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

Executive Director:

Jessica Kampfe

Oregon Public Defense Commission
Meeting will occur in person & virtually via Zoom
Thursday, June 13, 2024
8:00 AM – approx. 1:00 PM PST

Riverhouse on the Deschutes
3075 N. Business 97
Bend, OR 97703

AGENDA

8:00 - 8:05	Welcome	Chair Nash
8:05 - 8:50	Public Comment	Chair Nash
8:50-9:00	Action Item: Extension of Temporary Hourly Increase Program pg.3	Jessica Kampfe
9:00 - 9:10	Update: Budget Update	Jessica Kampfe & Ralph Amador
9:10 - 9:20	Update: Legislative Update pg. 9	Jessica Kampfe
9:20 - 9:30	Update: Unrepresented Persons in Oregon Courts pg.16	Jessica Kampfe
9:30 - 10:30	Briefing: Proposals for Policy Option Package (POP) Concepts pg.26	Jessica Kampfe Ralph Amador
10:30 - 10:45	Briefing: OCDLA POP Proposal Regarding Recruitment pg. 34	Mae Lee Browning, Jana Baker & Tristen Edwards, OCDLA
10:45 - 11:15	Action Item: Approval of Policy Option Package Concepts	Jessica Kampfe
11:15 - 11:25	***Break***	
11:25 - 11:40	Briefing: Process Review for Pre-Authorized Expense and Accounts Payable pg.39	Jessica Kampfe

11:40 - 11:50	Action Item: Updating Policies on Pre-Authorized Expense, Routine Expenses, and Schedule of Guideline Amounts pg. 42	Jessica Kampfe
11:50 - 12:05	Briefing: Qualification Standards for Core Staff pg.79	Shannon Flowers
12:05 - 12:20	Action Item: Supervised Practice Portfolio Examination Policy pg. 108	Shannon Flowers
12:20 - 12:25	Update: Directors Update pg. 117	Jessica Kampfe
1:00	***Adjourn***	

**To join the Zoom meeting, click this link <https://zoom.us/j/94257164794> This meeting is accessible to persons with disabilities or with additional language service needs. Our Zoom virtual meeting platform is also equipped with Closed Captioning capabilities in various languages, which agency staff can assist you with setting up ahead of meetings. Requests for interpreters for the hearing impaired, for other accommodations for persons with disabilities, or for additional interpreter services should be made to opds.state@opds.state.or.us. Please make requests as far in advance as possible, and at least 48 hours in advance of the meeting, to allow us to best meet your needs. 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 welcomes public comment. Public comment in written form must be submitted by 5:00 PM PT Tuesday June 11, 2024 to be presented to the commission. There will also be a limited amount of time to provide public comment during the meeting, with each commenter allowed up to three minutes. Requests to provide public comment to the commission must be submitted by 5:00 PM PT Wednesday June 12, 2024. If you are interested in providing public comment to the OPDC, please email opds.info@opds.state.or.us. 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: July 24, 2024, 9am – 1pm

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



DATE: June 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

CC: Jessica Kampfe, Executive Director

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

Re: Temporary Hourly Increase Policy (THIP)

Nature of Briefing: Action

Background:

The program deadline for the Temporary Hourly Increase Policy (THIP) has been extended to December 31, 2024. The current policy is set to expire on June 30, 2024. The policy has been updated with the extended date of December 31, 2024, and will go into effect on July 1, 2024.

The following sections of the policy have been changed:

- Logo Changed from Oregon Office of Public Defense Services to Oregon Public Defense Commission
- Revised date of November 16, 2023, changed to June 3, 2024
- Expires date of June 30, 2024, changed to December 31, 2024
- Effective policy dates changed from 10/1/2023 - 6/30/2024 to 7/1/2024 – 12/31/2024
- OPDS changed to OPDC throughout the policy
- Temporary Policy to Increase Hourly Rate Section – Changed from expires June 30, 2024, to December 31, 2024
- Revised the date that appointments made after June 30, 2024, are not eligible for the increased rate to December 31, 2024

Agency Recommendation:

Approve the Temporary Hourly Increase (THIP) changes.

Fiscal Impact:

The Legislative Fiscal Office recommends that the Emergency Board acknowledge the extension of the existing Temporary Hourly Increase Program from July 1 to December 31, 2024, defer funding of the extension to a future meeting of the Emergency Board, and hold in reserve up to \$5million of a \$6.2million special purpose appropriation for public defense expenses to fund the extension of the program.

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the Temporary Hourly Increase Policy (THIP) effective July 1, 2024, which will supersede any prior memo or policy.

Changed Logo



Oregon Public Defense Commission

POLICY NAME: Temporary Hourly Increase Policy **Number:** 404-070-004

DIVISION: Trial Division

RESPONSIBLE SECTION: Criminal and Juvenile

Revised: ~~November 16, 2023~~
June 3, 2024

Expires: ~~June 30, 2024~~
December 31, 2024

**Effective ~~10/1/2023 – 06/30/2024~~
7/1/2024 – 12/31/2024 this policy only applies to in-custody clients on the OJD Unrepresented list*

PURPOSE: Establishes criteria to increase the hourly rate for appointed counsel and investigators for persons that **are in-custody** and on the OJD Unrepresented list.

AUTHORITY: ORS 151.216(f)(B) and (C), 151.219

APPLICABILITY: This policy applies to Counsel and Investigators who agree to accept case(s) for clients who are **in custody**, financially qualified and entitled to representation by appointed Counsel at state expense and for whom the court has been unable to locate counsel.

DEFINITIONS FOR PURPOSES OF THIS POLICY:

Appointed Counsel: An attorney who is identified by ~~OPDS~~ **OPDC**, who is appointed by a court to represent a client at state expense and who may be contract or private bar counsel.

Case Support Services (CSS): Case related fees and expenses for preparation and presentation of the case for trial, negotiation, and sentencing that require preauthorization per ORS 135.055.

Co-Counsel: An attorney who is appointed by the court and approved by ~~OPDS~~ **OPDC** to assist in or share the responsibility of representing a client.

Contract Administrator: A person responsible for administering a contract with ~~OPDS~~ **OPDC** to provide services to persons qualifying for court appointed counsel.

Counsel - Contract: An attorney providing legal representation to persons qualifying for court appointed counsel pursuant to a contract with the PDSC.

Counsel – Non-Contract: An attorney who accepts case assignments to represent persons entitled to public defense services at an hourly rate.

Increased Hourly Rate: An hourly rate approved by the PDSC which exceeds the standard rate for attorneys appointed to cases from the Oregon

Judicial Department (OJD) Unrepresented List and investigators providing services on those cases

Investigator: A person who is a qualified investigator, including a mitigator, and who engages in the business of obtaining or furnishing information to be used by Counsel in their legal representation of a client.

MAC: Maximum Attorney Caseload

Routine Expense: Reasonable fees and expenses associated with the representation of a person who is determined to be financially eligible and who is represented by court-appointed Counsel in the proceeding or on appeal that are required to be paid by the state and do not need preauthorization.

Service Provider: A licensed, certified, or otherwise authorized person or entity performing case related non-attorney services for preparation and presentation of the case for trial, negotiation, and sentencing.

Unrepresented Person: A person determined to be eligible for representation by court-appointed counsel at state expense and listed on the Oregon Judicial Department's "~~OPDS~~ **OPDC**

Unrepresented" list, hereinafter referred to as the "OJD Unrepresented List."

POLICY

Temporary Policy to Increase Hourly Rate (~~Expires June 30, 2024~~ Expires December 31, 2024)

This temporary policy is adopted in response to a shortage of contracted public defense providers in the state of Oregon. A person who has been found eligible for court-appointed Counsel may be without Counsel because providers in the jurisdiction do not have capacity to take additional cases. Appointments made after ~~June 30, 2024~~ **December 31, 2024**, are not eligible for the increased rate.

The Oregon Judicial Department, in collaboration with circuit courts throughout Oregon, maintains a list that includes only those clients who have active cases in the trial court and for whom the trial court, due to the capacity of local providers, conflicts or multiple Counsel withdrawals, cannot find contract Counsel to represent the person.

When a court requests assistance to locate representation for a qualified *in-custody* unrepresented person, ~~OPDS~~ **OPDC** will evaluate availability of qualified resources, locate counsel, and contact the court to confirm acceptance of the appointment. An attorney may request an adjustment in the hourly rate in certain circumstances (*e.g.*, new charges, increased severity of charged offenses). Any request for adjustment in the hourly rate must be submitted in writing using the form designated by ~~OPDS~~ **OPDC**.

~~OPDS~~ **OPDC** must approve all increased hourly rates and adjustments under this policy.

By accepting any public defense case assignment or related work, Counsel and other Service Providers agree to comply with all ~~OPDS~~ **OPDC** policies and procedures as may be amended from time to time.

Counsel and Investigator Hourly Rate Increase

~~OPDS~~ **OPDC** has established increased hourly rates for Counsel who accept case appointments from the OJD Unrepresented List and for Investigators who provide services on those cases. Both Counsel and Investigator must meet eligibility requirements established in this and any other ~~OPDS~~ **OPDC** policies. (See Hourly Rates for Unrepresented Persons)

Policy Name: Temporary Hourly Increase Policy

Page 2 of 4

Unrepresented Person

A person is eligible for assignment of Counsel under this policy when all the following criteria apply:

1. Financially qualified and constitutionally or statutorily entitled to representation by appointed Counsel at state expense
2. Client is ***in custody*** and listed on the OJD Unrepresented List. Appointments to cases other than ***those where the client is in custody*** and on the OJD Unrepresented List are not eligible for the rate increase unless authorized by ~~OPDS~~ **OPDC**.

Eligibility Criteria

Counsel who meets the criteria below and who accepts a case appointed from the OJD Unrepresented List are eligible for a rate above the Guideline of Scheduled Amounts. ~~OPDS~~ **OPDC** has established Increased Hourly Rates which are ONLY applicable for cases appointed under this policy. Once approved, the rate would apply to all legal representation or investigation services for the duration of the case.

Non-Contract Counsel

Non-Contract Counsel will be considered for assignment under this policy only when all the following criteria apply:

1. Within the previous two years, Counsel has submitted an Attorney Qualification form and has been approved by ~~OPDS~~ **OPDC** to accept appointments for specified case types.
2. Counsel does not currently provide public defense representation pursuant to an ~~OPDS~~ **OPDC** contract.
3. Counsel enters an agreement, as provided by ~~OPDS~~ **OPDC** to provide legal representation to eligible clients.

Contract Counsel less than 1.0 MAC

Counsel contracted for less than 1.0 MAC will be considered for assignment under this policy only when all the following criteria apply:

1. Within the previous two years, Counsel has submitted an Attorney Qualification form and been approved by ~~OPDS~~ **OPDC** to accept appointments for specified case types.
2. Counsel, or a law firm that employs counsel, enters an agreement, as provided by ~~OPDS~~ **OPDC**, for Counsel to provide legal representation to eligible clients.
3. Counsel submits the form designated by ~~OPDS~~ **OPDC** certifying that they can accept appointment to the client and case(s) and continue to provide zealous representation to all of their public defense clients.

Contract Counsel at 1.0 MAC

Counsel contracted for 1.0 MAC will be considered for assignment under this policy only when all the following criteria apply:

1. Within the previous two years, Counsel has submitted an Attorney Qualification form and been approved by ~~OPDS~~ **OPDC** to accept appointments for specified case types.
2. ~~OPDS~~ **OPDC** has confirmed through a review of Counsel's caseload reporting that Counsel has reached their contracted 1.0 MAC.
3. Counsel, or a law firm that employs counsel, enters an agreement, as provided by ~~OPDS~~ **OPDC**, for Counsel to provide legal representation to eligible clients.
4. Counsel submits the form designated by ~~OPDS~~ **OPDC** certifying that they can accept appointment to the client and case(s) and continue to provide zealous representation to all of their public defense clients.

Eligibility Criteria for Investigator

Investigators who accept or who are currently providing services related to cases that were assigned to Counsel from the OJD Unrepresented List are eligible for a rate above the Guideline of Scheduled Amounts **AFTER October 20, 2022**. ~~OPDS~~ **OPDC** has established an Increased

Hourly Rate which is ONLY applicable for services on cases assigned under this policy. Once approved, the rate would apply to all investigation services for the duration of the case.

Investigators who are employed by a Contract Administrator who perform services related to cases assigned under contract are not eligible for the Increased Hourly Rate.

Case Support Services and Invoice Submission

Invoices for all fees and expenses payable should be submitted minimally every 90 days and are subject to review. ~~OPDS~~ **OPDC** shall determine whether the amount is necessary, reasonable, and properly payable from public funds. Counsel must submit all necessary and reasonable fees and expenses for legal representation consistent with the ~~OPDS~~ **OPDC** payment policy.

CSS requests for investigation for cases from the OJD Unrepresented List must use the long form.

Investigators who are providing services related to cases assigned from the OJD Unrepresented List must submit a separate invoice for services through October 19, 2022, and for services from October 20, 2022, forward.

Legal Representation Fee “Soft Caps”

~~OPDS~~ **OPDC** has established initial “soft caps” related to representation service fees for each case appointed from the OJD Unrepresented List and will monitor the amount of compensation paid to Counsel per case assignment.

The soft cap may be waived, and an increased soft cap approved by ~~OPDS~~ **OPDC**. The representation soft cap applies only to Counsel service fees paid at the increased hourly rate. Any request for service fees over the initial or any subsequent soft cap must be preauthorized by ~~OPDS~~ **OPDC** prior to services for which total compensation may exceed the established limit.

~~OPDS~~ **OPDC** will initially evaluate requests to exceed the initial and any subsequently approved soft cap for a case by first evaluating whether the hours spent on the case exceed the average expected time that “The Oregon Report”, prepared by the American Bar Association and Moss Adams and published in 2021, found should be expended on a typical case of that type.

For those cases that are expected to exceed both the initial and/or any subsequently established soft cap ~~OPDS~~ **OPDC** will consider requests from Counsel using criteria including, but not limited to, the following.

Case type

Whether multiple counsels are appointed to the case

Whether the case is likely to go to trial

Whether the case can be classified as an extraordinary case under ~~OPDS~~ **OPDC** standards

Any extraordinary pressure of time or other factors under which services were rendered

Whether more time is reasonably required for total processing than the average case, including pre-trial and post-trial hearings

Requests to exceed the applicable soft cap for a case type and any subsequently established soft cap must be submitted in writing using the form designated by ~~OPDS~~ **OPDC**.

Oregon Public Defense Commission

Legislative Update

Jessica Kampfe, Executive Director
Jessica.Kampfe@opdc.state.or.us

June 13, 2024



May Legislative Days

Judiciary

New Report: Comprehensive Public Defense Report II

- Due December
- OPDC October Meeting

Comprehensive Public Defense Report

- The report seemed informative to the committee.
- Expected questions about workload and cost were asked.
- Requested and have been invited to December.

Public Safety

Reports

- Executive Branch Transition
- Financial and Case Management System
- Quality Management Plan
- Remediation Plan

All reports were accepted.

- Concerns about Executive Transition.
- Optimistic about FCMS leadership.
- LFO found Quality Management Plan lacked specifics.
- Remediation Plan well received.

Considerable amount of work being done- but would like it done faster.

Public Safety

Requests

- Temporary Hourly Increase Program
- Information Technology

Temporary Hourly Increase Program

- The Emergency Board approved the extension of THIP through Dec. 31, 2024.
- OPDC will return in September for the fiscal request.

Information Technology

- 2 positions approved.
- Will return in September for additional IT positions.

New Reporting Requirements

August

- Report to the Governor on Unrepresented Plan

September

- FCMS Status Update
- OPDC/OJD Unrepresented Update
 - State trial offices
 - OJD crisis plans implementation

December

- Comprehensive Public Defense Report II

Existing Reporting Requirements

September

- Remediation Report IV
- Executive Move Report II

December

- Remediation Report V

Thank You



Oregon Judicial Department

Unrepresented Crisis – June 2024 Update

Key Insights

[Unrepresented Trends](#)

The number of unrepresented individuals continues to increase ([Figure 1](#)). Deschutes County is experiencing a severe and sudden attorney shortage and spike in unrepresented ([Figure 2](#)). Attorneys have been added to contracts, but appointments taken has not increased yet ([Figure 3](#)). 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, but significant improvements have been made for people in-custody. ([Figure 4](#)).

[Unrepresented by County](#)

The crisis is most severe in Jackson, Marion, Multnomah, Washington, and Douglas counties and growing more severe in Clatsop, Deschutes, Klamath, Lake, Coos, Umatilla, Malheur and Lincoln counties ([Figure 5](#)).

[OPDC Trial Division Offices](#)

The OPDC Trial Division Offices continue to ramp up. Nine attorneys have taken 268 new appointments since December 2023, primarily in Jackson and Multnomah on misdemeanors and minor felonies ([Figure 6](#) and [Figure 7](#)).

[Data Share Update](#)

In May 2024, OPDC was provided direct access to the OJD Data Warehouse which includes OJD court data on attorney appointments, unrepresented persons, and public defense caseloads. OPDC is starting to share data OJD has requested regarding updated prorated contract and hourly attorney start and end dates, attorney qualifications, attorney caseload reports, and the Temporary Hourly Increase Program (THIP) case list. OJD staff continue to meet weekly with the OPDC data team.

[Circuit Court Case Filings](#)

Criminal case filings remain more than 20% below pre-pandemic levels. They have been on the rise for two consecutive years and are projected to continue to increase. ([Figure 8](#)).

[Case Dispositions](#)

The number of cases resolved by courts is expected to decrease in fiscal year 2024 by 5% ([Figure 9](#)) primarily due to delays caused by the unrepresented crisis.

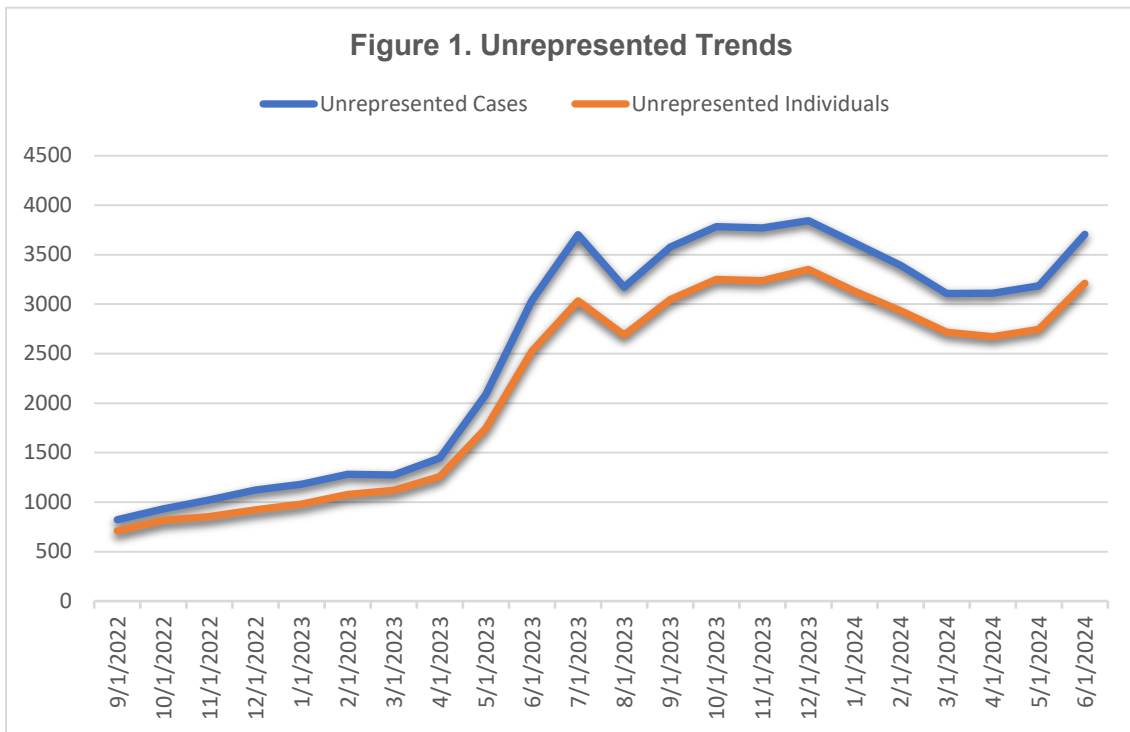
[Local Court Spotlights](#)

Courts involved with the [Intake Form Pilot Program](#) report positive experiences. The [Jackson County Circuit Court](#) shares its experience with the unrepresented crisis.

Unrepresented Trends

Figure 1 shows the number of unrepresented individuals continues to increase even as new attorneys are added in public defense offices and regional trial division offices.

- As of 4/1/2024, there were 2,671 unrepresented individuals with 3,110 unrepresented cases:
 - 1,693 misdemeanors,
 - 1,305 felonies, and
 - 112 non-criminal cases.
- As of 5/1/2024, there were 2,747 unrepresented individuals with 3,184 unrepresented cases:
 - 1,769 misdemeanors,
 - 1,340 felonies, and
 - 75 non-criminal cases.
- As of 6/1/2024, there were 3,210 unrepresented individuals with 3,707 unrepresented cases:
 - 2,082 misdemeanors,
 - 1,552 felonies, and
 - 73 non-criminal cases.

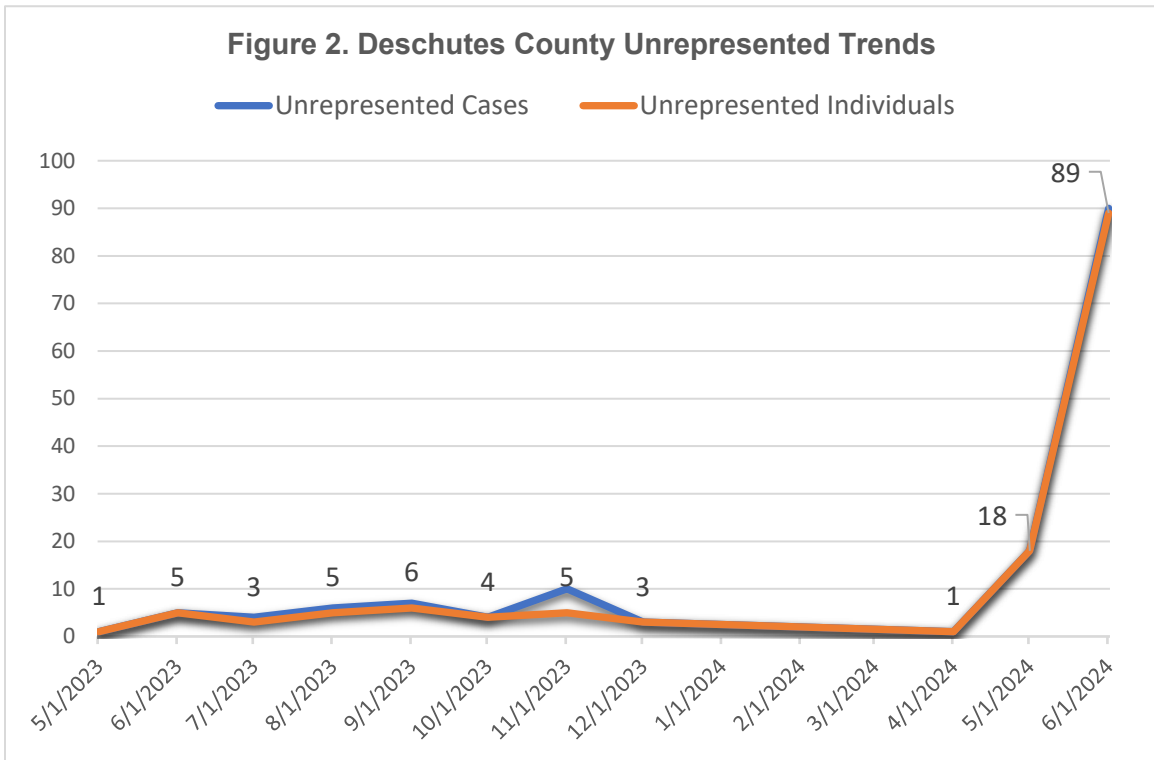


Source: OJD Odyssey Data (eCourt).

Deschutes County recently lost six attorneys and now has a spike in its unrepresented population.

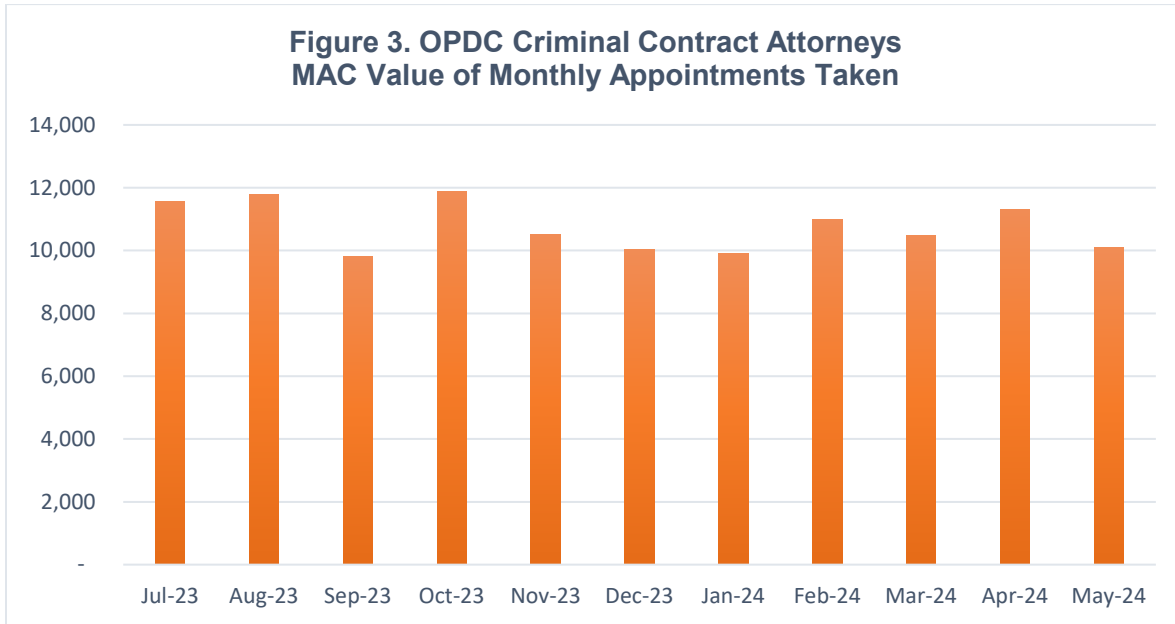
As of 6/1/2024, Deschutes County had 89 unrepresented individuals with 90 unrepresented cases:

- 53 misdemeanors, and
- 37 felonies.



Source: OJD Odyssey Data (eCourt).

Although more attorneys have been added to existing contracts statewide since July 2023, total appointments taken under those contracts has not increased yet. OPDC staff can provide more information on MAC added since July and MAC utilization by county, provider, and attorney.

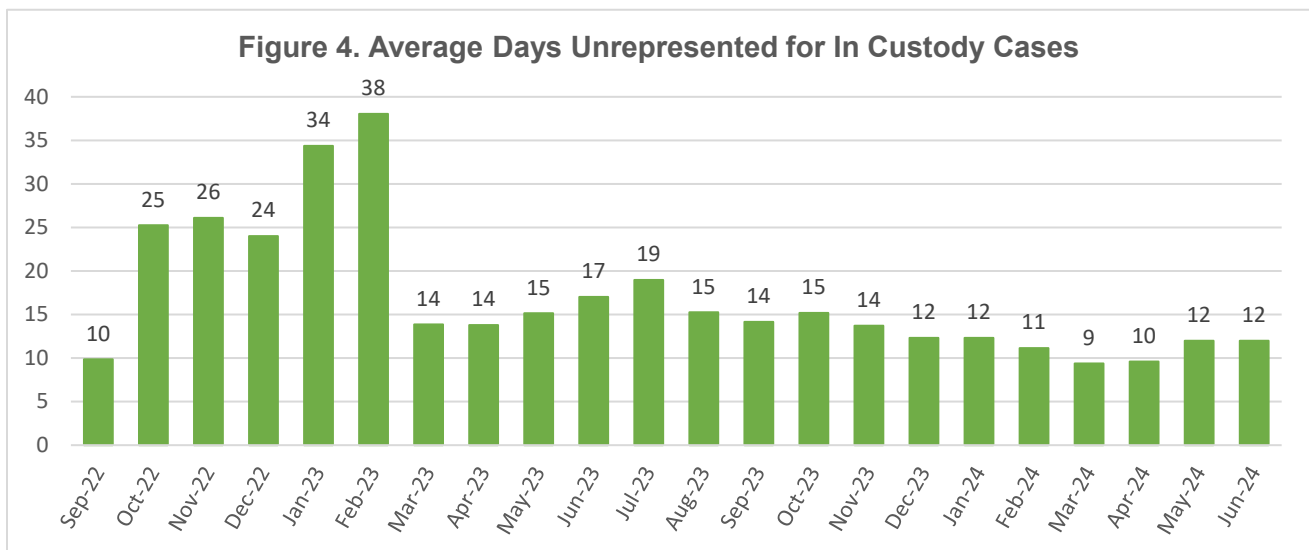


Source: OJD Odyssey Data (eCourt).

Average Time Unrepresented

People who are out of custody with felony cases are waiting an average of more than **three** months for an attorney. Out-of-custody people with misdemeanor cases are waiting an average of more than **two** months for an attorney.

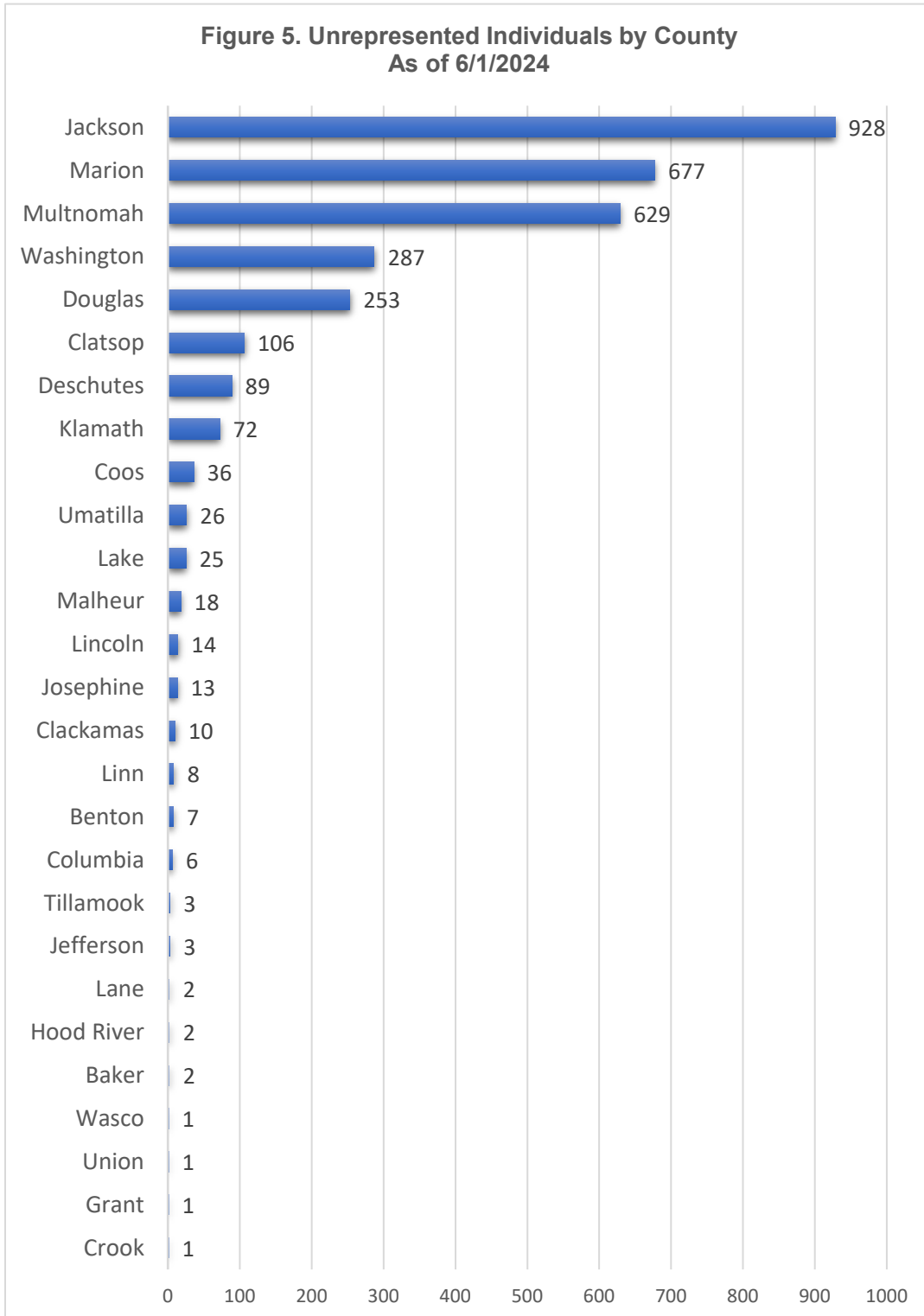
Figure 4 shows improvements have been made since 2022 on the average time an unrepresented person must wait in custody before an attorney is appointed.



Source: OJD Odyssey Data (eCourt).

Unrepresented by County

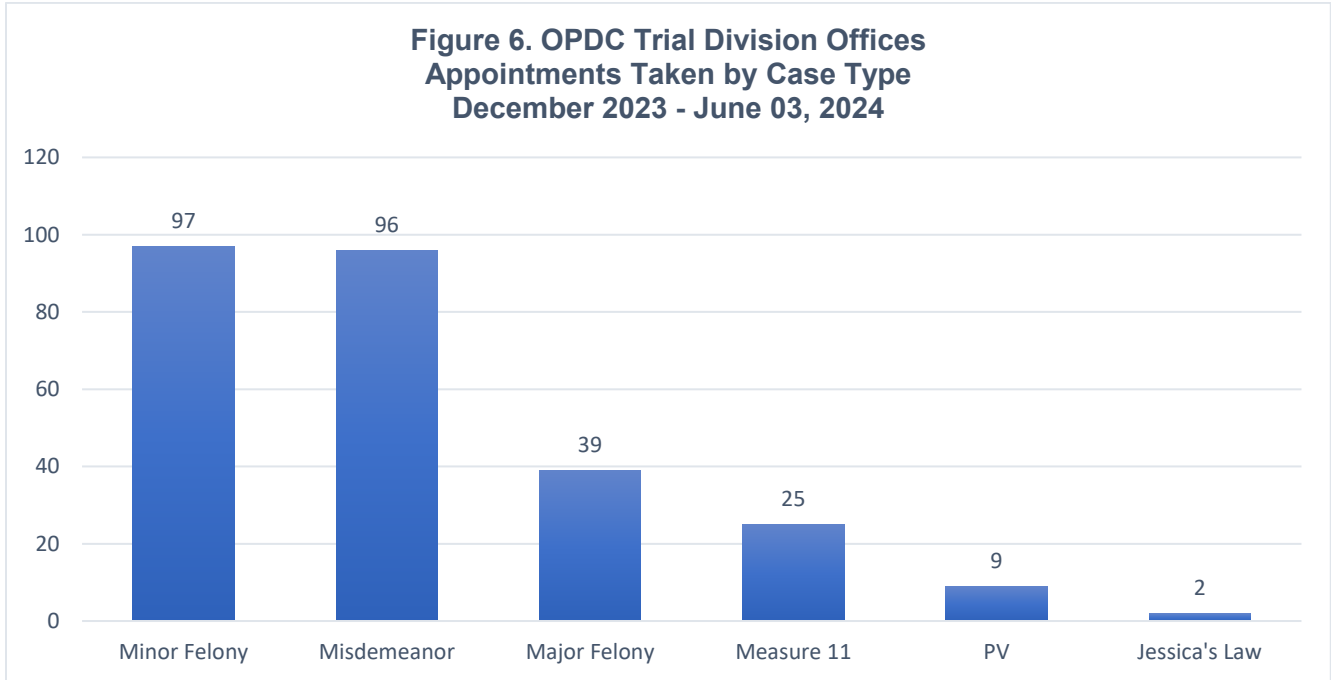
Figure 5 shows the number of unrepresented individuals by county and where the crisis is most severe. The OPDC regional trial division offices are primarily taking appointments in Jackson and Multnomah on misdemeanors and minor felonies.



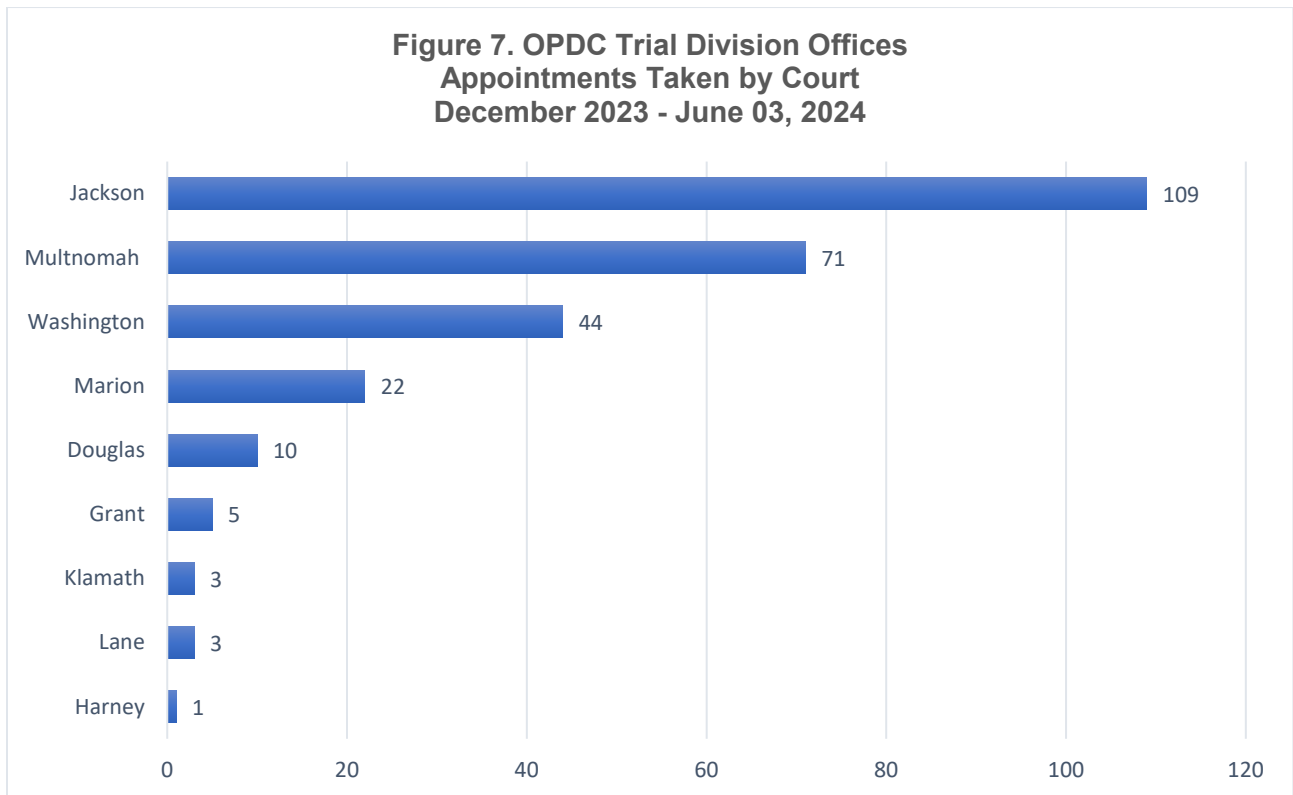
Source: OJD Odyssey Data (eCourt).

OPDC Trial Division Offices

Figure 6 and Figure 7 show the **268** new appointments taken since December 2023 by nine attorneys in the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.



Source: OJD Odyssey Data (eCourt).



Source: OJD Odyssey Data (eCourt).

Data Share Update

In May 2024, OPDC was provided direct access to the OJD Data Warehouse which includes OJD court data on attorney appointments, unrepresented data, and public defense caseloads.

OPDC can start using this court data and the data warehouse databases to:

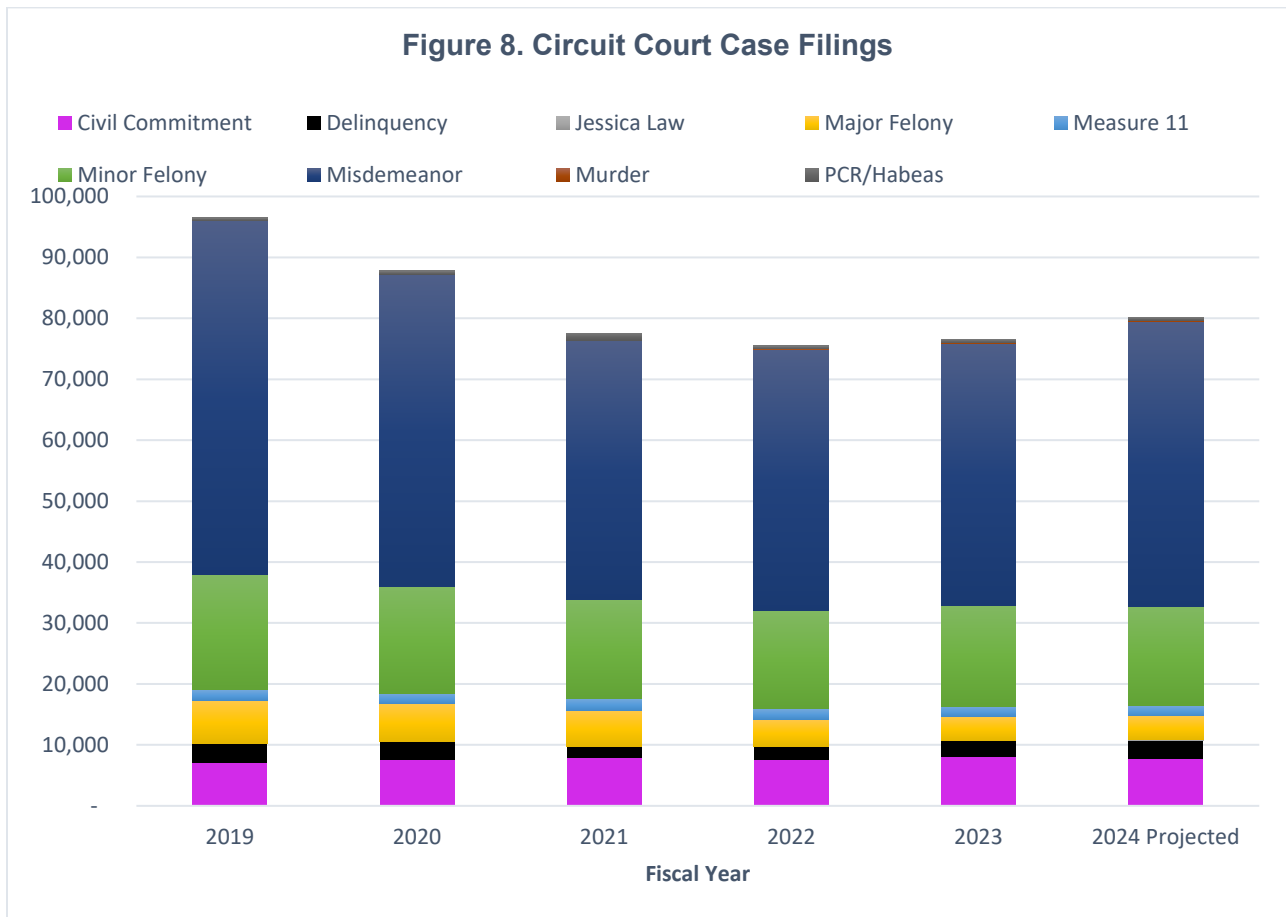
- verify attorney MAC utilization and self-reported attorney caseload reports by reconciling it with court data,
- streamline attorney appointments for unrepresented individuals through automated comparisons of attorney capacity, attorney qualification, and prioritize unrepresented cases using OPDC's new intake form/process,
- identify unrepresented individuals who have multiple cases in the same county (half of total unrepresented caseload) to consolidate attorney appointments and work down the unrepresented caseload faster,
- flag attorney appointments in warrant status for more than 180 days and request that attorneys close those appointments and notify the court,
- track caseload trends that impact public defense providers,
- track open public defense caseloads over time, and
- compare qualitative outcomes by provider (case outcomes, time to disposition, motions filed, cases with multiple attorney substitutions, time to trial, trial rates and trial outcomes).

OPDC has started sharing data requested by OJD regarding updated contract and hourly attorney start and end dates (prorated MAC), attorney qualifications, attorney caseload reports, and the Temporary Hourly Increase Program (THIP) case list.

Circuit Court Case Filings

Figure 8 shows circuit court case filings since fiscal year 2019 by case type.

- Filings remain more than 20% below 2019 levels but started to increase in fiscal year 2023.
- In fiscal year 2023, case filings increased statewide by 1.4% over the prior year. In fiscal year 2024, OJD projects case filings will increase by another 5%, due primarily to increases in misdemeanor filings. Minor decreases are projected in filings for major and minor felonies, Measure 11, and civil commitment cases.

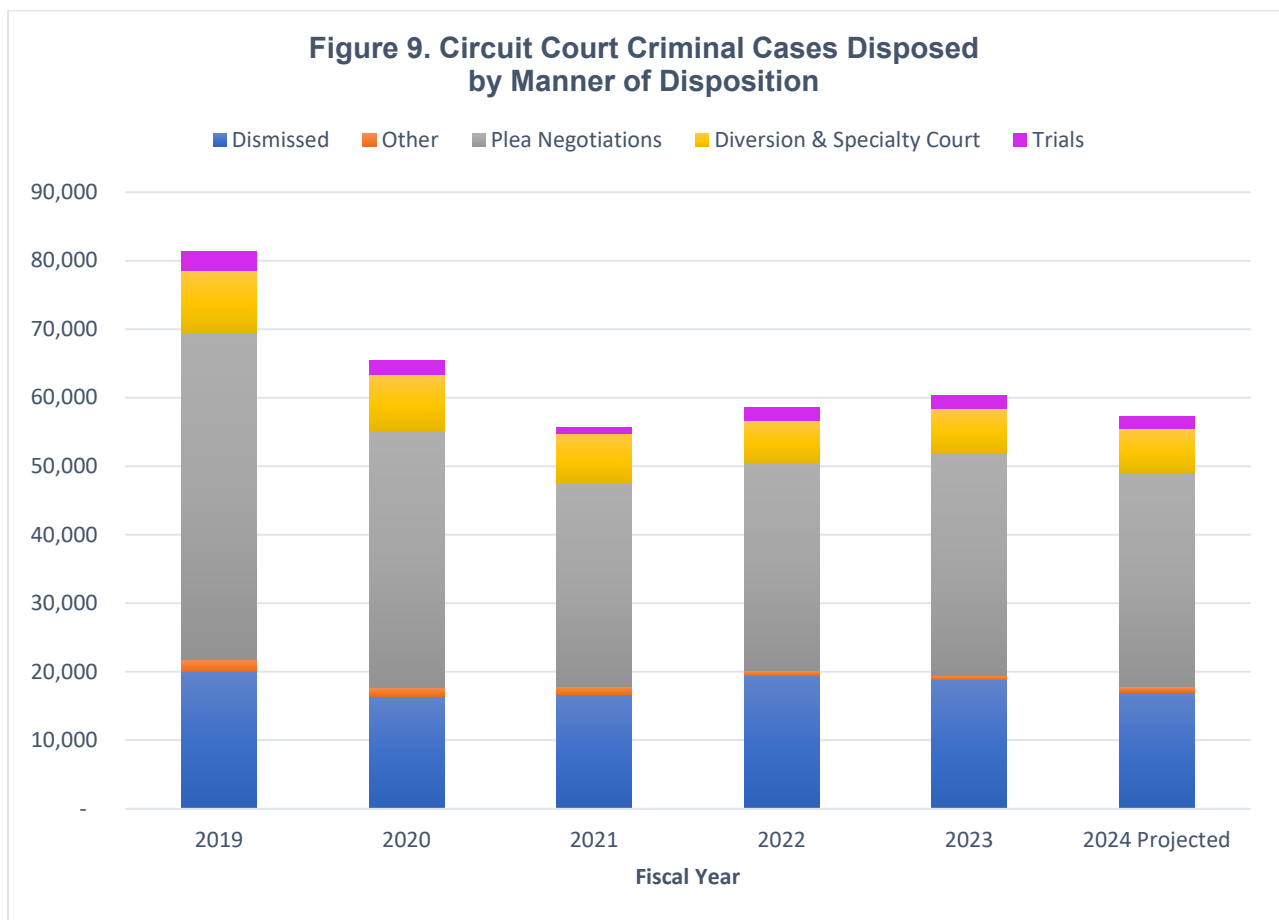


Source: OJD Odyssey Data (eCourt).

Case Dispositions

Figure 9 shows case dispositions since fiscal year 2019 by the manner of disposition.

- Like filings, case dispositions are well below 2019 levels.
- Case dispositions increased by almost 3% in fiscal year 2023 over the prior year.
- In fiscal year 2024, OJD projects that case dispositions will decrease by 5% primarily due to delays caused by the unrepresented crisis.
- Plea agreements are declining, while trial rates, diversions, and treatment court programs remained unchanged compared to 2019.



Local Court Spotlight

Intake Form Pilot Program Update

OPDC launched a pilot program May 1, 2024, where pilot courts submit an online form to request counsel be appointed to an in-custody unrepresented person, focusing on cases that qualify for the Temporary Hourly Increase Program (THIP). The pilot courts are circuit courts in Coos, Curry, Linn, and Douglas counties. All courts report the form is simple to use and the process is working well. One court noted a concern that court staff cannot update the form if a defendant is released from custody after the form is submitted but prior to an attorney being assigned. OJD and OPDC staff are collaborating so OPDC can use the data warehouse to more efficiently prioritize attorney assignments and ensure defendants are represented on all their open cases.

Jackson County Circuit Court

Jackson County continues to have the highest number of unrepresented persons in the state, which has been steadily increasing since October 2023 despite an increase in the number of attorneys and fewer cases being filed. The local public defense office and consortium typically meet or surpass their monthly MAC limits about half-way through the month.

Jackson has several dockets to help cases proceed more efficiently, including early resolution conferences, settlement conferences, and a rapid aid-and-assist docket. They have also held several special settlement dockets for criminal traffic offenses, such as diversion-eligible Driving Under the Influence cases. The impact of these dockets and their success, though, is limited based on whether there is a defense attorney available. For instance, defense attorneys are frequently in the best position to identify persons struggling with mental health who would be appropriate for the rapid aid-and-assist docket.

In addition to in-custody unrepresented persons, the court is particularly concerned about out-of-custody probation violations and animal abuse cases. As of May 21, 2024, there are 117 probation violation cases on the unrepresented list, with 36 cases unrepresented for more than 180 days. These include domestic violence cases where the alleged probation violation is having contact with the victim. Other cases of concern are felony cases where the defendant is on a downward departure and facing significant prison time.

Unrepresented persons charged with animal abuse incur other collateral consequences due to delays appointing counsel. These defendants typically have their animals taken from them and are entitled to a forfeiture hearing involving the animal. Since these defendants are out of custody and lower on the priority list, they are often without counsel at their forfeiture hearings. Since the case is unable to move forward, the animals stay with Animal Control, incurring thousands of dollars in expenses which either (1) the county will be responsible to pay, or (2) defendants will pay and incur additional costs because the time to disposition was extended for lack of an attorney.



**Oregon
Public
Defense
Commission**

Date: June 5, 2024

To: Jennifer Nash, Chair
OPDC Commissioners

Cc: Lisa Taylor, Government Relations
Ralph Amador, Chief Financial Officer

From: Jessica Kampfe, Executive Director

Re: Policy Option Package Proposals

Action: Briefing, Discussion, and Vote.

Background: Oregon Public Defense Commission’s budget request for the 2025-2027 biennium is predicated upon maintaining its Current Service Level (CSL) and increasing agency capacity through Policy Option Packages (POPs) that implement new agency programs and increase funding to build a system that provides competent and effective legal representation for public defense clients.

A significant driver of the agency’s POP requests is legal compliance and the mandates arising from ORS 151.216 and SB 337 (2023). For example, ORS 151.216 provides several mandates regarding public defender caseload and workload:

- 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 Oregon and national standards of justice.
- Ensure caseloads are in accordance with national best practices.
- Adopt a statewide workload plan based upon the 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.

To effectuate these mandates, OPDC has adopted the criminal caseload standards from the National Public Defense Workload Study, published by the RAND Corporation in 2023. For juvenile cases, OPDC has adopted the caseload standards from the Oregon Report, published by the ABA and Moss Adams in 2022. OPDC has adopted a workload standard of 1,578 hours of

case specific work per year, which is equivalent to the billable hour requirement for full time attorneys at the Oregon Department of Justice. Implementing these caseload and workload standards immediately would cause significant disruption to the state’s public safety system, as there are not enough public defenders in Oregon to meet the statewide demand using these standards. OPDC will implement these caseload and workload standards over a period of 6 years, or 3 fiscal biennia.

The Moss Adams report estimated that Oregon needs to add 480 more attorneys to reach the workload/caseload standards for criminal cases. The recommendation is to implement this over three biennium. For the 2023-25 biennium, OPDC recommends requesting funding for 160 additional attorney positions to defend criminal cases. 80 of those positions are included in POP 102 for contractors, 40 positions are included in POP 103 for the OPDC Trial Division, and funding for the hourly equivalent of 40 panel attorneys are included in POP 104.

Table: First biennium build towards workload need

	33%	100%
Contracted POP 102	80	240
State employees POP 103	40	120
Hourly Panel POP 104	40	120
Total	160	480

ORS 151.216 provides additional mandates regarding the compensation of public defense providers:

- Ensure compensation is in accordance with national and regional best practices.
- Ensure all public defense provider contracts provide for compensation that is commensurate with the character of service performed.
- Ensure compensation is fair.
- Consider overhead costs that account for the cost of living and business cost differences in each county or jurisdiction, including but not limited to rent, professional membership dues, malpractice insurance and other insurance and other reasonable and usual operating costs.
- Avoid economic incentives and disincentives that impair the ability of appointed counsel to provide effective assistance of counsel.

To achieve these mandates, SB 337 directed OPDC to take the following steps:

- 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.
- By July 1, 2025, establish a panel of public defense attorneys who go through a process for certification and periodic review.
- By July 1, 2027, compensate those attorneys no less than the hourly rate recommended by the survey and economic analysis.

- Adjust the hourly rate for panel attorneys in the future 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.

OPDC contracted with Moss Adams for a survey and economic analysis to establish a formula for compensation, as required by SB 337. In addition to the survey and economic analysis for panel attorneys, OPDC requested Moss Adams gather similar information for eight categories of non-attorney core staff. On May 24, 2024, the Commission adopted the compensation formula as recommended by Moss Adams. It also reviewed the survey and economic analysis and directed the agency to develop a Policy Option Package utilizing the market leader rate (75th percentile) as the foundation for the agency’s hourly rate for both attorneys and core staff. While most directly relevant for POP 104, this economic data also informs the request in POP 102.

There are additional agency demands. OPDC needs to procure and implement an integrated financial and case management system. We need to recruit attorneys into the profession. We need to continue to make payments toward the Temporary Hourly Increased Program (THIP) cases. And we must grow administratively as an agency to accomplish all of these tasks.

Below are summaries of proposed POP concepts that staff has prepared for consideration in the agency’s proposed ’25-’27 budget request.

POP 101	FCMS
POP 102	Criminal Contract
POP 103	OPDC Trial Division
POP 104	Hourly Providers
POP 105	Juvenile Contract
POP 106	OPDC Administrative Staff
POP 107	THIP
POP 108	Recruitment/Retention

The cost estimates associated with each POP are projections based upon the best information available to OPDC staff at this time. Material changes to cost projections will likely occur between now and the final Agency Requested Budget (ARB), as the agency continues to refine requests and gather new information.

Furthermore, OPDC staff is seeking direction from the Commission on the build out of POP 102, 104, and 105. Those are articulated below.

POP 101 (FCMS)

Projected Budget: \$15.0 million

POP 101 is a budget request to support the agency’s implementation of a statewide financial and case management system (FCMS) for public defense providers. The FCMS will integrate OPDC’s relationship with its providers to effectuate authorization of funding requests and compensation to providers. It will also allow for enhanced data gathering and measuring to further the state’s goals of transparency and accountability.

The legislature has worked with OPDC to modernize its infrastructure, particularly as the agency transitions to the executive branch. SB 5506 (2023) included a budget note that directed the agency to continue reporting to the legislature on the status of the FCMS project and to follow the Stage Gate process for procurement.

POP 101 includes funding for hardware, software, data migration, hosting, support, and project management. It also includes funding for agency staff positions. POP 101 would allow 5 limited duration positions to be made permanent, and it would also add 3 new permanent positions, including a Chief Data Officer.

POP 102 (Criminal Contracts)

Projected Budget: Under Development

POP 102 is a budget request to move the agency toward compliance with ORS 151.216. As background, the agency’s calculated current service level, based upon the DAS caseload forecast, calls for an additional 65.49 attorney FTE to meet existing needs.

POP 102 is a request for additional resources and contains three components:

- Additional attorneys to build towards or meet the adopted caseload standards.
- Additional funding to compensate providers consistent with the economic analysis.
- Support staff to build towards or meet the support staff ratios.

Attorney FTE calculations are based on the projected CSL for 25-27 of 572.25 FTE. The Moss Adams draft Six-Year Plan estimated that OPDC needs 480 additional attorneys. If we assume half of those attorneys will come from contracted providers, that’s 240 total additional contracted attorneys or 80 per biennium.

In establishing the reimbursement rates for attorneys and core staff, OPDC is collapsing the existing 4 reimbursement rates into 1 reimbursement rate for simplified contract management and to incentivize contractors to hire based on forecasted caseload needs. The reimbursement rate for these positions is based upon the market leader hourly rates arising from the Moss Adams’ survey and economic analysis. This foundation ensures that contract rates are commensurate with the hourly rates for the panel attorneys.

To finalize this POP a few decisions must be made by the Commission:

- What rate to use?
- Continue to use MAC model or the adopted workload standard?
 - At 33% or 100%
- Pay for support staff at 33% or 100%?
- Implement these models with 2080 or 1578 as the work hour expectations?

The chart below shows how these different factors will impact the attorney cost of this POP. The least expensive option is CSL (MAC), as shown in green in the top left, moving to the most expensive option- implementing 100% of the caseload model (NPDWS) implemented at the 1578 hours- in the bottom right.

	Criminal Contracts		
	MAC/ CSL	NPDWS/ 33%	NPDWS/ 100%
	CSL Current + 67	CSL + 80 Attorneys	CSL + 240 Attorneys
Current Rate collapsed into 1 reimbursement rate			
Market Leader Rate (2,080 hours)			

Market Leader Rate (1,578 hours)			
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OPDC is also requesting funding for core support staff positions in this POP. The core support staff positions arise from the following staffing ratios with respect to attorneys:

- Investigators, 1:3
- Case Managers, 1:3
- Supervisors, 1:10
- Paralegals/Legal Assist, 1:4

Adult Criminal Support Staff		
CSL Current + 67	CSL + 80 Attorneys	CSL + 240 Attorneys

POP 103 (OPDC Trial Division)

Projected Budget: \$22.6 million

POP 103 is a budget request to grow the OPDC Trial Division over the next biennium in compliance with SB 337. The agency must have OPDC staff attorneys provide 20% of trial-level representation by 2031 and 30% by 2035. POP 103 would add 40 attorneys and corresponding core support staff to OPDC’s trial division over the next two years, with the positions staggered throughout the biennium.

POP 104 (Panel Attorneys and Hourly Core Support)

Projected Budget: Under Development

POP 104 is a budget request to move the agency toward compliance with the compensation and service delivery mandates of ORS 151.216 and SB 337. Effective July 1, 2025, OPDC is required to establish a panel of public defense attorneys who undergo a process for certification and periodic review. Effective July 1, 2027, OPDC must compensate those attorneys no less than the hourly rate recommended by the survey and economic analysis.

POP 104 includes funding for the following components:

- Funding for the hourly equivalent of 40 new panel attorneys.
- Funding to increase the hourly rate for all panel attorneys.
- Funding to increase the hourly rate for investigators and mitigators authorized through the PAE process.

It should be noted that the Commission requested the OPDC staff conduct an analysis of how using 1,578 hours per year would impact those rates. OPDC staff recommends this POP be based upon the 75th percentile of benchmarked data Moss Adams’s to enable the agency to take a leading market strategy to support enhanced recruitment and retention of public defenders in the state. This, in combination with the newly adopted workload standards, positions the agency to offer an above-market hourly rate and appropriate workload expectations for current and future public defenders.

The chart below shows how these different factors will impact the attorney cost of this POP. The

least expensive option is CSL, as shown in green in the top left, moving to the most expensive option- implementing the economic analysis in one biennium at the 1578 hours- in the bottom right.

	Current Rates	2080 Hours	1578 Hours
Tier 1 (More Serious cases)			
Tier 2 (Less Serious cases)			
Total			

To finalize this POP a few decisions must be made by the Commission.

- Implement these models with 2080 or 1578 as the work hour expectations?

POP 105 (Juvenile Contract)

Projected Budget: Under Development

POP 105 is a budget request to move the agency toward compliance with ORS 151.216. Based on the DAS caseload forecast, the agency’s calculated current service level for the combined Juvenile and PCRCP need is approximately 209.9 or 1.7 FTE more than last biennium.

POP 105 is a request for additional resources and contains three components:

- Additional attorneys to build towards or meet the adopted caseload standards.
- Additional funding to meet the adopted workload standards and economic analysis.
- Support staff to build towards or meet the support staff ratios.

Attorney FTE calculations are based on the projected CSL for 25-27 of 209 FTE. Using the same method as the Moss Adams study did for criminal cases, OPDC needs 302 additional juvenile attorneys. We assume all of those will come from contracted providers; that’s 302 additional attorneys or 100.6 per biennium.

Similar to POP 102, the agency is proposing collapsing the existing staggered reimbursement rates into 1 reimbursement rate for the same reasons outlined above. To finalize this POP a few decisions must be made by the Commission.

- What rate to use?
- Continue to use MAC model or the adopted workload standard?
 - At 33% or 100%
- Pay for support staff at 33% or 100%?
- Implement these models with 2080 or 1578 as the work hour expectations?

The chart below shows how these different factors will impact the attorney cost of this POP. The least expensive option is CSL, as shown in green in the top left, moving to the most expensive option- implementing 100% of the caseload model implemented at the 1578 hours- in the bottom right.

Juvenile Contracts			
	CSL	33%	100%
		100.59 Attorneys	302 Attorneys
Current Rate			
Market Leader Rate (2,080 hours)			
Market Leader Rate (1,578 hours)			

Juvenile Support Staff		
CSL Current + 1.7	CSL + 100 Attorneys	CSL + 302

POP 106 (OPDC Administrative Staff)

Projected Budget: \$9.1 million

POP 106 is a budget request to increase agency administrative staffing to account for current workload and necessary programmatic growth. As a result of SB 337, OPDC’s programmatic obligations have changed significantly. The agency’s obligations now include increased standard setting for public defense providers; training providers on those standards; and measuring performance related to those standards. The agency is also transitioning to the executive branch of government where there will be different expectations regarding procurement, information technology, administrative rulemaking, policy, and budgeting.

This package provides authority for thirty-seven (37) new positions and 33.04 full-time equivalents (FTE). The package adds positions to the agency’s administrative departments, such as accounts payable, budget, accounting, procurement, operations, policy, and human resources.

POP 107 (THIP)

Projected Budget: \$7.5 million

POP 107 is a budget request for additional funding for the agency to continue making payments for cases in the Temporary Hourly Increase Program (THIP) into the next biennium. OPDC provides some attorney services to eligible persons by compensating attorneys at an hourly rate, with those attorneys billing the agency during the ongoing representation and at the completion of the case.

In July 2022, due to the number of eligible persons lacking assigned counsel, the Commission authorized THIP as a program to offer increased hourly rates to incentivize attorneys to accept appointments to cases. The program has had several iterations, in terms of which cases were eligible and the specific rates authorized. Regardless of the iteration, the additional funds required for this program were not included in the agency’s budget.

OPDC does not contemplate continuing this program in the next biennium, as the agency will adopt a consistent hourly rate effective July 1, 2025. Additionally, this POP assumes THIP terminates on December 31, 2024. The requested funds in POP 108 will allow the agency to continue making hourly payments on cases assigned under the program as those case progress

through the court system.

POP 108 (Recruitment/Retention)

Projected Budget: Under Development

POP 108 is the agency's budget request to enhance the recruitment and retention of public defense attorneys. Funding in this request would enable the agency to do the following:

- Continue the law school misdemeanor clinical program authorized by the legislature in HB 5204 (2024).
- Provide stipends to law students employed by public defense providers.
- Provide training programs to new attorneys.
- Conduct outreach to law schools, job fairs, and new lawyer programs.
- Expand options for utilizing Supervised Portfolio Practice Examination program.

Agency Recommendation: OPDC staff is recommending the Commission authorize the agency to include these POP concepts in its proposed agency budget.

Agency Proposed Motion: I move to authorize OPDC staff to include POP concept _____ in the agency's proposed budget.



**Oregon
Public
Defense
Commission**

Date: June 5, 2024

To: Jennifer Nash, Chair of PDSC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Lisa Taylor, Government Relations Manager

Re: Public Comment Summary

Nature of Presentation: Briefing

Background: The Oregon Public Defense Commission held a listening session hosted by Commissioner Smith and Director Kampfe on May 28, 2024. This session focused on OPDC's budget build process and sought public comment from providers on the priorities they would like to see OPDC focus on in the 2025-2027 budget.

Based on the provided public comments, the general topics of concern seem to revolve around budget allocation and resource management within public defense services. Here are the key themes:

Funding for Training and Supervision: There's a concern about ensuring continued funding for training and supervision, particularly in light of increased caseloads stemming from legislative changes. There's also a call for specific funding to help providers recruit new attorneys and staff.

Workload Model and Ethical Standards: Participants emphasized the importance of an open workload model for transparency of state resources and adherence to ethical standards. There's a desire to ensure that workload models are integrated into recruitment and retention frameworks.

Transition to Hourly Panel: Questions arose regarding the transition of the private bar, as directed in SB 337, with concerns raised about potential conflicts of interest, especially in juvenile cases.

Treatment Courts and Funding: Treatment courts, including juvenile treatment courts and family treatment courts, should be included in the public defense budget or a separate funding source sought from the Legislature.

Recruitment and Retention Strategies: Suggestions are made for addressing retention and recruitment, including the need for excess capacity in attorney recruitment akin to a medical residency program. Additionally, there's a call for financial support to foster diversity among attorneys.

Transparency and Communication: Concerns are voiced regarding the need for more concrete information and advanced distribution of meeting materials to allow for meaningful public feedback and discussion.

Fair Compensation and Timely Payment: Fair compensation for attorneys, ensuring that pay is commensurate with workload and services provided. Timely payment of attorneys and other staff is crucial for retaining experienced lawyers and attracting new talent.

System Sustainability and Prioritization of Provider Funding: The sustainability of the public defense system is emphasized, with a call for prioritizing funding for providers over agency operations. The consequences of underfunding, including potential shutdowns, are highlighted.

Overall, the comments reflect a deep concern for ensuring adequate resources, fair compensation, and effective management practices within the public defense system to uphold ethical standards and provide quality representation to defendants.

Agency Recommendation: None

Fiscal Impact: None

Agency Proposed Motion: None

OCDLA Recruitment and Retention Funding Proposal

Shaun McCrea, Executive Director, smccrea@ocdla.org

Mae Lee Browning, Legislative Director, mlbrowning@ocdla.org

The Oregon Criminal Defense Lawyers Association (OCDLA) helps recruit and retain defense attorneys through our Diversity, Equity, and Inclusion (DEI) Committee and Law School Outreach coordination. With funding from OPDC, we can expand our outreach to recruit and retain more public defense attorneys. The recent adoption of caseload standards will help with recruitment, however, it must be coupled with active in-state and out-of-state recruitment efforts. In-state recruitment is OCDLA's purview; out-of-state recruitment is OPDC's.

In the recent Criminal Justice Commission presentation to House and Senate Judiciary Committees on May 30, Director Sanchagrin presented the key themes from Crisis Plans required by SB 337 (2023). One key theme/takeaway from the crisis plans is that “[r]ecruitment and retention strategies must be improved to both bring more public defenders into the system and to retain them long term.”¹ The slide included the following information:

“The need for additional attorneys was discussed in more than 90 percent of crisis plans. Plans suggested:

- Oregon should employ coordinated, aggressive recruitment strategies to create pipelines into public defense.
- Compensation is a central concern given cost of living challenges. Any assistance in this area, ranging from increased pay to loan forgiveness/tuition reimbursement, housing stipends, etc. would be beneficial.
- Training and support is needed to increase retention rates once attorneys become public defenders.”

OCDLA's proposal includes a pipeline into public defense and some compensation for cost of living of challenges for people who seek to enter the public defense field.

To fund an expansion of OCDLA's recruitment and retention efforts, the amount is \$30,350 for the remainder of this biennium. We believe this amount can come from existing monies within the OPDC.

¹ <https://olis.oregonlegislature.gov/liz/202311/Downloads/CommitteeMeetingDocument/284122>

We are requesting step-up increases for OCDLA’s bar exam scholarships. For July 1, 2025 to June 30, 2026, the cost to OPDC would increase to approximately \$42,000. For July 1, 2026 to June 30, 2027, the cost to OPDC would be approximately \$54,000.

OCDLA DEI Committee

OCDLA’s DEI Committee is uniquely positioned to recruit students into criminal and juvenile defense, support students as they enter the criminal defense field, and retain defense attorneys of diverse backgrounds. OCDLA’s DEI Committee focuses on recruitment and retention through law school outreach, fostering community in the defense bar in Oregon, and providing bar exam scholarships for graduates who are seeking public defense employment. A sense of belonging with similar individuals is critical to retaining attorneys of diverse backgrounds in Oregon. The DEI Committee fosters community and a sense of belonging by hosting monthly virtual meetups over Zoom and in person gatherings.

OCDLA Law School Outreach

OCDLA has law student chapters at each Oregon law school. Recruitment through law school outreach means exposing students to criminal and juvenile defense, maintaining mentoring relationships, fostering inclusion in the defense community via our conferences, and providing incentives (scholarships and stipends) for entering public defense.

OCDLA’s Current Recruitment and Retention Efforts and Proposed Expansion:

- ✓ We currently host in person gatherings at our summer conference in Bend, at our winter conference in Portland, and twice a year in each law school city (Portland, Salem, and Eugene).

With \$8,416 additional funding, we could:

- ❖ Expand the gatherings to the Juvenile Conference in May and a Criminal Conference in September. **\$3,558**
- ❖ Add events for LGBTQ defense attorneys and defense attorneys with disabilities, and partner with the law student versions of these groups. **\$805**
- ❖ Add a geographic location and rotate the locations, such as in southern Oregon, eastern Oregon, and the coast. **\$402**
- ❖ Increase law student involvement at the summer conference in Bend and winter conference in Portland by providing hotel rooms and mileage. **\$3,134**
- ❖ Pay for OCDLA law student membership for 45 students (15 students from each law school) each year. **\$517**

- ✓ Every September, OCDLA organizes an Introduction to Criminal Defense panel at each law school to introduce students to different defense practice areas – nonprofit public defense office, consortia, private attorney, juvenile attorney, appellate and we include a rural practitioner. OCDLA arranges for attorney volunteers, who are available to mentor law students, to speak to students about their work.

With \$10,207 additional funding, we could:

- ❖ Add a panel at the law schools in January to help law students with their criminal and juvenile defense job application materials, including resume review, cover letter editing, and interview preparation. **\$3,402**
- ❖ Add 2 more panel presentations at each law school throughout the year for specific practice areas or defense topics. These panels expose more law students to defense work and creates more networking and employment opportunities. **\$6,805**

- ✓ Every August, the OCDLA staff person for the DEI Committee and Law School Outreach attends the Oregon State Bar’s Opportunities for Law (OLIO) program for incoming first year law students. The OCDLA staff person participates on panels and speed networking events promoting defense work. Every January, the Chair of the DEI Committee participates in the OLIO Employment Retreat, reviewing materials and helping law students prepare for job interviews.

With \$227 additional funding, we could:

- ❖ Have an OCDLA staff representative table at the employment retreat to attract more students to defense work. **\$227**

- ✓ OCDLA provided \$10,000 in bar exam scholarships in May 2024 to support people who are seeking employment in public defense while they study for the bar exam. Bar exam study is two and a half months when the person is solely focused on study. The bar exam scholarship OCDLA provided this year helps offset some of the cost of living during bar exam study, though it does not fully cover the cost of living. The applicants must commit to working in public defense in Oregon to be eligible for the scholarship.

The \$10,000 was to be dispersed over the number of qualified applicants. The applicants must be of a diverse/historically underrepresented background and provide a description of their financial need. This year, OCDLA awarded 3 law students a scholarship of \$3,000 each. We expect there to be more applicants next year, so each applicant would receive less money if the pool of money remains \$10,000.

With \$11,500 additional funding, we could:

- ❖ Increase of pool of available scholarship money to \$20,000, thus providing more incentive for graduates to pursue public defense. This reflects an ask that OPDC match our \$10,000 so that we have \$20,000 to disperse in April/May 2025.
- ❖ For April 2026, we request OPDC to double their match – OCDLA will contribute \$10,000 and OPDC would contribute \$20,000.
- ❖ For April 2027, we request OPDC to triple their match – OCDLA will contribute \$10,000 and OPDC would contribute \$30,000.

Bar Exams scholarships and Summer Clerkship Stipends

A key takeaway from the SB 337 (2023) crisis plans is “[c]ompensation is a central concern given cost of living challenges. Any assistance in this area, ranging from increased pay to loan forgiveness/tuition reimbursement, housing stipends, etc. would be beneficial.”

OPDC should remove some of the barriers to joining public defense, thus making public defense competitive with other practice areas. In other words, OPDC should provide financial incentives to join public defense such as paying summer clerks and paying for a graduate’s cost of living while they study for the bar or pursue the Supervised Practical Pathway to the bar.

OPDC does not currently provide public defense entities with funding to cover the cost of a certified law student. Not receiving financial support for work during the summer is a disincentive for law students to work in and later join public defense. **OPDC should provide a cost of living stipend for certified law student clerks who work at a public defense entity during the summer.** This will entice and enable law students to work in public defense. Certified law students can represent clients and make court appearances under the close supervision of an attorney. A goal should be to have 15 students from each law school want to pursue public defense. Assuming the cost of living for a single person is \$3,000 per month, for 45 students, each working three months of work at a public defense entity, the cost to OPDC would be approximately \$405,000.

OPDC should provide incentives to every graduate who wants to enter public defense by fully covering the cost of living while the graduate studies for the bar exam or pursues the Supervised Practice Portfolio Examination (SPPE). Assuming that 15 graduates from each law school wish to enter public defense and assuming the cost of living for a single person is \$3,000 per month, the cost to OPDC would be approximately \$405,000. This does not include the cost of attorney supervision for the SPPE, which is necessary to fund.

The SPPE is an alternative to the bar exam whereby a graduate completes certain tasks/assignments under the supervision of an attorney, culminating in a portfolio of work submitted to the Board of Bar Examiners (BBX). The SPPE is a boon to the law school graduate and to public defense. SPPE reduces the barriers for students of diverse backgrounds entering law practice in Oregon. The SPPE more accurately tests a person's capability to practice law than the traditional bar exam. For public defense, instead of losing a summer clerk for three months after graduation while they study for the bar exam, the law graduate can continue their work representing clients and submit that work to be graded by the BBX. This would require having the funding for an attorney supervisor to supervise these graduates, in addition to supporting the graduate's cost of living for the summer.

For future development:

An untapped area and one that is ripe for recruitment and creating a pipeline early on is in community colleges and colleges. Those schools have criminal justice or criminal justice-related courses. OCDLA could connect with the professors to ask present to their class. OCDLA would include public defenders and investigators in the presentations to expose students to the range of career options in the criminal defense field. OCDLA already does this work through Portland State University's Explore the Law program. If the Commission would like OCDLA to expand our recruitment efforts to colleges, we will return with a plan and a cost to execute the plan.

Please direct any questions to:

Mae Lee Browning
Legislative Director, OCDLA
mlbrowning@ocdla.org
(310) 227-7659



Date: June 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

From: Jessica Kampfe, Executive Director

Re: Pre-Authorized Expense (PAE) Process Map
Accounts Payable (AP) Process Map

Nature of presentation: Briefing

Background: The Commission directed the Agency to prepare a white paper on pre-authorized expense and accounts payable processes. Attached are two maps detailing the workflow of pre-authorized expense requests and billings received from vendors and providers. The yellow highlighted areas are where the agency encounters issues that slow processing times.

PAE has added several new short-forms and continues to look for ways to speed up the pre-authorization process. Short forms continue to be processed within 2 business days. Providers can assist by ensuring they are using the most recent version of the forms.

Accounts Payable is in the process of hiring additional staff to assist in processing bills. Internal processes regarding Nintex have been updated and the division is now completely paperless. Providers can assist AP by ensuring that their bills are submitted timely, their calculations are accurate, and they are billing the correct rate.

OPDC continues to review the current processes and policies in place to speed up processing times.

Agency Recommendation: N/A

Fiscal Impact: N/A

Agency Proposed Motion: N/A

OPDC Pre-Authorized Expense Process Map

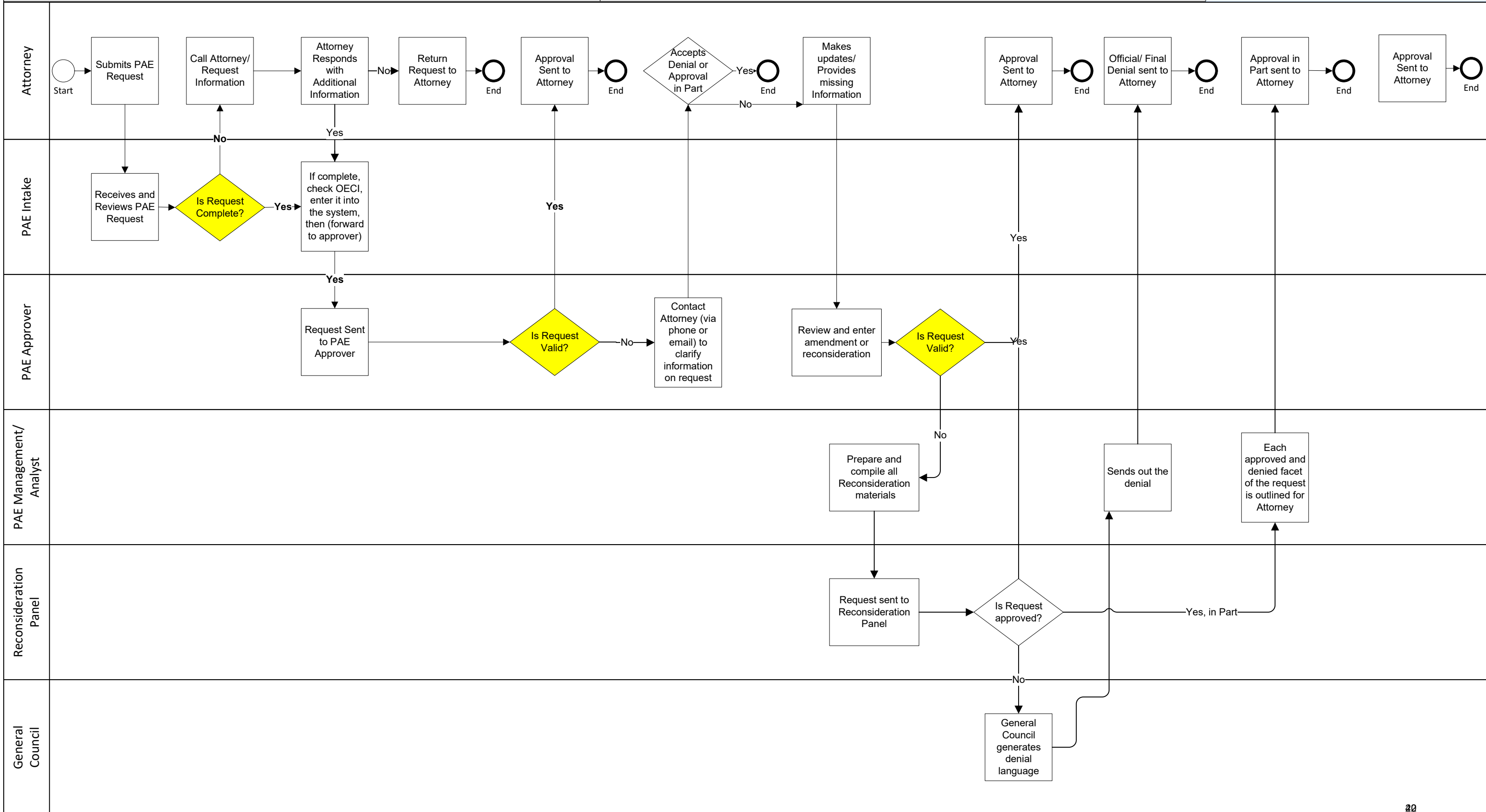


Intake Roadblocks

- Case Number Errors
- Incomplete Form
- Duplicate Requests
- Attorney Bar Number Errors
- Incomplete Provider Information

Approval Roadblocks

- Insufficient Documentation
- Lack of Justification
- Incomplete Service Description
- Missing Travel Information
- Duplicate Requests



OPDC ACCOUNTS PAYABLE PROCESS MAP

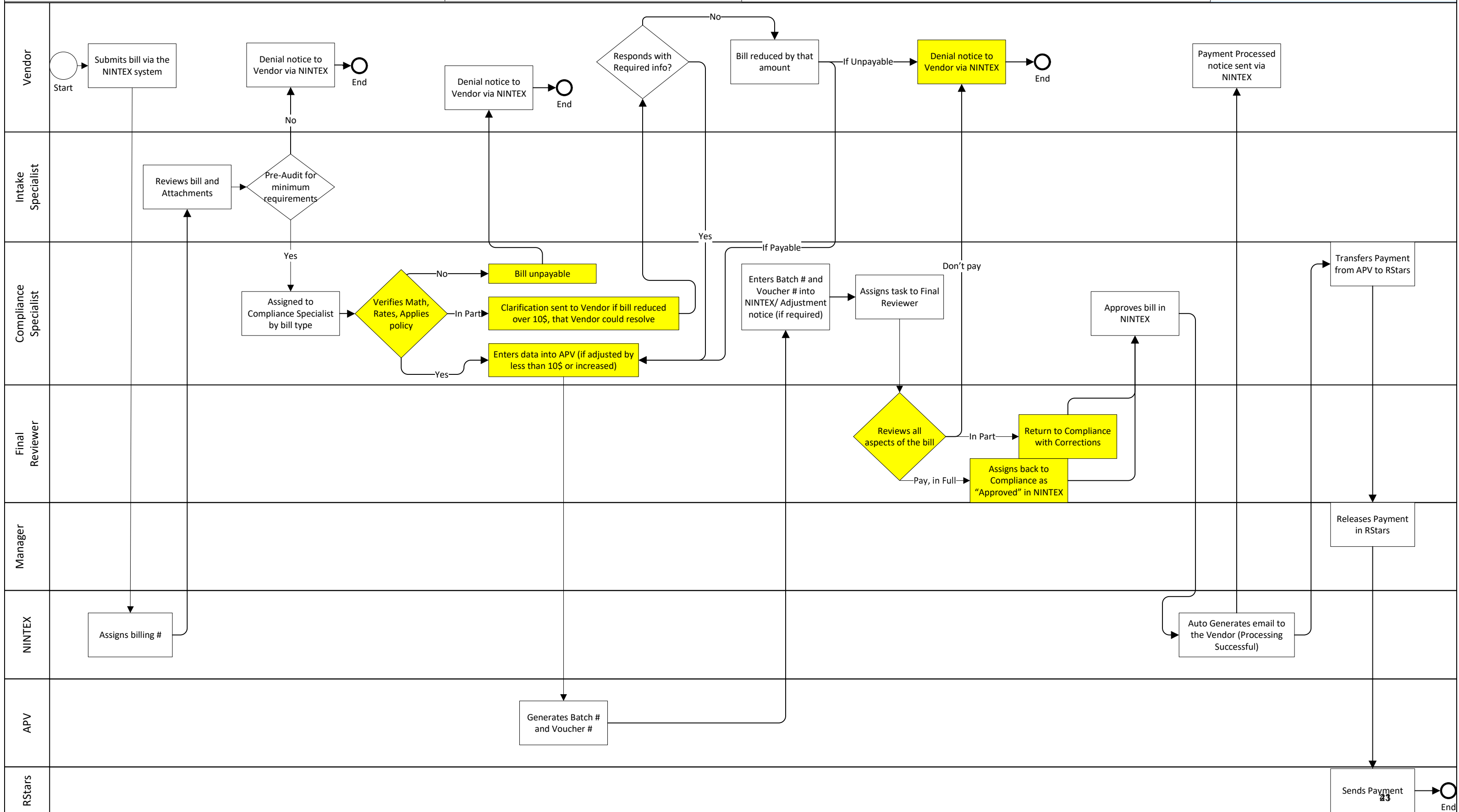


Accounts Payable Roadblocks Intake:
 Pre-Authorized Expense Authorization not submitted w/invoice
 Invoices missing essential information (i.e., remittance address, grand total, incomplete service dates)
 Bills submitted with incorrect invoice type

Accounts Payable Roadblocks Processing:
 Attorney with no appointment order in OECl
 Incorrect Rates
 Multiple Rates to apply and verify
 Submissions spanning multiple years
 Late Billings
 General calculation errors
 Billing under THIP, but not qualified

Accounts Payable Roadblocks Releasing Payment:
 Vendor on Dept. of Revenue's garnishment list and vendor profile is inactive
 Remittance address does not match RSTARS
 Business name on invoice does not match vendor profile in RSTARS

Bills are processed "first in, first out," by order received.
 Only non-policy adjustments are addressed via the Reconsideration Panel.
 All bills, including Pre-Authorized Expenses (PAE), are submitted through the Accounts Payable department.





**Oregon
Public
Defense
Commission**

Date: June 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

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

Re: Pre-Authorized Expenses (PAE) policy

Nature of Presentation: Action

Background:

On March 21, 2024, the Commission approved changes to the Pre-Authorized Expenses (PAE) policy. Since that time, the Policy Team has received both internal and external feedback. The changes reflected in the policy before the Commission today are due to that feedback. More work remains to be done and the agency continues to be committed to bringing the policy back on a quarterly basis. Over the next 90 days the agency will be reviewing additional suggestions and comments received prior to July 5, 2024. Any additional provider feedback should be submitted prior to that date.

The following sections of the policy have been changed:

- Language added to “Applicability” that supersedes any previous memorandum or version of the policy.
- Section 3.2 – Added Drug & Alcohol Evaluation to match ASAM/Drug & Alcohol Evaluation Short Form
- **Section 3.3 – NEW!** Associate/Research Counsel
- Section 3.4 – Added “Combination of equivalent experience language” as well as “Travel time is included in the hours authorized” to match investigation.
- Section 3.12 – Added “Travel time is included in the hours authorized” to match investigation.
- **Section 3.16 – NEW!** Testimony rates
- Section 3.17 – Added language to Grand Jury transcripts “When billed at the guideline rate. Transcript requests that exceed the guideline rate require pre-authorization.”
- Section 3.19 – Added language for “interpreters, investigators, mitigators, and/or case managers” for clarity with cancellations and missed evaluations and/or examinations.
- Section 3.26 – Added language regarding cleaning fees and incidentals. Added 50-mile requirement for lodging. Added non-commercial lodging rate of \$25.00 which aligns with Department of Administrative Services (DAS) policy.

Pre-Authorized Expense Policy - Commission Memorandum – June 13, 2024

Agency Recommendation:

Approve Pre-Authorized Expense policy changes.

Fiscal Impact:

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

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the Pre-Authorized Expenses (PAE) Policy effective July 1, 2024, which will supersede any prior memo or policy.



<u>POLICY NAME:</u>	Pre-Authorized Expenses	Number: 404.060.001
<u>DIVISION:</u>	Administrative Services	Effective Date: 7/1/2024
<u>RESPONSIBLE SECTION:</u>	Pre-Authorized Expenses Division	
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<u>APPROVED:</u>	Oregon Public Defense Commission	Approval Date: 6/13/2024

PURPOSE: Establishes eligibility, criteria, service types and time frames for which authorization of Pre-Authorized Expenses (PAE) (formerly Case Support Services) will be considered.

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

APPLICABILITY: This policy applies to all requests for authorization of Pre-Authorized Expenses (PAE) submitted to OPDC **and supersedes any previous memorandum or version of the policy.**

POLICY

SECTION 1 – IN GENERAL

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

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

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

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

OPDC shall review each request and determine whether the amount is necessary, reasonable, and properly payable from public defense funds. Pre-authorization does not guarantee payment of any fee or expense that is later determined to not be necessary or reasonable at the time the fee or expense was incurred. If the expense is determined to not be necessary or reasonable the invoice may be denied.

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

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

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

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

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

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

1.2 Responsibilities of Service Providers

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

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

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

1.3 Engaging Relatives for Compensable Services

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

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

1.4 Expenses Incurred Prior to Authorization

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

1.5 Rush Requests

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

1.6 Contact Information

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

SECTION 2 – REQUESTS FOR PRE-AUTHORIZATION OF EXPENSES

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

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

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

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

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

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

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

2.1 Authorization Effective Date and Expiration

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

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

2.2 Overhead Expenses

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

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

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

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

2.3 Amendment of Authorization

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

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

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

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2.4 Reconsideration

If a request for pre-authorization is denied or approved in part, it will be reflected on the Pre-Authorized Expense Authorization.

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

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

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

2.5 Confidentiality

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

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

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

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

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

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

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

SECTION 3 – EXPENSES THAT REQUIRE PRE-AUTHORIZATION

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

PERSONNEL:

3.1 Alternative Sentencing Evaluation (OPE)

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

3.2 American Society for Addiction Medicine (ASAM)/Drug and Alcohol Evaluation

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

3.3 Associate/Research Counsel

Counsel may seek funding for an attorney to serve as Associate/Research Counsel to assist with legal research or case preparation. Associate/Research Counsel does not serve as an expert, is not appointed to the case and does not provide direct client representation. Associate/Research Counsel may be approved in cases where it's reasonable and necessary, i.e., murder, juvenile waiver, cases subject to ORS 137.719 and 137.725, Jessica's Law cases or any case in which OPDC deems an Associate/Research attorney is reasonable and necessary. The temporary hourly increase program rates do not apply to Associate/Research Counsel approvals.

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3.4 Case Managers and Social Workers

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

- a Bachelor's or higher level degree in Social Work/Human Services or a closely related field; OR
- a Bachelor's degree in a field not closely related to Social Work/Human Services and one year of human services related experience (*i.e.*, work providing assistance to individuals and groups with issues such as being economically disadvantaged, unemployment, abuse and neglect, substance abuse, aging, disabilities, inadequate housing).
- **a combination of equivalent experience in related fields including lived experience in the criminal and juvenile systems. Providers requesting approval based on lived experience in recovery must have a minimum of three years documented sobriety and shall possess a Certified Recovery Mentor (CRM) or Peer Wellness Specialist (PWS) certificate. Other certificates or programs that offer similar training around peer support may also meet this criteria.**

Mileage and/or time spent transporting a client is not compensable. **Travel time is included in the hours authorized.**

3.5 Dual Diagnosis Evaluation

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

3.6 Expert Attorney Services

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

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

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

3.7 Forensic Experts

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

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

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- Use of Force

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

3.8 Interpreters and Assistive Communication Devices

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

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

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

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

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

3.9 Investigators

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

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

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

3.10 Medical Experts

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

3.11 Mental Health Professionals

Mental health professionals include psychiatric nurse practitioners, psychologists, psychiatrists, and neuropsychiatrists. OPDC will authorize an evaluation by such a mental health professional when it is reasonable and necessary to investigate, prepare, and present the case. OPDC will not authorize a mental health, psychological, neuropsychological, psychiatric, or neuropsychiatric

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evaluation as a substitute for another agency (e.g., Oregon Department of Human Services) fulfilling its obligation under statute, regulation, or court order to provide the service. When a mental health expert is required to testify, trial Counsel should accommodate those witnesses, and whenever possible, attempt to take their testimony out of order.

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

3.12 Mitigators

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

Travel time is included in the hours authorized.

3.13 Paraprofessional Services

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

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

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

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

3.14 Polygraph Examinations

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

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

3.15 Process Servers and Other Personnel to Secure Witnesses

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

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

3.16 Testimony rates

OPDC does not, as a matter of course, authorize differing rates for vendor services based upon whether a vendor testifies.

3.17 Transcription Services

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

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

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

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

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

Grand Jury transcripts are considered routine expenses and do not require pre-authorization **when billed at the guideline rate. Transcript requests that exceed the guideline rate require pre-authorization.**

3.18 Translation and Transcription Services

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

3.19 Cancellations and Missed Evaluations and/or Examinations

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

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

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

Note that section 3.17 does not apply to **interpreters, (see Routine Expense Policy Section 1.5), investigators, mitigators or case managers.**

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SERVICES:

3.20 Client Clothing

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

3.21 Lay Witness Travel Expenses

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

3.22 Travel-Related Compensable Time

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

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

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

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

Time spent transporting a client is not compensable.

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

3.23 Travel Expenses

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

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

Traveler must plan with establishments that offer General Services Administration (GSA) or commercial rates where available. GSA rates can be reviewed at <https://www.gsa.gov/travel/plan-book/per-diem-rates>. **If GSA rates are unavailable, written documentation from the hotel or car rental establishment should be requested when informed that a higher rate will be necessary due to a lack of availability at approved rates.** Documentation, with an explanation of what exigent

circumstances exist that required you to incur the expense without requesting pre-authorization, must be submitted with the invoice.

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

3.24 Airfare

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

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

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

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

3.25 Car Rental

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

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

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

3.26 Lodging

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

Lodging will be reimbursed for total cost of lodging, including taxes ~~and incidentals~~ using the Federal GSA per diem amounts. **OPDC will not pay for cleaning fees or incidentals unless the total cost is less than or equal to the applicable per diem rate. To be eligible to request lodging reimbursement, travel must be more than 50 miles one way from counsel's assigned jurisdiction. Assigned jurisdiction is defined as the county where Counsel's office is, as reflected in Counsel's business registration with the Secretary of State. OPDC is not responsible for any damages or additional fees beyond what is approved in the pre-authorized expense authorization.**

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

Non-commercial lodging **of \$25** may be claimed if it is more economical, and the traveler arranges for the accommodations. The traveler must submit a brief written explanation as to the types of alternate accommodations used unless it was specifically authorized.

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

3.27 Meals

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

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

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

3.28 Mileage

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

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

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

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

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

Publish: Internally & Externally



**Oregon
Public
Defense
Commission**

Date: June 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

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

Re: Routine Expenses policy

Nature of Presentation: Action

Background:

On March 21, 2024, the Commission approved changes to the Routine Expenses policy. Since that time, the Policy Team has received both internal and external feedback. The changes reflected in the policy before the Commission today are due to that feedback. More work remains to be done and the agency continues to be committed to bringing the policy back on a quarterly basis. Over the next 90 days the agency will be reviewing additional suggestions and comments received prior to July 5, 2024. Any additional provider feedback should be submitted prior to that date.

The following sections of the policy have been changed:

- Language added to “Applicability” that supersedes any previous memorandum or version of the policy.
- Section 1.5 (L) – added “in-custody”, removed “psychological” to cover any in-custody evaluation. Added additional examples of evaluations covered.
- Section 1.6 – added language that allows counsel to bill for mileage within their jurisdiction if it exceeds 50 miles round trip. Corrected language in section B. Mileage inadvertently changed at last update to match out of state mileage, but adversely effected eastern Oregon contractors.
- Section 1.14 – language added to clarify what types of cases are authorized for transcript costs.

Agency Recommendation:

Approve Routine Expenses policy changes.

Fiscal Impact:

None.

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the Routine Expenses Policy effective July 1, 2024, which will supersede any prior memo or policy.



<u>POLICY NAME:</u>	Routine Expenses	Number: 404.050.001
<u>DIVISION:</u>	Administrative Services	Effective Date: 7/1/2024
<u>RESPONSIBLE SECTION:</u>	Accounts Payable	
<u>APPROVED:</u>	Oregon Public Defense Commission	Approval Date: 6/13/2024

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

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

APPLICABILITY: This policy applies to all requests for reimbursement of routine expenses submitted to OPDC **and supersedes any previous memorandum or version of the policy.**

EXPENSES REIMBURSABLE WITHOUT PREAUTHORIZATION

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

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

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

Out of pocket expenses include the following:

1.1 Cleaning Costs for Client Clothing

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

1.2 Discovery

The custodian's actual cost of printing electronic discovery, but not more than a reputable private vendor would charge for making copies. In lieu of obtaining printed copies, OPDC will reimburse counsel for flash drives, CD's, or other storage devices up to \$10.00 without a receipt. In addition,

OPDC will pay for one copy for the client. Any additional copies must be preauthorized. OPDC will not pay premiums for expedited copies unless appointed counsel gives a reasonable explanation of why this situation could not have been avoided.

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

1.3 Fax

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

1.4 Grand Jury Transcripts

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

1.5 Interpreter Services:

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

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

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

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

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

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

1.6 Mileage

Routine mileage does not include travel between counsel’s office and the courthouse or other location where a hearing or judicial appearance is required unless the appearance or hearing is outside of counsel’s assigned jurisdiction or exceeds 50 miles round trip. Assigned jurisdiction is defined as the county where counsel’s office is, as reflected in counsel’s business registration with the Secretary of State.

Mileage out of the state of Oregon over 100 miles must be preauthorized. Allowable routine mileage is outlined in the sections below:

- A. The departure and destination city are required for mileage reimbursement.
- B. Qualifying case related attorney or attorney staff mileage that is out of county, or in a county that exceeds 50 **[100] (corrected last time to match 100 miles for out of state but adversely affected eastern Oregon contractors)** miles round trip, is routine mileage. This mileage applies specifically to actual location **of [“f” - typo corrected]** the travel and not the county assigned to the case.

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

1.7 Parking

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

1.8 Photocopies and Document Scanning

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

1.9 Postage

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

1.10 Process Service:

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

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

1.11 Records

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

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

1.12 Telephone calls

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

1.13 Witness fees/mileage

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

The following expenses are considered Routine:

1.14 Appellate Transcripts

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

When an Oregon circuit court or appellate court has made a determination that a person is eligible for appointed counsel at state expense and/or issued an order for appointment of counsel, in a case of the following case types, OPDC authorizes production of a transcript at state expense for use in an appeal or judicial review of a judgment or order in that case:

- **Criminal;**
- **Juvenile delinquency;**
- **Juvenile dependency;**
- **Termination of parental rights;**
- **Civil commitment;**
- **Post-conviction relief;**
- **Habeas corpus;**
- **Psychiatric Security Review Board; and**
- **State Board of Parole and Post-Prison Supervision.**

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

1.15 Court Ordered Psychological Examinations

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

1.16 Hourly Attorney Billings

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

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

Publish: Internally & Externally



**Oregon
Public
Defense
Commission**

Date: June 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

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

Re: Schedule of Guideline Amounts

Nature of Presentation: Action

Background:

On March 21, 2024, the Commission approved changes to the Schedule of Guideline Amounts. Since that time, the Policy Team has received both internal and external feedback. The changes reflected in the policy before the Commission today are due to that feedback. More work remains to be done and the agency continues to be committed to bringing the policy back on a quarterly basis. Over the next 90 days the agency will be reviewing additional suggestions and comments received prior to July 5, 2024. Any additional provider feedback should be submitted prior to that date.

The following sections of the policy have been changed:

- Language added in Introduction that supersedes previous memorandum or version of the document.
- Added additional case types to Tier 1 that were approved at the last commission meeting.
- Added Drug & Alcohol Evaluation to match ASAM/Drug & Alcohol Evaluation Short Form
- Added Associate/Research Counsel to schedule.
- Added additional language in “required credentials” for Case Manager to match Pre-Authorized Expense Policy
- Added File Conversion rate to schedule.

Agency Recommendation:

Approve Schedule of Guideline Amounts changes.

Fiscal Impact:

None.

Agency Proposed Motion:

Agency recommends the Commission approve the proposed changes listed above for the

Schedule of Guideline Amounts effective July 1, 2024, which will supersede any prior memo or policy.



PROCEDURE NAME:	Schedule of Guideline Amounts (Credentials included)	Number: 404.060.002
RESPONSIBLE SECTION:	Pre-Authorized Expenses Division	Effective Date: 7/1/2024

INTRODUCTION

This document covers rates paid by the Oregon Public Defense Commission to vendors for services provided in public defense cases **and supersedes any previous memorandum or version of the document.**

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

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

ATTORNEY FEES
 Effective date: 10/1/2023
 (Applies to all appointments not subject to the Unrepresented list)

Tier 1 – Murder, JLaw, Measure 11, AFEL, BFEL, Appeals, Habeas Corpus, Mandamus, Post Conviction Relief and all Juvenile cases	\$145/hr.
Tier 2 – All other case types	\$130/hr.

ALL OTHER SERVICE PROVIDERS

Service	Guideline Amount	Hourly Guideline	Required Credentials
Accountant	\$200/hr. - \$270/hr.		Accountant or forensic accounting degree
Alternative Sentencing Evaluation (OPE)	\$40/hr. \$450/flat rate	7-12 hrs. Flat rate must be approved and is not guaranteed.	
Arson Expert	\$160/hr. - \$515/hr.	20 hrs.	
American Society for Addiction Medicine (ASAM)/ Drug and Alcohol evaluation	\$435/flat rate		QMHA/QMHP/CADC certification
Associate/Research Counsel	\$145 or \$130 (Tier 1 or Tier 2)	20 hrs.	J.D.
Audio, Video, or Photo Analyst Digital Forensic Analyst	\$165/hr. - \$300/hr.	20 hrs.	
Ballistics/Firearms Expert	\$165/hr. - \$300/hr.	20 hrs.	AA or higher degree in related field or direct ballistics and or firearm investigation field experience

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

Service	Guideline Amount	Hourly Guideline	Required Credentials
Eyewitness/Memory Perception	\$165/hr. - \$325/hr.	10 hrs.	PhD or equivalent doctorate level degree
File Conversion	\$27/hr.	varies	
File Organization	\$45/hr.	10 hrs.	
Fingerprint Analyst Expert	\$245/hr.	20 hrs.	BA or BS in relevant field (forensic science, biology, criminal justice)
Forensic Expert Computer/Cellphone Analyst Expert	\$165/hr. - \$300/hr. \$2,175 (per unit for information extraction)	25 hrs.	BS in related field (computer science, computer forensics, cybersecurity)
Gang Expert	\$110/hr. - \$270/hr.	20 hrs.	PhD or engagement experience
Guardian Ad Litem	\$130/hr. (attorney) \$50/hr. (non attorney)	10 hrs.	Attorney non-attorney providers
Geneticist	\$45/hr. - \$320/hr. \$1,090 - \$3,265/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	Licensed Professional (MD or PhD)
Handwriting Analyst Expert	\$135/hr. - \$165/hr.	10 hrs.	Direct certification or BA/BS in forensic related field
Hematologist	\$380/hr.	10 hrs.	Licensed professional
Interpreter/Translator and Assistive Communication Devices (spoken languages)	\$57/hr. – certified \$42/hr. – registered \$34/hr. – non-certified		OPDS follows the State Court Administrator's rates and qualifications.

Service	Guideline Amount	Hourly Guideline	Required Credentials
Interpreter - American Sign Language – (OJD Certified)	\$74/hr. - certified	N/A	ORS 45.291 and ORS 45.275
Investigator	\$55/hr. -monolingual \$60/hr. -bilingual	Varies	DPSST certification
Jury Consultant	\$50/hr.	10 hrs.	
Law Student / Clerk	\$15/hr. - \$30/hr.	Varies	
Legal Expert/Consultant Attorney	\$155/hr.		JD
Linguist Expert	\$110/hr. - \$165/hr.	15 hrs.	
Litigation Support Expert	\$70/hr. - \$150/hr.	50 hrs.	
Mitigation Specialist	\$70/hr.	25 hrs.	Mitigators shall, at the minimum, be licensed by DPSST.
Neurologist (MD)	\$165/hr. - \$435/hr.	20 hrs.	Licensed professional
Neuropsychologist (PhD/ PsyD)	\$165/hr. - \$435/hr. \$2,180 - \$2,720/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	Licensed professional
Nurse	\$55/hr. - \$135/hr.	20 hrs.	Licensed professional
Nurse Practitioner	\$110/hr. - \$165/hr.	20 hrs.	Licensed professional
Occupational Therapist	\$220/hr.	20 hrs.	Licensed professional
Other Medically licensed Expert (MD, DO)	\$270/hr. - \$410/hr.	20 hrs.	Licensed professional

Service	Guideline Amount	Hourly Guideline	Required Credentials
Paraprofessional Services (Legal assistant, paralegal and secretarial services)	\$30/hr. - \$55/hr.	Varies	
Pharmacist	\$165/hr. - \$325/hr.	20 hrs.	PharmD
Physical Therapist	\$165/hr.	20 hrs.	Licensed professional
Plethysmography	\$315/hr.	20 hrs.	OHA certification
Polygrapher	\$435/flat rate - \$545/flat rate		DPSST certification
Process Server	\$35/per location	N/A	Service may be effectuated by the Sheriff pursuant to ORS 21.300, an investigator, or a process server.
Psychiatrist (MD)	\$160/hr. - \$380/hr.	20 hrs.	Licensed professional
Psychologist (PhD) (Certified forensic) Rate is based on years of experience	0-7 yrs. = \$190/hr. 8-15 yrs. = \$200/hr. 16+ yrs. = \$220/hr. Bilingual receives \$25/hr. more	20-25 hrs.	Licensed professional
Psychologist (PhD) (Non-certified forensic) Rate is based on years of experience	0-7 yrs. = \$165/hr. 8-15 yrs. = \$175/hr. 16+ yrs. = \$190/hr. Bilingual receives \$25/hr. more	20-25	Licensed professional
Radiologist	\$270/hr. - \$380/hr.	20 hrs.	Licensed professional
Redaction/Document processing	\$40/hr. - \$130/hr.	15 hrs.	

Service	Guideline Amount	Hourly Guideline	Required Credentials
Sleep Pathologist	\$165/hr. - \$520/hr. \$2,015 - \$6,050/flat rate	20 hrs. Flat rate must be approved and is not guaranteed.	Licensed professional
Social Worker (forensic)	\$80/hr. - \$110/hr.	10 hrs.	MSW licensed
Speech Therapist Expert	\$95/hr. - \$245/hr.	10 hrs.	Licensed professional
Toxicologist	\$165/hr. - \$545/hr.	20 hrs.	
Traffic Engineer Expert	\$110/hr. - \$190/hr. \$4,320/flat rate	10 hrs. Flat rate must be approved and is not guaranteed.	
Transcriptionist	\$4.25 per page (rate set by statute)	N/A	Must have completed a training program through a court reporting school, approved by National Court Reporting Association (NCRA)
Transcriptionist/Translation	\$34/hr. - \$74/hr.	20 hrs.	A forensic transcription translation will only be provided if the service is reasonable and necessary.
Use of Force Expert	\$95/hr. - \$325/hr.	30 hrs.	DPSST certification for law enforcement; JD for higher rate
Veterinarian	\$165/hr. - \$270/hr.	10 hrs.	Licensed professional

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

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

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

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



**Oregon
Public
Defense
Commission**

Date: June 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

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

Re: Archiving Outdated Policies and Memorandums on OPDC Website

Nature of Presentation: Briefing

Background:

Policies and Memorandums posted to the Oregon Public Defense Commission (OPDC) website have been reviewed to determine if they are expired or outdated. If the policy or memorandum was confirmed as expired or outdated, then the document has been scheduled to be archived from the OPDC website.

The following policies or memorandums will be archived by 6/28/2024:

Policies & Procedures -

- Memo Caseload Report (Non-PCRCP) Effective May 7, 2021
- Memo Caseload Report (Non-PCRCP) Effective February 19, 2021
- Memo Caseload Report (Non-PCRCP) Effective February 1, 2021
- Memo Caseload Report (Non-PCRCP) Effective January 11, 2021
- Memo Contractor Hourly Compensation Effective July 1, 2021
- Memo Appeal Caseload Report (Non-PCRCP)
- Memo Accounts Payable – Travel Reimbursements, Effective August 11, 2021
- Memo Non-Contract and Contract Capital Hourly Attorney Rate, Effective July 10, 2020
- Memo Mitigation NRE Policy Change, Effective October 2, 2020
- Memo Mitigator Billing Practices, Effective July 10, 2020
- Memo Non-Contract, Non-Capital Hourly Attorney Ratee Increase, Effective July 8, 2020

Pre-Authorized Expenses (PAE) -

- Memo Transcriptionist Rate Increase, Effective Sept 24, 2023
- Rate Increases and Schedule of Guideline Amounts
- Temporary Hourly Increase Policy, Effective July 1, 2023 (exp Sept 30, 2023)

- Rate Increases and Schedule of Guideline Amounts
- Temporary Hourly Increase Policy, Effective October 1, 2023 (exp November 30, 2023)

Mileage Rates

- 2017 Traveled Mileage Rate is \$0.535/mile
- 2018 Traveled Mileage Rate is \$0.545/mile
- 2019 Traveled Mileage Rate is \$0.58/mile



**Oregon
Public
Defense
Commission**

Date: June 13, 2024

To: Jennifer Nash, Chair
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Shannon Flowers, Trial Support & Development Manager

Re: Workgroup Recommendations for Role Definitions & Qualification Standards for Core Staff Roles

Nature of Presentation:

Briefing

Background:

In 2022, the American Bar Association and Moss Adams concluded that Oregon’s public defense caseloads were too high, preventing attorneys from consistently providing constitutionally competent and effective legal representation for all public defense clients. In 2023, OPDC partnered with Moss Adams to develop a plan to add attorney capacity to achieve caseloads for public defense attorneys that are consistent with the Oregon Rules of Professional Conduct. Moss Adams LLP, *Six-Year Plan to Reduce Representation Deficiency* (DRAFT Mar 15, 2024). Critical to that plan is shifting a portion of the work needed in many public defense cases away from the attorneys providing legal representation to other core roles that are qualified to perform that work. This shift would allow attorneys to focus their time and work on those tasks that only attorneys can perform, allowing attorneys to take a greater number of cases than they would without such support.

In spring 2024, OPDC convened workgroups comprised of public defense stakeholders to make recommendations regarding the definitions of these core, non-attorney roles and qualification standards for serving in them. These workgroups and their recommendations are among the first steps toward realizing the six-year plan and are directed toward standardizing roles, qualifications, and responsibilities and improving transparency in funding decisions across the public defense system.

Summary of Work

As noted, the recommended role definitions and qualification standards were developed in partnership between OPDC and subject matter experts from the public defense stakeholder community. OPDC sought out participants from a variety of fields within public defense, organizational structures, and localities to form workgroups centered around the support roles identified in the *Six-Year Plan*. The workgroups gathered state and national standards related to each of the core staff roles, which informed the development of definitions and qualification standards for use in Oregon. Each work session for each workgroup was recorded, and the recordings of those sessions are available on the agency’s website. Following is a brief overview of work done by each workgroup.

Legal and Administrative Support

The Legal and Administrative Support work group began by determining how many tiers of classification made the most sense for core staff roles in this field, emphasizing the ability to transition from a primarily administrative role to adoption of substantially more legal support based on experience. Qualification standards likewise increase as the workload shifts to legal work of greater complexity. Of primary concern for this workgroup was enabling effective and competent legal support without straying into the unauthorized practice of law. Many of the qualification standards were informed by the *Model Standards and Guidelines for Utilization of Paralegals* published by NALA - the Paralegal Association and were modified to fit the public defense system.

Investigators and Mitigation Specialists

The Investigator and Mitigation Specialist workgroup began by discussing the structure of qualification standards for both investigators and mitigation specialists. There were no known qualification standards for public defense investigators and very few for mitigation specialists. The group uniformly believed that merely having a license issued by the Oregon Department of Public Safety Standards and Training (DPSST) is not an indicator of quality or ability and that a more formal structure was needed to ensure quality and ability of the investigators and mitigation specialists in the context of public defense.

The group developed a structure for qualification standards that allows for easy entry into both professions with emphasis on ensuring adequate training and supervision for all types of cases. The group believed this structure provided quality assurance as well as providing all investigators support and community.

Case Managers

The Case Manager workgroup consisted of licensed social workers, case managers, and attorneys from a variety of geographical locations, working relationships with OPDC, and backgrounds and experience, including lived experience within the criminal court system. The group discussed the similarities and differences in how licensed social workers and case managers might perform in the case manager role. Ultimately, the group decided not to define separate roles and qualification standards for case managers and social workers, understanding that all case managers approach the work through the lens of their own background, education, and experience. Licensed social workers and other mental health professionals have a clinical perspective that can provide significant benefits for certain clients and cases but are not needed to provide valuable services in all situations. The group believed that both case managers with a social work license and those without must be included because they bring different but equally important experience to this work and that qualification standards needed to account for the value of lived experience.

One unresolved question is how a licensed social worker's mandatory reporting requirements interact with the attorney-client privilege. The group recommended the agency reach out to the Oregon Board of Licensed Social Workers for guidance. The agency is still attempting to answer that question. The group also discussed the importance of training for these positions and requested that the agency develop training and support for these positions.

Interpreters

The Interpreter workgroup consisted of interpreters working in a diverse collection of languages with a variety of qualifications and certifications. Also included was a bilingual legal assistant from a public defender office and a consortium attorney with significant experience working with non-English speaking clients and interpreters. The first meeting began with a discussion of the current interpreter shortage and access-to-language crisis, as well as the impediments to interpreters accepting work for Oregon public defense attorneys over competing work from court systems or other industries. The group then turned to a robust conversation about the importance of having qualified legal interpreters, and the barriers that rigid certification requirements create for indigenous or less diffuse languages that often lack standardized

proficiency exams. The group agreed that, when possible, certified interpreters were preferred and necessary for adequate client communication in legal contexts. However, given the shortage of certified interpreters and the lack of available certification for many languages, the group decided on minimal qualifications OPDC should require for any non-certified interpreter. One open question is whether a criminal background check should be part of the minimum qualifications. This is something that the Oregon Judicial Department requires for interpreters but could create barriers to non-citizen language interpreters.

The group agreed that affiliation with an approved organization could substitute where there are no certifications available, so long as that organization has appropriate, documented qualification and training policies in line with these qualifications. A recurring topic of conversation, however, was concern over the use of conglomerate language service providers lacking clear standards and equitable practices for employment. The workgroup stressed that OPDC should adopt clear requirements for any language services or collectives to ensure they require sufficient training and experience of their interpreters as well as screen for exploitive employment practices where possible.

Technological Support

The Technological Support work group discussed the overlapping roles in the field and difficulty in narrowly defining qualifications and standards for those operating in the Public Defense realm, especially given the variety of law office structures interfacing with the Oregon Public Defense Commission. The group decided to use loose definitions, qualification requirements, and performance standards to recognize the flexibility needed in order to support that variety.

Certified Law Students and Provisional Licensees

This workgroup consisted of attorneys currently or previously at non-profit offices, law firms, consortia, or solo practice. Several supervise Certified Law Students, were CLS's themselves, and many plan or hope to supervise Provisional Licensees in the new Supervised Provisional Practice Exam pathway to bar admission. The group discussed what requirements should be placed on the participants and supervisors in these programs. There was a strong desire to minimize barriers to entry for Provisional Licensees, to ensure equitable access to law students who might not have been able to take on the typically unpaid work to gain public defense experience before beginning the program. Two significant questions remain for this group—expected workload/caseloads for participants as well as appropriate attorney-to-CLS or Licensee ratios to ensure adequate supervision and training.

Agency Recommendation:

OPDC staff will evaluate the workgroup's recommendations and report back to the commission at a later date with a plan for the implementation of qualification standards for the '25-'27 biennium.

Fiscal Impact:

In development.

Agency Proposed Motions:

None.



Workgroup
Recommendations
for
Role Definitions &
Qualification Standards
For Core Staff Roles

June 2024

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Workgroup Participants

The Oregon Public Defense Commission (OPDC) appreciates the time and expertise public defense stakeholders contributed in workgroups OPDC convened to define non-attorney roles within the public defense system and develop qualification standards for these roles.

Legal and Administrative Support

Kevin Hupy, Oregon Public Defense Commission
Aimi Vansyckle, Oregon Public Defense Commission
Megan Doak, Oregon Public Defense Commission
S. Amanda Marshall, Marshall Advocacy Center (MAC Law)
Bobi Jo Ousnamer, Kaitlin Kelly Law
Dawn Hartwell, Hart 2 Hart Investigations
Beth Knudson, Arneson Stewart & Styarfy
Janine Hollingsworth, Los Abogados
Kelly Davidson, Metropolitan Public Defender Services, Inc
Nathan Law, Cornerstone Law Group

Investigators and Mitigation Specialists

K.O. Berger, Oregon Public Defense Commission
Troy Hartwell, Investigator
Carla Curran, Member of the Public
Carin Connell, Mitigation Specialist
Laura Rittall, Mitigation Specialist
Krystal Daniel, Investigator
Kristina Mann, Office of Public Defense Commission
Alice Ellis Gaut, Mitigation Specialist
Cameron Taylor, Attorney
Spencer Todd, Attorney
James Comstock, Investigator and Mitigation Specialist
Steve Wilson, Investigator

Case Managers

Annie Borton, Oregon Public Defense Commission
Jordon Huppert, Oregon Public Defense Commission
Dana Brandon, Senior Parent Child Representation Program (PCRP) Case Manager Administrator
Shannon Getman, PCRP Case Manager Administrator
Tara Prince, Case manager
Patrick Fenner, Case manager
Melissa Riddell, PCRP attorney
Lee Wachocki, Criminal attorney
Mikayla Avery, PCRP case manager social worker
Rebecca Menda, Social worker

Interpreters

Christine Breton, Oregon Public Defense Commission
Adrian Arias, Spanish Interpreter
Cameron Coval, Executive Director, Pueblo Unido
Melanie Deleon, ASL Interpreter, Coordinator of Transcribing & Interpreting Services at Portland Community College
Helen Eby, Spanish Interpreter
Amine El Fajri, Arabic Interpreter
Barbara Hua Robinson, Mandarin Interpreter
John Schlosser, Criminal Attorney
Sonja Trigo, Spanish Interpreter
Puma Tzoc, Maya K'iche' Interpreter, Coordinator for Collective of Indigenous Interpreters of Oregon
Esmeralda Zavala, Legal Assistant

Technological Support

Jordon Huppert, Oregon Public Defense Commission
Kevin Hupy, Oregon Public Defense Commission
Wes Baker, Oregon Public Defense Commission
Cody Wingard, Oregon Public Defense Commission
Steve Gorham, Marion County Association of Defenders
Griffin Thomas, Public Defense Services of Lane County
Russ Bretan, Court Discovery Management
Allyx Pershing, Oregon Justice Resource Center
Lindsay Carlson, Public Defender of Marion County

Certified Law Students and Provisional Licensees

Christine Breton, Oregon Public Defense Commission
Kevin Hupy, Oregon Public Defense Commission
Jo Perini-Abbot, Professor of Practice and Director of the Center for Advocacy, Lewis & Clark Law School
Jana Baker, CLS/SPPE Applicant, Public Defender of Marion County
Spencer Todd, Attorney at Law
Connor McDermott, Columbia Gorge Defenders
Shannon Wilson, Executive Director, Public Defender of Marion County
Grant Cole, Chief Attorney and Manager of Training, Metropolitan Public Defender, Inc
Kim Davis, Misdemeanor Attorney Manager, Multnomah Defenders, Inc.

Legal and Administrative Support

Role Definitions

Office Support Staff

Office Support Staff are administrative personnel within a law office who do not meet the qualification standards for either the Legal Assistant or Paralegal classifications. The Office Support Staff role may cover several discrete roles within a firm supporting an Attorney providing Public Defense services, some of which may be entry-level and others of which may require specialized knowledge and experience that are not governed by these Standards. Tasks that may be performed by personnel in the Office Support Staff role include:

- Routine Discovery communication, intake, logging, and filing
- At the discretion of the law office, engage in routine client communication, such as assisting with client intake and hearing reminders.
- Manage calendars for the attorney and other office staff

This is not intended as an exhaustive list, however, tasks explicitly associated with the Legal Assistant and/or Paralegal roles under these standards should not be performed by Office Support Staff without those qualifications.

Legal Assistant

Legal Assistants carry a combined administrative and legal support role within a law office, and they frequently interface more directly with clients, system partners, and courts. Legal Assistants have obtained experience working in the legal field and may leverage that experience to assist attorneys with the following tasks in addition to administrative tasks associated with Office Support Staff:

- Operate as a point of contact with clients, system partners, the court, and opposing counsel on routine matters not requiring legal research or discretion, or as directed by the attorney
- Draft routine legal documents requiring minimal legal analysis for attorney approval
- Format, edit, and file documents with the Court, subject to attorney approval
- Prepare Pre-Authorized Expense requests, subpoenas, and exhibits, as directed by an attorney

Paralegal

A Paralegal is a person qualified by education, training, or work experience who is employed or retained by a lawyer, law office, corporation, government agency, or other entity who performs specifically delegated substantive legal work for which a lawyer is responsible.

Paralegals leverage their substantial experience and training to assist attorneys with a wider range of tasks that are likely to require them to exercise professional judgment and research. In addition to the tasks associated with Office Support Staff and Legal Assistants, Paralegals may:

- Conduct client interviews and maintain general contact with the client after the establishment of the attorney-client relationship, so long as the client is aware of the status and function of the Paralegal, and the client contact is under the supervision of the attorney
- Locate and interview witnesses, so long as the witnesses are aware of the status and function of the Paralegal
- Conduct statistical and documentary research for review by the attorney
- Educate clients on upcoming procedural requirements
- Redact discovery
- Under the supervision of an Attorney, draft documents and correspondence requiring substantial legal research or discretion
- Author and sign letters, so long as the Paralegal's status is clearly indicated and the correspondence does not contain independent legal opinions or legal advice
- Review, summarize, and highlight significant events in discovery
- Assemble trial notebooks
- Research and identify Expert Witnesses
- Ensure Expert Witnesses have relevant materials as needed, as determined or approved by the Supervising Attorney
- Exercise professional judgment about how to pursue tasks delegated by an Attorney
- Attend court or administrative hearings and trials with the attorney

Qualification Standards

To qualify for funding by OPDC, persons serving in the following roles must meet at minimum the following standards:

Office Support Staff

1. Must be at least 18 years old
2. Acknowledges an awareness of the types of cases handled by the law office and the types of information to which they may be exposed
3. Understands the obligation, as a member of the defense team, to protect privileged communications and confidential information related to the representation of a client or to a prospective client.

Legal Assistant

In addition to the requirements for the Office Support Staff role:

1. One of the following:
 - a. One year experience working in the legal field
 - b. Three months in-house training
2. Demonstrates an understanding of the basic procedural framework of the types of public defense cases handled by the law office
3. Can produce a portfolio of routinely drafted motions and other documents
4. Has observed at least five hours of court, of which at least one hour is of a substantive hearing

Paralegal

In addition to the requirements for the Office Support Staff role, meets one of the following:

- 1) Successful completion of a Paralegal Certificate examination from a National Association such as NALA, The Paralegal Association or National Federation of Paralegal Associations
- 2) Graduation from an ABA-approved Paralegal program
- 3) Graduation from an accredited Paralegal program requiring not less than 60 semester hours of study
- 4) Graduation from a Paralegal program and six months of in-house training
- 5) Bachelor's degree in any field and six months of in-house training
- 6) Three years of law-related experience including six months of in-house Paralegal training
- 7) Two years of in-house Paralegal training

Investigators and Mitigation Specialists

Role Definitions

Fact Investigator

A non-lawyer legal professional who guides and executes the defense investigation of a client's case. Defense fact investigators do substantive work that requires broad knowledge of court proceedings, court rules, and Oregon state law. A defense fact investigator's review of case evidence and discovery requires an understanding of government investigative procedures and regulations, a familiarity with forensic disciplines, the aptitude to stay current with advancements in technology, and an ability to ascertain factual discrepancies. They may:

- Interview witnesses identified by the police investigations
- Identify, locate, and interview witnesses identified by the defense
- Gather evidence by
 - Recording witness statements,
 - Conducting field investigation,
 - Writing reports,
 - Photographing the crime scene,
 - Gathering records and online materials.
- Build rapport with the client and bridge any communication gaps between the attorney and the client.

They should be educated in baseline mitigation investigation and approach each case with the pursuit of uncovering possible mitigating circumstances. A defense investigator's preservation of evidence is critical to trial preparations, as, unlike the attorney, they can testify to lay the foundation for that evidence, as well as explain case details and assist with impeachment of witnesses. The use of a defense investigator is not limited to criminal cases; they are also important advocates in juvenile dependency and delinquency cases and any other proceedings that affect a client's liberty or other constitutionally protected interest. National standards for defense attorneys require investigation in every case before advising a client to accept a plea or go to trial, and national standards suggest a ratio of one investigator for every three attorneys.

Mitigation Specialist

A non-lawyer legal professional who is an expert at gathering and investigating historical data, client's background, personal history and circumstances that could potentially mitigate or lessen their culpability in a case. The background research done by a mitigation specialist includes investigation into a client's formative experiences, including, but not limited to, the following:

- Traumas
- Cognitive functioning
- Mental health
- Physical health
- Addiction
- Religious background
- Traumatic brain injuries
- Substances/toxin exposure in utero and through life
- Genetics
- Environmental factors
- Family health histories

A mitigation specialist assists the attorney by documenting these factors through records and interviews to integrate this information into the client's defense. Like fact investigators, mitigation specialists preserve evidence and may testify to lay the foundation for the information that they gather—something that the attorney cannot do. Mitigation Specialists must generally have previous experience in fact investigation and shall, at a minimum, be licensed by the Department of Public Safety Standards & Training, possess a bachelor's degree or greater, and have at least two years in a related field. The goal of a mitigation specialist is to present a comprehensive and compelling portrait of the client as a person.

Qualification Standards

Fact Investigator

To qualify for funding by OPDC, Fact Investigators providing services for the following case types must meet at minimum the following Standards:

1. Criminal/Juvenile Misdemeanor and Lesser Felony Post-Conviction Relief and Juvenile Post-Adjudication Relief cases
 - a. Licensed by Department of Public Safety Standards & Training (DPSST).

- b. New Investigators (with less than 1 year of criminal defense investigation experience or less than 1500 hours of criminal defense investigation experience) must be assigned a mentor through the OPDC investigator mentorship program and must follow the requirements of that mentorship program.
 - c. One of the following:
 - i. Submission of a writing sample or
 - ii. Certification from the investigator's employer that a writing sample was required for employment
 - d. Complete the OPDC-approved misdemeanor and lesser felony training program for investigators, when available. If doing investigation on juvenile cases, the investigator also must complete the OPDC-approved juvenile training, when available. If doing Post-Conviction Relief or Juvenile Post-Adjudication Relief cases, complete the OPDC-approved training, when available.
2. Criminal/Juvenile Major Felony (excluding waiver cases), Dependency, Termination of Parental Rights, Civil Commitment, and Post-Conviction Relief cases (excluding Murder, Jessica's Law, Waiver and any equivalent life-sentence cases)
- a. Licensed by DPSST
 - b. Complete mentorship program requirements, if applicable, and file necessary paperwork.
 - c. Have completed 1500 hours of public defense investigation verified by mentor or supervisor. Hours should include both fact investigation and elementary mitigation specialist tasks.
 - d. Complete OPDC-approved major felony investigator training program, when available. If handling juvenile cases, the investigator must complete the OPDC- approved juvenile major felony training, when available. If the investigator is handling PCR or JPAR cases, the investigator must complete OPDC- approved training, when available.
 - e. Complete OPDC-approved report writing training program.
 - f. An investigator who has not been previously certified by OPDC and has more than 2 years or more than 3000 hours of criminal defense investigation experience will be certified at this level. Before taking any cases, the investigator must complete any OPDC-approved trainings for misdemeanor/lesser felony investigations, when available or otherwise provide 3 letters of recommendation from persons who know the investigator's work quality and work with an assigned mentor as a resource for 200 hours.

- g. Investigators who do not meet these qualification standards can be approved by OPDC to work on cases above their qualification level with supervision from an investigator who does meet the qualification standards.
3. Specialization Certification: Trial Level and Post-Conviction Relief Murder, Jessica's Law, Waiver, and any equivalent life-sentence cases.
- a. Fact investigation specialization:
 - i. Apply for and be accepted into mentorship program for specialization certification.
 - ii. Complete all the requirements of the mentorship program.
 - iii. Complete the OPDC-approved specialization training program for fact investigators, when available.
 - iv. Have completed more than 5000 hours of public defense investigation on major felony level and submit three letters of recommendation from person who have had recent (within one year) experience with the investigator's work.
 - v. Get approval for specialization certification from group of investigative mentors, as selected by OPDC.
 - vi. Maintain a DPSST license.
 - vii. Investigators who do not meet these qualification standards can be approved by OPDC to work on cases above their qualification level with supervision from an investigator who does meet the qualification standards.
 - b. Juvenile specialization
 - i. Apply for and be accepted into mentorship program for specialization certification.
 - ii. Complete all the requirements of the mentorship program.
 - iii. Complete the OPDC-approved specialization training program for juvenile specialization, when available.
 - iv. Have completed more than 5000 hours of public defense investigation on major felony level and submit three letters of recommendation from person who have had recent (within one year) experience with the investigator's work.
 - v. Get approval for specialization certification from group of juvenile investigator mentors, as selected by OPDC.
 - vi. Maintain a DPSST license.
 - vii. Investigators who do not meet these qualification standards can be approved by OPDC to work on cases above their qualification level with

supervision from an investigator who does meet the qualification standards.

4. Mentorship certification
 - a. Maintain DPSST license.
 - b. Apply for and be accepted into the mentorship program.
 - c. Complete the OPDC-approved mentorship training program.
 - d. Get approval from OPDC Trial Support and Development team.

Mitigation Specialist

1. New mitigation specialist (less than 1 year of criminal defense investigation experience or 1500 hours of criminal defense investigation experience) must complete step one of the fact investigator qualifications.
2. Criminal/Juvenile Major Felony (excluding Waiver cases), Dependency, Termination of Parental Rights, Civil Commitment, and Post-Conviction Relief cases (excluding Murder, Jessica's Law, Waiver and any equivalent life-sentence cases)
 - a. Investigators interested in a mitigation specialist specialization qualification must satisfy step 2 (a-e) of the Fact Investigator qualifications.
 - b. Prior to applying for mitigation specialization, the investigator wanting to become a Mitigation Specialist must complete the OPDC-approved mitigation training program, when available. If handling juvenile cases, the investigator must complete the OPDC-approved juvenile mitigation training, when available. If the investigator is handling PCR or JPAR cases, the investigator must complete the appropriate OPDC-approved mitigation training, when available.
 - c. A mitigation specialist who has not previously been certified by OPDC and has more than 2 years or 3000 hours of criminal defense mitigation experience will begin at this level, unless otherwise approved by OPDC. Before taking any cases, the mitigation specialist must complete the OPDC-approved major felony training and provide 3 letters of recommendation from persons who know the mitigation specialist's work quality and work with an assigned mentor as a resource for 200 hours on appointed cases.
3. Specialization Certification: Post-Conviction Relief Murder, Jessica's Law, Waiver, and any equivalent life-sentence cases.
 - a. Mitigation specialist specialization:
 - i. Have a bachelor's degree or have five years of relevant experience outside of the 5000 hours of public defense investigation required in

subsection iv, or some combination thereof. OPDC shall be the sole arbitrator of whether the person meets these requirements.

- ii. Apply for and be accepted into mentorship program from specialization certification and complete all requirements.
 - iii. Have completed the OPDC-approved mitigation training prior to submitting application.
 - iv. Have completed more than 5000 hours of public defense investigation on major felony level and submit three letters of recommendation from person who have had recent (within one year) experience with the investigator's work.
 - v. Submit a recent writing sample.
 - vi. Get approval for specialization certification from group of mitigation specialist mentors as selected by OPDC.
 - vii. Maintain a DPSST license.
 - viii. Mitigation specialists who do not meet these qualification standards can be approved by OPDC to work on cases above their qualification level with supervision from a mitigation specialist who does meet the qualification standards.
- b. Juvenile specialization
- i. All of requirements i, ii, and iii for the Mitigation Specialist specialization above.
 - ii. Complete the OPDC specialization training program for juvenile specialization, when available.
 - iii. Have completed more than 5000 hours of public defense investigation on major felony level of which half (2500) are on juvenile cases and submit three letters of recommendation from person who have had recent (within one year) experience with the investigator's work.
 - iv. Submit a recent writing sample.
 - v. Get approval for specialization certification from group of juvenile mitigation specialist mentors, as selected by OPDC.
 - vi. Maintain a DPSST license.
 - vii. Mitigation specialists who do not meet these qualification standards can be approved by OPDC to work on cases above their qualification level with supervision from a mitigation specialist who does meet the qualification standards.
4. Mentorship certification
- a. Maintain DPSST license.
 - b. Apply for and be accepted into the mentorship program.

- c. Complete the mentorship training program.
- d. Get approval from OPDC.

Case Managers

Role Definition

Case Managers play an integral role in interdisciplinary public defense representation. They can be assigned in both juvenile and criminal cases at the request of the appointed attorney. These roles offer a social work perspective to the interdisciplinary defense team and provide client-driven advocacy at the direction of the assigned attorney.

Essential functions of these roles:

- Practice client engagement strategies to build trust and rapport with clients.
- Provide direct service focused work in the client's community.
- Support clients in identifying strengths and barriers.
- Identify client needs and develop case plans driven by client goals and case strategy.
- Connect clients with services and community resources.
- Gather information to strengthen case advocacy and court preparation.
- Collaborate with system partners and community providers to support client goals.
- Licensed Social Workers or other mental health professionals may approach this work from a clinical perspective offering clinical assessment/consultation/education when appropriate.

Qualification Standards

Minimum Standards:

To qualify for funding by OPDC, persons serving as a Case Manager must meet the following minimum standards:

1. One of the following:
 - a. A bachelor's or higher-level degree in Social Work, Human Services, or a closely related field;
 - b. A bachelor's degree in a field not closely related to Social Work or Human Services plus two years of human services related experience (e.g., work providing advocacy assistance to individuals and groups experiencing issues around poverty, employment, abuse and neglect, substance abuse,

- aging, disabilities, prevention, health, cultural competencies, inadequate housing, etc.); OR
- c. A combination of equivalent experience and education in related fields:
 - i. Lived experience in the criminal and juvenile systems may qualify as equivalent experience;
 - ii. Applicants applying based on lived experience in recovery must have a minimum of three years documented sobriety. Such an applicant is also required to be or become within 6 months a Certified Recovery Mentor (CRM) or Peer Wellness Specialist (PWS). Other certificates or programs that offer similar training around peer support may also meet this criteria.
 2. Access to a reliable vehicle and valid driver's license and applicable insurance;
 3. Submit to a background check.

Preferred Criteria

1. Social Work License issued by the Oregon Board of Licensed Social Workers or working toward licensure.
2. Familiarity and/or lived experience in the criminal and juvenile justice systems
3. Familiarity with trauma-informed care and the impacts of vicarious trauma
4. Familiarity with mental illness and drug addiction and appropriate treatment plans
5. Experience working with diverse client populations and culturally responsive practice
6. Knowledge of local community services and resources
7. Bilingual language proficiency
8. Ability to access jails and other secure facilities, with exceptions possible for those with lived experience.

Interpreters

Role Definitions

Interpreters convert information from one spoken or signed language to another. Their primary role is to facilitate clear and accurate communication in real time between parties who speak different languages.

Qualification Standards

It is the lawyer's affirmative responsibility to ensure the client understands the lawyer's communications, and that the lawyer understands the client's communications. This obligation is especially critical when using uncertified interpreters in client communication.

Minimum Standards

1. Language assessment for both native and target language (where available)
2. Language-neutral training and orientation
3. Knowledge of interpretation ethics
4. Participation in relevant workshops, trainings, education

Preferred Criteria

1. Certified
 - a. Oregon Judicial Department Certification: passed written, oral, and ethics examinations, orientation, a criminal history check, court observation, and application process
 - b. Certified by other State Court
 - c. Certified in Federal Court
 - d. Professionally Qualified in Federal Court
2. Registered
 - a. Oregon Registered Court Interpreter Credential
 - b. Found Language Skilled in Federal Court
 - c. Employed by OPDC-approved language service provider

Tech Support

Role Definition

Tech Support Staff are administrative personnel utilized by a law office who function in one or more of the following roles:

IT Systems and Software

- Managing and predicting hardware and software needs
- Evaluating emerging technologies for use in the law office
- Assuring that needed information is accessible either physically or remotely.

Data Security

- Ensuring the security and accessibility of a law office's data, including:
 - Discovery
 - Client information
 - Practice aids
 - Research tools
 - Case management information
- Meeting the Oregon State Bar requirements for information storage.

User Support and Training

- Integrating State software as needed for:
 - Case management
 - Case reporting
 - Billing
- Utilizing available technologies to further advocacy
- Collaborating with defense experts.

Issue Resolution

- Responding to Attorney and Core Staff reports of operational issues relating to technology
- Triaging and managing technical issues.

New Technology Integration

- Training attorneys and their Core Staff to use the technology within the law office including:
 - IT safety
 - Video conferencing and remote appearance systems used by the firm, the court, and/or OPDC, such as Teams, Webex, Zoom, etc.
 - Software necessary for viewing discovery or investigation including videos, and
 - Any other training that is necessary to meet the technology needs of the law office.

Qualification Standards

To qualify for funding from OPDC, persons serving in any Technological Support role must meet the following minimum standards:

1. Must be at least 18 years of age.
2. Acknowledges an awareness of the types of cases handled by the law office and the types of information to which they may be exposed.
3. Understands the obligation, as a member of the defense team, to protect privileged communications and confidential information related to the representation of a client or to a prospective client.
4. Familiar with the software needs of the law office within the broader legal community.
5. Must possess a personality that can patiently work with employees at various levels of technology familiarity and, if the problem in question cannot be readily or rapidly solved, have the ability to document the issue and involve technical contractors.
6. One year of experience in the field of information technology; or equivalent education; or equivalent experience.

Provisional Licensees

Role Definition

Provisional Licensee

A Provisional Licensee (PL) has graduated from an ABA-accredited law school, has not been admitted to the Oregon State Bar, but has been issued a Provisional License through the Supervised Practice Portfolio Examination (SPPE) program. PLs are subject to the same court appearance rules as Certified Law Students, but have met the curriculum, employment, good moral character and fitness, and professional liability insurance requirements of the SPPE program.

PLs may only appear on behalf of a client with the client's informed, written consent as well as approval by the Supervisor and the Court. Client consent must be filed with the Court as a part of the case record. PLs may not appear without a Supervisor in civil commitment proceedings, in any case where the client may be subject to a felony conviction, or in any case where a juvenile is facing adjudication for an act that if committed by an adult would constitute a felony.

Supervising Attorney

An active member of the Oregon State Bar who has committed to supervising a Provisional Licensee under SPPE Rules 2.4-2.5; or an active member of the Oregon State Bar to whom the Supervising Attorney has delegated responsibility under SPPE Rule 5.4.

Qualification Standards

Provisional Licensee

1. Meets all requirements under SPPE Rule 2.1
2. Has been accepted by the Oregon State Bar into the Supervised Practice Portfolio Examination Program
3. Has secured employment with an organization, firm, or attorney who provides Court Appointed Attorney services

Supervising Attorney

1. Meets Qualifications of Supervising Attorneys under SPPE 2.4
2. Submitted application form for Supervising Attorneys to Oregon State Bar

3. Has practiced criminal defense or juvenile delinquency/dependency for at least 3 years, corresponding with Provisional Licensee's practice area:
 - Criminal: Major Felony
 - Delinquency: Juvenile Major Felony
 - Dependency: Termination of Parental Rights

Certified Law Student

Role Definition

Certified Law Student

Certified Law Students are law students or recent law school graduates certified under the Oregon Supreme Court Rules on Law Student Appearances (RFA 13.05-13.30) to represent clients on behalf of a public defender office or attorney in private practice. They have not been admitted to the bar, do not have a bar number, and are at all times subject to supervision by a Supervisor.

Certified Law Students may only appear on behalf of a client with client's informed, written consent as well as approval by the Supervisor and the Court. Client consent must be filed with the Court as a part of the case record. Certified Law Students may not appear without a Supervisor in civil commitment proceedings, or for any case where client may be subject to a felony conviction, or in any case where a juvenile is facing adjudication for an act that if committed by an adult would constitute a felony.

Supervising Attorney

Member of the Oregon State Bar personally assuming professional responsibility for the student's guidance in any work undertaken and for supervising the quality of the student's work (RFA 13.30)

Qualification Standards

Certified Law Student

1. Certified by State Court Administrator under Oregon Supreme Court Rules on Law Student Appearances

Supervising Attorney

1. Member of the Bar in good standing who has been actively engaged in the practice of criminal defense or juvenile delinquency and dependency practice for at least the immediately preceding 3 years, corresponding with Provisional Licensee's practice area:
 - Criminal: Major Felony
 - Delinquency: Juvenile Major Felony
 - Dependency: Termination of Parental Rights

Appendix: Sources Reviewed

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National Association for Public Defense, *Formal Ethics Opinion Addressing the Confidentiality of Client Information when Defense Team Representation includes Social Workers and Other Non-Lawyer Professionals whose Licensure is Affected by Statutory or Professional Mandatory Reporting Obligations* (Dec 2014).

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Oregon Judicial Department, *State Court Administrator Policies for the Oregon Judicial Department's Oregon Certified Court Interpreter Program* (Nov 2022).

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Date: June 13, 2024

To: Jennifer Nash, Chair
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Shannon Flowers, Trial Support & Development Manager
Christine Breton, Criminal Resource Counsel

Re: Contract Funding for Supervised Practice Portfolio
Examination (SPPE) Participants

Nature of Presentation: Briefing and Action Item

Background:

Starting in May 2024, the Oregon State Bar (OSB) has implemented the Supervised Portfolio Practice Examination (SPPE) program as an alternative to the traditional bar exam. Those accepted into the program are granted a Provisional License to practice law in a limited capacity while they work toward full licensure. Successful completion substitutes for a passing score on the Uniform Bar Exam, allowing the attorney to apply for admission to the Oregon State Bar.

Many public defense contractors have inquired about their ability to immediately fill current attorney vacancies with SPPE candidates. However, current OPDC policy does not address whether public defense services contractors may fill Attorney FTE with provisional licensees under the SPPE program. Without the ability to hire SPPE Provisional Licensees, some contractor vacancies may go unfilled for extended periods and long-term capacity needs may remain unmet in difficult-to-recruit areas of the state that the SPPE program was, in part, intended to target.

SPPE Program Overview

1. Program Requirements

Provisional Licensees must complete at least 675 hours of program work. Those hours may include up to 40 hours per week of Legal Work (specifically defined in SPPE Rules), all time devoted to working on Program components, and all time spent on any training or educational activities required by their Employer that are not included in the Program components.

Licensees must also produce specific pieces of work product, perform documented client work, and develop a Portfolio documenting this work. This includes:

- At least 8 pieces of written work product
- Leadership of at least 2 initial client interviews or client counseling sessions;
- Leadership of at least 2 negotiations;
- Completion of 15 hours of Practice Overview MCLE programs designated by the OSB Board of Admissions
- Evidence of competence in professional responsibility
- Completion of at least 10 hours of activities exploring diversity, equity, inclusion, or access to justice issues;

Provisional Licensees maintain a Portfolio which includes all of the above materials. They must submit at least one Interim Portfolio for review and feedback at the halfway point of the program. Portfolio components will receive scores of “qualified” or “not qualified,” with the option for the Provisional Licensee to submit new pieces of work in a subsequent Interim Portfolio to replace any component scored as “not qualified.” When the Provisional Licensee has completed all SPPE Program requirements, they will prepare and submit a Final Portfolio to the Board of Bar Examiners.

2. *Qualifications of Program Participants*

Three applications are required to be completed and approved for acceptance into the SPPE program: one from the applicant, or Provisional Licensee; one from the supervising attorney; and one from the employer. Below are the minimum requirements set out by the Oregon Bar for acceptance into the program.

Provisional Licensee

In order to participate in the SPPE, an applicant must have the following qualifications required of all applicants to the bar:

- Graduated from an ABA-accredited law school, or otherwise meets RFA 3.05(1)-(3) for application for admission to the Oregon State Bar
- Has been through the Admissions Board character and fitness process described in RFA 6.05 and 6.15

Additionally, SPPE applicants must:

- Have completed courses in designated subject matters, including Business Associations, Civil Procedure, Constitutional Law, Contract Law, Criminal Law, Evidence, Torts, and Real Property
- Secured a commitment of employment with an SPPE-qualified Employer
- Secured a commitment from a SPPE-qualified Supervising Attorney
- Sign and file the “Oath for a Provisional Licensee” with the Admissions department

Provisional Licensees are subject to the same court appearance rules as Certified Law Students. Specifically, Provisional Licensees may only appear on behalf of a client with the client’s informed, written consent as well as approval by the Supervisor and the Court. Client consent must be filed with the Court as a part of the case record.

Provisional Licensees may not appear without a Supervisor in civil commitment proceedings or felony matters. (These are the Bar’s minimum restrictions, this policy recommends additional limitations on Licensees appearing in court appointed cases.)

Supervisor

A qualified Supervising Attorney must:

- Be an active member of the Oregon State Bar and have been active for at least two years preceding
- Been an active member in at least one jurisdiction for at least three of the five years preceding
- No record of public discipline (or else meets certain rehabilitation requirements)
- Employed by same Employer as the Provisional Licensee
- Not an immediate family member as Provisional Licensee
- Signs and files the ‘Declaration of Supervising Attorney’ with Admissions Department

Supervising Attorneys must also watch or attend designated training sessions, supervise the Provisional Licensee’s schedule and workload, supervise the Provisional Licensee’s work and personally assume professional responsibility for that supervision. They must also complete various statements, rubrics, and approvals for the SPPE program and give regular feedback to the Provisional Licensee to develop their skills.

Employer

A qualified Employer is any law firm, solo practitioner, business entity, non-profit organization, or government agency that:

- Is authorized to practice law within Oregon
- Regularly practices law within Oregon
- Employs or has agreed to employ a Provisional Licensee for at least 20 hours of paid Legal Work a week (with some exceptions)
- Commits to provide at least the salary and benefits provided to other recent law school graduates
- Provides Professional Liability Coverage for the Provisional Licensee (or obtains appropriate waiver) and pays that coverage to the same extent they would another new lawyer
- Files a “Declaration of an Employer” with the Admissions Department

Employers must also provide Provisional Licensees appropriate work space, tools, and technology to accomplish tasks assigned by the Supervising Attorney as well as include the Provisional Licensee in any training programs or other education activities provided to other new lawyers working for the Employer.

OPDC SPPE Provisional Licensee & Certified Law Student Work Group

In April 2024, OPDC convened a workgroup that included public defense providers to discuss Role Definitions and Qualification Standards for SPPE Provisional Licensees and Certified Law Students. Those discussions have informed the agency’s development of the proposed Contract Funding for Provisional Licensees policy. The workgroup meeting recordings are posted on the OPDC website.

1.0 FTE Limitation

For the purposes of this preliminary pilot, it is recommended limiting Provisional Licensees to only full-time public defense work, or 1.0 Attorney FTE, under public defense services contracts. Until OPDC can understand more about SPPE participant workloads, program outcomes, and supervision needs, it is unclear what the parameters for a part-time court-appointed Provisional Licensee should be.

Timeline for Funding

OSB gives Provisional Licensees up to 3 years to complete the program, with a maximum of 40 hours of work per week, but no minimum. They are also required to submit an “Interim Portfolio” consisting of specified items or components (*e.g.*, at least three pieces of Written Work Product, documentation of Client Interviews, and/or documentation of Negotiations) after completing 350 hours of Program work. The Interim Portfolio will be scored by OSB as either “qualified” or “not qualified.” If not qualified, a replacement component may be submitted.

Given that OPDC would provide funding for up to a year and that Provisional Licensees funded under this policy will work full-time, the recommended timeline to complete is as follows:

- Must submit proof of “qualified” score on their Interim Portfolio within 6 months
- Must be admitted to the Oregon State Bar within 1 year

This timeline was discussed with members of the workgroup, including one involved in the development of SPPE. The period for Interim Portfolio scoring was extended to six months because of the length of time it may take Provisional Licensees to get enough casework to meet the submission requirements. It was also suggested that Provisional Licensees submit their Final Portfolio within 10 months to allow enough time for final review.

Agency Recommendation: OPDC staff recommend adoption of the proposed Contract Funding for Provisional Licensees policy.

Fiscal Impact: None

Agency Proposed Motion: I move to adopt the Contract Funding for Provisional Licensees policy.



POLICY NAME: Contract Funding for SPPE Provisional Licensees **Number:**
DIVISION: **Effective Date: July 1, 2024**
RESPONSIBLE SECTION:

APPROVED: **Approval Date:**

PURPOSE: Establishes criteria for filling an attorney vacancy in a public defense services contract with a Provisional Licensee under the Oregon State Bar’s Supervised Practice Portfolio Examination program.

AUTHORITY: ORS 151.216 and 151.219

APPLICABILITY: This policy applies to Contracts for Public Defense Services.

DEFINITIONS FOR PURPOSES OF THIS POLICY:

Supervised Provisional Practice Examination (SPPE): Alternative exam for Oregon State Bar admission allowing law school graduates to work in supervised apprenticeship settings and submit a portfolio of work to be examined by the Oregon Board of Bar Examiners instead of taking the traditional Oregon Bar Exam.

Provisional License: The limited license to practice law in Oregon conferred under the SPPE Program after the Oregon State Bar’s application process involving employer, supervising attorney, and applicant that includes graduation from an accredited law school and a review of the applicant’s character and fitness to practice law.

Provisional Licensee: An individual practicing law within the SPPE Program to gain admission to the Oregon State Bar.

SPPE Supervising Attorney: An active member of the Oregon State Bar who has committed to supervising a Provisional Licensee under SPPE Rules 2.4-2.5; or an active member of the Oregon State Bar to whom the Supervising Attorney has delegated responsibility under SPPE Rule 5.4.

Full Time Equivalent (FTE) Attorney: A FTE Attorney is an attorney under contract with the Oregon Public Defense Commission (OPDC) to provide representational services.

Attorney Vacancy: When an attorney discontinues providing representational services under a contract with the PDSC for Public Defense Services under OPDC Vacancy Funding Policy 404-070-003.

Interim Portfolio: Compilation of the Provisional Licensee’s work submitted to the Oregon Board of Bar Examiners after completing 350 hours of SPPE Program work.

Final Portfolio: Final submission by the Provisional Licensee containing proof of completion of all SPPE Program requirements.

POLICY

Contractors may fill a 1.0 FTE attorney vacancy with a Provisional Licensee under the Supervised Provisional Practice Exam (SPPE) program for up to one year, subject to the following:

- Provisional Licensee must submit preliminary OPDC Certificate of Attorney Qualification and Supplemental Questions form (Attorney Qualification form), along with Provisional License number and proof of Certificate of Eligibility to OPDS.Atty.Qualifications@opdc.state.or.us and receive confirmation that OPDC has approved the Attorney Qualifications before the Provisional Licensee will be added to a contract.
- Provisional Licensees and SPPE Supervising Attorneys must adhere to all Oregon State Bar rules and requirements of the Oregon Supervised Practice Portfolio Examination.
- OPDC will provide contract funding for Provisional Licensees at the annual Provisional Licensee contract rate.

Provisional Licensee Minimum Qualifications

Provisional Licensees funded under this policy must meet the following minimum qualifications:

- Granted a Certificate of Eligibility by the OSB Board of Examiners
- SPPE Supervising Attorney must be qualified by OPDC at the following minimum levels and have been practicing that area of law for at least 3 years immediately preceding, corresponding with Provisional Licensee's practice area:
 - Criminal: Major Felony
 - Delinquency: Juvenile Major Felony
 - Dependency: Termination of Parental Rights

Provisional Licensee Attorney Qualification Certification

So long as a Supervising Attorney who meets the above minimum qualifications is supervising Provisional Licensee, OPDC will generally certify a Provisional Licensee's attorney qualifications "with supervision."

A Provisional Licensee may not appear in court on behalf of a client without a SPPE Supervising Attorney present *regardless of client consent* until they are certified by OPDC for the case type through the Attorney Qualification process.

The Provisional Licensee should submit an updated Attorney Qualification once the Provisional Licensee is admitted to the Oregon State Bar and before accepting appointment for any case type for which OPDC has not previously confirmed their qualifications.

Limitations on Client Representation

Provisional Licensees may only appear on behalf of a client with the client's informed, written consent as well as approval by the SPPE Supervising Attorney and the Court. Client consent must be filed with the Court as a part of the case record.

Provisional Licensees may not appear on behalf of a client without a SPPE Supervising Attorney in the following circumstances:

- Civil commitment proceedings;
- Any case where the client may be subject to a felony conviction;
- Any delinquency matter in which a juvenile is alleged to have committed acts which, if committed by

an adult, would constitute a felony; and

- Any case type for which OPDC has not confirmed their qualifications.

Timeline to Complete

Unless given extension by OPDC, a Provisional Licensee funded under this policy must:

- Submit proof to OPDC that they have received a “qualified” score on their Interim Portfolio within 6 months.
- Be admitted to the Oregon State Bar within 1 year.

It is the Provisional Licensee’s responsibility to ensure timely Portfolio submissions to meet these deadlines. Documentation should be submitted to OPDC at OPDS.Atty.Qualifications@opdc.state.or.us.

Reporting Requirements

- Provisional Licensees and/or Supervising Attorney must report open and appointed cases for Provisional Licensees pursuant to OPDC policy.
- Both Provisional Licensee and Supervising Attorney shall complete and submit to OPDC a summary of hours, training and work under SPPE, and clients served at two points: (1) submission of “qualified” Interim Portfolio score, and (2) at the conclusion of the year or SPPE term (whichever is sooner). OPDC will develop format and content requirements for this submission.

Approved by:

Prepared by: Trial Division

Reviewed by:

Publish: Internally
 Externally



TINA KOTEK
GOVERNOR

May 23, 2024

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

Dear Chair Nash and Members of the Commission:

As you know the Oregon Public Defense Commission (OPDC) will transfer from the judicial to the executive branch on January 1, 2025. I am writing to express my concerns about the current availability of public defense services and OPDC's ability to transition to the executive branch. It is imperative that Oregon have a public defense agency that fulfills its duty to meet our state's constitutional responsibility of providing public defense to persons charged with crimes who cannot afford an attorney. It is my expectation that OPDC will be prepared to effectively serve Oregonians from its first day in the executive branch.

Chief among my concerns is that OPDC is unable to ensure that thousands of Oregonians have access to public defense attorneys. This is unacceptable. We cannot allow the current state of affairs to be normalized. It is corrosive to our system of justice and fundamental constitutional values. The current situation serves neither victims of crime nor persons charged with an offense. While this crisis is many years in the making, it is up to OPDC to identify solutions and work towards resolving this crisis. My expectation is that addressing this crisis is a top priority for the Commission. I am requesting that you provide me by August 1, 2024, your plan to eliminate Oregon's unrepresented client crisis in both the near and long term, and that plan should be based in the realities of the current fiscal and legislative environment.

Even before the passage of Senate Bill 337, OPDC had many tasks that it needed to accomplish. I am concerned that OPDC does not have sufficient capacity to transition successfully to the executive branch while fulfilling its other obligations. The Governor's Office and the Department of Administrative Services have previously recommended to OPDC that it bring on an outside consultant to add capacity to support the transition. While OPDC has brought on a consultant, I do not believe this resource has provided OPDC the necessary support to improve the situation.

One of the unique aspects of Oregon's public defense system is its heavy reliance on contracting with defense attorneys to act as counsel for indigent defendants. One of the areas of significant risk during the transition is procurement, particularly making sure OPDC's system of procurement is in alignment with the executive branch. It is my understanding that OPDC's

Chair Nash
May 23, 2024
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process to update how it does procurement is delayed. I strongly recommend that OPDC utilize outside resources if needed to ensure that its procurement process is ready by January 1, 2025.

As the executive branch builds towards the 2025-2027 Governor's Recommended Budget, I want to make sure that OPDC is integrated into this effort, while recognizing that OPDC will still be part of the judicial branch when the budget is released. It is important that OPDC work closely with the Governor's Office and the Chief Financial Officer as the Commission develops its budget.

Executive branch agencies are currently developing their needs for the agency request budget (ARB), and in order for OPDC to be successful, I believe it should do the following:

- Identify clearly its continuing service level (CSL) budget, accounting for the number of investments that the legislature has made to public defense over the past several legislative sessions.
- Exclude from CSL any positions that have not been authorized by the legislature.
- Work closely with the Chief Financial Officer and the Legislative Fiscal Office to ensure that OPDC is in alignment with executive and legislative branch expectations.

As we get closer to OPDC's transfer to the executive branch, please know that my office and I are available to provide you the assistance and support that you need.

Thank you for your work and partnership.

Sincerely,

A handwritten signature in black ink, appearing to read "Tina Kotek". The signature is fluid and cursive, with the first name "Tina" being more prominent than the last name "Kotek".

Governor Tina Kotek



Oregon

Oregon Public Defense Commission

198 Commercial St. SE, Suite 205

Salem, Oregon 97301-3489

Telephone: (503) 378-2478

Fax: (503) 378-4463

www.oregon.gov/opdc

June 4, 2025

Governor Tina Kotek
254 State Capitol
Salem OR 97301

Dear Governor Kotek,

Thank you for your letter dated May 23, 2024. The Oregon Public Defense Commission's mission is to ensure constitutionally competent and effective legal representation for persons eligible for a public defender. We share your concern about Oregonians remaining unrepresented. The topmost priority for OPDC is securing counsel for all eligible defendants.

We will prepare a plan to eliminate Oregon's unrepresented client crisis in the near and long term by August 1, 2024. This plan will be based on the realities of the current fiscal and legislative environment.

OPDC has taken action to mitigate the unrepresented crisis, securing counsel for thousands of cases that would have otherwise joined the unrepresented list.

- The Temporary Hourly Increase Program (THIP) pays attorneys and investigators an enhanced hourly rate that allows OPDC to compete with the federal and private bar. This program has secured counsel for 4,108 defendants on 5,851 cases since it started in August 2022. Since October 2024, THIP has been limited to in-custody defendants. At last week's Emergency Board meeting, the Legislature approved the extension of THIP until the end of 2024.
- Three state trial-level public defense offices are targeting in-custody unrepresented persons cases. While new and small, these offices have already taken 258 cases. The legislature has allocated resources to add eight more lawyers beginning in July.
- A new form for court use has increased coordination for in-custody unrepresented persons. This form automates a previously labor-intensive process, allowing OPDC staff to quickly identify attorneys for unrepresented individuals. A full-time staffer has also been dedicated to finding attorneys for unrepresented defendants, which is expected to increase case processing by 20%.

The Oregon Public Defense Commission is committed to finding attorneys for all eligible defendants. We are working tirelessly to identify counsel and connect them to clients quickly. Our focus on in-custody defendants has reduced the number of persons in-custody without counsel in half from a high of 394 in July 2023, although we agree that it is unacceptable for even a single person to be incarcerated without counsel appointed.

Governor Kotek

June 4, 2025

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While OPDC continues to tackle the day-to-day challenges of finding counsel for unrepresented defendants, we are also working on finding long-term solutions to prevent this crisis in the future. We do this by building, stabilizing, and maintaining the public defense workforce. Our report will detail both the short-term and long-term solutions.

Executive Branch Transition

OPDC believes it is on track to successfully transition to the Executive branch on January 1, 2025. However, we understand your concerns and will endeavor to increase communication and coordination with the Executive Branch leading up to January.

Thank you for identifying that procurement is the largest risk to the agency during this transition. We agree. We are currently working with the Legislative Fiscal Office to secure procurement positions at the September Emergency Board. In the meantime, OPDC has contacted the Oregon Department of Justice for assistance to develop the next round of public defense provider contracts to ensure they meet all procurement requirements.

OPDC is building its Agency Request Budget (ARB), starting with our Continuing Service Level (CSL). While the Executive Director meets monthly with the CFO, we will set up a meeting to review our progress in building the CSL and ensure we are on track to submit an ARB on time.

This transition represents a significant organizational endeavor, but we believe that with the executive branch's continued support and the resources available through both the Moss Adams consulting contract and the remaining Executive Transition SPA, OPDC will successfully move to the Executive Branch on January 1, 2025, positioning itself for long-term growth and operational excellence within the Executive Branch.

We appreciate your resolve and commitment to public defense and look forward to providing you with a more detailed plan to eliminate the unrepresented persons crisis by August 1, 2024.

A handwritten signature in blue ink, appearing to read 'Jennifer Nash', with a stylized flourish at the end.

Jennifer Nash, Chair
Oregon Public Defense Commission