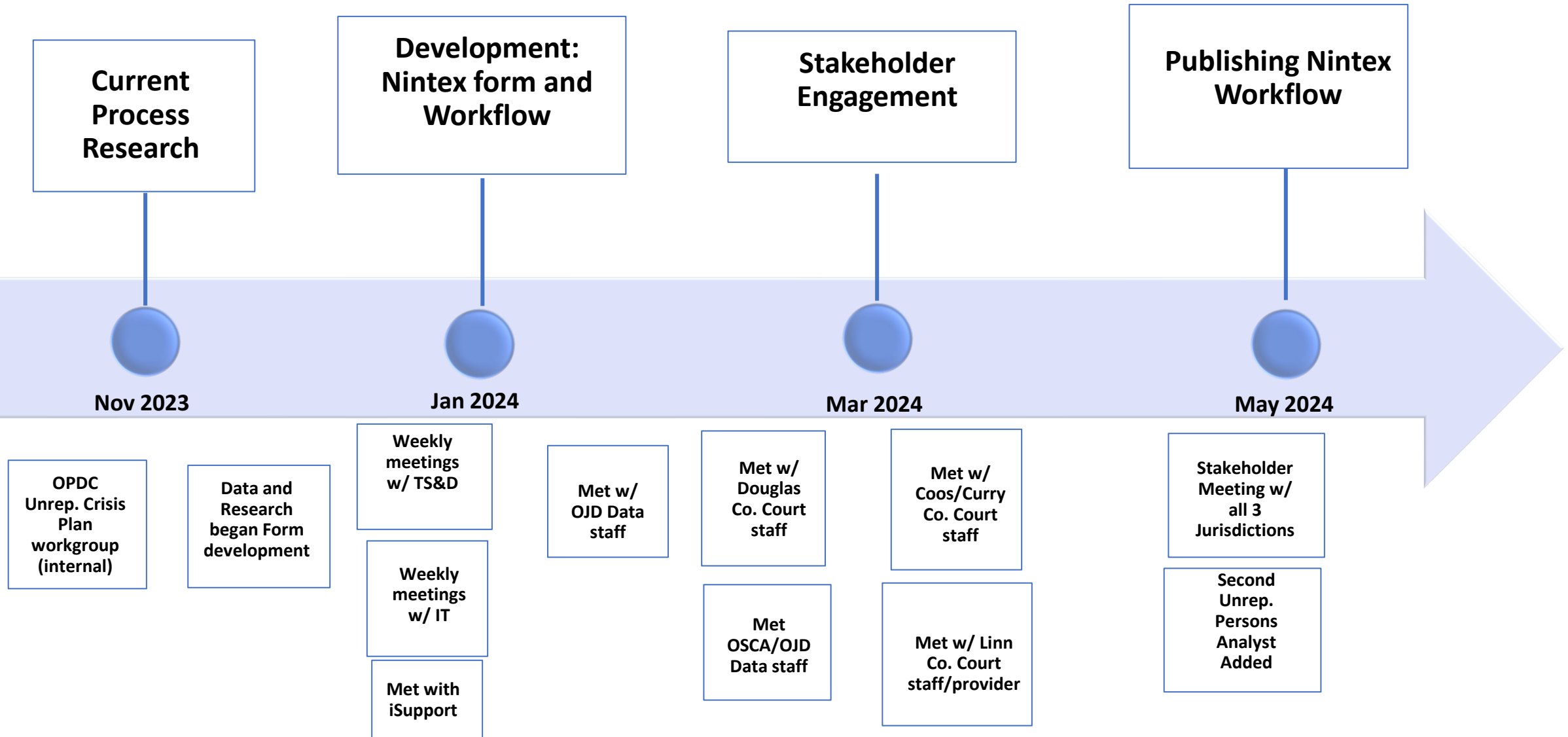
Additional Information

Highest charge: Murder  
Additional Cases: Misdemeanor 24CR67890, A Felony 24CR12345  
Upcoming court date 5/15/2024

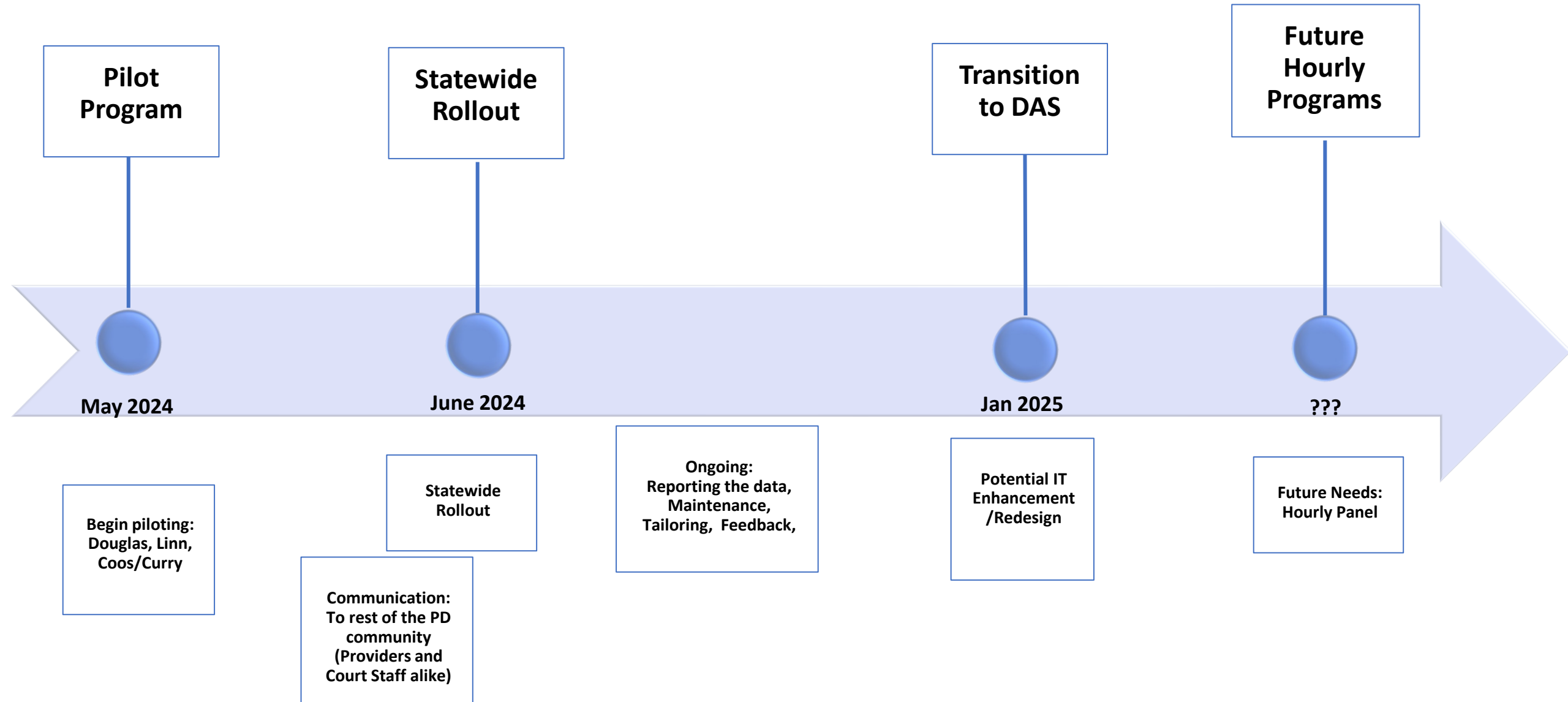
*Example: Additional case numbers/charges, days unrepresented, upcoming court dates, etc*

Submit

# Timeline: Project Development



# Timeline, contd: Pilot, Rollout, and Maintenance





# Auto Generated Approval Emails

## To Court Staff:

**From:** OPDC <[nintex@workflowcloud.com](mailto:nintex@workflowcloud.com)>  
**Sent:** Friday, April 26, 2024 11:01 AM  
**To:** Cody Wingard <[Cody.Wingard@opdc.state.or.us](mailto:Cody.Wingard@opdc.state.or.us)>  
**Subject:** Attorney Assignment - 24CR223344, John Doe, MURD \*\*\*For Development use only\*\*\*

Dear Court Staff

This message notifies you of OPDC approval of the assignment of Attorney - OSB the following case:

**Client Name:** Doe, John

**Case Number:** 24CR223344

**Approved Case Type:** MURD

**Approved Case County:** Clackamas

**Custody Status:** In Custody

Please appoint Attorney - OSB to the case number designated above.

**Notes/Reasoning:**

Approved lead counsel, searching for co-counsel Attorney agrees to additional cases

Any response to this message is sent directly to the [Unrepresented Persons inbox](#).

## To Approved Attorney:

**From:** OPDC <[nintex@workflowcloud.com](mailto:nintex@workflowcloud.com)>  
**Sent:** Friday, April 26, 2024 11:01 AM  
**To:** Cody Wingard <[Cody.Wingard@opdc.state.or.us](mailto:Cody.Wingard@opdc.state.or.us)>  
**Subject:** Attorney Assignment - 24CR223344, John Doe, MURD \*\*\*For Development use only\*\*\*

Dear Attorney - OSB

This message notifies you of OPDC approval of your assignment to the following client:

**Client Name:** Doe, John

**Case Number:** 24CR223344

**Approved Case Type:** MURD

**Approved Case County:** Clackamas

**Custody Status:** In Custody

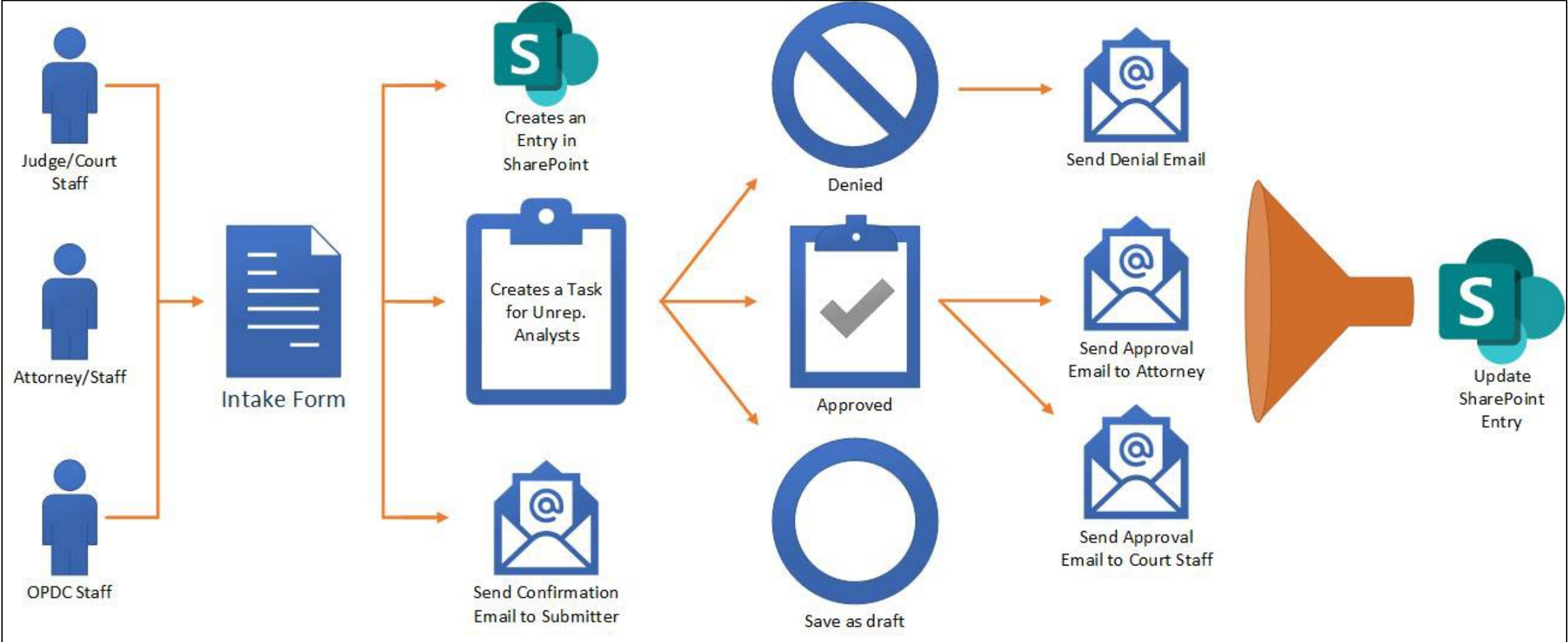
The case is approved at an Hourly Rate of \$200, with a Soft Cap of \$75,000.

**Notes/Reasoning:**

Approved lead counsel, searching for co-counsel Attorney agrees to additional cases

Any response to this message is sent directly to the [Unrepresented Persons inbox](#).

# Schema of Data Collection



# Expected Benefits of This New Process

- **Organization:**
  - A queue of pending tasks for OPDC Unrepresented Analysts to work through allows more efficiency and repeatability
- **Communication:**
  - Auto generated emails save time/energy, create consistency
- **Transparency:**
  - Stakeholders will have a better idea of where particular cases stand
- **Data Collection:**
  - Data is collected more easily, as it generated at the same time as assignments are approved and communication is sent out

# Thank you





# Oregon Judicial Department

## Unrepresented Crisis – April 2024 Update

### Key Insights

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#### [Data Share Update](#)

OJD and OPDC have updated and expanded their data share agreement to address the systemic gaps in data collection that prevent OPDC from accurately tracking attorney start and end dates, annual maximum attorney caseload, attorney availability, attorney qualification, and attorney capacity.

#### [Unrepresented Trends](#)

The number of unrepresented individuals continues to increase, although the rate of growth has stabilized ([Figure 1](#)). For daily updates, you can access the [Unrepresented Dashboard](#) on the OJD website.

#### [Average Time Unrepresented](#)

People who are out of custody with pending felony cases continue to wait longer, on average, than people who are out of custody with misdemeanor cases ([Figure 2](#)), but significant improvements have been made for people in-custody ([Figure 3](#)).

#### [In-Custody Data Collection](#)

Maintaining adequate analyst resources for OJD and OPDC is critical to managing the unrepresented crisis given the challenges associated with collecting the in-custody data.

#### [Unrepresented by County](#)

The crisis is most severe Jackson, Multnomah, Marion, Washington, and Douglas counties and growing more severe in Clatsop and Klamath counties ([Figure 4](#)).

#### [OPDC Trial Division Offices](#)

The OPDC Trial Division Offices continue to ramp up. Eight attorneys have taken 205 new appointments since December 2023, primarily in Jackson and Multnomah on misdemeanors and minor felonies ([Figure 5](#) and [Figure 6](#)).

#### [Opportunities to Make Data-Informed Decisions](#)

Most unrepresented cases are misdemeanors and minor felonies ([Figure 7](#)). Unrepresented individuals with multiple unrepresented cases in the same county make up **half** of the unrepresented criminal caseload ([Figure 8](#) and [Figure 9](#)).

A holistic approach to client representation could significantly decrease the unrepresented caseload and provide a higher quality of service to people who need an attorney.

The March 2024 update focused on activities and progress to date on each of the four levers and local court spotlights for Clatsop, Multnomah, and Washington County Circuit Courts. This month’s report will focus on the unrepresented data and opportunities to make data-informed decisions.

### Data Share Update

In April 2024, OJD and OPDC updated and expanded their data share agreement to address the systemic gaps that prevent OPDC from accurately tracking attorney start and end dates, annual maximum attorney caseload, attorney availability, attorney qualification, and attorney capacity.

OJD and OPDC will work together to develop comprehensive data sets that provide real-time insights to improve data collection and reporting on current capacity, total open caseloads, and caseload forecasts.

Improved data collection and reporting will also facilitate the enforcement of contract provisions and the reconciliation of attorney caseload reports with OJD’s court data. For example, OJD’s court data show there are still about **1,800** open appointments in warrant status for more than 180 days. Public defense contractors are required to withdraw from those cases but tracking the age of warrants on open appointments is most likely burdensome for providers.

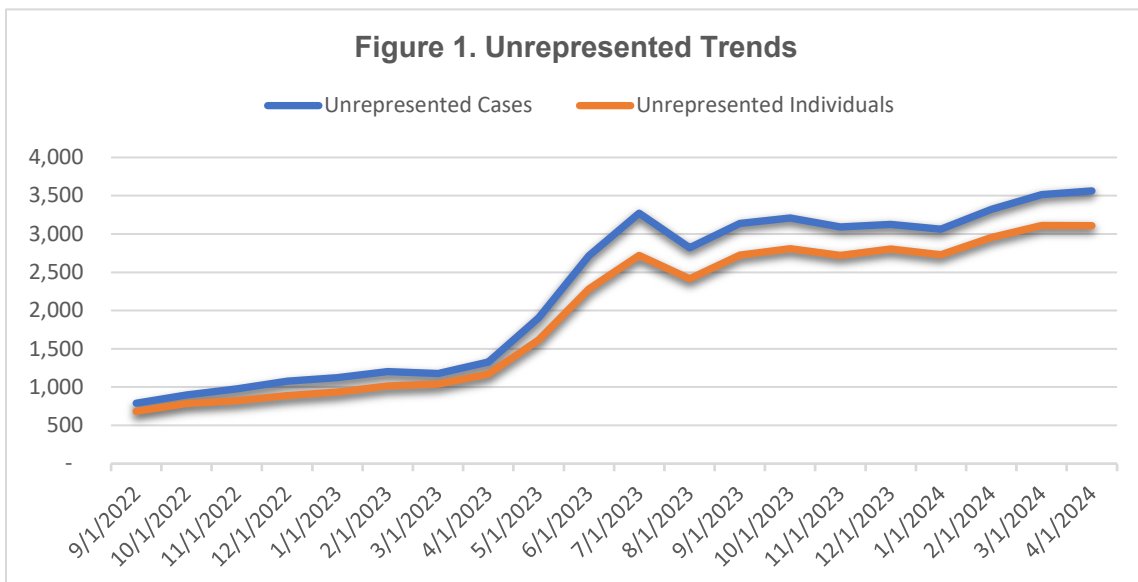


Improved reporting to providers could streamline the process to comply with contract provisions and produce more accurate caseload reporting for attorneys which in turn, will produce more accurate data on attorney capacity and open caseloads.

### Unrepresented Trends

The number of unrepresented individuals continues to increase even as new attorneys are added in public defense offices and regional trial division offices.

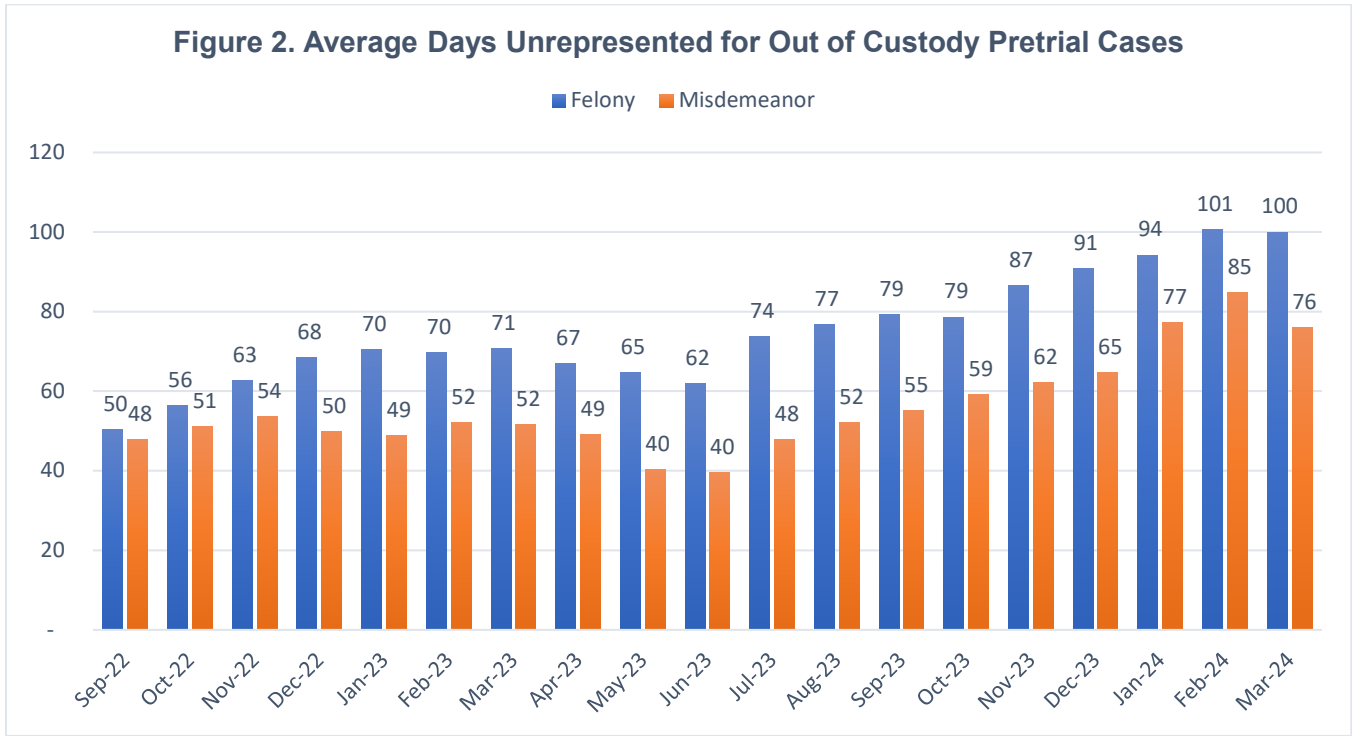
Although more than 20 attorneys have been added to existing contracts since July 2023, the total appointments taken under contract has decreased.



Source: OJD Odyssey Data (eCourt).

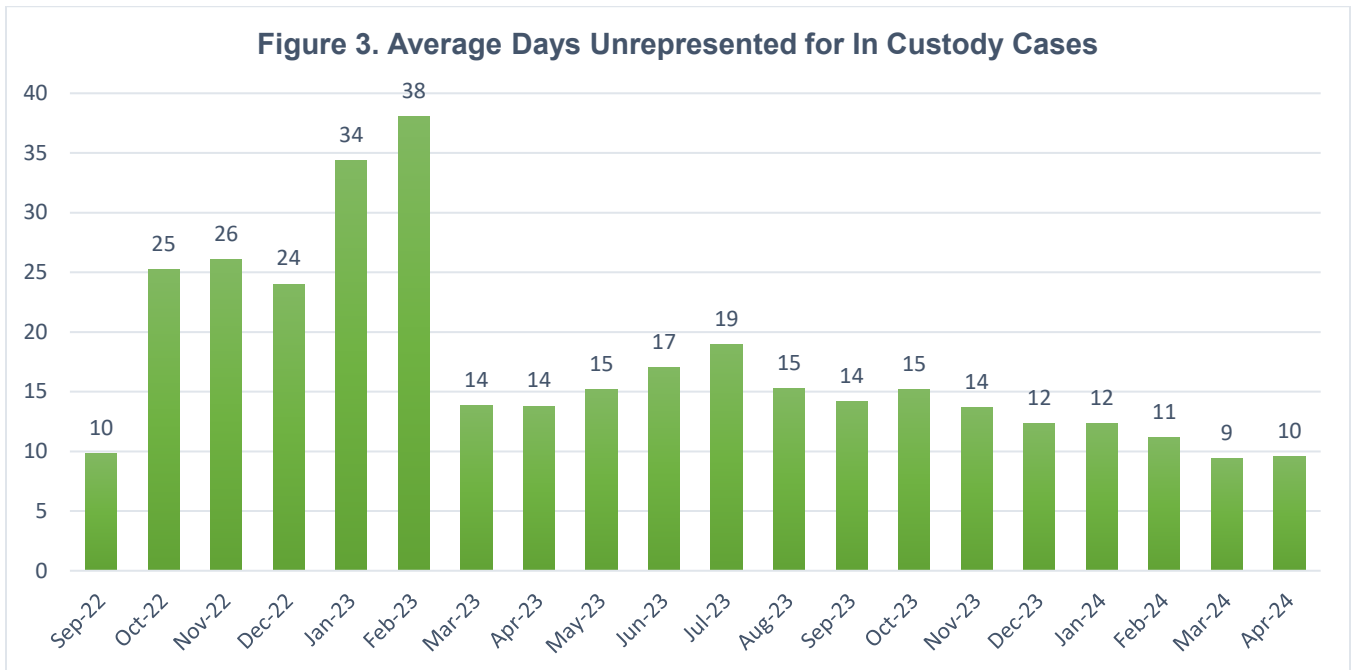
## Average Time Unrepresented

People who are out of custody with felony cases continue to wait longer, on average, than people with misdemeanor cases.



Source: OJD Odyssey Data (eCourt).

Significant improvements have been made in the average time an unrepresented person must wait in custody before an attorney is appointed.



Source: OJD Odyssey Data (eCourt).

## In-Custody Data Collection

As of **4/15/2024**, there were **33** individuals unrepresented and in custody for more than 10 days and **98** total individuals unrepresented and in custody (does not include individuals in jail in one county and unrepresented on a case in a different county). Although the number of people unrepresented and in-custody fluctuates daily, the numbers have stabilized since August 2023.

Since August of 2022, OJD has collected the in-custody (jail) data once a day either through integrations with individual counties or “screen scraping” programs that collect data from each county’s public jail roster.



Maintaining adequate levels of analyst resources for OJD and OPDC are critical to manage the unrepresented crisis. The in-custody data often requires monitoring by both OJD and OPDC analysts to verify accuracy of the in-custody data.

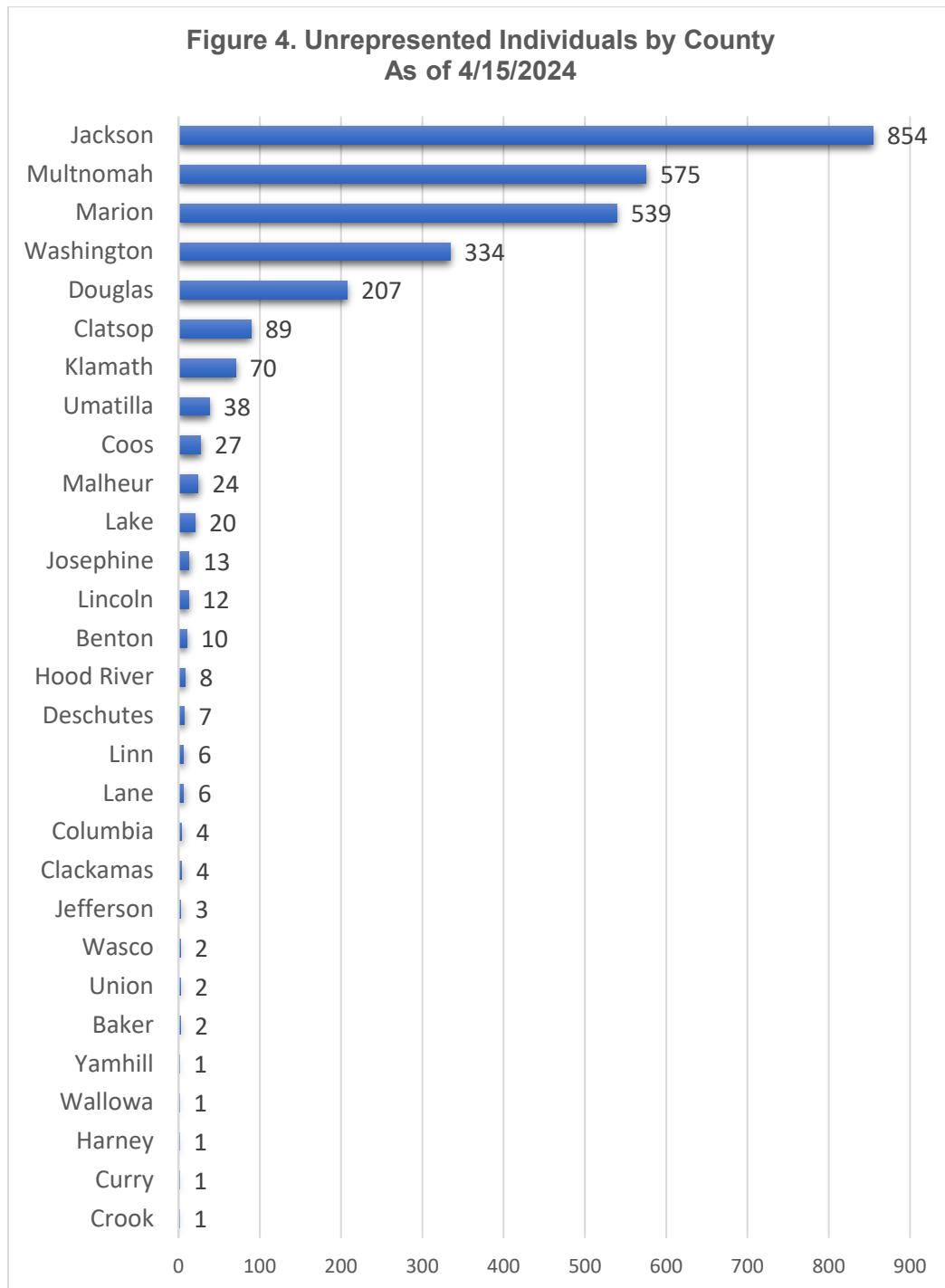
The in-custody data is difficult to collect and track for the following reasons:

- There is no uniform jail management system in Oregon, meaning that each individual jail facility maintains its own record-keeping system of bookings, releases, and other data points.
- These systems also categorize, compartmentalize, and store data differently. Often the data needed to match a person across public safety systems is not collected.
- The data is not designed to integrate with other public safety partners and exporting the data can be challenging and costly for counties who do not have in-house resources and may have to contract with vendors and pay fees.
- These systems do not always precisely identify why a person is being held in custody. People who are in custody may have violated the conditions of a prior release agreement, they may have multiple pending cases (some of which they may be represented on), they may be serving a jail sentence, or they may be on a parole or multi-state hold.



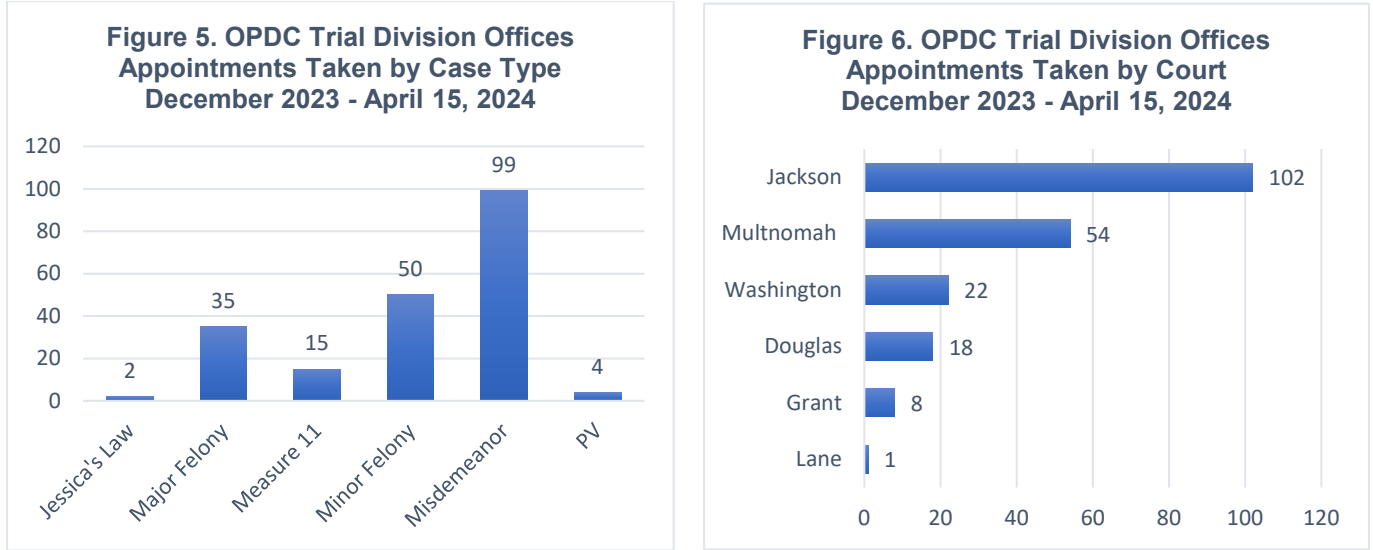
## Unrepresented by County

Figure 4 shows the number of unrepresented individuals by county and where the crisis is most severe. The OPDC regional trial division offices are primarily taking appointments in Jackson and Multnomah on misdemeanors and minor felonies.



### OPDC Trial Division Offices

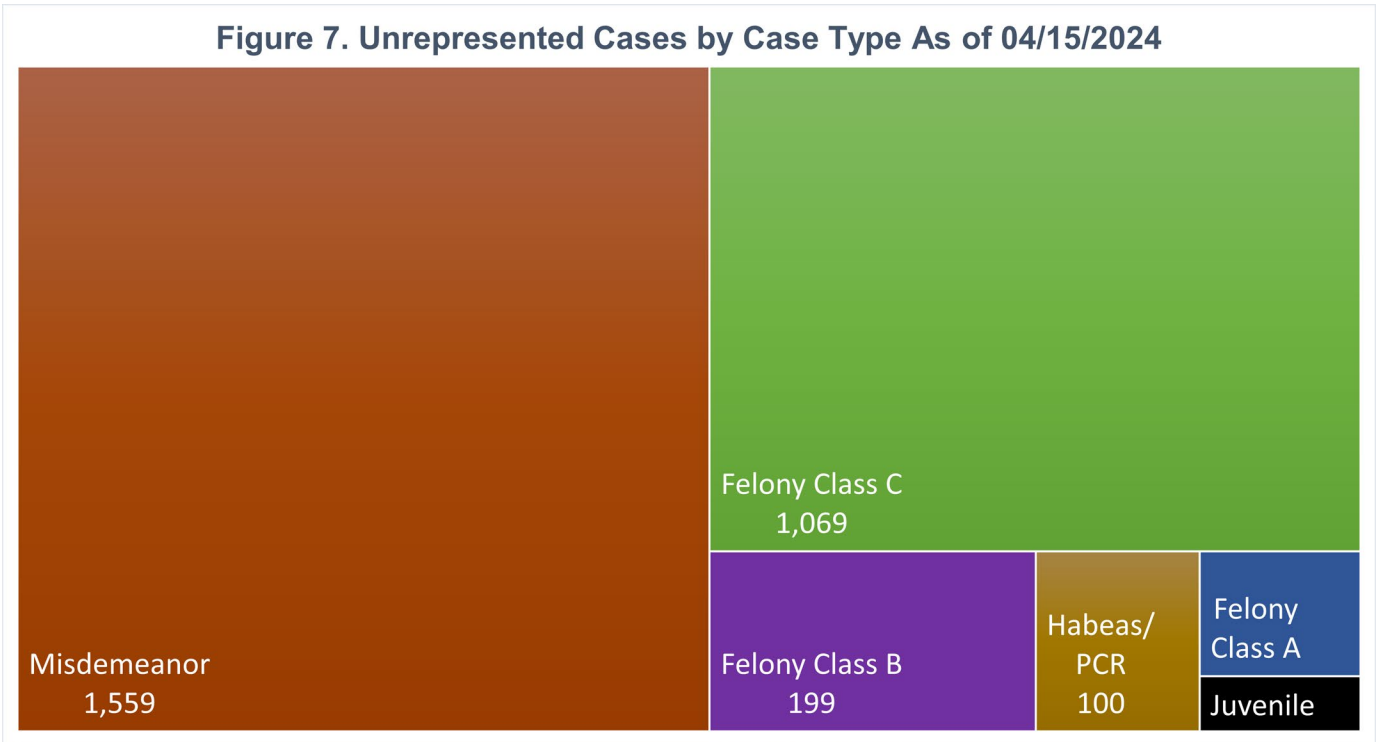
Figure 5 and Figure 6 show the **205** new appointments taken since December 2023 by eight attorneys in the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.



Source: OJD Odyssey Data (eCourt).

### Opportunities to Make Data-Informed Decisions

The data in Figure 7 show that most of the unrepresented cases are misdemeanors and minor felonies.



Source: OJD Odyssey Data (eCourt).

An analysis of the unrepresented data show there are several opportunities to consolidate representation for unrepresented individuals who have multiple cases of the same case type in the same county.

- There are **341** unrepresented individuals with **771** cases of the same case type in the same county (Figure 8), and
- there are **213** unrepresented individuals with **539** cases of varying case types in the same county (Figure 9).

Figure 8. Unrepresented Individuals with Multiple Cases – Same Case Type

Case Type	Individuals	Cases
Other (Juvenile or Habeas/PCR)	7	16
Major Felony	13	31
Minor Felony	112	247
Misdemeanor	209	477
<b>Total</b>	<b>341</b>	<b>771</b>

Figure 9. Unrepresented Individuals with Multiple Cases – Varying Case Types

Most Serious Case Type	Individuals	Cases
Major Felony	59	154
Minor Felony	154	385
<b>Total</b>	<b>213</b>	<b>539</b>



Unrepresented individuals with multiple unrepresented cases in the same county make up **half** of the unrepresented criminal caseload.

A holistic approach to client representation will, most likely, be more effective than a case-by-case approach. If an attorney appointed to represent a client could be assigned to all their client’s unrepresented cases for which the attorney is qualified, this could decrease the unrepresented caseload significantly. Courts could work with attorneys to facilitate global resolutions where appropriate, and when not, attorneys could focus on each case consecutively.

# Oregon Public Defense Commission

## Budget Overview

May 8, 2024

**Jessica Kampfe, Executive Director**  
[Jessica.Kampfe@opdc.state.or.us](mailto:Jessica.Kampfe@opdc.state.or.us)

**Ralph Amador, Chief Financial Officer**  
[Ralph.H.Amador@opdc.state.or.us](mailto:Ralph.H.Amador@opdc.state.or.us)



# Budget Development Process

- Budget Outline
- Budget Process Overview
- Policy Option Packages
- Initial Agency Proposals

# 2025-2027 Budget Outline

- 2023-25 Legislatively Adopted Budget
- 2023-25 Legislatively Approved Budget
- 2025-27 Base Budget
  - ▶ Essential Packages Adjustments
- 2025-27 Current Service Level (CSL)

**Starting Point after 2024 Session**

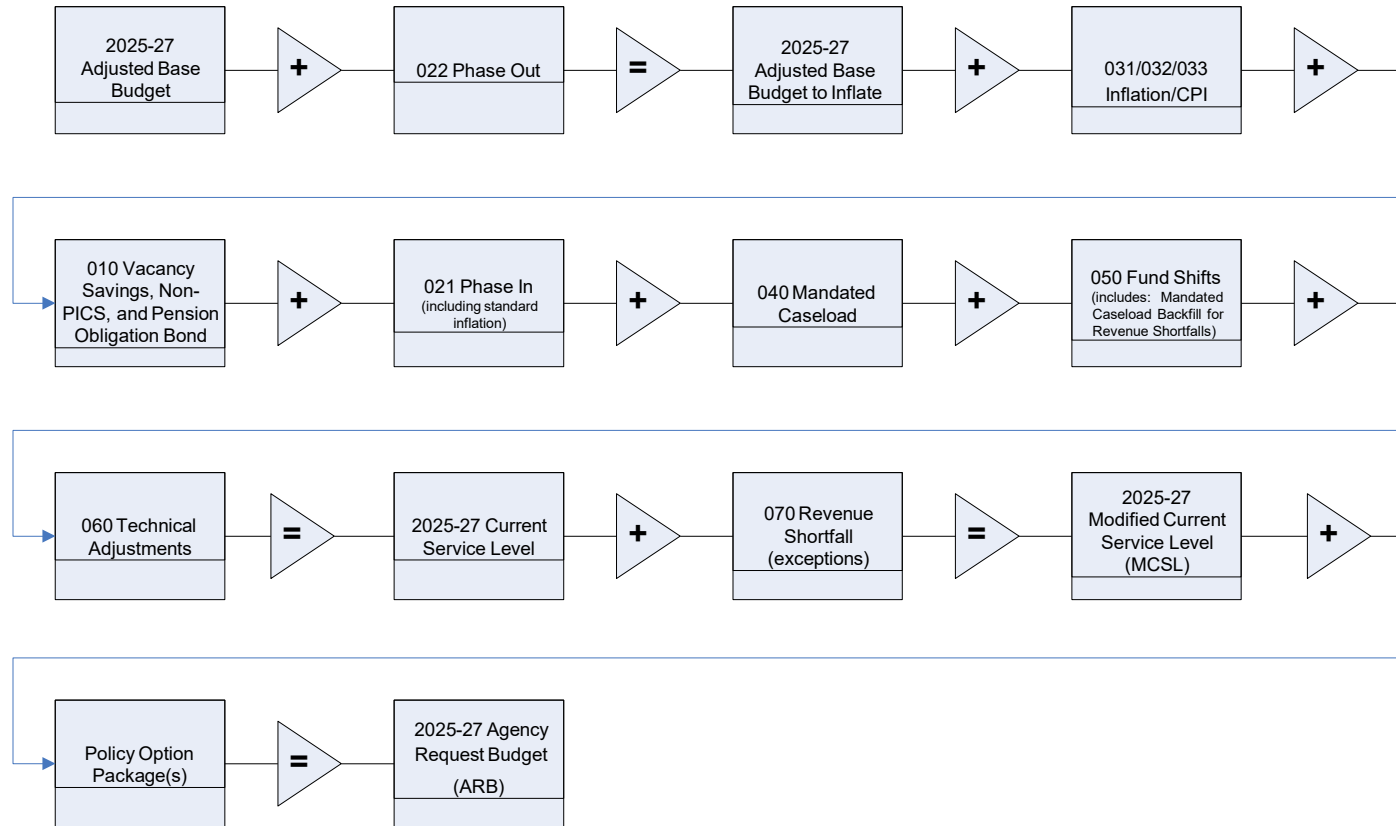
**Statewide Administrative Adjustments**

**Personnel Services, Inflationary Adjustments**

**Mandated Caseloads, Technical Adjustments**

# PROCESS OVERVIEW

## Budget Development 2025-27 Adjusted Base Budget to 2025-27 Agency Request Budget (ARB)



# Policy Option Packages

- **Should answer the following:**
  - Nature of the request
  - Background/History
  - State Level Considerations
  - Facility/Capital Outlay Considerations
  - Justification
  - Analysis of all Feasible Alternatives
  - Timetable

## What they are for

- **Change level of service**
- **Change funding sources**
- **New program**
- **Change in program**
- **Define the public or customer need**



# Initial Agency Proposals

- Financial Case Management
  - Case Management Roll Out, Change Management, Positions
- Workload (6-year Plan)
  - Caseload Standards, Workload Model, Support Staff Augmentation
- Hourly Rates (Hourly Rate and Economic Survey)
  - Panel Attorney and Vendor Rates
- State Level Trial Offices
  - SB 337 (2023) Requirements, New Offices, Staff Support
- Agency Staffing
  - Gap Analysis

# Thank you





**Date:** May 1, 2024

**To:** Jennifer Nash, Chair  
OPDC Commissioners

**Cc:** Jessica Kampfe, Executive Director

**From:** Eric Deitrick, General Counsel

**Re:** Hourly Rate & Economic Survey

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**Action:** Briefing.

**Background:** SB 337, Section 96(1) (2023) provides the following directives to OPDC:

- The Oregon Public Defense Commission shall conduct a survey and economic analysis to establish a formula for the commission to use to calculate an hourly pay rate, taking into account overhead expenses, market rates and regional differences in the cost of living, for appointed counsel who are not employees of the commission or a nonprofit public defense organization.
- The commission may conduct the survey and economic analysis internally or may contract with an outside entity. The survey and economic analysis must be completed, and the hourly pay rate calculated no later than July 1, 2025.
- After the hourly pay rate described in paragraph (a) of this subsection has been calculated, and beginning with contracts entered into on or after July 1, 2027, the hourly pay for appointed counsel who are not employees of the commission or a nonprofit public defense organization may not be lower than that amount.
- The commission may conduct another survey and economic analysis described in this subsection to establish a new formula and calculate a new hourly rate.

SB 337 included funding for the survey and economic analysis, and OPDC staff contracted with Moss Adams to conduct the survey and economic analysis. Although the survey and economic analysis are not required to be completed prior to July 1, 2025, OPDC requested the work be done expeditiously to align with the agency's development of Policy Option Packages (POPs) for the '25-'27 biennium. Policy Option Packages are agency proposals to increase its budget beyond merely maintaining its current service level (CSL). OPDC staff's intent is that this survey and analysis inform the Commission in its consideration of the agency's POPs.

Historically, the agency has not utilized data-informed or formulaic approaches to establishing compensation rates. The mandate to do so in SB 337 affords OPDC an opportunity to realign the workforce with market conditions and use those adjusted rates as a foundation for future rate calculations. Specifically, SB 337, Section 94 states that the payment of panel counsel:

- May not be lower than the hourly rate established by the commission.

- Shall be adjusted to reflect the same percentage amount of any positive cost of living adjustment granted to employees in the management service in other executive branch agencies.
- May not provide a financial conflict of interest or economic incentives or disincentives that impair an attorney's ability to provide effective representation.

The enclosed report satisfies Moss Adams' contractual obligation to conduct a survey and economic analysis to establish a formula for the commission to use to calculate an hourly pay rate.

**Agency Recommendation:**

OPDC staff is recommending that Moss Adams finalize the Hourly Rate and Economic Survey and submit to the agency to inform the '25-'27 POPs and future updates to the fee schedule of guidelines amounts.

**Fiscal Impact:**

No fiscal impact.

**Agency Proposed Motions:**

None.



Draft Report

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# **Oregon Public Defense Commission**

## **HOURLY RATE AND ECONOMIC SURVEY**

April 30, 2024

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Moss Adams LLP  
999 Third Avenue, Suite 2800  
Seattle, WA 98104  
(206) 302-6500



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# I. PROJECT OVERVIEW

## A. BACKGROUND AND SCOPE

There are various ways to characterize how state and local governments provide public defense functions, including supplying lawyers (and other legal team members) to people with a right to counsel. This report will reference the 2023 publication from the U.S. Department of Justice, which simplifies the methods into two categories: public defenders and private assigned counsel.<sup>1</sup> Public defenders work as employees of a government or nonprofit office; private assigned counsel are private attorneys paid by governments to handle cases according to the time they work (hourly, daily, annually), the number of cases they take, the activities they perform (like staffing an arraignment shift), or a combination of these factors.

The second principle of the American Bar Association's (ABA) *Ten Principles of a Public Defense Delivery System* is the principle related to Funding, Structure, and Oversight. This principle states that contracted attorneys should be paid a reasonable fee that reflects the cost of overhead and other office expenses, as well as payment for work.<sup>2</sup> In its 2023 session, the Oregon Legislature passed SB 337 requiring the Oregon Public Defense Commission (OPDC) to:

[C]onduct a survey and economic analysis to establish a formula for the commission to use to calculate an hourly pay rate, taking into account overhead expenses, market rates, and regional differences in the cost of living, for appointed counsel who are not employees of the commission or a nonprofit public defense organization.

OPDC engaged Moss Adams, LLP (Moss Adams, we) to conduct an hourly rate study and economic analysis for attorneys in addition to the following non-attorney support staff roles:

- Investigators
- Social Workers
- Paralegals or Legal Assistants
- Interpreters
- Case Managers
- Mitigation Specialists
- Administrative support
- Legal Secretaries

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<sup>1</sup> Beeman, Marea, and Claire Buetow. *Gideon at 60: A Snapshot of State Public Defense Systems and Paths to System Reform*. Office for Access to Justice and the National Institute of Justice, U.S. Department of Justice. Nov. 2023. Retrieved from <https://nij.ojp.gov/library/publications/gideon-60-snapshot-state-public-defense-systems-and-paths-system-reform>

<sup>2</sup> ABA Criminal Justice Standards: Providing Defense Services, Standard 5-2.4. The fee rate should be subject to regular increases to ensure the ongoing availability of quality counsel and reviewed regularly. Contract selection should be based on factors such as counsel training and experience in public defense representation and should not merely be awarded to the lowest bidder. Counsel should not be paid on a flat fee basis, as such payment structures reward counsel for doing as little work as possible. See *Wilbur v. Mt. Vernon*, No. C11-1100RSL, U.S.D.C. D. Wash., at 15 (Dec. 4, 2013) (district court finding that a flat fee contract "left the defenders compensated at such a paltry level that even a brief meeting at the outset of the representation would likely make the venture unprofitable.").



The economic survey includes research and analysis of available data points that span private practice, the federal public defense system, and public defense systems in other states, in addition to data from the Oregon District Attorney's offices and the Oregon Department of Justice (ODJ). The report details the considerations for employee overhead expenses, labor market, and regional considerations.

This study relies on two methods of data collection. 1) Compensation benchmarking using two global databases, and 2) an economic survey of peers. Using compensation benchmarking data from a comprehensive database provides real-time insights into prevailing salary trends across a wide range of roles and regions, ensuring access to the most current and relevant compensation data available. Supplementing these results with peer benchmarking can support a better understanding of the competitive landscape and provide insight into how their compensation practices compare to similar organizations. It should be noted that peer data is often limited in its value for conducting comparative analysis. Peer data can frequently be outdated, especially when other agencies may also be updating their compensation data. For this reason, we recommend a balanced approach that combines database-driven insights with peer comparisons can provide a comprehensive view of compensation practices while accounting for both breadth of coverage and regional specificity. As OPDC operationalizes plans to reduce the public defender deficiency and transitions its workforce model, the combined results of multiple data sources will be an essential part of its recruitment and retention strategies.

This analysis intends to support OPDC's directive of offering a fair market hourly wage to attorney and non-attorney support staff. The results should assist the OPDC in setting hourly rates to ensure the state can provide public defense for indigent defendants in Oregon's criminal justice system. After the hourly pay rate has been calculated, and beginning with contracts entered into on or after July 1, 2027, the hourly pay for appointed counsel who are not commission employees or a nonprofit public defense organization may not be lower than that amount.

## **B. METHODOLOGY**

This engagement was performed in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accounts, as outlined in our Statement of Work dated March 8, 2024. This report is intended solely for the use of OPDC and may not be provided to, used, or relied upon by any third parties.

### **Compensation Benchmarking Data**

Moss Adams uses benchmarked data from two national sources of compensation data—Economic Research Institute (ERI) and PayScale—to avoid reliance on a single source and enhance the reliability of benchmarked data.





### **Economic Research Institute. *ERI Salary Assessor.***

- **Salary and Wage Data:** ERI gathers employer-provided compensation surveys and other salary survey data, which are then aggregated to provide current pay rates. Data is also gathered through the digitization of Proxy and 10-K data and Freedom of Information Requests in the U.S. ERI's salary data are used to benchmark total compensation, base pay, bonuses, and more. ERI releases new data sets approximately every six weeks for approximately 1.9 million organizations, across 9,000 positions, 8,000 locations, and 1,000 industries.
- **Cost of Living Data:** ERI downloads actual housing sales data from commercially available sources and also takes into account rental market rates when compiling cost of living data. Gasoline, consumables, medical care premium costs, and effective income tax rates are also just as accurate, and ERI research staff audit these sources with special area research projects.

### **PayScale. *PayFactors Market Data.***

- PayScale's HR Market Analysis database consists of market compensation data for more than 5,500 unique jobs, across 50,000 geographic locations, and 250+ industries that are updated monthly. Benchmark jobs are matched based on job content (description), to a library of aggregated HR-reported data sources. This process of blending the results from multiple sources produces data that is representative of the actual market. Benchmark data is built from Payscale's HR-reported data survey sources, historical third-party survey trends, as well as its own compensation data experts' analysis of the market.

We obtained compensation market benchmark data from ERI and PayScale by building custom profiles based on OPDC data. The following data was requested by OPDC and used to build the queries for the roles addressed in this report.



<b>Operating Budget:</b>	<b>\$300,000,000</b>
<b>Industry Code:</b>	NAICS: 921100 (Government - Appointed or Intergovernmental Sector)
<b>Regions:</b>	<ul style="list-style-type: none"> <li>• National (USA Average)</li> <li>• Idaho (Statewide Average)</li> <li>• Oregon (Statewide Average)</li> <li>• Washington (Statewide Average)</li> </ul>
<b>Pay Period:</b>	Hourly
<b>Planning Date:</b> <i>Planning date is the date of the last database refresh</i>	ERI: 4/14/2024 PayScale: 4/1/2024

## Benchmarking Analysis

We present the results of the market compensation benchmarking data using percentiles, comparing OPDC’s current compensation to specific percentiles of the market compensation data.

A **percentile** is a point on a rank-ordered scale, found by dividing a group of observations into parts in order of magnitude from lowest to highest. The first percentile approximates the very lowest/bottom number found, while the 100th percentile is the very highest reported.

- **25th Percentile:** Also known as the first, or lower, quartile. The 25th percentile is the value at which 25% of benchmark data is below that value, and 75% of benchmark data is above that value.
- **50th Percentile:** Also known as the median. The median cuts the data set in half, so 50% earn less than the median value, and 50% earn more than the median salary. This is also known as a market match or a market median.
- **75th Percentile:** Also known as the third, or upper, quartile. The 75th percentile is the value at which 25% of the data is above that value and 75% of the data is below that value.

Traditionally, salary compensation levels are evaluated in relation to the market compensation data percentile into the following levels.

LEVEL	PERCENTILE
Low	below 25th
Low to Medium	25th – 45th
Medium	within 5% of 50th
Medium to High	55th – 75th



LEVEL	PERCENTILE
High	above 75th

### C. ECONOMIC SURVEY, PEER RESEARCH

While many states in the U.S. use a mix of public defenders, contract attorneys, and private attorneys to provide legal defense to those who cannot afford it, the contract model can vary significantly from state to state and even within different jurisdictions in the same state.

In addition to benchmarking market compensation, we gathered and reviewed the available hourly rates and salary data from federal, state, and industry groups, including:

- Oregon District Attorney’s Office
- Oregon Department of Justice
- Washington District Attorney’s Office
- Washington Department of Justice
- Various County Public Defense Offices in Washington and Oregon
- Federal public defense system (Criminal Justice Act - CJA)
- Best practice information from the American Bar Association (ABA) and the National Association of Public Defenders (NAPD).

Appendix A—Current OPDC Contract Rates contains the results of the peer review. The survey of peer data relies on publicly available information from policies, contracts, and published guidance. Salary information from job postings was not considered due to the broad range within posted positions, diminishing the applicability of peer data when setting rates for OPDC.



## II. MARKET SURVEY AND ANALYSIS

### A. BUILDING A CONTRACTOR RATE FORMULA

#### Compensation Philosophy

An organization's compensation philosophy is a statement that outlines the organization's stance on employee pay and benefits. It serves as a guide for making compensation decisions and helps to ensure that these decisions are fair, consistent, and aligned with the organization's strategic goals. Here's how it should inform setting contractor rates:

- **Alignment with Goals:** The compensation philosophy should reflect the organization's strategic goals. If the organization values quality and expertise, it should be willing to pay higher rates for contractors who can deliver these.
- **Competitiveness:** The compensation philosophy should address how the organization positions itself in the market. If it aims to attract top talent, the organization should offer competitive contractor rates.
- **Fairness and Equity:** The compensation philosophy should ensure fairness and equity. This means that contractor rates should be set based on the value of the work, the skills and experience required, and the market rate for similar work.
- **Transparency:** The compensation philosophy should promote transparency. This means the method for setting contractor rates should be clear and understandable.
- **Flexibility:** The compensation philosophy should allow for flexibility. This means that the organization should be able to adjust contractor rates as needed based on changes in the market, the nature of the work, or the contractor's performance.

#### Hourly Rate Strategies

There are several options when setting pay in relation to the relative market:

##### **Match the market by paying comparable wages.**

- A common compensation strategy for employers is to set pay levels relative to those in the existing marketplace. By matching the pay rates of competitors, the organization ensures its compensation structure remains competitive, which may help to attract and retain top talent.
- While this approach can allow employers to manage labor costs better, it can potentially place the employer in a position of playing catch-up, requiring more significant adjustments to the compensation structure during tight labor markets.

##### **Lead the market by paying higher wages.**

- This compensation strategy may increase the supply of candidates, selection rates of qualified applicants, morale and productivity, and decrease employee turnover. A lead strategy is often most appropriate for organizations located in highly competitive labor markets. Employers that adopt such a strategy will need to monitor it closely to determine whether its anticipated benefits are being realized.



### **Lag the market by paying lower wages.**

- Organizations that choose to implement a compensation strategy that lags behind the marketplace often do so because they lack the financial resources required to pay higher rates. A lagging market strategy is frequently accompanied by nonmonetary incentives to minimize low morale and turnover. In some circumstances, an employer may be so highly sought-after due to their brand reputation that it can pay lower wages without realizing a negative impact.
- Organizations that opt to set pay rates below the prevailing marketplace can be more susceptible to fluctuations in the labor market, risk heightened levels of difficulty in retaining and attracting highly qualified candidates, and experience higher rates of employee dissatisfaction, poor performance, and turnover.

For many organizations, a combination of these options may be most appropriate. For example, an employer may choose to lead the market during tight labor markets or only for specific positions that are difficult to fill. OPDC has adopted this practice in its current Schedule of Guideline Rates, which includes a higher hourly rate for attorneys managing unrepresented cases. This method requires closer monitoring and pay rates may need to be adjusted regularly

### **Components of an Hourly Rate Formula**

Contract positions can effectively help manage workload, provide specialized expertise, and control costs. Creating a formula to calculate the rate to pay contracted positions requires careful consideration of several factors.

- **Factor in Overhead Costs:** The formula should account for the overhead costs that the attorney will incur, such as office space, utilities, legal research tools, and professional insurance
- **Include a Profit Margin:** A contract attorney needs to make a profit as a business; therefore, the formula should include a reasonable profit margin.
- **Consider the Complexity of the Work:** More complex work typically commands a higher rate. The formula should consider the complexity and scope of the work required.

Contracted attorney hourly rates should represent reasonable compensation when evaluated from a net earnings (“take-home pay”) perspective, which means a contracted attorney’s rate must account for more than what would be shown in an employee’s hourly salary rate. Gross pay is the starting point, representing the total amount earned before any deductions are made against it. Net earnings represent the amount remaining after taking gross pay and subtracting all deductions (taxes and benefits) and then office overhead costs. A formula for calculating reasonable compensation for contracted attorneys should, therefore, incorporate salaries, employee payroll taxes, employee benefit costs, office overhead costs, and a conservative profit margin estimate.



Payroll taxes include federal, state, and local taxes ranging from Social Security, Medicare, self-employment, FUTA, and state unemployment taxes. Self-employed contractors are required to pay both employee and employer shares of Social Security and Medicare, which can double the amount due. The cost of employee benefits may cover a more comprehensive array of costs but should typically include health insurance and retirement benefits. Overhead cost percentages and profit margins vary widely depending on an organization's size, location, and specialty.

Including profit in calculating a contractor's pay rate is essential for several reasons. Contracting often involves risks; profit can incentivize contractors to both take on these risks and deliver quality work. Contractors are businesses that need to make a profit to sustain their operations, invest in their growth, and compete effectively in the market. Without profit, a contractor may not be able to continue providing services in the long term

### **Average Market Hourly Salary**

- For each position, we used the statewide average market pay in Oregon, using the parameters identified in the Compensation Benchmarking Data methodology section.

### **Payroll Taxes:** 10.35%

- Social Security + Medicare, Statewide Transit Tax, and Unemployment Insurance Tax

### **Benefits:** 30%

- According to the U.S. Bureau of Labor Statistics, the average cost of benefits for all civilian workers was 31.7% of total compensation in 2020.

### **Office Overhead:** 40% (attorneys); 20% (support staff)

- The ABA reports that typical overhead costs at law firms can range anywhere from 35% - 50%; ; a 2020 report from software firm Clio reported that overhead expenses for sole practitioners tended towards the lower end of that range.<sup>3</sup>

### **Profit:** 10%

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<sup>3</sup> Clio. (2020). Legal Trends Report. Retrieved from <https://www.clio.com/resources/legal-trends/2020-report>



- According to industry research firm IBISWorld, profit margins for law firms in the U.S. averaged roughly 20% over the past five years through 2023.<sup>4</sup>

Using the above averages, we calculated hourly rates based on the statewide market compensation data as the starting point, referred to as the “Market Calculated Rate.”

## Regional Cost of Living Differences

The cost of living can vary significantly from one location to another. The data used to calculate it typically includes costs for housing, food, transportation, healthcare, taxes, and more. Cost of living data is generally used in compensation benchmarking to compare different geographic locations. Using the regions identified in the Oregon State Bar 2022 Economic Survey<sup>5</sup> by county, we collected the average cost of living data for these regions from ERI. We compared the regional data against the Oregon state average.

REGION	% DIFFERENCE FROM STATE AVERAGE
Portland (MSA)	↑ 11.9% higher
Tri-County	↑ 6.8% higher
Upper Willamette Valley	↓ 1.7% lower
Lower Willamette Valley	↓ 1.3% lower
Southern Oregon	↓ 7.2% lower
Eastern Oregon	↓ 6.6% lower
Oregon Coast	↓ 1.6% lower

While the cost of living is typically a core element in setting competitive compensation rates for salaried employees, it is not recommended to be directly included in the formula for setting contract rates. Instead, the information on the regional cost of living should be incorporated into OPDC’s compensation philosophy and its choice of hourly rate strategies.

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<sup>4</sup> *Industry Report - Law Firms in the U.S.* IBISWorld. Oct. 2023.

<sup>5</sup> *Oregon State Bar 2022 Economic Survey – Report of Findings.* Oregon State Bar. Mar. 2023. Retrieved from: [https://www.osbar.org/\\_docs/resources/Econsurveys/22EconomicSurvey.pdf](https://www.osbar.org/_docs/resources/Econsurveys/22EconomicSurvey.pdf)



## Annual Update Methodology

Updating a formula to calculate the pay rate for contract positions annually helps ensure that rates remain competitive, fair, and aligned with strategic goals. The recommended steps to update the formula include (but are not limited to):

- **Review Market Rates:** Research current market rates for similar contracted positions. This could involve reviewing industry surveys, consulting with professional organizations, or hiring a compensation consultant.
- **Consider Inflation:** Adjust the rates to account for inflation. The U.S. Bureau of Labor Statistics publishes the Consumer Price Index (CPI) which can be used to estimate the rate of inflation (U.S. Bureau of Labor Statistics, 2021). The Executive Branch Cost of Living Adjustment (COLA) rate could also be utilized.
- **Review Overhead Costs:** Review the overhead costs associated with the contracted position. If these costs have increased, consider adjusting the rate to reflect these changes •

## Other Calculation Considerations

OPDC could consider additional elements when evaluating the hourly rates it sets for contracted attorneys and support staff. These elements are not currently reflected in the calculated market rates presented in this report; however, these components should be considered when choosing which percentiles to use in alignment with OPDC's compensation philosophy.

### *Capital versus Non-Capital Cases*

Attorneys are often paid more for capital cases due to their complexity and high stakes. The distinction between capital and non-capital cases is the only one made in the Criminal Justice Act (CJA) guidelines regarding the hourly rate for compensating attorneys in federal criminal proceedings. The OPDC's current schedule includes a distinction between multiple types of cases regarding hourly attorney fees.

### *Living Wage Levels*

At its simplest, a living wage is what one full-time worker must earn on an hourly basis to help cover the cost of their family's minimum basic needs where they live while still being self-sufficient. The Living Wage Calculator from the Massachusetts Institute of Technology (MIT) calculates a living wage that includes eight typical expenses or basic needs – childcare, civic engagement, food, health care, housing, internet and mobile, transportation, and other necessities.





The living wage data for Oregon in 2024 below represents the hourly rate a household must earn to support themselves and/or their family, working full-time (2080 hours per year).<sup>6</sup> The Living Wage Calculator presents the data for individuals and households with one or two working adults and zero to three children. The table below provides the average value from across all household compositions and the range of values presented across all household types.<sup>7</sup>

State of Oregon	Average	Range
Living Wage	\$39.51	\$16.65 to \$73.80
Poverty Wage	\$10.56	\$4.91 to \$17.59
Minimum Wage	\$14.20	N/A

Supporting this consideration is a brief look at the median home value trends in Oregon. According to data published by the U.S. Census Bureau from the American Community Survey (ACS), in 2022, the median home value statewide in Oregon reached \$475,600 for homes of all ages.<sup>8</sup> This represents a five-year annual growth rate of 10.4% and a 112% increase from the median home value 10 years prior in 2012.

Similar to the Regional Cost of Living Differences, the Living Wage data should be incorporated into OPDC's compensation philosophy and its choice of hourly rate strategies.

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<sup>6</sup> Amy K. Glasmeier, "Living Wage Calculator," Massachusetts Institute of Technology, 2024. Accessed Apr. 2024 from <https://livingwage.mit.edu/states/41>.

<sup>7</sup> The poverty wage and state minimum wage are for reference purposes and provided as part of the Living Wage Calculator data set. Poverty wage estimates come from the Department of Health and Human Services' Poverty Guidelines published in 2024.

<sup>8</sup> U.S. Census Bureau. "Median Value by Year Structure Built." American Community Survey, ACS 1-Year Estimates Detailed Tables, Table B25107. Accessed Apr. 2024 <[www.data.census.gov](http://www.data.census.gov)>.



### III. MARKET DATA CALCULATIONS

We applied the methodology described in the Components of an Hourly Rate Formula to calculate the individual values for each hourly rate component to the average salary market data across the 25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> percentiles.

#### A. ATTORNEYS

We applied the methodology described above to calculate the individual values for each hourly rate component to the average market data for practicing attorneys in Oregon. This resulted in a market-calculated rate ranging from \$145 (25<sup>th</sup> percentile); \$182 (50<sup>th</sup> percentile); and \$207 (75<sup>th</sup> percentile).

FORMULA COMPONENT	25TH	50TH	75TH
Average Hourly Salary (Oregon)	\$67	\$84	\$95
Payroll Taxes (10.35%)	\$7	\$9	\$10
Cost of Benefits (30%)	\$20	\$25	\$29
<b>Total Employee Cost:</b>	<b>\$94</b>	<b>\$118</b>	<b>\$134</b>
Overhead (40%)	\$38	\$47	\$54
Profit (10%)	\$13	\$17	\$19
<b>Market Calculated Rate:</b>	<b>\$145</b>	<b>\$182</b>	<b>\$207</b>

*All figures are rounded to the nearest whole dollar.*

#### Comparison to Current Rates

To understand the current hourly rates used for contract attorneys by OPDC, a distinction must be made between three categories of rates. A detailed breakdown can be referenced in Appendix A—Current OPDC Contract Rates.

- **Schedule of Guideline Amounts – Standard**
  - For appointments to cases not subject to the “Unrepresented list” presented on the Schedule of Guideline Amounts, the OPDC’s current schedule guidelines distinguish between four groupings of attorney fees based on the type of case handled by the attorney.
  - The median hourly rate is \$138 per hour.
- **Schedule of Guideline Amounts - Temporary Hourly Increase Program (THIP)**

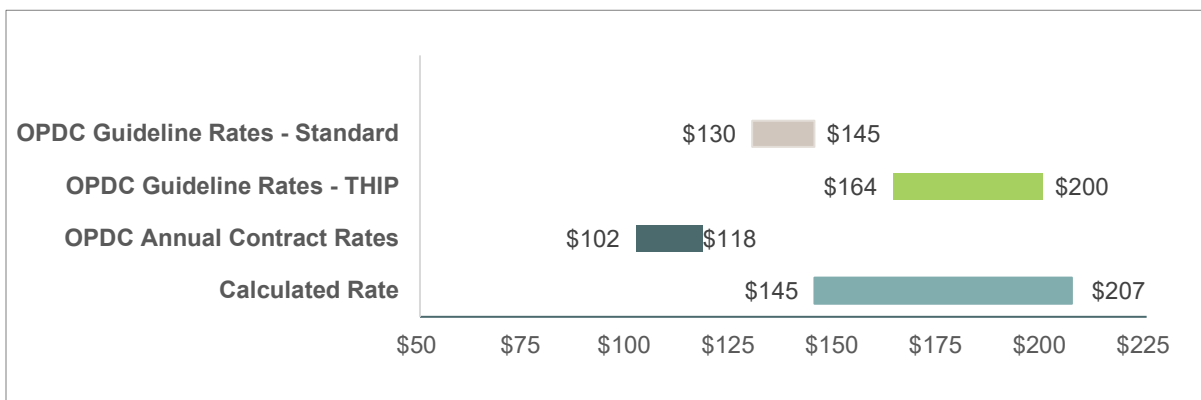


- Effective October 1, 2023, through June 30, 2024, these temporarily increased hourly rates are available only for in-custody cases and on the OJD Unrepresented list.
- The median hourly rate is \$182 per hour.
- **Annual Contract Attorneys**
  - Calculated across the Attorney 1 through Attorney 4 position FTE funding rates for the 2023-25 contracts
  - The median hourly rate is \$111 per hour.

The table below compares the three categories of current OPDC rates against the median of 1) the median of other agencies and 2) the three percentiles of the market-calculated rates.

ATTORNEY	OPDC – STANDARD RATE MEDIAN	OPDC – THIP RATE MEDIAN	OPDC – ANNUAL CONTRACT MEDIAN
<b>Current</b>	\$138	\$182	\$111
<b>Other Agency</b>	\$150	\$150	\$150
<i>% Difference</i>	<i>8% lower</i>	<i>21% higher</i>	<i>26% lower</i>
<b>Market 25</b>	\$145	\$145	\$145
<i>% Difference</i>	<i>5% lower</i>	<i>26% higher</i>	<i>33% lower</i>
<b>Market 50</b>	\$182	\$182	\$182
<i>% Difference</i>	<i>24% lower</i>	<i>Match</i>	<i>39% lower</i>
<b>Market 75</b>	\$207	\$207	\$207
<i>% Difference</i>	<i>33% lower</i>	<i>12% lower</i>	<i>46% lower</i>

The graph below compares current OPDC hourly rates to the calculated market rates range (25<sup>th</sup>, 50<sup>th</sup>, and 75<sup>th</sup> percentile). While the temporary THIP rates align with the calculated market rates, the standard rates currently scheduled to end on June 30, 2024, fall entirely below the calculated market rate range.





## B. SUPPORT STAFF

We applied the same methodology used above to the support staff positions to develop market-calculated rates. The primary difference is that the overhead cost percentage was reduced to 20% to accommodate the fact that these positions typically do not incur the same level of overhead costs as attorneys. This resulted in a market-calculated rate for each position.

POSITION	25TH	50TH	75TH
Paralegal / Legal Assistant	\$54	\$65	\$70
Investigator	\$61	\$74	\$82
Legal Secretary	\$44	\$54	\$57
Interpreter	\$43	\$50	\$56
Interpreter - Sign Language	\$52	\$63	\$67
Case Manager	\$67	\$78	\$83
Social Worker	\$61	\$69	\$74
Administrative Specialist	\$39	\$48	\$52

It should be noted that the Mitigation Specialist position did not have a comparable market salary position that provided robust enough data for comparison.

### Comparison to Current Rates

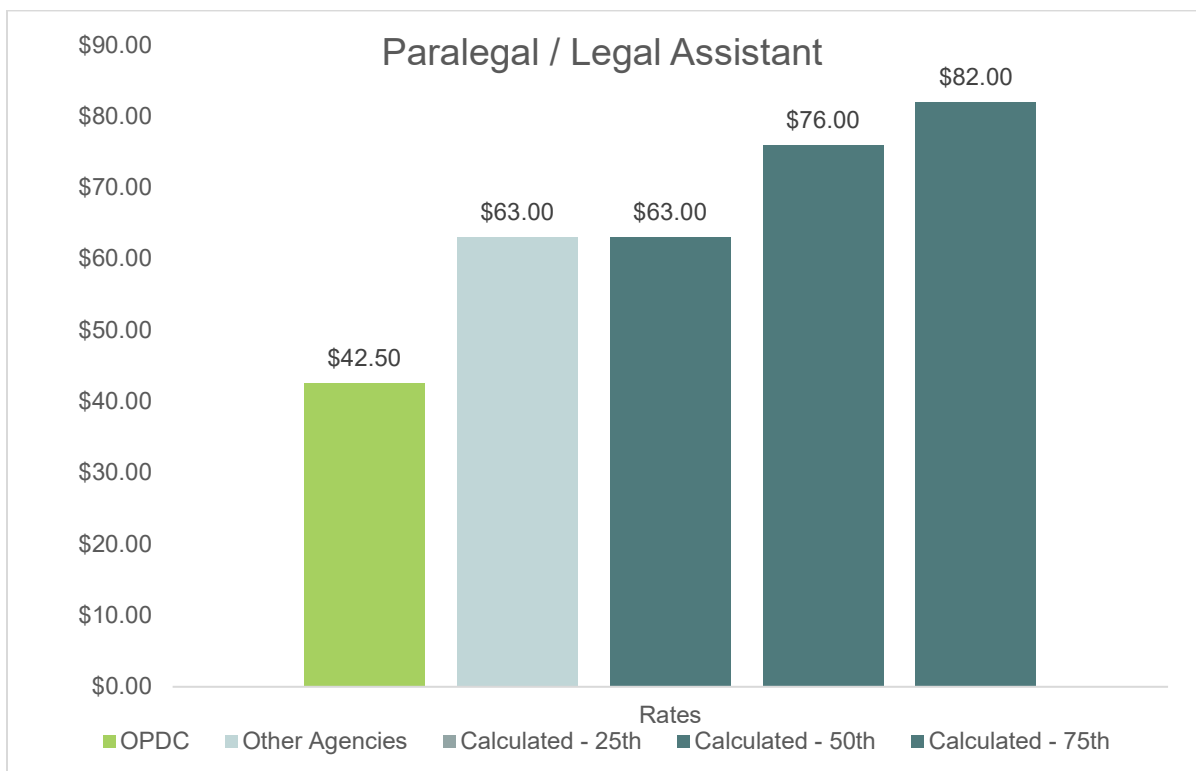
The following table compares the current OPDC contract rates to the available data on the average rates from other agencies and the market-calculated rate percentiles.



POSITION	OPDC GUIDELINE RATES	OPDC ANNUAL CONTRACT	OTHER AGENCIES	MARKET 25	MARKET 50	MARKET 75
Paralegal / Legal Assistant	\$42	–	\$63	\$54	\$65	\$70
Investigator	\$65	\$75	\$50	\$61	\$74	\$82
Legal Secretary	\$42.50	–	\$30	\$44	\$54	\$57
Interpreter	\$45.50	–	\$71	\$43	\$50	\$56
Interpreters – ASL	\$74	–	\$71	\$52	\$63	\$67
Case Manager	\$45	\$48.01	–	\$67	\$78	\$83
Social Worker	\$95	–	\$52	\$61	\$69	\$74
Mitigation Specialist	\$70	–	\$82	–	–	–
Administrative Specialist	\$42.50	–	\$25	\$39	\$48	\$52

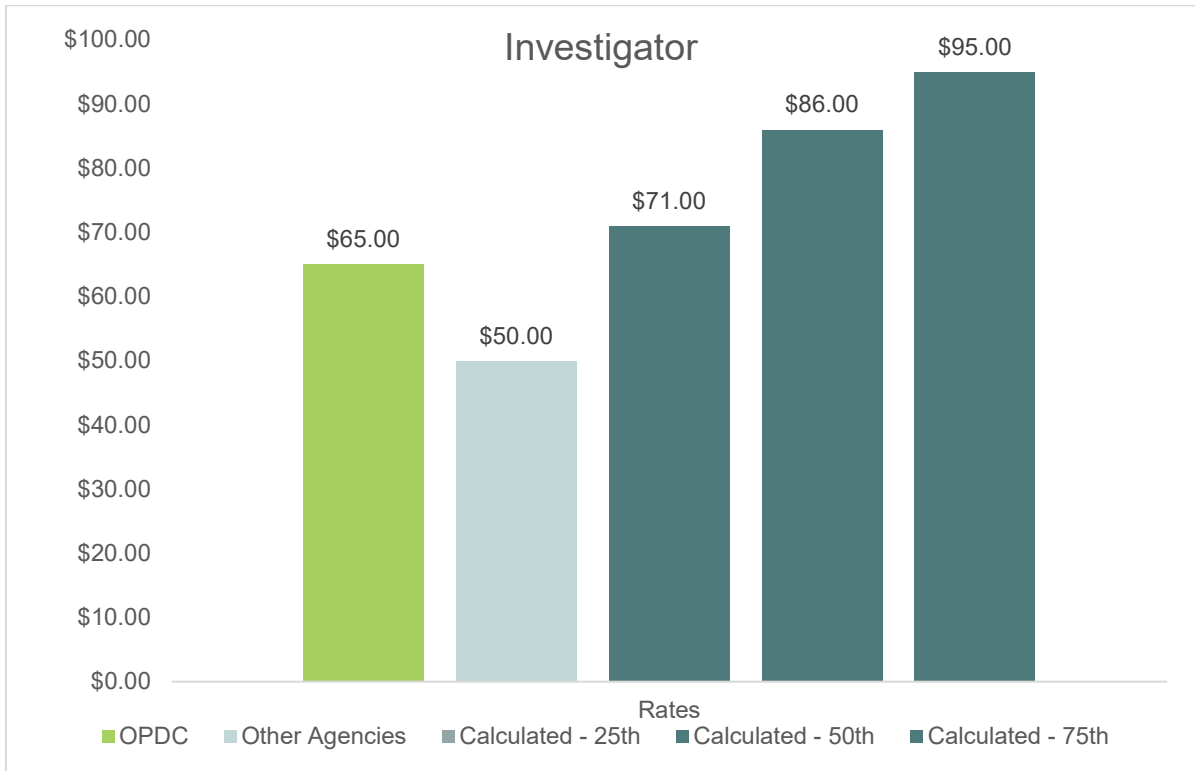
The following below present a visual representation of the same data for each position.

### *Paralegal / Legal Assistants*





### Investigator

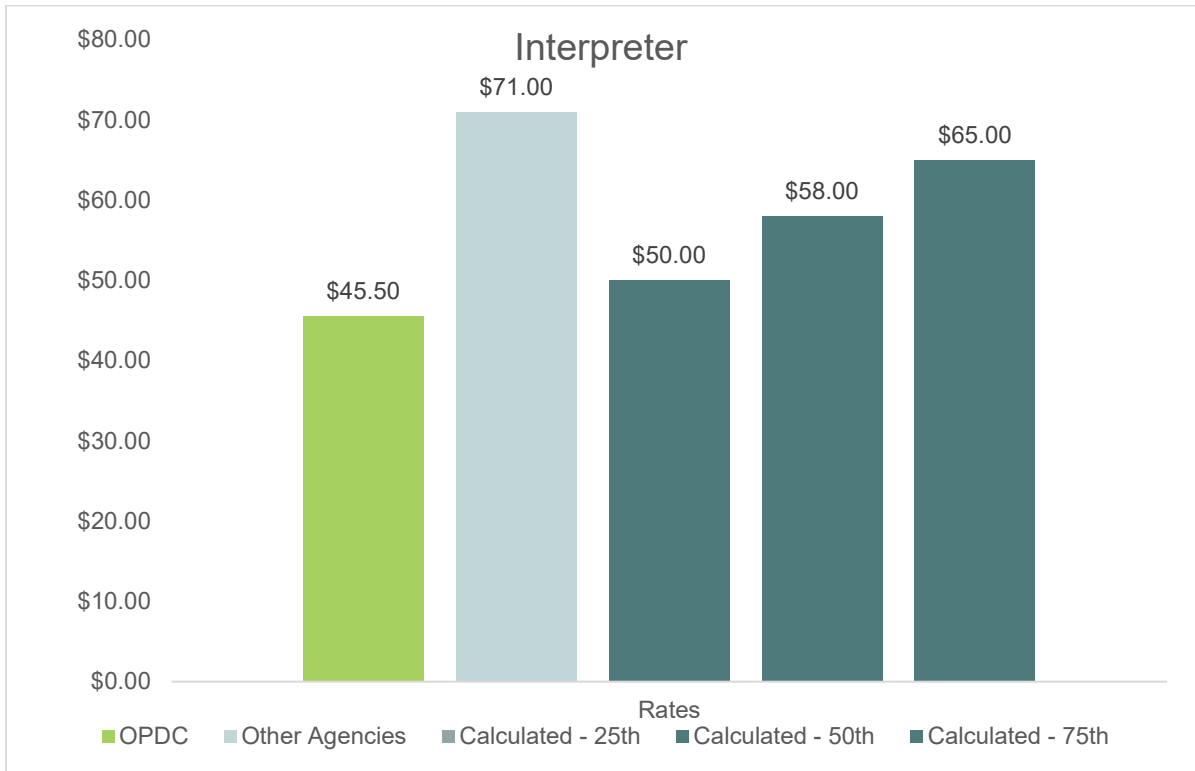


### Legal Secretary





### Interpreter

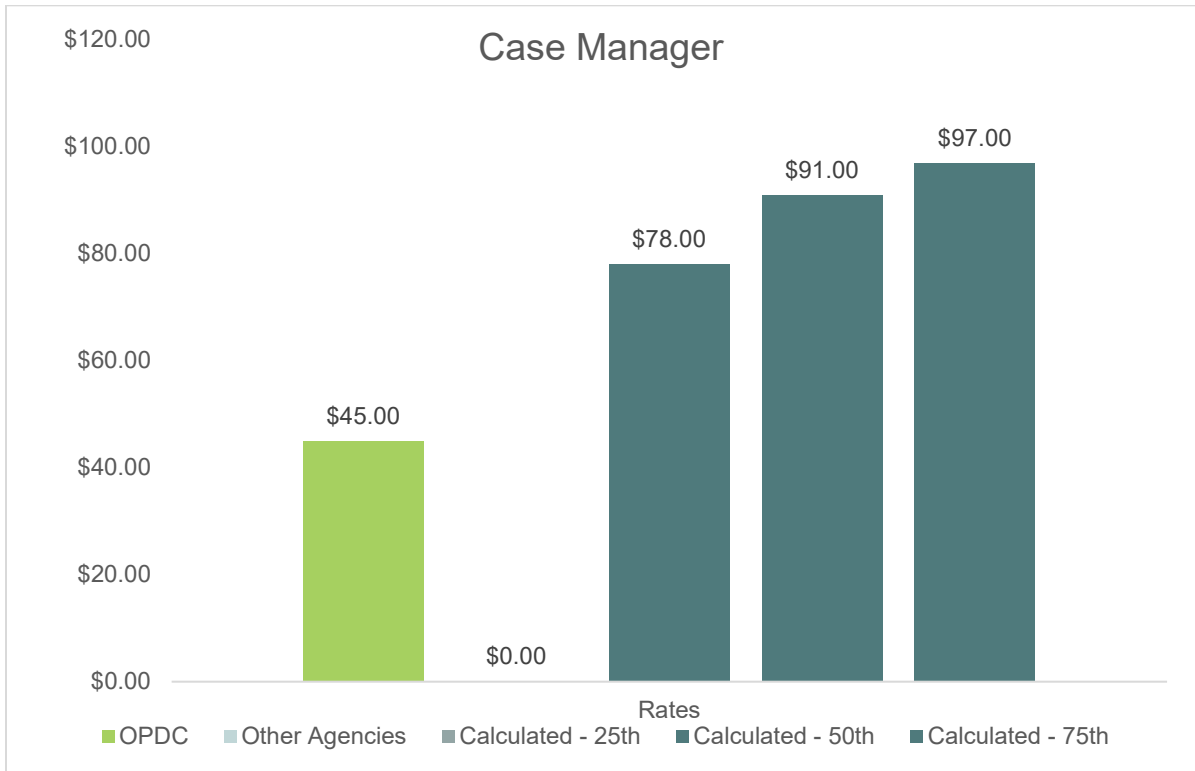


### Interpreter - ASL





### Case Manager



### Social Worker







## Administrative Specialist



# APPENDIX A—CURRENT OPDC CONTRACT RATES

## ATTORNEYS

The OPDC's current schedule guidelines distinguish between four groupings of attorney fees based on case types handled by the attorney.

ATTORNEY TYPE	OPDC SCHEDULE - THIP	OPDC SCHEDULE - STANDARD
Misdemeanor, contempt, and probation violation, any Class C felony and felony drug possession	\$164	\$130
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	\$130
Ballot Measure 11 and felony sex offenses (Class A, B & C)	\$175	\$145
Murder and Jessica's law (including mandatory co-counsel and cases subject to ORS 137.719)	\$200	\$145
<b>Median</b>	<b>\$182</b>	<b>\$138</b>

The annual contracts offered by the OPDC, the average FTE attorney funding rates are simply broken out by attorney level:

TITLE	2023-25 ANNUAL FTE FUNDING RATE
Attorney 1	\$102
Attorney 2	\$108
Attorney 3	\$113
Attorney 4	\$118
<b>Median:</b>	<b>\$111</b>

## SUPPORT STAFF

The table below shows the current OPDC Schedule of Guideline Rates for various support positions. There has been no temporary rate increase per the THIP policy for these positions.

POSITION	OPDC GUIDELINE RATES
Paralegal / Legal Assistant	\$42.50
Investigator	\$65.00
Legal Secretary	\$42.50
Interpreter	\$45.50
Interpreters – ASL	\$74.00
Case Manager	\$48.01
Social Worker	\$95.00
Mitigation Specialist	\$70.00
Administrative Specialist	\$42.50

## APPENDIX B– OTHER AGENCY RATES

### ATTORNEYS

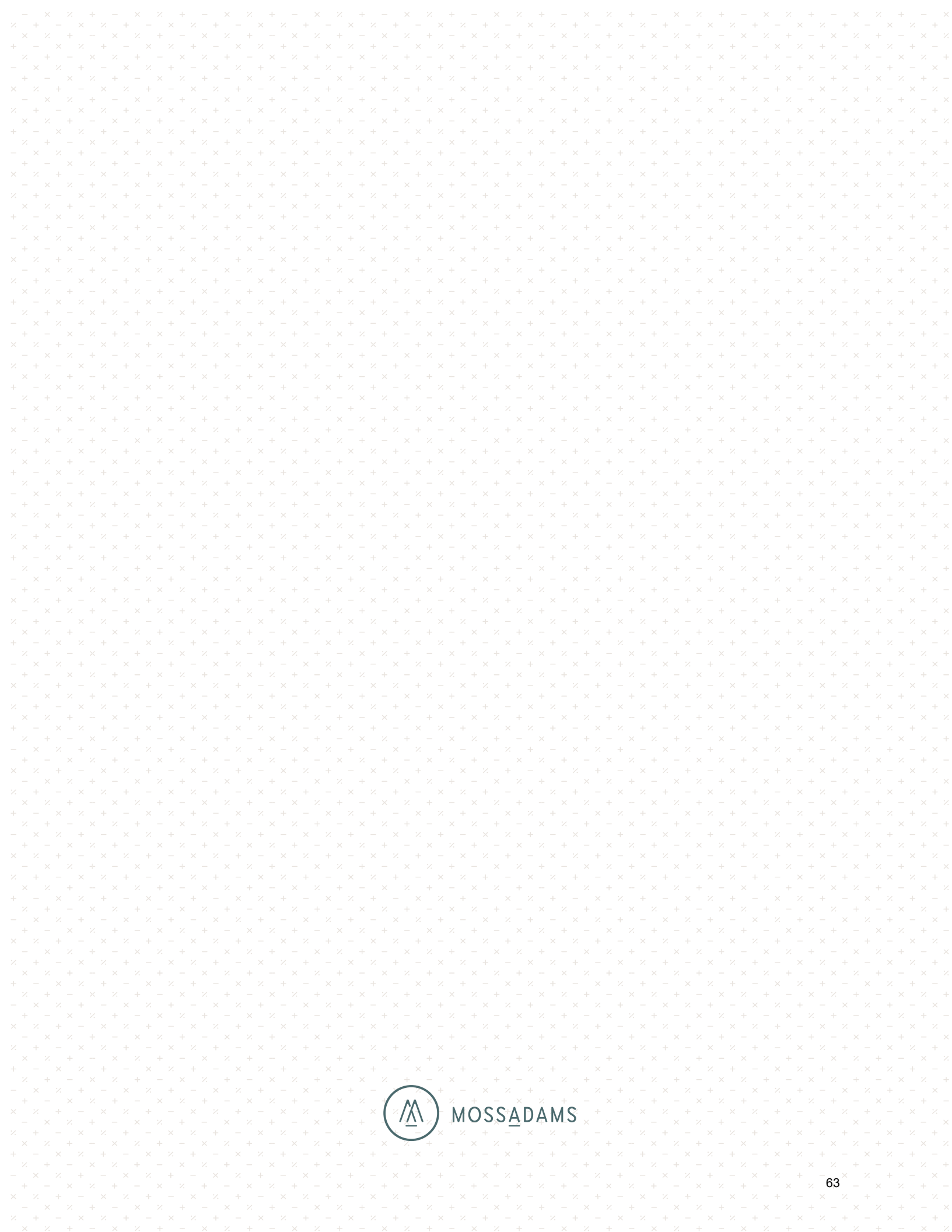
Agency	Lowest	Midpoint	Highest
King County, WA	\$55	\$102.50	\$150
Pierce County, WA	\$70	\$110	\$150
Snohomish County Office of Public Defense	\$55	\$70	\$85
Washington State		\$215.40	
Committee for Public Counsel Services (Massachusetts)	\$65	\$92.50	\$120
Maine Commission on Indigent Legal Services		\$150	
New York State Office of Indigent Legal Services		\$158	
Placer County, CA	\$120	\$152.50	\$185
US Criminal Justice Act (CJA)	\$172	\$196	\$220
<b>Position Median:</b>		<b>\$150.00</b>	

### SUPPORT STAFF

Position	Agency	Lowest	Midpoint	Highest
Paralegal / Legal Assistant	State of Washington	\$25.20	\$29.56	\$33.91
Paralegal / Legal Assistant	King County Department of Public Defense		\$40.00	
Paralegal / Legal Assistant	9th Circuit	\$65.00	\$85.00	\$105.00
Paralegal / Legal Assistant	Northern California	\$65.00	\$95.00	\$125.00
<b>Paralegal / Legal Assistant</b>	<b>Position Average:</b>		<b>\$62.39</b>	

Position	Agency	Lowest	Midpoint	Highest
Investigator	WA Attorney General	\$33.91	\$39.75	\$45.59
Investigator	Colorado Supreme Court		\$55.00	
Investigator	9th Circuit	\$85.00	\$102.50	\$120.00
Investigator	State of Montana		\$41.00	
Investigator	Northern California		\$100.00	
Investigator	King County Department of Public Defense		\$45.00	
<b>Investigator</b>	<b>Position Average:</b>		<b>\$63.88</b>	
<b>Legal Secretary</b>	State of Washington	\$25.84	\$30.30	\$34.75
Interpreter	State of Washington		\$44.44	
Interpreter	9th Circuit	\$44.00	\$62.00	\$80.00
Interpreter	King County Department of Public Defense		\$85.00	
Interpreter	Northern California		\$80.00	
<b>Interpreter</b>	<b>Position Average:</b>		<b>\$67.86</b>	
<b>Interpreter - Sign Language</b>			<b>\$67.86</b>	
Social Worker	WA State Office of Public Defense	\$34.04	\$40.90	\$47.75
Social Worker	Colorado Supreme Court	\$55.00	\$63.50	\$72.00
<b>Social Worker</b>	<b>Position Average:</b>		<b>\$52.20</b>	
Mitigation Specialist	Northern California	\$100.00	\$112.50	\$125.00
Mitigation Specialist	9th Circuit	\$85.00	\$122.50	\$160.00
Mitigation Specialist	King County Department of Public Defense		\$100.00	
<b>Mitigation Specialist</b>	<b>Position Average:</b>		<b>\$111.67</b>	
Administrative Specialist	WA State Office of Public Defense	\$25.94	\$29.58	\$33.21

Position	Agency	Lowest	Midpoint	Highest
Administrative Specialist	King County Department of Public Defense		\$20.00	
<b>Administrative Specialist</b>	<b>Position Average:</b>		<b>\$24.79</b>	



MOSSADAMS



**Date:** May 1, 2024

**To:** Jennifer Nash, Chair  
OPDC Commissioners

**Cc:** Jessica Kampfe, Executive Director

**From:** Eric Deitrick, General Counsel

**Re:** Six-Year Plan/Caseload & Workload Standards

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**Action:** Update, discussion, and vote.

**Background:** In March, this Commission reviewed a draft of a proposed Six-Year Plan, aimed at reducing Oregon’s public defender deficiency for adult criminal cases and expanding the public defense workforce to ensure attorneys have sufficient time to ethically represent their clients. At that meeting, there was discussion about one of the assumptions of both the Six-Year Plan and the Oregon Report – that attorneys engage in 2,080 hours of case specific work per year. At the end of the discussion, there was consensus amongst the Commission that the Six-Year Plan use an annual workload standard of 1,578 hour of case specific work each year, which is equivalent to the annual billing requirement for attorneys at the Oregon Department of Justice.

At this meeting, OPDC staff is seeking further direction on how to proceed with the Six-Year Plan. Specifically, OPDC staff is seeking clarification as to whether the Six-Year Plan should rely upon the caseload standards in the [Oregon Report](#) or those established in the [National Public Defense Workload Study \(NPDWS\)](#).

As additional background, ORS 151.216 requires the Commission 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, and national standards of justice.
- Adopt policies for public defense providers that ensure caseloads are in accordance with national and regional best practices.

The obligation for this agency to adopt policies that ensure caseloads are in accordance with national and regional best practices was established by HB 2003 (2021). Since the enactment of HB 2003, neither the prior Commission nor this Commission has adopted caseload or workload standards that ensure caseloads are in accordance with national or regional best practices. Currently, OPDC contracts contain a maximum attorney caseload (MAC) provision grounded in 300 misdemeanors per year with corresponding case weightings. This standard is not aligned with a national or regional best practice.



The adoption of a Six-Year Plan presents the Commission with the opportunity to adopt caseload standards that are required by statute, at least as it relates to criminal caseloads that are the focus of the Six-Year Plan. There are two published reports containing caseload standards that are consistent with this statutory directive:

- The Oregon Report, published by the American Bar Association and Moss Adams in January 2022, constitutes a regional best practice.
- The NPDWS, published by the RAND Corporation, American Bar Association, the National Center for State Courts, and Stephen Hanlon in July 2023, constitutes a national best practice.

In November 2023, the ABA published an update to its “Ten Principles of a Public Defense Delivery System,” which are considered best practices the agency has relied upon in ensuring the provision of public defense services is consistent with “national standards of justice.” Principle 3, “Control of Workloads,” provides:

- The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations.
- Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology.
- Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded.

Below is a table demonstrating the annual caseload limits that would result from using either the Oregon Report or the NPDWS, with varying workload hour assumptions:

Case Type	NPDWS Hours	Oregon Hours	NPDWS 2080	NPDWS 1650	NPDWS 1578	Oregon 2080	Oregon 1650	Oregon 1578
Felony High LWOP	286		7	6	6			
Felony High Murder	248	552.46	8	7	6	4	3	3
Felony High Sex	167	552.46	12	10	9	4	3	3
Felony High Other	99	148.95	21	17	16	14	11	11
Felony Mid	57	47.73	36	29	28	44	35	33
Felony Low	35	39.78	59	47	45	52	41	40
DUII High	33		63	50	48			
DUII Low	19		109	87	83			
MISD High	22.3	36.98	93	74	71	56	45	43
MISD Low	13.8	22.26	150	120	114	93	74	71
PV	13.5	8.33	154	122	117	250	199	189

Both the Oregon Report and the NPDWS relied upon the same methodology to arrive at their results. However, there are differences between the specific approaches of each report:

- The Oregon Report examined adult criminal, juvenile dependency, and juvenile delinquency case types. The NPDWS only examined adult criminal.
- The Oregon Report placed adult criminal cases into 7 categories. The NPDWS used 11 categories.
- The Oregon Report used 11 case task categories to assess attorney workload. The

NPDWS used 8 case task categories.

- The Oregon Report includes a breakdown of time needed per specific case task, which was helpful for Moss Adams in assessing which attorney hours could be shifted to non-attorneys as part of a Six-Year Plan. The NPDWS does not contain this data.

Moss Adams has already prepared a Six-Year Plan based upon the Oregon Report. It could update the report to reflect the NPDWS standards, although given the above information, it's not a one-to-one comparison. Additional case mapping would need to occur to align the NPDWS with Oregon case types.

A few additional points for the Commission to consider:

- The Six-Year Plan is only aimed at adult criminal cases, as juvenile dependency and delinquency cases are not included in the plan. Eventually, this Commission will have to approve caseload and workload standards for these case types. As the NPDWS does not include standards for these case types, the Oregon Report is likely the best data set for the Commission.
- OPDC staff is aware that other states currently adopting the NPDWS as their state standard are looking to the Oregon Report for their juvenile standards.

Finally, it should be noted that ORS 151.216 provides additional mandates to the Commission regarding caseload and workload:

- Review the caseload policies and revise the policies as necessary and at least every four years.
- Adopt a statewide workload plan based upon the agency's caseload policies.
- Develop, adopt, and oversee the implementation, enforcement, and modification of policies, procedures, minimum standards, and guidelines to ensure that public defense providers are providing effective assistance of counsel consistently to all eligible persons in this state.
- Appointed counsel shall be provided sufficient time and a space where attorney-client confidentiality is safeguarded for meeting with clients.
- The workload of appointed counsel must be controlled to permit effective representation. Economic disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel must be avoided. The Commission may develop workload controls to enhance appointed counsel's ability to provide effective representation.

Some of these provisions inform the current work of the Commission while others inform future work. Once the Commission adopts an annual caseload standard, OPDC staff can begin to develop workload models that phase in the caseload standard over a period of six years.

**Agency Recommendation:**

OPDC staff is recommending the Commission direct OPDC staff on (1) whether to use the annual caseload standards outlined in either the Oregon Report or the NPDWS and (2) the projected annual number of hours dedicated to case specific work. OPDC staff is specifically recommending that the Commission select one standard and not a mix of case types from both the Oregon Report and the NPDWS.

**Fiscal Impact:**

No fiscal impact to update the Six-Year Plan report. Implementation of the Six-Year Plan will have a fiscal impact.

**Agency Proposed Motions:**

Move to direct OPDC staff to work with Moss Adams on updating the Six-Year Plan to use the \_\_\_\_\_ annual caseload standard with a projected workload of \_\_\_\_\_ hours of case specific work. The Six-Year Plan should aim to phase in these caseload standards over six years.

# Oregon Public Defense Commission

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COMPREHENSIVE PUBLIC DEFENSE REPORT

Version I  
April 30, 2024

## NATURE OF THE REPORT

Section 98 of SB 337 (2023) states:

SECTION 98. (1) No later than May 15, 2024, the Oregon Public Defense Commission shall provide a comprehensive report on the Commission's plan for providing public defense services in this state to the interim committees of the Legislative Assembly related to the judiciary, in the manner described in ORS 192.245, that includes at least the following information:

- (a) Financial projections for the Commission based on anticipated workload;
- (b) A description of the Commission's proposed method for providing public defense services based on anticipated workload;
- (c) The establishment of training and supervision requirements for public defense providers;
- (d) Steps taken to determine a reasonable hourly rate for appointed counsel who are not employees of the Commission or nonprofit public defense organizations that accounts for overhead expenses; and
- (e) Steps taken to improve oversight and enforcement of statewide objective standards for the provision of public defense.

(2) No later than December 1, 2025, and no later than December 1, 2026, the Commission shall provide the interim committees of the Legislative Assembly related to the judiciary with an updated version of the report described in subsection (1) of this section.

(3) Beginning no later than December 1, 2027, and biennially thereafter until December 1, 2035, the Commission shall provide the interim committees of the Legislative Assembly related to the judiciary with an updated version of the report described in subsection (1) of this section.

SECTION 99. Section 98 of this 2023 Act is repealed on January 2, 2036.

The Oregon Public Defense Commission members approved this report at their May 8, 2024, meeting.

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## EXECUTIVE SUMMARY

SB 337 (2023) provides a framework for developing public defense in Oregon. The Oregon Public Defense Commission (OPDC) must create and adopt rules, policies, and procedures to implement the goals mandated by SB 337. This is the Commission’s first report on its plan to provide comprehensive public defense services in Oregon, and it provides a roadmap of how the agency plans to carry out directives outlined in SB 337.

Three sets of data inform the plan for providing public defense in Oregon:

- The Public Defense Forecast (How many cases are projected);
- Caseload and Workload (How many attorney hours are needed per case);
- Economic Study (What is the appropriate compensation for attorney and non-attorney work).

Applying this data to accepted standards for calculating appropriate workloads will provide the Commission, Legislature, and the Governor with a calculation of the number of public defense lawyers needed in Oregon to represent all persons who qualify for a court-appointed attorney within constitutionally mandated caseloads. It will also provide cost information related to that representation. Using the nationally accepted formula for this calculation will allow the Commission to meet its obligation under the Constitution and ORS 151.216 to ensure caseloads and workloads align with national and regional best practices.

The Oregon Public Defense Commission (OPDC) understands that the necessary investments to improve public defense will take time. In 2023, the OPDC hired Moss Adams to develop the Oregon Public Defense Commission's Six-Year Plan to Reduce Representation Deficiency (Six-Year Plan) to address this issue. The Commission plans to review and adopt that plan within two months. The Six-Year Plan will outline a timeline and implementation strategy for meeting the need for improved public defense. Using this information, OPDC will create policy option packages (POPs) for the 2025-27 biennium and beyond. Below is the work plan the Commission will be following to adopt these standards:

Month/Meeting	Action Item
April	<ul style="list-style-type: none"> <li>• OEA releases public defense forecast,</li> <li>• Economic study on attorney and non-attorney hourly rates completed.</li> </ul>
May Commission Meeting	<ul style="list-style-type: none"> <li>• Briefing on caseload and workload standards,</li> <li>• Briefing on the six-year plan with the adopted caseload and workload.</li> </ul>
June Commission Meeting	<ul style="list-style-type: none"> <li>• Adopt caseload and workload standards,</li> <li>• Adopt POPs,</li> <li>• Amend the Six-Year Plan with the adopted caseload ratios and hourly rate.</li> </ul>

In addition to this foundational work, the Commission is working to implement the other parts of SB 337. SB 337 states that by July 1, 2027, public defense providers in Oregon will be either state employees, employees at a non-profit, or attorneys who are paid hourly as part of a panel of qualified counsel.

For the first time, Oregon now has state-employed trial-level public defenders. Three regional trial division offices have opened, with the goal of state-employed attorneys representing 30% of all appointed counsel by 2035.

OPDC currently contracts with non-profit public defenders, who operate independently but receive training and supervision funding, as well as individual attorneys, law firms, and consortia or private bar attorneys. OPDC plans to implement workload and caseload standards for all public defense providers.

By July 2025, OPDC intends to formalize hourly private bar public defense attorneys into a structured panel. Between July 2025 and July 2027, OPDC will work with public defense providers to transition private bar public defense attorneys to the hourly panel.

This report is a progress report on OPDC's plan to implement SB 337. Many of the fundamental pieces of this plan are coming together (late Spring/early Summer of 2024) but have yet to be adopted by the Commission. SB 337 directs OPDC to submit the next Comprehensive Public Defense Report in December 2025. OPDC would like to provide an updated progress report and plan to the Judiciary Committees in December 2024 to ensure that the legislature is regularly updated regarding the significant changes to public defense in Oregon.



## SENATE BILL 337 (2023 LEGISLATIVE SESSION)

SB 337 (2023) is the product of a more than year-long process with a workgroup comprised of representatives from all three branches of government ('Tri-Branch Workgroup').

The three main components of SB 337 are:

- Changes the Commission makeup and appointment process.
- Moves OPDC to the Executive Branch of government.
- Changes the delivery model of public defense.
  - By July 1, 2027, public defense in Oregon will be provided by state employees, employees at non-profit public defender offices, or attorneys who are paid hourly as part of a panel of qualified counsel.

### Transition Timeline

January 1, 2024

- Commission makeup changes: initially, appointments by the Chief Justice will be made, with recommendations required from the Executive and Legislative branches.
- The OPDC must start collecting data from all contracted parties.
- Executive director appointed by the voting commission members, who can remove the executive director for cause.
- Department of Administrative Services public defense population forecasting begins.

January 1, 2025

- The OPDC moves from the Judicial Branch to the Executive Branch.
- The Governor appoints commission members with recommendations from the Judicial and Legislative branches.
- Executive director appointed by the Governor and subject to Senate confirmation; serves at the pleasure of the Governor.

July 1, 2025

- Flat fee contracting is prohibited, and OPDC must establish a panel of qualified counsel.
- The OPDC must have established an hourly pay formula for panel attorneys.

July 1, 2027

- OPDC contractors are no longer permitted to subcontract.
- The executive director appointed by the voting commission members no longer requires Senate confirmation and serves at the pleasure of the voting commission members.

January 1, 2031

- At least 20% of trial-level counsel must be OPDC employees.

January 1, 2035

- At least 30% of trial-level counsel must be OPDC employees.

The full text of SB 337 can be found [here](#).

## FINANCIAL PROJECTIONS BASED ON WORKLOAD

Three variables are needed to build financial projections for the Commission based on the anticipated workload:

- How many cases are projected? (Caseload forecast)
- How many attorney hours are needed per case? (Caseload and workload standards)
- What is the appropriate compensation for attorney and non-attorney work? (Economic study)

Below is a breakdown of how the OPDC will set standards for these variables and how these factors will create financial projections.

### CASELOAD FORECAST

SB 337 requires the Oregon Department of Administrative Services Office of Economic Analysis (OEA) to issue a state public defense population forecast, including, but not limited to, expected populations of adults and juveniles eligible for appointed counsel. OEA will release the forecasts annually on April 15 and October 15.

OPDC signed an interagency agreement with OEA in late 2023 for this work. OPDC, OEA, and the Oregon Judicial Department (OJD) met several times to review existing forecast methodology, data inputs, and how the forecast feeds into contracting and budgeting. OEA released the first [forecast](#) on April 15, 2024.

Understanding that this forecast is not a simple count of cases is essential. One case does not necessarily equate to one person eligible for public defense, as many individuals may simultaneously have multiple cases. Similarly, one case does not always mean one attorney, as one attorney may represent an individual on numerous cases. This complexity increases in situations such as juvenile dependency cases and murder cases, which often require multiple attorneys per case. Furthermore, it is not uncommon for multiple attorneys to be associated with a single case over its lifespan due to conflicts, post-conviction work, and probation violations, which adds another layer of complexity to the forecast.

These are all factors OPDC will need to incorporate when using the OEA case forecast to calculate the number of attorneys required to address the caseload forecast. OPDC is currently undertaking this work.

### CASELOAD AND WORKLOAD STANDARDS

OPDC must set standards for both caseloads, the number of cases an attorney could take on in a given timeframe, and workload, the number of hours an attorney can work per year. The caseload and workload calculations will provide OPDC with the appropriate number of hours and attorneys needed to cover the forecasted caseload fully.

ORS 151.216 directs the Commission to ensure caseloads and workloads align with national and regional best practices. OPDC has two examples of best practices for public defense. The Oregon Project provides Oregon-specific workload standards, and the recently released National Public Defense Workload Study conducted by the Rand Cooperation provides national standards.

Both studies relied on the Delphi Method, a reliable and structured research method developed by the Rand Corporation in the 1960s. It has been employed across various industries to produce professional consensus opinions and reports, including the legal system.

The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) and the Seattle-based accounting and consulting firm Moss Adams collaboratively conducted the Oregon Project, *An Analysis of Public Defense Attorney Workloads*.<sup>1</sup> Published in January 2022, the Oregon Project includes an analysis of historical public defense caseloads and staffing and a Delphi process that resulted in attorney workload standards.

The Oregon Project, as in prior ABA SCLAID workload studies, used the Delphi method to provide a reliable consensus of professional judgment on the time required for a public defense attorney in Oregon to provide reasonably practical assistance of counsel under 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 based on 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 practical assistance of counsel) and the applicable ethical and substantive professional standards discussed earlier in this report (prevailing professional norms).

The National Public Defense Workload Study<sup>2</sup> (September 2023) is the culmination of a comprehensive review and analysis of 17 previously released state-level studies, many of which the ABA conducted. For the first time, a comprehensive national workload study was created based on empirical data and the consensus of indigent defense experts reflecting modern criminal defense practice standards. This study demonstrates the widespread problem of excessive public defender caseloads and can be used to assist public defense agencies, policymakers, and other stakeholders in evaluating public defense workloads.

The Oregon Project provides OPDC with a solid understanding of how many hours attorneys should spend on a case, depending on case type and severity. The National Study, conducted more recently, also provides a look at best practices nationally. Below is a comparison of the standards from both studies as they relate to the Commission's current maximum attorney caseload (MAC) standards.

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<sup>1</sup> [The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards \(americanbar.org\)](https://www.americanbar.org/publications/2022/01/01-an-analysis-of-the-oregon-public-defense-system-and-attorney-workload-standards/)

<sup>2</sup> [National Public Defense Workload Study | RAND](https://www.rand.org/pubs/working_papers/2023/09/national-public-defense-workload-study/)

	Current MAC	National Study	Oregon Project
<b>Murder/ Jessica’s Law</b>	6	7-8 (12 sex charges)	4
<b>Felony A/ M11</b>	45	21	14
<b>Felony B/ Mid Fel</b>	136 (A/B Fel)	36 (mid Fel)	44
<b>Felony C/ Low Fel</b>	167	59 (low Fel)	52
<b>Complex Misdos</b>		93	56
<b>Misdemeanors</b>	300	150	96
<b>Probation Violations</b>	833	154	250
<b>Juvenile Delinquency</b>	130	NA	8 (M11/Waiver) 42 (Average)

By June 2024, the Commission will adopt goals for caseload and workload standards for all public defense providers in Oregon.

## HOURLY RATES

SB 337 (2023) requires the OPDC to conduct a survey and economic analysis to establish a formula for calculating an hourly pay rate, considering overhead expenses, market rates, and regional differences in the cost of living for appointed counsel who are not employees of the OPDC or a nonprofit public defense organization.

The survey and economic analysis intend to ensure the OPDC offers a fair market hourly wage to appointed counsel, investigators, social workers, and other legal support staff. They will also assist the commission in setting hourly rates to ensure the ability to provide public defense for indigent defendants in Oregon’s criminal justice system.

OPDC contracted with Moss Adams to conduct the survey and economic analysis. The study and analysis considered many factors, including the available hourly and salary data from federal, state, and local groups, Oregon District Attorney’s offices, the Oregon Department of Justice, the Federal public defense system, and various county public defense offices in the Pacific Northwest. It also considered overhead expenses, market rates, regional differences in the cost of living, and years of experience and types of cases (most complicated to least complicated).

OPDC will use this survey and economic analysis to inform the Commission’s calculation of the hourly pay rate for attorneys, investigators, social workers, and other legal support staff. In June, the Commission will direct the agency on what hourly rates should serve as the foundation for the agency’s Policy Option Packages for the ’25-’27 biennium. With these standards adopted, the rate variable of the financial projections will be answered.

## FINANCIAL PROJECTIONS

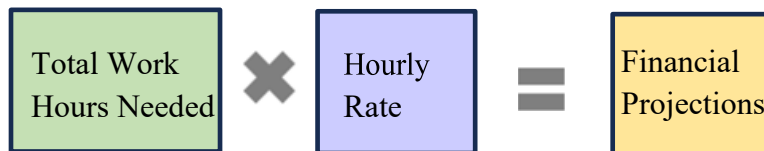
Once the caseload forecast has been translated into an attorney forecast, workload and caseload

hours have been adopted, and the hourly rate set, OPDC can combine them to create financial projections based on workload. This calculation will also inform the OPDC of the number of additional attorneys needed to cover the projected workload fully. The Commission knows there are currently not enough attorneys in Oregon to provide a lawyer for every person eligible for a court-appointed attorney. Stakeholders need to know the extent of that deficiency. A formula like the deficiency analysis done in the Oregon Project will be used.

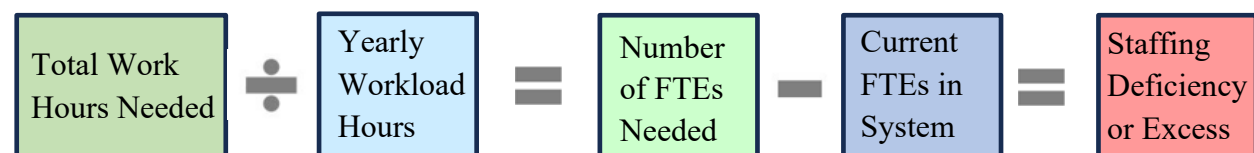
To perform the deficiency analysis, the caseload forecast (OEA forecast with attorney ratio) is multiplied by the caseload standards (time needed per case) to produce the hours required annually to provide reasonably practical counsel assistance under prevailing professional norms.



The hours needed can then be multiplied by the hourly rate (or rates depending on case type) to calculate the financial projections based on workload.



The hours needed can then be 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.



## SIX-YEAR PLAN

In 2023, OPDC used Edward Byrne Memorial Justice Assistance Grant (JAG) funding to contract with Moss Adams to produce the Oregon Public Defense Commission's Six-Year Plan to Reduce Representation Deficiency (Six-Year Plan). ORS 151.216 directs the agency to ensure caseloads and workloads align with national and regional best practices.

The plan 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 - factors that address adding and reallocating resources

within and contracted by OPDC.

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

Critical to the plan is the notion that public defense lawyers in Oregon are currently not adequately supported by non-lawyer staff. Investing adequate funding for investigators, case managers, paralegals, and legal assistants will ensure that workload standards can be achieved with less overall system cost. Implementing the plan will produce reasonable workloads, optimize costs, and, most critically, enable Oregon's public defenders to fulfill their ethical and constitutionally mandated duty to provide adequate defense services.

OPDC recognizes that while they can recommend policy and budget options, the Legislature enacts changes and funds public defense. That is why a vital piece of the Six-Year Plan is its adaptability. As the Commission adopts standards, Moss Adams can change variables within the report to show the impact on the budget and the number of attorneys needed. OPDC hopes the Legislature finds this a helpful tool when deciding what and how to prioritize competing public defense needs.

## PUBLIC DEFENSE DELIVERY

The future of public defense in Oregon is more equitable, effective, and efficient for those involved in the criminal justice system. This delivery system will produce reasonable workloads, optimize costs, and, most critically, enable Oregon's public defenders to fulfill their ethical and constitutionally mandated duty to provide adequate defense services.

SB 337 (2023) is transparent in what the future of public defense in Oregon will look like regarding providers. By July 1, 2027, public defense in Oregon will be provided by:

- OPDC employees,
- Non-profit employees, or
- Attorneys are paid hourly as part of a panel of qualified counsel.

OPDC is in the process of establishing or bringing enhanced structure to these three provider types.

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## STATE EMPLOYEES

In 2023, Oregon's public defense system was authorized to employ trial attorneys for the first time, a significant shift in the state's public defense. OPDC has opened three trial division offices to provide public defense in criminal cases.

- Northwest Regional Trial Division Office—This office opened in December 2023 and covers Clackamas, Washington, and Multnomah counties.
- Southern Regional Trial Division Office—Attorneys began taking cases in the Southern Region in February. The physical office will open mid-May and cover Douglas, Jackson, and Klamath counties.
- The Central Valley Regional Trial Division Office opened in mid-April 2024 and covers counties in the mid-Willamette Valley.

These offices house multiple attorneys and core staff and prioritize appointments to cases from the Oregon Judicial Department's unrepresented list. As the offices become fully staffed, the unrepresented list will significantly reduce. The goal is for OPDC trial division attorneys to account for 30% of all appointed counsel by 2035.

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## NON-PROFIT PUBLIC DEFENDERS

OPDC currently contracts with fourteen non-profit public defender firms. These firms have dedicated one hundred percent of their practice to public defense and declared themselves non-profit businesses under federal law. Since non-profits operate as single firms, they share conflicts, limiting the number of cases a non-profit can take in a single jurisdiction. The non-profit approach allows attorneys within the firm to work cases collaboratively without restrictions. This has permitted non-profit offices to serve as development grounds for newer

public defenders. The firms also offer health care and retirement benefits, making them an attractive option for more experienced attorneys. Due to their non-profit status, employees qualify for public service loan forgiveness. Some offices have acquired additional funding to partner with the three Oregon law schools to train and supervise law students through the development of law student clinics. HB 5204 (2024) provides additional funding for public defense clinics in law schools.

Non-profit offices operate as independent contractors, which means the OPDC does not have direct supervisory or oversight authority over the employees. OPDC has developed standards for non-profit offices to receive training and supervision funding and will create similar standards for oversight and supervision in non-profit public defense offices.

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## CONSORTIA, LAW FIRMS, AND SOLO PRACTITIONERS

OPDC currently contracts with many private bar public defenders to provide both full-time and part-time public defense services. These providers are an integral part of Oregon’s public defense system as they provide direct representation for clients, facilitate the appointment of counsel, recruit and support public defenders, and are the voice of the defense bar in many communities. As Oregon transitions private bar public defenders from the contract model to the hourly panel, it must work closely with current providers and jurisdictions to replicate core functions.

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## PANEL ATTORNEYS

OPDC currently provides significant and increasing public defense services through attorneys accepting appointments to cases hourly. OPDC is working to formalize this system of hourly appointments into a panel of qualified attorneys who are available to take cases more regularly and consistently. Attorneys interested in joining the panel will complete an application, and panel membership may be contingent on factors such as practice area, certified qualifications, forecasted service needs, and willingness to work in more than one judicial district. The panel attorney program will increase the number of hourly attorneys in the system and require additional OPDC staff to support it. Additionally, the panel attorneys will access the preauthorized expense (PAE) system more frequently than state employees, leading to increased use of the accounts payable (AP) services. The agency does not have enough staff in these departments to support the anticipated increase in PAE requests and AP services and will need additional funding as those needs grow.

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## TRAINING, SUPERVISION AND OVERSIGHT

The OPDC is working to develop and revise qualification and performance standards for all core roles involved in providing public defense services. The Commission is prioritizing the creation of standards for non-attorney core staff roles such as paralegals, legal assistants, investigators, interpreters, case managers, social workers, mitigation specialists, and technical support staff. To



create these standards, OPDC has extensively researched industry standards for each role and is forming work groups to ensure robust provider feedback and collaboration.

OPDC is revising the current attorney qualification standards with two goals: to match qualification standards more appropriately to the skills required for given case types and to increase the variety of opportunities for demonstrating capacity in those skills.

OPDC is looking to become more proactive and data-informed in its oversight scheme, allowing more reasonable and practical use of its limited personnel resources. Additional key performance metrics for public defense services in Oregon are being developed.

OPDC's oversight is capacity-restricted, predominantly reactive, resource-intensive, and largely unconnected to data. To improve oversight in the near term, OPDC's primary goal is to develop a more proactive data-informed oversight scheme, allowing for more reasonable and practical use of limited personnel resources.

OPDC revised the data submission process for contractors, significantly improving its ability to analyze and understand provider work. Work is ongoing to improve the data infrastructure to utilize submitted data and provide more regular and consistent reports on provider work. OPDC recently signed a new data share agreement with the Oregon Judicial Department, increasing data sharing, reducing redundancies, and enhancing data accuracy between the two systems.

The goal is to develop training programs and partner with public defense organizations to provide tailored training programs for the public defense community. Through data analysis, the OPDC will be able to see where there are gaps and take action to implement training on specific subjects.

## FUTURE REPORTING

OPDC is currently at a crucial point in implementing SB 337, which will affect the future of public defense in Oregon. The Commission is aware of the significant impact these changes will have on public defense services in the state. Moreover, OPDC remains committed to providing competent and effective legal representation to all persons eligible for a public defender, as mandated by the constitution. Given the importance of this matter, OPDC would appreciate the opportunity to provide an update before the Legislatively mandated report in December 2025.

April 17, 2024, Public Comment

**From:** [peter.gassner](mailto:peter.gassner)  
**To:** [OPDS info](#)  
**Subject:** Public Comment - Virtual Public Meeting on 4/17/24.  
**Date:** Tuesday, April 16, 2024 10:14:06 AM

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Some people who received this message don't often get email from peter.gassner26@gmail.com. [Learn why this is important](#)

Executive Director Kampfe and Commission Members,

As of today, 4/16/24, it has been **SIX WEEKS** since I submitted a batch of invoices for payment. As I write this email, I'm struggling to find the words to communicate the stress, anxiety, and financial hardship the current state of payment processing is causing to me and all of your providers.

I work extremely hard and have a heavy criminal defense caseload. I'm very proud of my work and take considerable pride in playing what I believe is a crucial role in our state's criminal defense process. The fact that I have to stress each and every month about paying my bills on time and incurring credit card debt, all because of the commission's inability to remedy the payment processing service, is frankly a travesty.

This has been going on for years, and it's only gotten worse in the last 8-12 months. Your providers deserve to know how the commission intends to resolve this ongoing issue. We have heard the same excuses and apologies for years, and the rhetoric is borderline insulting.

I implore you to take whatever measures necessary to streamline the auditing process or rapidly staff up so that payments can be returned within 30 days. That's all I'm asking—just a 30-day payment window that we can consistently count on.

Thank you for your time and consideration.

Sincerely,

Peter Gassner  
Juniper Investigations and Consulting LLC  
PO Box 1570  
Redmond, Oregon 97756  
503-702-0172  
[www.juniperinvestigations.com](http://www.juniperinvestigations.com)  
PI-ID: 77429  
OALI Board Member 2018 - Present

# ODCA

**Date:** 4/16/2024

**To:** Chair Jennifer Nash. Oregon Public Defense Commission  
Commissioners Peter Buckley, Robert Harris, Alton Harvey, Dr. Tom Lininger,  
Dr. Susan Mandiberg, Jennifer Parrish-Taylor, Bob Selander, Addie Smith

**From:** Sal Peralta, Executive Director, Oregon Defense Consortia Association

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Chair Nash and members of the Commission,

My name is Sal Peralta. I am the executive director of the Oregon Defense Consortia Association, which represents private bar attorneys and consortia that hold public defense contracts with the state.

Our association has grown from 140 to approximately 200 members in the last four months, in large part due to concerns that the agency is disregarding the needs of the private bar workforce in terms of both its current operations and in its future planning and budgeting.

Regarding both the Moss Adams 6 year report and the agency's draft report:

- There is a significant concern that the agency's current work plan will create a two-tiered system of public defense that is inequitable in terms of compensation and working conditions for the current private bar workforce and that this will put downward pressure on the number of attorneys willing to take public defense cases.
- There is a concern that the agency and its consultant are attempting a rapid transition to a much more expensive model of public defense while underestimating and downplaying both the costs and disruption associated with this transition. This will likely exacerbate Oregon's current public defense crisis and continue the agency's long term pattern of relying on crisis budgeting to address predictable budget and staffing shortfalls that negatively affect clients and the thin line of attorneys in Oregon who are willing to do this kind of work.

We again reiterate the recommendation that the Commission slow the agency down and take ample time to review and approve or reject each of these processes to ensure they happen in a more thoughtful and inclusive manner that doesn't disrupt public defense and that takes into account the concerns of the existing workforce.

## ABOUT THIS DOCUMENT

This document addresses concerns raised with strategic planning presented in this meeting and with the Moss Adams 6-year report presented at the March meeting. We had just a few days to put these materials together, as the agency did not share any of its planning with us prior to posting the packet a few days ahead of the meeting.

## THERE ARE MULTIPLE GAPS IN AGENCY STRATEGIC PLANS

Across at least 3 of the 4 legislatively required plans received in this commission meeting, we note that the agency remains months behind initial proposed implementation timelines for SB 337 in terms of staffing, planning and outreach necessary for the workforce transitions it is attempting.

### FCMS

The agency proposes implementing a Case Management system that has not yet been purchased because the agency failed to follow a standard vendor selection process in developing its RFP for a case management system in December. **Despite several similar flagged gaps in this and other project plans, rather than slow down the projects, the current plans appear to instead propose a less inclusive approach that instead reduces stakeholder outreach and short circuits processes that were originally proposed to be more intentional and inclusive in order to offset the agency's internal delays.**

### Remediation Plan

In your meeting, you will discuss problems with vendor payments that occurred when two staff responsible for payments went on extended leave indefinitely or through May.

Here is how the agency described those issues in its report to the legislature:

**OPDC is not without issues, as of April 1, 2024 the accountant who handles all the agency budget and accounting is on extended leave without a clear return to work date. The backup to the accountant is also on extended leave until May 9, 2024. The agency is currently without a clear resource for doing the accounting for the agency. This has not impaired the ability to pay operating bills and OPDC has not missed any payments to providers or vendors.**

And yet, as you have heard, late payments for emergency pre-authorized expenses was a significant problem that did impair the agency's ability to make timely payments to vendors. There are similar gaps in representations throughout this document.

## PROPOSED TRANSITION TO PANELS

Our association opposes this transition as harmful to public defense in Oregon.

The agency plan contains no significant reference to the scale of work it is contemplating with this change. **Currently, the agency handles approximately \$15 million in hourly attorney relationships. It is proposing to onboard at least another \$72 million in hourly relationships to manage.**

The current administrative cost for consortia to manage attorneys under their supervision is 5% of the contract. While hourly billing will increase management costs, we note that the proposed shift to state managed panels carries a much higher cost at a loss of local control.

Currently, attorneys can organize together to address local public defense needs and contract with an administrator of their choosing and bargain collectively on behalf of their shared interests. This model significantly restricts that right for practicing attorneys.

## **IS THE AGENCY TESTING ITS WORKFORCE ASSUMPTIONS AGAINST DATA?**

The changes to public defense proposed in the agency's draft plan appear largely rooted in the assumption that unionized non-profit and unionized state agency defenders will provide more effective and zealous representation than the private bar. These assumptions and others are worth considering:

Are attorneys taking strong cases to trial? Do attorneys spend sufficient time and resources to ensure positive outcomes for clients? Do clients benefit when attorneys expand their scope of practice to include more social services? How does the high turnover among many non-profit defenders and agency staff affect public defense? These are all valid questions.

**At the time policy makers set the agency's current direction, much of the data needed to answer those questions was not available for OPDC or OJD to track performance by provider type. That data is now available. It should be driving policymaker decisions and opinions about provider performance.** It has not been made available to policymakers or used in agency decision-making, but it should be.

## **CONTRACT AND HOURLY RATE CONCERNS**

The Commission was correct to note in its March meeting that the hourly billing assumptions made by the Oregon Moss Adams report as part of the National Public Defense Workload Survey (NPDWS) do not align with NPDWS recommendations, with realistic billing or the contractual 40-hour work obligations that the agency has with the unionized workforce and the workers it is seeking to hire.

The table below compares current hourly and contract rates being offered to public defenders. It includes a comparison between the hourly rates and the current contract rate based on the billable hourly assumptions being made.

Under the assumption of 1577.5 available hours for billable case work adopted at the March Commission meeting, based on Oregon DOJ workforce standards, the current rate for hourly defenders would be less than the current contract rate. \*1650 is the rate adopted by the Washington State Bar.

	Current Rate	Current Rate	Current Att 1	Current Att 2	Current Att 3	Current Att 4
Billable Hours	Misdemeanor	Felony	Misdemeanor	Mis/Minor Fel	Felony	Felony
	\$130.00	\$145.00	\$213,085.00	\$224,182.00	\$235,280.00	\$246,378.00
1577.5	\$ 130.00	\$ 145.00	\$ 135.08	\$ 142.11	\$ 149.15	\$ 156.18
1650	\$ 130.00	\$ 145.00	\$ 129.14	\$ 135.87	\$ 142.59	\$ 149.32
2080	\$ 130.00	\$ 145.00	\$ 102.44	\$ 107.78	\$ 113.12	\$ 118.45

2080 hours assumes billing 40 hours work per week for 52 weeks with no vacation or paid time off and that every moment of that workweek is consumed with contract billable work. Not only is that not practical, it is not what the Rand NPDWS recommended. To the contrary:

**16 The 2,080 annual hours assumption is an extremely high estimate because it does not account for work time spent on activities not related to representing clients in adult criminal cases. The calculation of annual caseload standards is based on an assumption of the average annual hours available to defenders for case-related work. That assumption will vary from jurisdiction to jurisdiction, so our use of 2,080 hours (essentially 52 weeks each year of 40 case-related work hours) is simply for illustrative purposes. If such adjustments were made to the hours assumption we use for illustrative purposes only, the annualized caseload standards would be lower.<sup>1</sup>**

In Oregon, the correct number to base case billing is the one the commission established: 1577.5 hours used by the Oregon Department of Justice.

## UNDERSTANDING ATTORNEY RATES

Regardless of whether we are talking about a \$130-\$145 hourly rate, or a \$213,000 - \$250,000 annual contract, the rates charged for legal services by contract law firms reflect more than just attorney compensation.

**In addition to the attorney's time, these fees cover costs such as rents, uncompensated mandatory staffing costs, training, health insurance, practice insurance, retirement benefits, personal leave, vacation, and other office related expenses** such as reporting and improving technical infrastructure to meet anticipated new demands of the agency.

<sup>1</sup> Rand National Public Defense Workload Survey, [https://www.rand.org/pubs/research\\_reports/RRA2559-1.html](https://www.rand.org/pubs/research_reports/RRA2559-1.html) downloadable pdf. Footnote, page xii.

Similar “all in” costs by the Oregon Department of Justice are in the range of \$260 per hour. We believe that’s an important number when considering “all in costs” of state agency defenders. The compensation and benefits received by an attorney are much less than the total cost of agency operations associated with the position.

## CONCERNS ABOUT CASE WEIGHT ASSUMPTIONS

Case weights are the estimates of the amount of time it takes for a lawyer to ethically dispense with certain kinds of cases. With respect to case weighting estimates (hours per case) produced in Oregon for the Moss Adams and national ABA/Rand report to establish national public defense standards, **Oregon’s estimate is a significant outlier for most categories of offenses, assuming 50% to 370% more time than the norm in most types of cases.**<sup>2</sup>

The chart below compares the Oregon case weight results to the average case weight assignments of all states that participated in the ABA/Rand study from which the Moss Adams report is derived. The final column shows the variance in the Moss Adams estimates.<sup>3</sup>

	Oregon	US Average	Oregon Diff from norm
<b>Felony High LWOP</b>	<b>552</b>	256	<b>215.63%</b>
<b>Felony High Murder</b>	<b>552</b>	266.1	<b>207.44%</b>
<b>Felony High Sex</b>	<b>552</b>	150	<b>368.00%</b>
<b>Felony High Other</b>	<b>148.95</b>	75.3	<b>197.81%</b>
<b>Felony Mid</b>	47.74	67.2	71.04%
<b>Felony Low</b>	<b>39.78</b>	24.6	<b>161.71%</b>
<b>DUI - High</b>	<b>36.98</b>	25.1	<b>147.33%</b>
<b>DUI LOW</b>	<b>22.3</b>	12	<b>185.83%</b>
<b>Misdemeanor High</b>	<b>36.98</b>	20.7	<b>178.65%</b>
<b>Misdemeanor Low</b>	<b>22.3</b>	8	<b>278.75%</b>
<b>Probation/Parole</b>	8.3	8	103.75%

<sup>2</sup> Case weights beginning on printed page 39 (59 in packet)

<sup>3</sup> Chart source is the median recommended attorney hours from the Rand study, page 89 and the hours reported by Oregon to the study.



## ARE THE AGENCY'S ASSUMPTIONS AROUND ATTORNEY GROWTH REALISTIC?

A major assumption in the Moss Adams plan is to double the workforce of attorneys through the recruitment of an additional 80-130 attorneys per year within 6 years, specifically to do public defense work.

However, the 10-year trend of attorneys into the state \*at all\* has remained flat or slightly declined over the last decade. Oregon had 12276 attorneys in 2012. Oregon had 12,258 attorneys in 2022, a net loss of attorneys<sup>4</sup>, despite the fact that Oregon's population grew from 3.9 million in 2012 to 4.24 million in 2022.<sup>5</sup>

Forcing private bar providers into choosing between disadvantageous terms and state employment is not going to increase the number of attorneys willing to commit to public defense. A more realistic workforce model should take these facts into account and do more to work collaboratively with and to leverage the existing workforce.

## ARE SUPPORT STAFF ASSUMPTIONS ACCURATE?

**The Moss Adams 6-year report appears to overstate the degree to which additional staff will reduce attorney caseload.** Especially in the adult criminal context, which represents 70-80% of caseload, many of the administrative positions contemplated do not appear tied to reducing existing caseload. Instead, several positions are tied to an expansion in the scope of practice from constitutional legal services to one that includes both legal and social services.

While this expanded scope of practice may yield a long-term benefit to the system, this will not come in the form of attorneys spending less time on current constitutional defense services, as the report appears to assume.

This change in scope of practice will likely be a major driver of costs in the public defense system and the cost should be fully accounted for at the start.

## IS THE MASSACHUSETTS MODEL RIGHT SIZED FOR OREGON?

OPDC appears to be unveiling a "Massachusetts-system" of public defense for Oregon. However, it seems reasonable to ask, is the Massachusetts model right for Oregon and realistic, given the workforce differences, tax base differences, and other key differences between the two states.

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[https://www.americanbar.org/content/dam/aba/administrative/market\\_research/national-lawyer-population-by-state-2012-2022.pdf](https://www.americanbar.org/content/dam/aba/administrative/market_research/national-lawyer-population-by-state-2012-2022.pdf)

<sup>5</sup> <https://www.census.gov/quickfacts/fact/table/OR/PST045223>

- Oregon has less than ½ the GDP of Massachusetts.
- Oregon has 1/8th the population density.
- Oregon has 2.5x more crime.
- Oregon has fewer than ½ the number of attorneys per 1000 population.

	<b>Oregon</b>	<b>Mass</b>
<b>Population<sup>6</sup></b>	4,240,137	6,981,974
<b>Pop. Density</b>	17.00	255.00
<b>GDP</b>	\$316,461,000,000.00	\$733,860,000,000.00
<b>Per capita GDP</b>	\$74,635.00	<b>\$105,108.00</b>
<b>Attorneys<sup>7</sup></b>	<b>12285</b>	<b>42635</b>
<b>Attorneys per 1000</b>	2.897312044	6.106439239
<b>All property &amp; violent crime 2022<sup>8</sup></b>	138979	97198
<b>Total crime per 1000</b>	32.77700697	13.92127785

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<sup>6</sup> US Census Bureau, Quick Facts

<sup>7</sup> ABA 2022 lawyer population by state. See footnote 4.

<sup>8</sup> FBI UCR Data Explorer; <https://cde.ucr.cjis.gov/>

Lynne B. Morgan  
Attorney at Law  
6312 SW Capitol Hwy, #443  
Portland, Oregon 97239

TELEPHONE 503.706.7217  
EMAIL: lbmorgan@att.net

April 16, 2024

Oregon Public Defense Services Commission  
1175 Court Street NE  
Salem, OR 97301

Re: Public Comment, April 17, 2024, Meeting

Dear Chief Justice Flynn, Chair Nash, Commission Members, and Executive Director Kampfe,

I write to express my dismay at the increasing disconnect between the Agency's lofty goals as outlined in the agendas submitted for the past several Commission meetings and the reality of the extreme dysfunction and poor performance within the Agency itself.

I have been practicing law since 1989, primarily as a public defender. I began my career at Metropolitan Public Defender and, after 7 years, went into private practice. I have been on the federal Criminal Justice Panel for the past 20 years, accepting court appointments to all manner of serious and complex federal criminal cases. I held a contract with Oregon Public Defense Services to defend capital murder cases from 2016 through the implementation of Senate Bill 1013 and Governor Brown's December 13, 2022, commutation of the sentences of those individuals on Oregon's death row.

For at least the past two decades, I have been one of the public defense lawyers to whom the courts look when counsel is required for especially challenging cases. I am currently lead counsel on two Murder in the First-Degree cases, each complex in different ways, one

Murder 2 case, involving the death of a child, and I'm co-counsel on a capital murder post-conviction relief case. All of this is to say that I have a firm understanding of the resources reasonable and necessary to provide my clients with the effective assistance of counsel and a constitutionally adequate defense.

The Agency's primary responsibilities and loyalties should and must lie with the providers. Yet, we find ourselves in the increasingly dire position of extraordinary delay in authorizing the most basic of funding requests, and a maddening delay in paying properly submitted invoices for services rendered.

I have funding requests for the most routine of necessary and reasonable expenses submitted in February of this year that, as of this writing, have yet to be authorized. Some of the most frustrating of these requests are for investigator services. Because of the Agency's failure to advocate at the Oregon Legislature for adequate funding for investigator services and/or its inability to provide the Oregon Legislature with an accurate account of the funds necessary, the hourly rate for investigators remains a paltry \$55 per hour. It is exceedingly difficult to find a suitable investigator for this rate, and even at the enhanced rate of \$75 per hour for cases taken off the unrepresented lists, there is a dearth of qualified investigators. This challenge is greatly compounded when the requests for funding are not authorized for months on end. This causes very real harm to our clients, who should be at the center of all we do.

Similarly, the delay in paying properly submitted invoices is unacceptable. The delay is now up to and over seven weeks from the time an invoice is submitted to the time the provider has the funds in his or her bank account. For example, I submitted invoices on March 1, 2024, for the work I completed in February on the four above-mentioned cases. On Monday, April 15<sup>th</sup>, I was notified these invoices were "transferred for payment," which means I'll see the funds in my bank account towards the end of this week. Does this delay in processing and payment of invoices seem fair to you? The investigators, mitigators, lawyers and other providers who are committed to providing quality public defense deserve better.

I know from reviewing recent past public comments that none of this is news to this Commission. This situation has not improved since your March meeting - indeed, it has gotten worse over the past month and far worse than it was three months ago. The current situation regarding funding requests and payment of invoices is simply untenable. Nonetheless, the Agency comes to you with a recommendation that this Commission approve Legislative Reports for May Legislative Days. The proposed reports suggest an agency that is far more functional than the reality shows it to be. I respectfully suggest this Commission not simply "rubber stamp" the Agency's recommendation, but rather withhold approval of these reports until the Agency begins processing funding requests and invoices in a much more timely manner.

I love working as a public defender and feel both grateful and proud when I think of all the people I've been able to help over the past 30 years. With the rise of the public defender crisis, I have hoped all along to be part of the solution. This appears to be increasingly unrealistic, with an Agency which is unable or unwilling to recognize the urgency with which these two funding processing crises must be resolved. I urge this Commission to do all it can to push the Agency into prioritizing the providers, to take all actions possible to erase the backlog in funding requests and payment of invoices, and to move towards a timely response to both.

Sincerely,

*Lynne B. Morgan*

Lynne B. Morgan



CIRCUIT COURT OF THE STATE OF OREGON  
FOURTH JUDICIAL DISTRICT  
MULTNOMAH COUNTY COURTHOUSE  
1200 SW FIRST AVENUE  
PORTLAND, OR 97204-3201

April 16, 2024

Jennifer Nash, Chair  
Oregon Public Defense Commission

Via email only

Dear Chairperson Nash,

Please consider this public comment for submission to the Oregon Public Defense Commission (OPDC) at its meeting on April 17, 2024.

We were pleased to see that the OPDC held a public meeting in Portland last month, including a presentation on the current state of public defense in Multnomah County. We would have appreciated the opportunity for the Multnomah County Circuit Court to participate in providing information on that critical topic, but instead are providing these comments. Chief Criminal Judge Michael Greenlick and Trial Court Administrator Barbara Marcille did attend the meeting.

Given the duration and severity of the public defense representation shortage here in Multnomah County, we anticipated that their discussion with the Commission would focus on the eligible defendants who are not being appointed counsel on a timely basis and the hundreds of defendants who are currently awaiting the appointment of counsel for their pending criminal charges. Because the public defense panel discussion did not address those issues, the court felt it important to ensure you hear the court's perspectives on what we feel is the most pressing and critical issue facing public defense in our county – the continued lack of adequate public defense capacity to take appointments for all eligible defendants.

In Multnomah County, we first started to experience a public defense shortage in fall 2021. This was as the pandemic was subsiding and the court was resuming typical case processing activities. We know that the increased demand combined with high vacancy rates in the public defense offices contributed to the problem. In January 2022, we had 41 unrepresented cases in Multnomah County, and by the end of June 2022 we had 622 unrepresented cases.

Since 2022, public defense offices in Multnomah County report substantially less turnover, far fewer vacancies, and additional attorney FTE being added. While criminal case filings are increasing in Multnomah County (a 9% increase in FY 2023 and another 24% increase projected in FY 2024), they are

still substantially below pre-pandemic filings. With fewer cases to manage overall, less turnover in the firms, and expanded attorney capacity, we would expect the public defense shortage to be improving.

However, the number of out-of-custody unrepresented individuals eligible for public defense counsel is as almost as high as it has ever been here. Each week in Multnomah County, we have dozens of cases where the defendants appear on new criminal charges and are eligible for public defense representation but there are no attorneys available to appoint for them. On September 15, 2022 (almost 18 months ago) we had 569 people on the Multnomah County "unrepresented list", and as of March 7, 2024, we had 587 people on the Multnomah County unrepresented list.

These are out-of-custody defendants who were arraigned with the benefit of counsel but have been awaiting appointment of counsel on their case(s) since that time. Typically in Multnomah County, defendants are scheduled to re-appear several weeks out to determine if counsel is available to be appointed, and often defendants re-appear multiple times in this manner without receiving an appointed lawyer. To be clear, the same individuals have not been awaiting appointment of counsel for multiple years; some defendants might be appointed counsel on a subsequent appearance or perhaps will have their case dismissed if they have reappeared 3 or more times without counsel appointed. If their case is dismissed, the Multnomah County District Attorney's Office often reinitiates prosecution by obtaining an indictment, but reinitiating the case still does not guarantee the availability of counsel. Every day for the last two years, defendants arraigned on new charges are added to our unrepresented list. Currently, 24% of the unrepresented defendants in Multnomah County are charged with misdemeanor crimes, 65% are charged with Class C felonies, and 11% are charged with Class B felonies.

In their panel, the public defense leadership emphasized their heavy workloads and the impact of defendants with high needs for resources. Our court is engaged with state, city, county, and community leadership in an ongoing attempt to find resources for the problems of homelessness, mental illness, and addiction. We meet regularly with Metropolitan Public Defender, Multnomah Defenders, Inc., the Portland Defense Consortium, the Multnomah County DA's Office, and the Multnomah County Sheriff's Office to identify pinch points and to implement policy, procedural, and docket structure changes to help cases move more efficiently through our system. These mitigation efforts have kept the situation here from becoming far worse, but will not resolve the underlying problem.

We understand that OPDC is working on developing a 6-year plan to address restructuring the indigent defense system. But there seems to be a complete lack of urgency for solving the crisis we face every day in our arraignment courts. For the defense crisis to be resolved, we believe that the OPDC needs to better estimate the public defense capacity required to handle the case demand, track actual attorney workload, and structure compensation in a way that will incentivize taking the necessary caseload to meet contractual requirements.

We would welcome the opportunity to discuss these issues with the Commission directly or answer your questions, but otherwise hope this gives you useful information as you continue your efforts to develop a competent and effective public defense system for Oregon.

Sincerely,



Judith H. Matarazzo