

Members:

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



Nonvoting Member:

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

Executive Director:

Jessica Kampfe

Oregon Public Defense Commission

Meeting will occur virtually.
Wednesday, November 13, 2024
9:00 AM – approx. 1:00 PM PST
Via Zoom*

Administrative Announcement

This is a public meeting, subject to the public meeting law and it will be recorded. Deliberation of issues will only be conducted by Commission members unless permitted by the Chair. Individuals who engage in disruptive behavior that impedes official business will be asked to stop being disruptive or leave the meeting. Additional measures may be taken to have disruptive individuals removed if their continued presence poses a safety risk to the other persons in the room or makes it impossible to continue the meeting.

AGENDA

Approx. Time	Item	Lead(s)
9:00-9:05	Welcome	Chair Nash
9:05-9:20	Public Comment	
9:20-9:35	Update: Unrepresented Persons in Oregon Courts	Jessica Kampfe Harry Noone
9:35-9:50	Update: Budget	Ralph Amador
9:50-10:20	Discussion: December Legislative Days <ul style="list-style-type: none"> Update on E-Board Request Update on Remediation Report Introduction: Anna Braun 	Jessica Kampfe
10:20-10:50	Action Item: Approve Comprehensive Public Defense Report	Jessica Kampfe
10:50-11:15	Action Item: Approve Organizational Chart	Chris Henderson
11:15-11:25	****Break****	
11:25-11:40	Update: Audit Committee Charter	Vice Chair Mandiberg

11:40-11:50	Update: FCMS	David Martin
11:50-12:00	Update: Director's Update	Jessica Kampfe
12:00-12:20	Briefing: Local Court Spotlight: Clatsop County	Judge Peterson
1:00 (Approximately)	***Adjourn***	

**To join the Zoom meeting, click this link: <https://zoom.us/j/92334877800>. 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 info@opdc.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. There is a limited amount of time to provide public comment during the meeting, with each commentator allowed up to three minutes of time. However, the time limit per person for public comment may be limited by the chair if time constraints require.*

If you are interested in providing virtual public comment to the OPDC, please submit your request no later than 5:00 PM PT November 11, 2024 using our [online form](#). Please include your full name, organization/entity name, email, and phone number with your request. You will be provided a meeting link to join the meeting as a panelist for the public comment portion of the meeting.

The commission also welcomes written public comment. If you wish to provide written public comment, please submit your comment using our [online form](#). Please include your full name, organization/entity name, email, and phone number on your submission. Written comment regarding action items shall be submitted no later than two (2) business days prior to the meeting. All written comment received by the close of business two (2) business days in advance of the meeting will be provided to Voting and Non-voting Members and posted to the public on the OPDC website prior to the meeting. If you would like to provide attachments to accompany your written comment, please email them to info@opdc.state.or.us. Please include your name and a reference to your written comment in your email.

Written comment on agenda topics can be submitted up to two business days after the meeting. Any written comment that is received after meeting and within two business days from the posted meeting time will be provided to Voting and Non-voting Members, posted to the public on the OPDC website as soon as practicable, and will be included in the material for the subsequent OPDC regular meeting. To submit written public comment after the meeting, please email info@opdc.state.or.us. Please include your full name, organization/entity name, email, and phone number with your written comment.

Next meeting: December 6, 2024, 9am – 1pm – In-Person at the Benson Hotel Crystal Ballroom

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>



October 16, 2024

Oregon Public Defense Commission
1175 Court Street NE
Salem, OR 9730

RE: Retaliatory Conduct by Eric Deitrick, General Counsel for OPDC

Dear OPDC Members,

I am Sandy Chung, Executive Director of the ACLU of Oregon, a civil liberties, civil rights, and democracy organization representing more than 27,000 members statewide.

More than three years ago – in August 2021 – the ACLU of Oregon asked OPDC to initiate an investigation. We requested this after multiple women defense attorneys shared with us their experiences involving pay inequity by OPDC, as well as retaliation by Eric Deitrick, OPDC’s General Counsel.

Near the end of summer 2024, three years after the ACLU of Oregon raised the concerns, we finally received a copy of the investigation report regarding the retaliation concerns. The investigator engaged by OPDC found that Deitrick engaged in retaliatory and deeply problematic conduct against multiple women attorneys.

In a letter dated September 12, 2024, Jessica Kampfe, Executive Director of OPDC, wrote that “[t]he incidents that were referred to in the Workplace Solutions investigation report occurred between 2019 and 2021” and that “[t]he concerns outlined in the investigation report have been addressed and there have been no further complaints submitted since 2021.”

Kampfe’s statement about no further complaints since 2021 is not true. According to the investigation report, OPDC and Deitrick continued to engage in retaliatory and problematic acts after 2021 and these acts were reported:

- The investigator confirmed that a “further act of retaliation” occurred **in late 2021/early 2022** when Witness 6’s previously-agreed-to hourly fee of \$100 per hour was unilaterally decreased to \$75 by OPDC. The date of this retaliation was approximately four months **after** OPDC started the investigation about Deitrick’s retaliatory acts.
- According to the investigator, Deitrick engaged in additional “problematic” actions against Witness 6 **during 2023**. Specifically, he actively supported opposition to an attorney’s fee petition by Witness 6; however, another OPDC staff member had approved Witness 6 to pursue the fee petition, and Deitrick did not stop his opposition until he learned of this.

Kampfe’s statement that “[t]he concerns outlined in the investigation report have been addressed” also is incorrect:

- Witnesses 3, 4 and 6 all had their concerns substantiated by the investigation. According to these witnesses, however, OPDC has not involved them in any process to provide them redress for Deitrick’s retaliation and deeply problematic conduct.
- There is no information supporting that Deitrick received disciplinary action that was appropriate and commensurate to the retaliatory and deeply problematic conduct he engaged in against the multiple women attorneys.

Also, the investigation report does not address retaliation experienced by an OPDC employee who reported directly to Deitrick:

- During 2021, a woman employee of OPDC reported to the agency’s HR department that Deitrick had engaged in multiple instances of retaliation against her for engaging in legally protected activity. It appears that the HR department did not address these retaliation concerns in any substantive manner.
- When this person tried to speak to Jill Goldsmith, the investigator engaged by OPDC, she was told that the investigator’s scope did not include retaliation experienced by OPDC employees.

It should be a given that the General Counsel of Oregon’s public defense agency should not engage in retaliation towards the agency’s employees and contractors. Moreover, after an investigation substantiates that the General Counsel engaged in retaliatory conduct against multiple people, the General Counsel should no longer be in their position.

We request that OPDC immediately take the only appropriate action in this situation: terminate Deitrick’s employment with OPDC.

Respectfully,

Sandy Chung
Executive Director
ACLU of Oregon

Kelly Simon
Legal Director
ACLU of Oregon

Jessica Maravilla
Policy Director
ACLU of Oregon



Oregon Judicial Department

Unrepresented Crisis – November 2024 Update

Key Insights

OJD is not able to provide the most recent statewide unrepresented data for this report, due to conflicts between the time needed to complete our data analysis and the Commission meeting timelines. This month's report is a Local Court Spotlight focused on Clatsop County, as Presiding Judge Beau Peterson will be presenting to the Commission at the November meeting.

Beginning with the December 2024 Update, OJD will publish these monthly reports on a regular schedule for all recipients, rather than provide partial or localized reports based on OPDC commission meeting schedules. We will continue to provide the Commission with local data to support court presentations.

Local Court Spotlight: Clatsop

Unrepresented Trends

The total number of unrepresented cases in Clatsop County has trended upwards since September 2023 with the total number remaining above 120 cases since April 2024 ([Figure 1](#) and [Figure 2](#)).

Unrepresented – Out-of-Custody

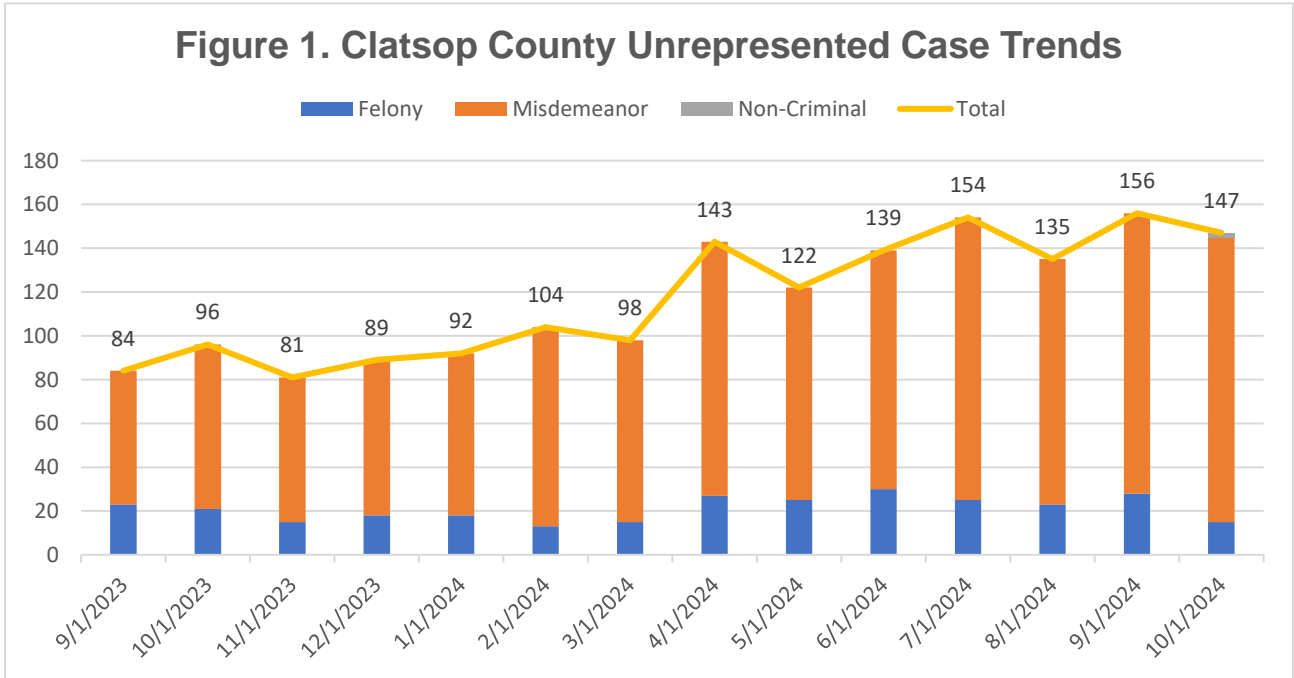
On average, out-of-custody pre-trial cases are on the unrepresented list for 38 days before an attorney is assigned ([Figure 5](#)). A defense provider who will be resigning at the end of the year has taken on all outstanding out-of-custody probation violations. Because of this, an out-of-custody probation violation case is on the unrepresented list for an average of 3 days,

Criminal Case Filings

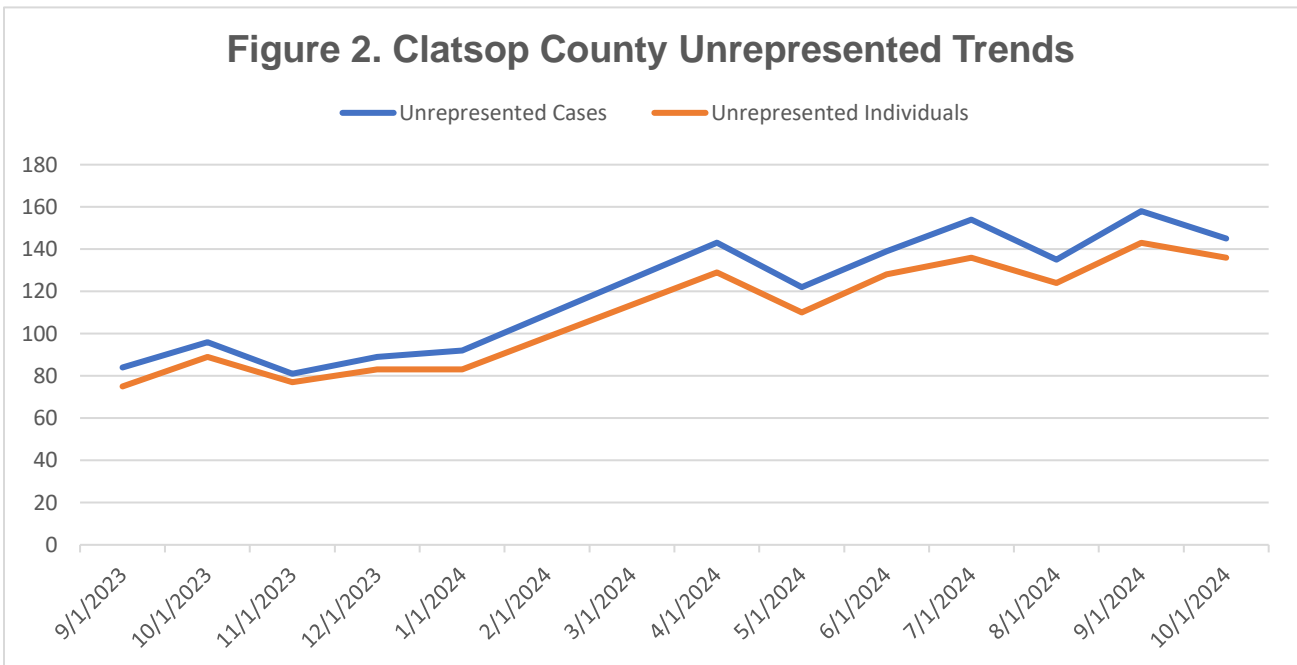
The number of misdemeanor criminal case filings increased from June 2023 to August 2024, in part due to increased staffing in the district attorney's office ([Figure 6](#)). Previously, the district attorney's office was not filing as many misdemeanors and had a backlog of cases to be filed due to vacancies.

Unrepresented Trends

Figure 1 shows the number of unrepresented cases by case type in Clatsop County. Most of the unrepresented cases are misdemeanor cases, which increased significantly in April of 2024. The number of unrepresented felony cases also increased but have not exceeded 30 cases in a month. **Figure 2** shows the number of unrepresented individuals compared to the number of unrepresented cases in Clatsop County. There are more unrepresented cases than unrepresented persons, which means there are some unrepresented individuals with more than one pending unrepresented case.



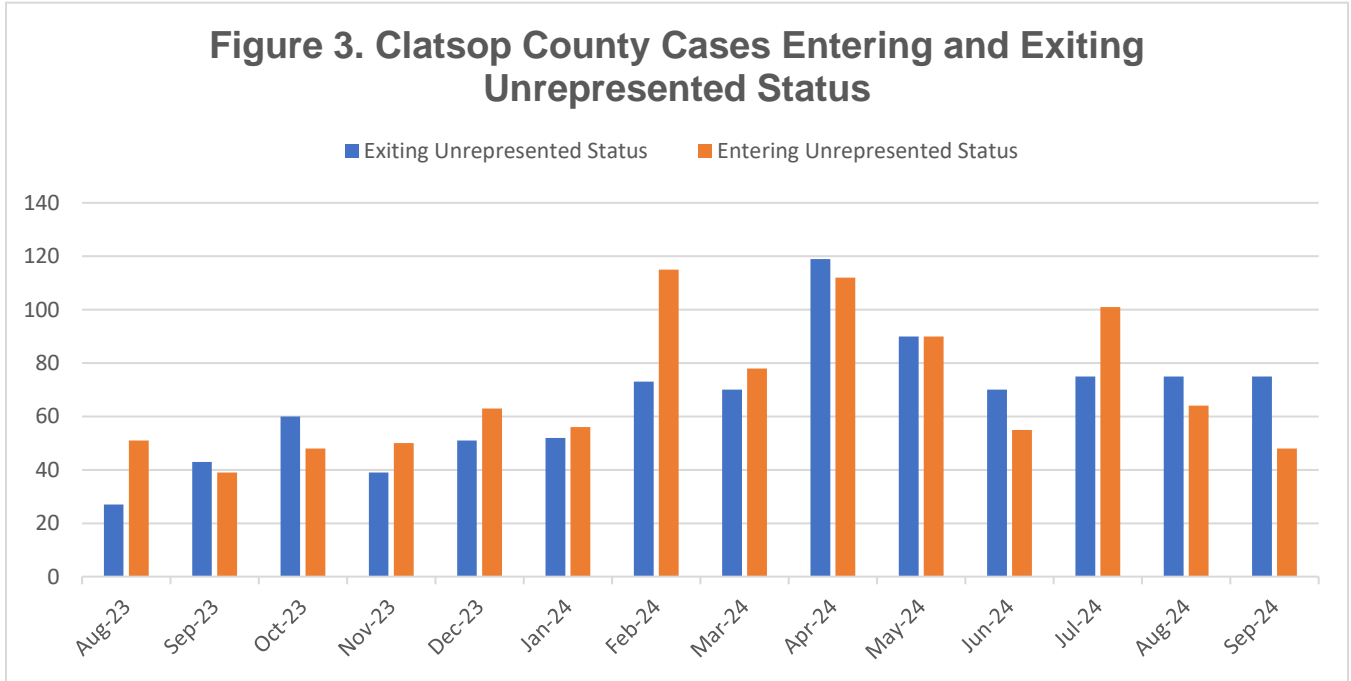
Source: OJD Odyssey Data (eCourt).



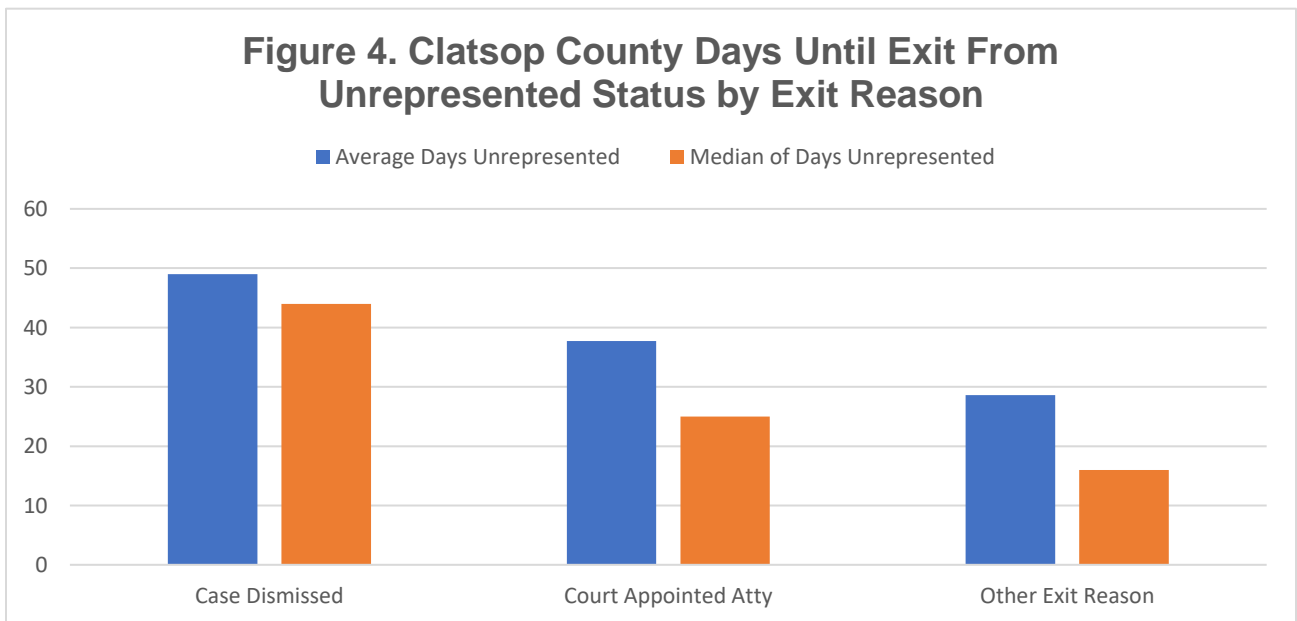
Source: OJD Odyssey Data (eCourt).

Figure 3 shows the number of unrepresented cases entering and exiting unrepresented status each month. In February 2024 and July 2024, significantly more cases entered the unrepresented list than exited. However, in June, August, and September 2024, more cases exited the list than entered. When more cases exit the list than enter, the total number of unrepresented cases decreases.

Figure 4 show the average and median number of days a case is on the unrepresented list, organized by the reason for exiting. A case may exit the unrepresented list because an attorney was appointed, the case was dismissed, or other reasons (e.g., the defendant hired an attorney, defendant waived counsel, etc.).



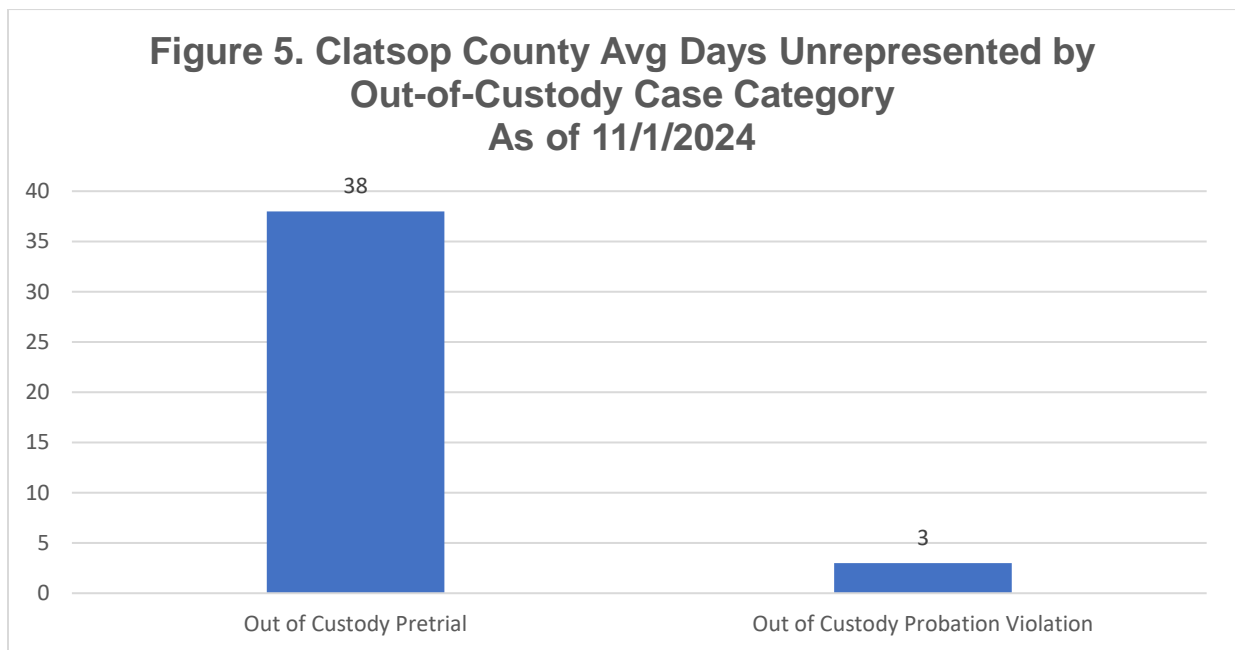
Source: OJD Odyssey Data (eCourt).



Source: OJD Odyssey Data (eCourt).

Unrepresented – Out-of-Custody

Figure 5 shows the average number of days a case is unrepresented by out-of-custody case category. In Clatsop County, the average number of days an out-of-custody pretrial case is unrepresented is 38 days, whereas an out-of-custody probation violation (PV) is unrepresented on average for 3 days. The average for out-of-custody PV cases decreased substantially because one defense provider is primarily focused on accepting PV cases. The provider is starting a new job in 2025 and is trying to accept cases that will likely conclude before the end of the year. The more cases the attorney can accept and conclude before leaving Clatsop County, the fewer cases will need to be transferred to another attorney or potentially be added to the unrepresented list. It is likely the unrepresented list, and specifically the unrepresented out-of-custody PV cases, will begin to increase in 2025 unless at least one new provider is identified quickly.

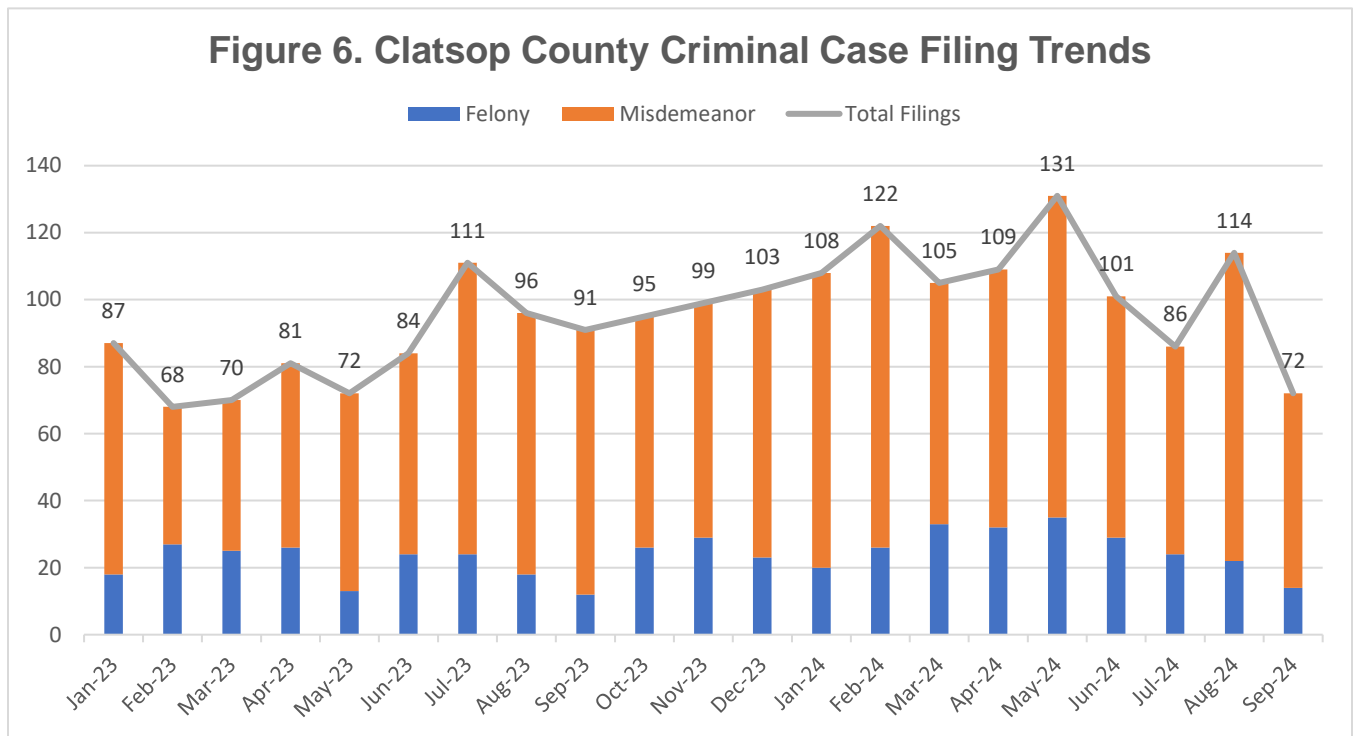


Source: OJD Odyssey Data (eCourt).

Criminal Case Filings

Figure 6 shows criminal case filing trends in Clatsop County since January 2023. Since June 2023 there has been an increase in case filings, specifically misdemeanor case filings, although the trend since May 2024 generally has been fewer filings. One reason why case filings increased is the district attorney's office was able to fill vacant positions. Prior to filling these vacancies, the district attorney's office was not filing as many misdemeanor cases and had a backlog of cases to be filed. The decrease in criminal case filings in September 2024

may account for part of why fewer cases entered the unrepresented list in September 2024 ([Figure 3](#)).



Source: OJD Odyssey Data (eCourt).

Oregon Public Defense Commission

OPDC Data Overview

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

November 13th, 2024



System Capacity

The Contract MAC Standard

- Maximum Attorney Caseload
- A Maximum, not a Quota
- Workload Standard and Ethical Issues

MAC Standard by Case Categories		
Case Category	Weight	Standard
Capital Murder	50	6
Civil Commitment	1.3	230
Delinquency	2.3	132
Dependency/Termination	4.3	69
Jessica Law	50	6
Major Felony	2.2	138
Measure 11	6.7	45
Minor Felony	1.8	165
Misdemeanor	1	300
Murder	50	6
PCR Agg	6	45
PCR/Habeas	6.7	45
Probation Violations-Criminal	0.36	825
Probation Violations-Juvenile	0.36	825

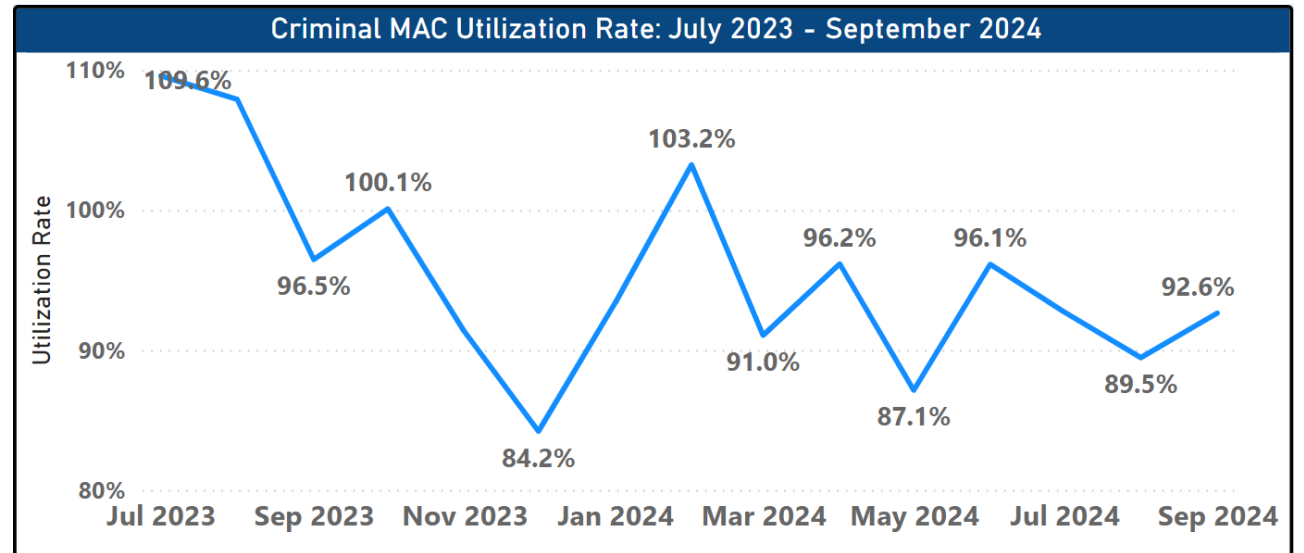
"Standard" column shows how many cases can be taken at that category at a full-time workload (or "1 MAC")

System Capacity

Contractor Utilization (Criminal contracts)

- Reported MAC: July 2023 – September 2024
- Based on Self-reported contractor caseloads
- Only new Appointments get calculated as "Reported MAC" (no open cases)
- Prorated MAC: Attorney capacity based on portion of FTE devoted to client representation (excludes Training, Supervision, and Spec. Courts), accounting for Attorney specific start and end dates
- Ex. "Attorney A" is 1 MAC for 6 months and switches to 0.5 MAC for 6 months. This equals a 0.75 Prorated MAC.

Criminal MAC Utilization			
OPDC Contract Data July 2023 - September 2024			
ENTITY	Reported MAC	Prorated MAC	Utilization
⊕ Consortium	201.9	215.7	93.6%
⊕ Firm	60.6	61.8	98.1%
⊕ PD	189.3	225.3	84.0%
⊕ Sole Proprietorship	6.6	7.4	88.3%
Total	458.3	510.3	89.8%



For Criminal Contracts in all counties. Excluding "Statewide" Contractors

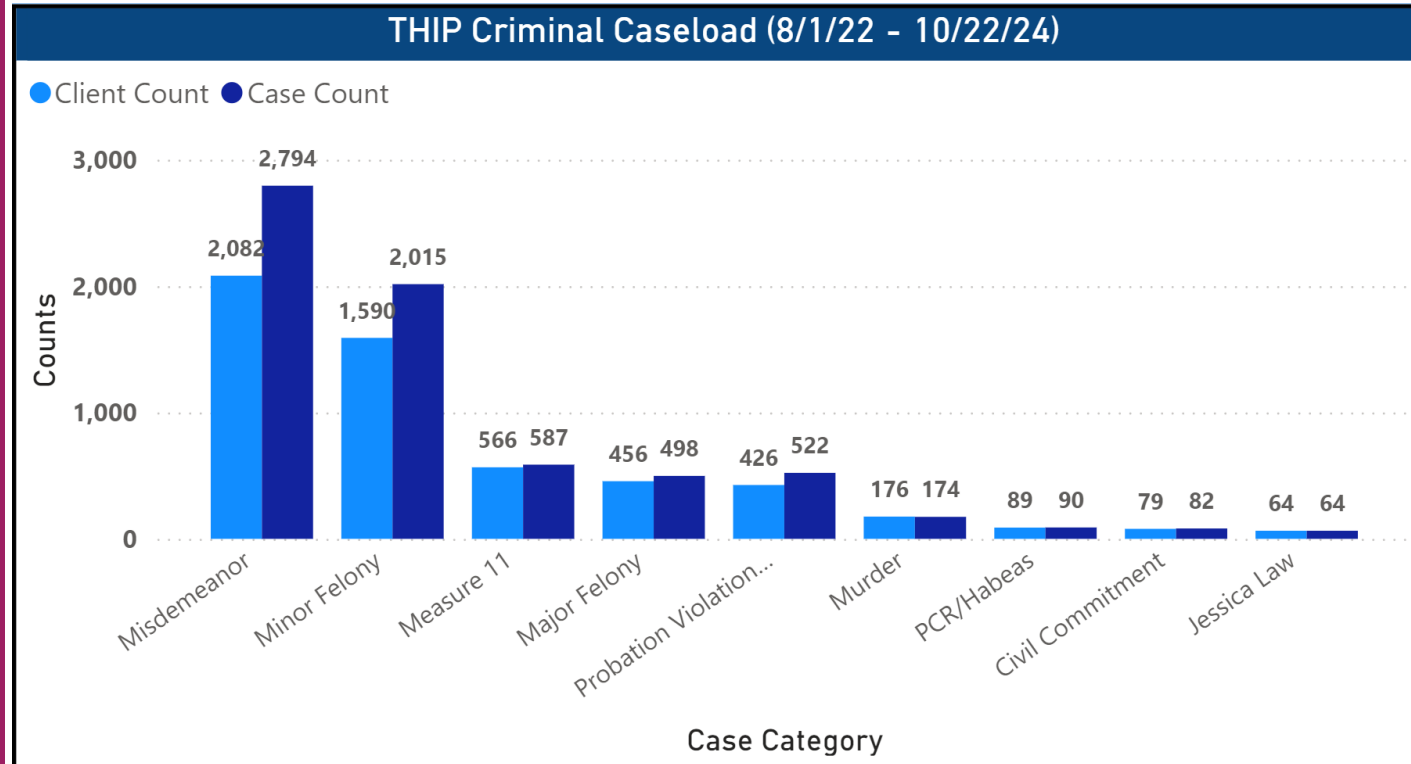
System Capacity

THIP

- Temporary Hourly Increase Program
- Incentivize Private bar appointments to Unrepresented Cases

Hourly Rate	"Soft Cap"	Case Type
\$164	\$10,000 to \$50,000	Misdemeanor, contempt, and probation violation; Class C felony and felony drug possession; Class A and B felony, juvenile delinquency, juvenile probation violations, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases; waiver co-counsel; discretionary co-counsel; material witness representation; fugitive/extradition; appeals
\$175	\$50,000	Ballot Measure 11 and felony sex offense; Juvenile delinquency cases in which underlying charge is equivalent to BM11 or felony sex offense.
\$200	\$75,000	Murder and Jessica's Law (including mandatory co-counsel); capital appeals/PCR; cases subject to ORS 137.719 and ORS 137.690.

The investigation and mitigation rate on cases assigned under this program is \$75/hour.



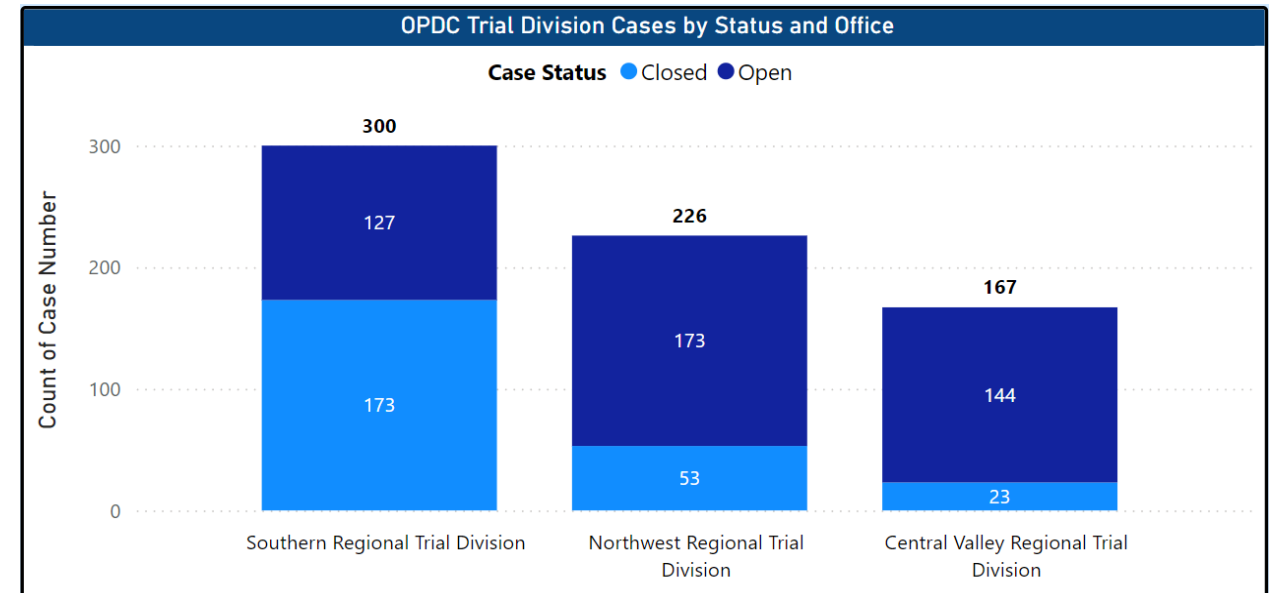
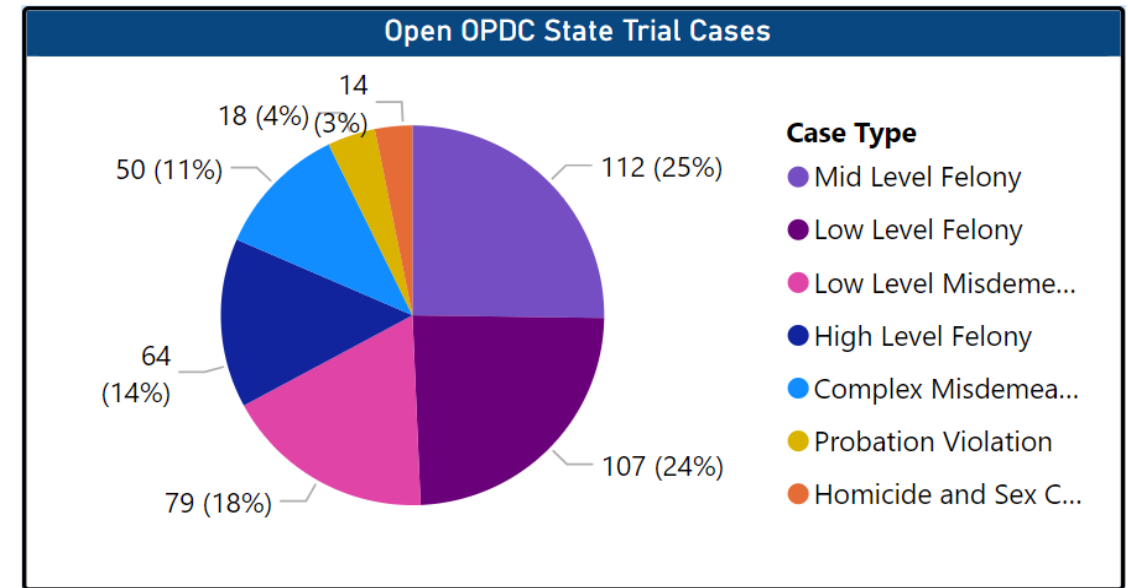
System Capacity

State Trial Offices

3 offices with a total of 18 attorneys

- Each office has support staff, investigators, and case managers

OPDC Trial Cases by Count of Client's Highest Charge & All Cases		
Case Type	Count of Clients by Highest Charge	Count of Cases
Low Level Felony	91	160
Mid Level Felony	91	155
Low Level Misdemeanor	42	137
Complex Misdemeanor	53	97
High Level Felony	76	79
Probation Violation	11	48
Homicide and Sex Cases	17	17
Total	381	693



Source: OPDC Case Management System as of 10/21/24

System Capacity

Betschart Attorney Assignments

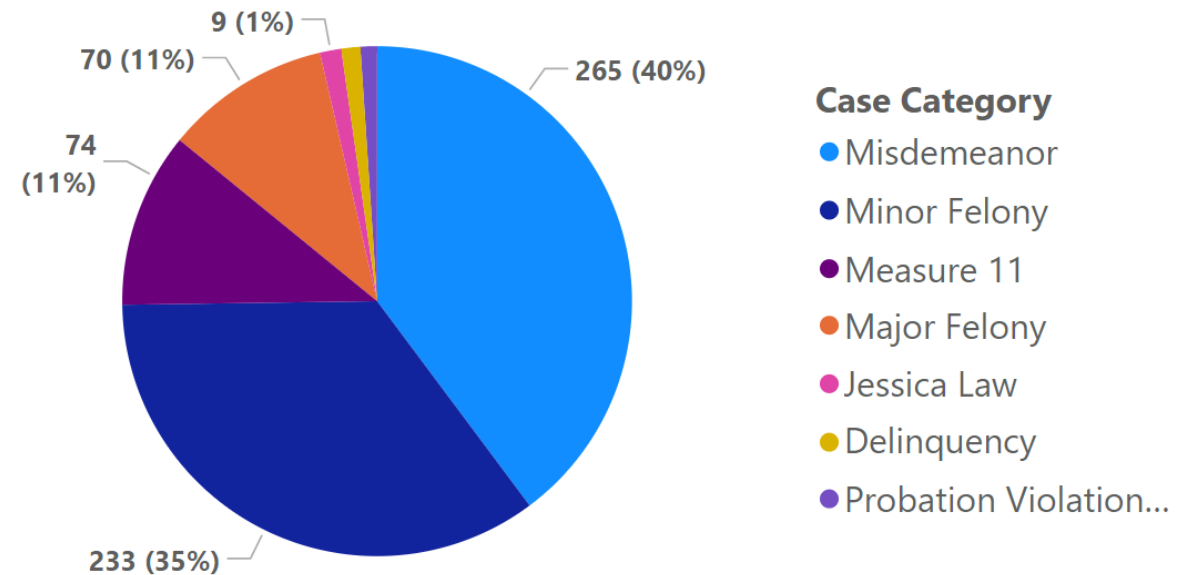
Coordinated by OPDC
Analysts

- Daily Review of Unrepresented List
- Analysts contact attorneys who may be willing to accept appointments, track results

Betschart Assignments by Program

Assignment	Attorney Count	Client Count	Case Count
Contract	41	58	69
Hourly	106	409	541
Trial Division	11	49	56
Total	152	515	666

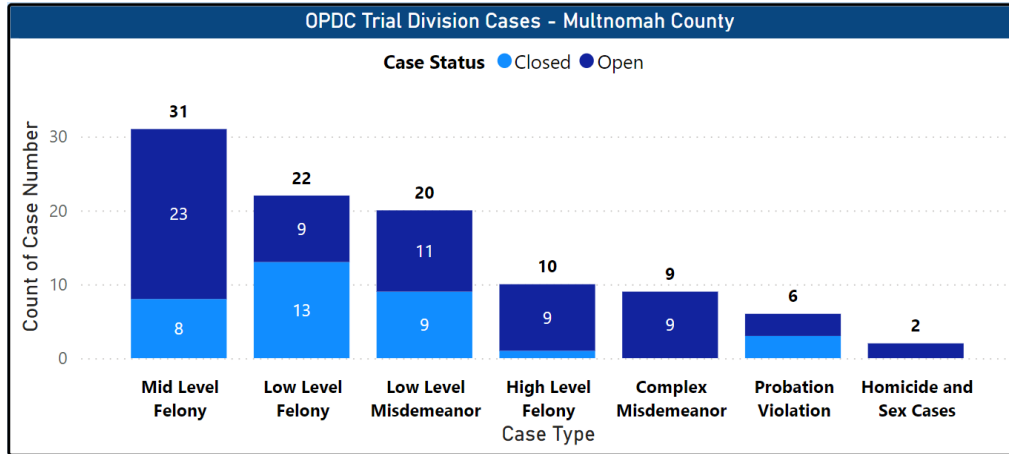
Betschart Assignments by CaseType



Unrepresented and County Specific Challenges

Contract Attorney Retention: July 2023 - October 2024

HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
Multnomah	21	20		5	15
Attorney 4	2	2			2
Attorney 3	1	7		3	4
Attorney 2	6	7		2	5
Attorney 1	12	4			4
Total	21	20		5	15

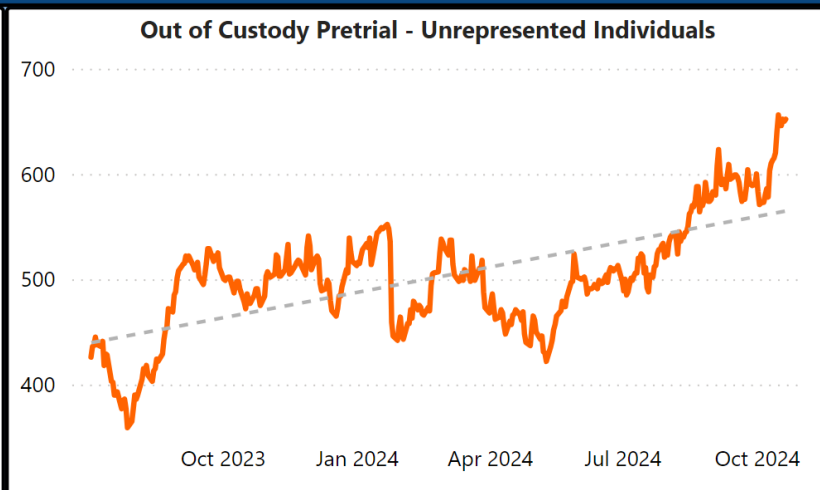
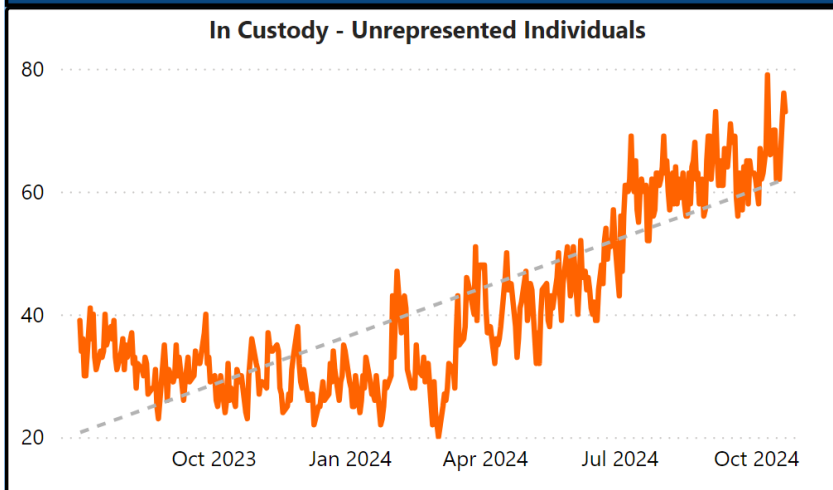


Thru 10/21/24

THIP Caseload (thru 10/21/24)

Case County	Client Count	Case Count
Multnomah	713	1,119
Civil Commitment	1	1
Delinquency	5	12
Dependency/Termination	2	2
Jessica Law	7	7
Major Felony	44	48
Measure 11	72	77
Minor Felony	272	399
Misdemeanor	360	517
Murder	47	46
Other	1	1
PCR/Habeas	2	2
Probation Violations-Criminal	10	11
Total	713	1,119

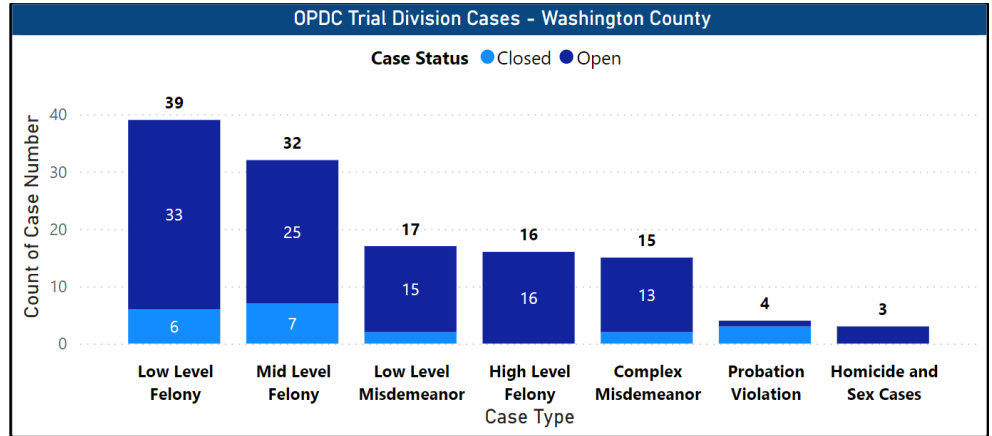
Multnomah County Unrepresented Individuals 7/1/2023 - 10/21/2024



Source: OJD OPDS Unrepresented Power BI Dashboard

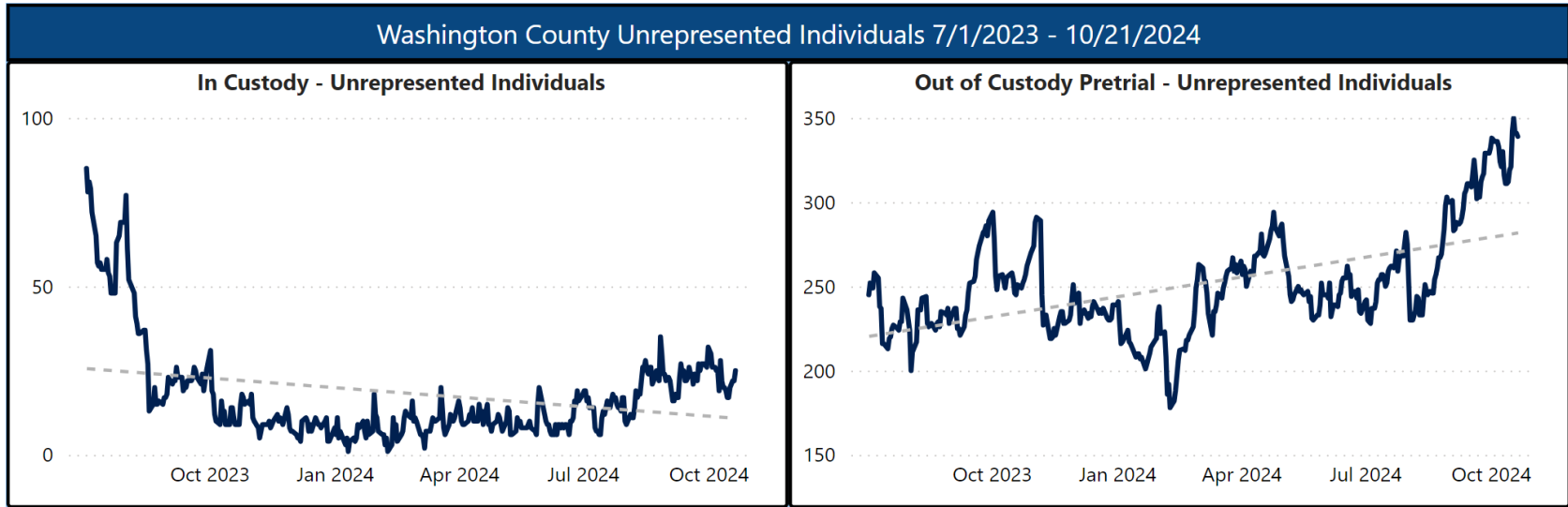
Washington

Criminal MAC Utilization			
OPDC Contract Data (July 2023 - September 2024)			
HomeCounty	Reported MAC	Prorated MAC	Utilization
Washington	53.3	53.5	99.6%
Consortium	7.5	6.8	110.2%
Firm	17.1	17.8	95.8%
PD	27.7	27.6	100.4%
Sole Proprietorship	0.9	1.2	76.5%
Total	53.3	53.5	99.6%



Thru 10/21/24

Contract Attorney Retention: July 2023 - October 2024					
HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
Washington	18	20	2	7	11
Attorney 4	1	1		1	0
Attorney 3	4	11	2		9
Attorney 2	8	9		6	3
Attorney 1	7	2			2
Total	18	20	2	7	11

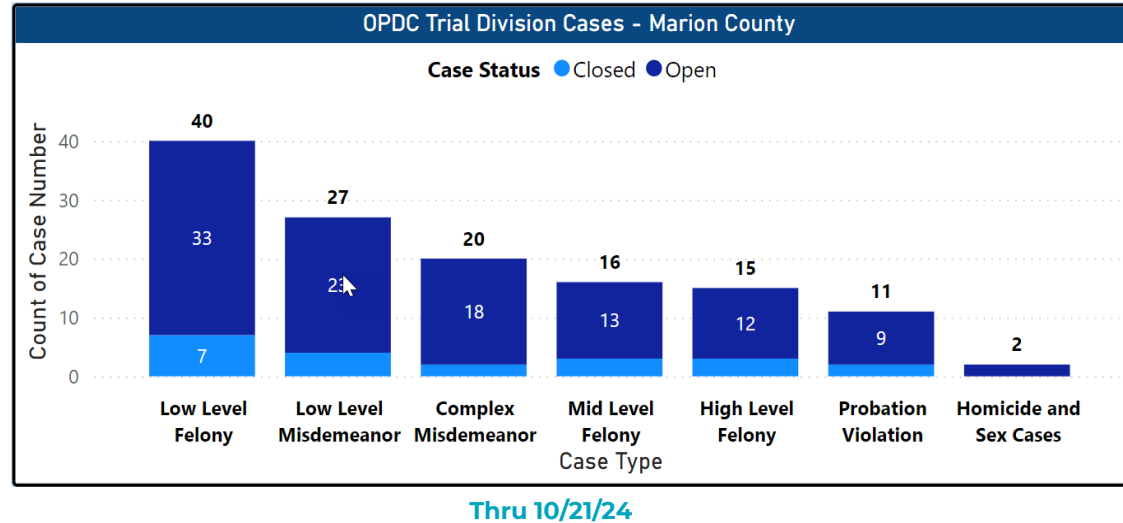


THIP Caseload (thru 10/21/24)		
Case County	Client Count	Case Count
Washington	656	980
Delinquency	58	76
Dependency/Termination	8	10
Jessica Law	19	19
Major Felony	91	97
Measure 11	169	175
Minor Felony	230	283
Misdemeanor	172	248
Murder	22	22
PCR/Habeas	17	17
Probation Violations-Criminal	40	49
Total	656	980

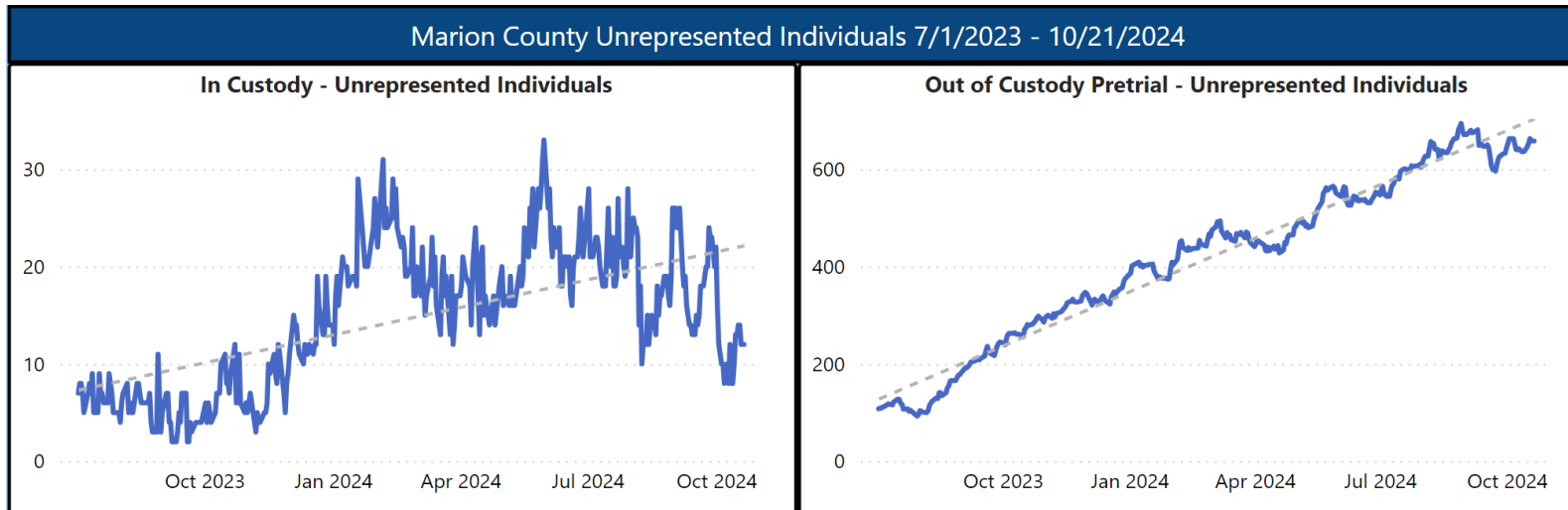
Source: OJD OPDS Unrepresented Power BI Dashboard

Marion

Criminal MAC Utilization			
OPDC Contract Data (July 2023 - September 2024)			
HomeCounty	Reported MAC	Prorated MAC	Utilization
Marion	31.5	45.9	68.7%
Consortium	18.8	24.0	78.4%
Firm	0.4	0.9	44.7%
PD	12.3	21.0	58.6%
Total	31.5	45.9	68.7%



Contract Attorney Retention: July 2023 - October 2024					
HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
Marion	15	18	4	5	9
Attorney 4	2	5	1	1	3
Attorney 3	2	4	2		2
Attorney 2	3	2	1		1
Attorney 1	8	7		4	3
Total	15	18	4	5	9

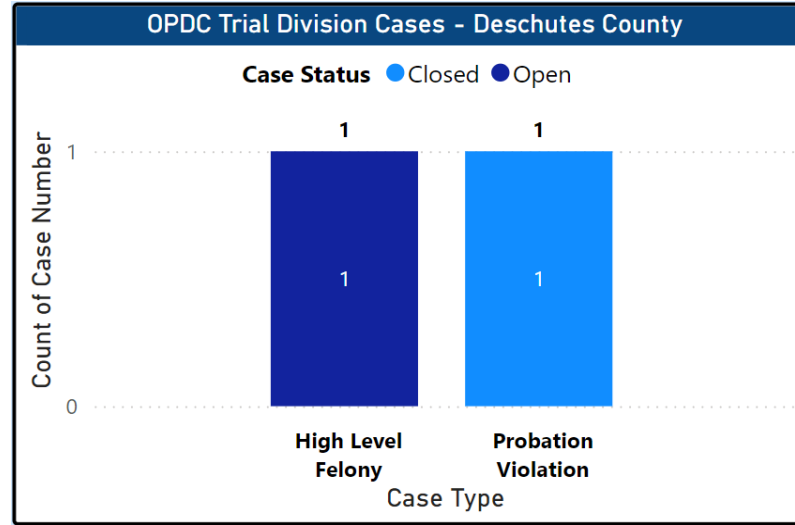


THIP Caseload (thru 10/21/24)		
Case County	Client Count	Case Count
Marion	316	440
Civil Commitment	1	1
Delinquency	4	3
Jessica Law	5	5
Major Felony	21	23
Measure 11	54	54
Minor Felony	99	119
Misdemeanor	70	83
Murder	13	13
PCR/Habeas	19	19
Probation Violations-Criminal	96	123
Total	316	440

Source: OJD OPDS Unrepresented Power BI Dashboard

Deschutes

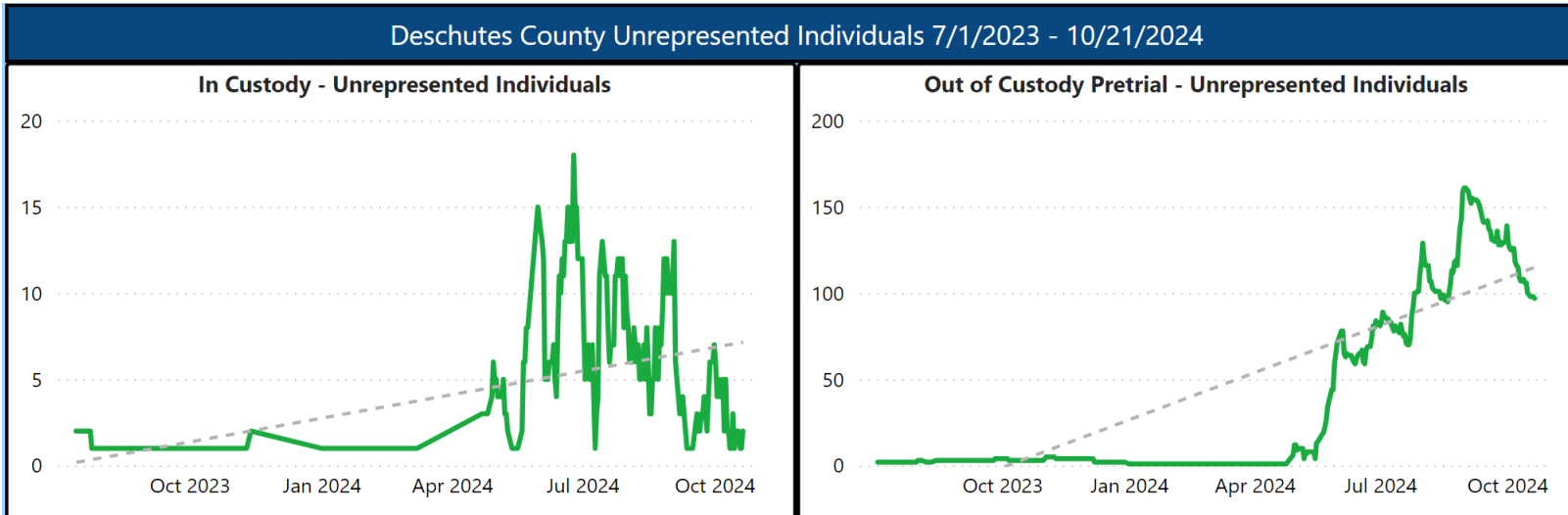
Criminal MAC Utilization			
OPDC Contract Data (July 2023 - September 2024)			
HomeCounty	Reported MAC	Prorated MAC	Utilization
Deschutes	24.3	25.7	94.5%
Consortium	6.3	6.2	100.7%
Firm	4.7	4.6	102.4%
PD	13.3	14.9	89.5%
Total	24.3	25.7	94.5%



Thru 10/21/24

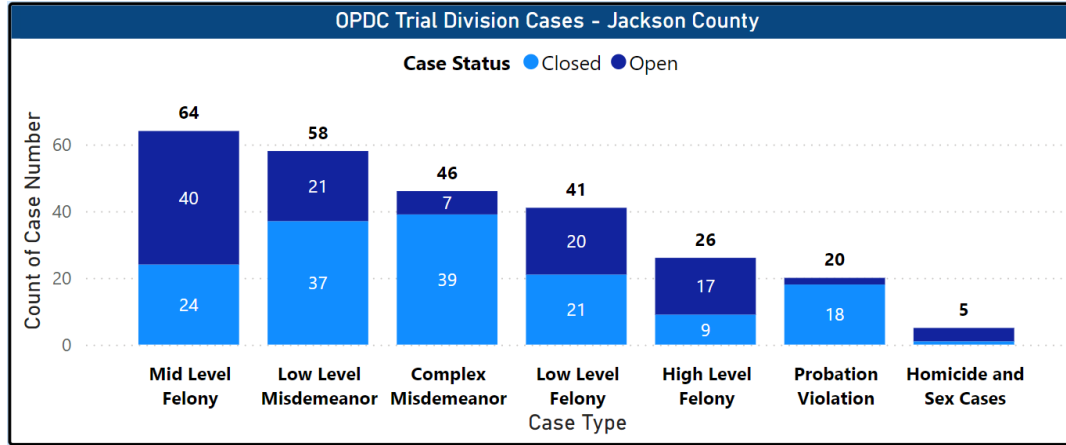
Contract Attorney Retention: July 2023 - October 2024					
HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
Deschutes	11	13		1	12
Attorney 4	3	4			4
Attorney 3		5		1	4
Attorney 2	1	3			3
Attorney 1	7	2			2
Total	11	13		1	12

THIP Caseload (thru 10/21/24)		
Case County	Client Count	Case Count
Deschutes	102	134
Delinquency	2	2
Dependency/Termination	14	14
Jessica Law	4	4
Major Felony	10	10
Measure 11	8	8
Minor Felony	17	17
Misdemeanor	44	54
Murder	6	6
Probation Violations-Criminal	16	19
Total	102	134



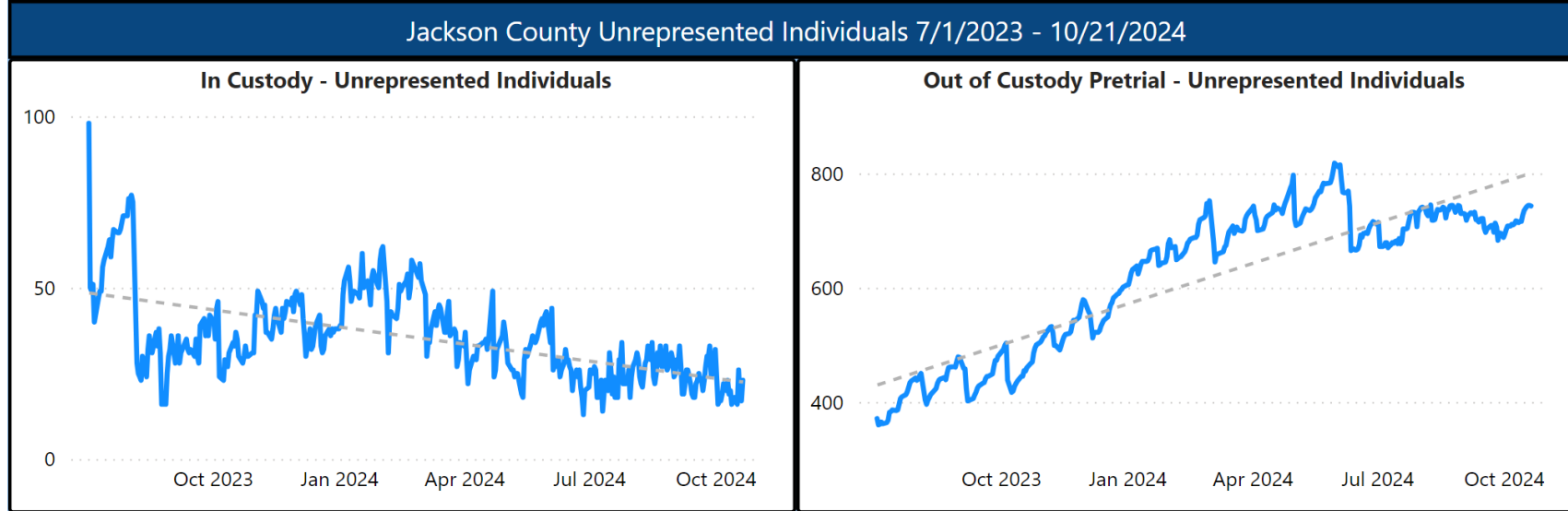
Source: OJD OPDS Unrepresented Power BI Dashboard

Criminal MAC Utilization			
OPDC Contract Data (July 2023 - September 2024)			
HomeCounty	Reported MAC	Prorated MAC	Utilization
Jackson	25.2	28.0	90.0%
Consortium	13.3	14.5	91.5%
PD	11.8	13.3	88.6%
Sole Proprietorship	0.2	0.2	82.4%
Total	25.2	28.0	90.0%



Thru 10/21/24

Contract Attorney Retention: July 2023 - October 2024					
HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
Jackson	9	8	2		6
Attorney 4		4	2		2
Attorney 3	4	2			2
Attorney 2	2	2			2
Attorney 1	3				
Total	9	8	2		6

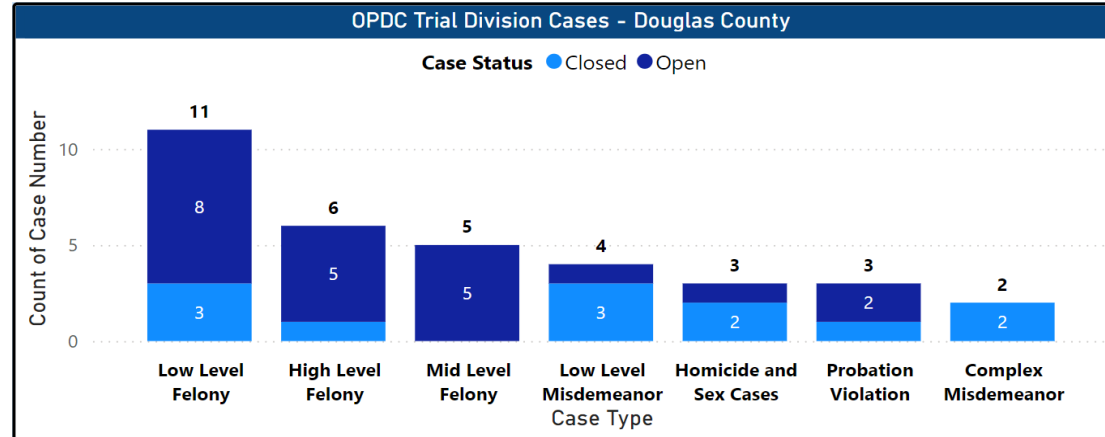


Source: OJD OPDS Unrepresented Power BI Dashboard

THIP Caseload (thru 10/21/24)		
Case County	Client Count	Case Count
Jackson	289	399
Civil Commitment	44	44
Delinquency	12	15
Dependency/Termination	72	80
Jessica Law	2	2
Major Felony	18	23
Measure 11	13	14
Minor Felony	60	82
Misdemeanor	85	113
Murder	5	5
Other	2	2
Probation Violations-Criminal	17	19
Total	289	399

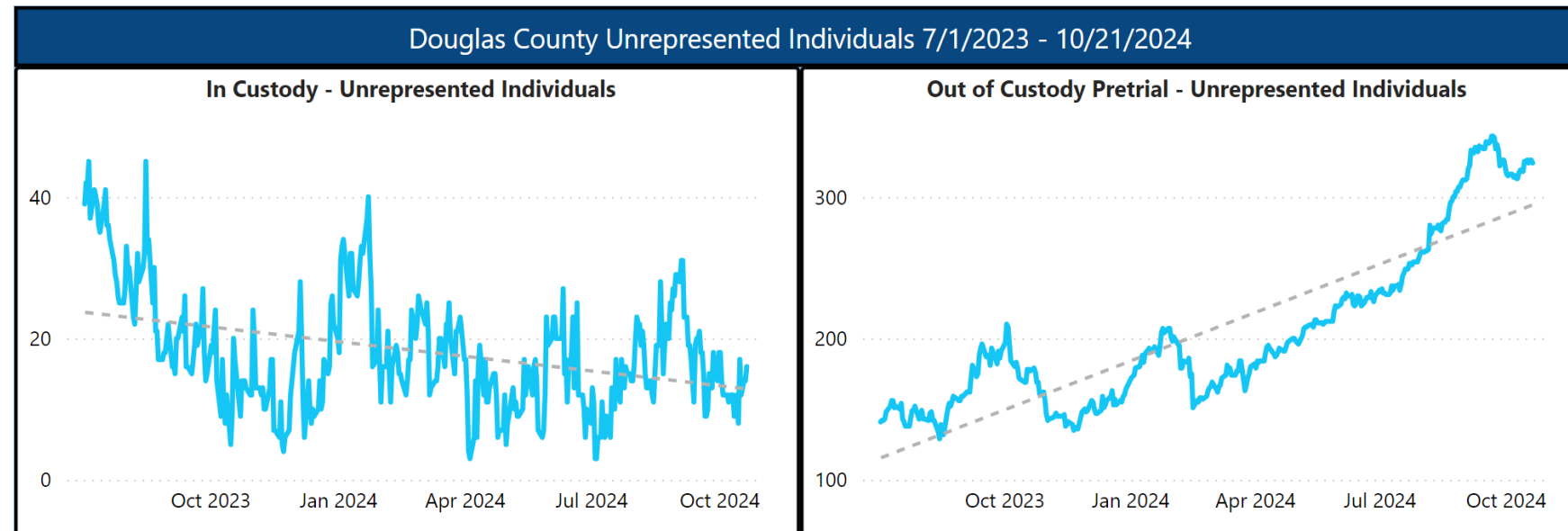
Douglas

Criminal MAC Utilization			
OPDC Contract Data (July 2023 - September 2024)			
HomeCounty	Reported MAC	Prorated MAC	Utilization
Douglas	10.1	12.4	82.1%
Consortium	1.8	2.1	85.0%
Firm	1.9	1.8	111.0%
PD	4.8	6.5	73.1%
Sole Proprietorship	1.7	2.0	83.2%
Total	10.1	12.4	82.1%



Thru 10/21/24

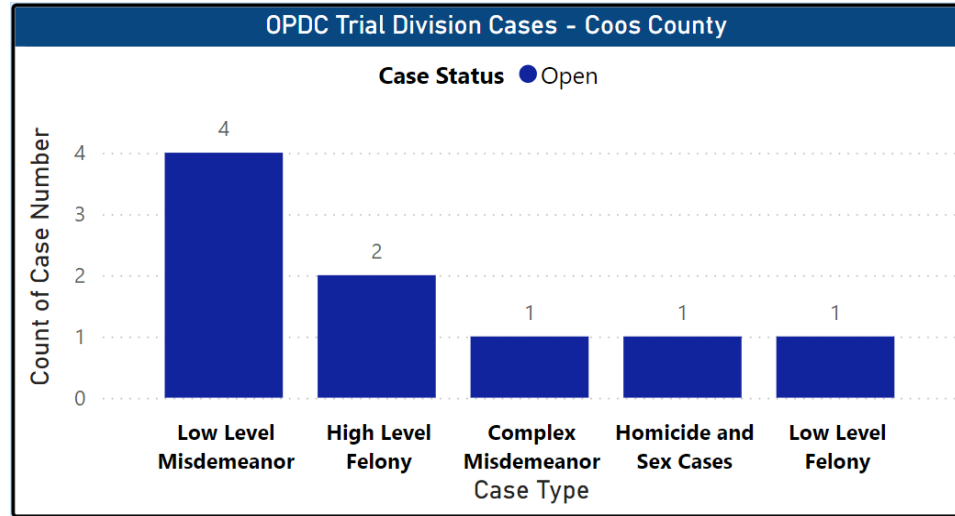
Contract Attorney Retention: July 2023 - October 2024					
HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
Douglas	4	3		3	0
Attorney 4		1		1	0
Attorney 3	2	1		1	0
Attorney 2	1	1		1	0
Attorney 1	1				
Total	4	3		3	0



Source: OJD OPDS Unrepresented Power BI Dashboard

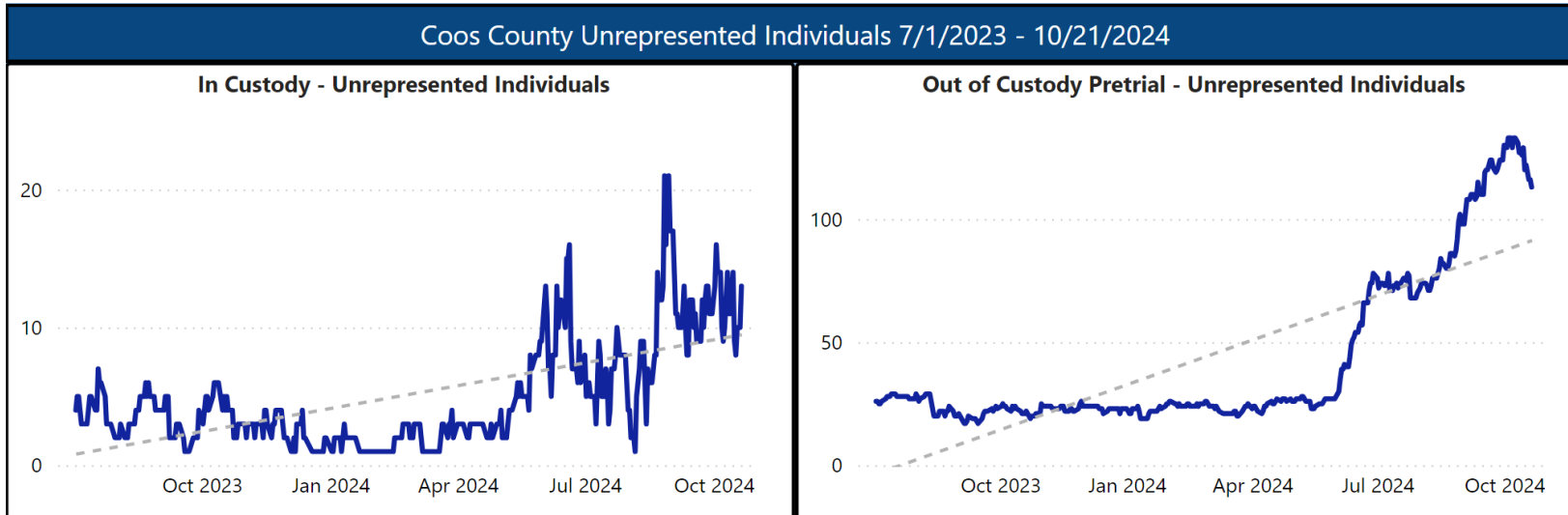
THIP Caseload (thru 10/21/24)		
Case County	Client Count	Case Count
Douglas	299	460
Dependency/Termination	8	7
Jessica Law	3	3
Major Felony	35	40
Measure 11	28	30
Minor Felony	135	173
Misdemeanor	123	180
Murder	9	10
Probation Violations-Criminal	18	25
Total	299	460

Criminal MAC Utilization			
OPDC Contract Data (July 2023 - September 2024)			
HomeCounty	Reported MAC	Prorated MAC	Utilization
☐ Coos	7.5	7.2	103.0%
☒ PD	7.5	7.2	103.0%
Total	7.5	7.2	103.0%



Thru 10/21/24

Contract Attorney Retention: July 2023 - October 2024					
HomeCounty	New Attys	Departed Attys	Now State Trial	Now Hourly	Left Public Defense
☐ Coos		4		3	1
☒ Attorney 4		1		1	0
☒ Attorney 3		1			1
☒ Attorney 2		2		2	0
Total		4		3	1



THIP Caseload (thru 10/21/24)		
Case County	Client Count	Case Count
☐ Coos	256	350
Civil Commitment	14	15
Dependency/Termination	2	2
Jessica Law	6	6
Major Felony	39	38
Measure 11	31	31
Minor Felony	80	99
Misdemeanor	97	140
Murder	7	7
Probation Violations-Criminal	12	15
Total	256	350

Source: OJD OPDS Unrepresented Power BI Dashboard

Thank you





**Oregon
Public
Defense
Commission**

Date: November 13, 2024

To: Jennifer Nash, Chair of OPDC
Susan Mandiberg, Vice Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Ralph Amador, Chief Financial Officer

Re: December Emergency Board Items

Nature of Presentation: Briefing

Background:

The Oregon Public Defense Commission (OPDC) is proposing a rebalance of agency funds through the end of the biennium.

The Oregon Public Defense Commission (OPDC) is proposing a to access the special purpose allocation made to the Emergency Board for expense related to public defense to fund projected overages to Court Mandate Expense and Preauthorized Expense programs. (\$5.1 million)

The Oregon Public Defense Commission (OPDC) is requesting to extend the Temporary Hourly Increase Program from January 1, 2025, through June 30, 2025. OPDC is subsequently proposing a to access the special purpose allocation made to the Emergency Board for expense related to public defense and is requesting additional funding from the Emergency Board general-purpose allocation Board to fund the additional expenditures that accompany the extension. (\$1.2 million SPA, \$1.4 million general-purpose allocation)

The Oregon Public Defense Commission (OPDC) is requesting the establishment of two full time attorney positions (0.50 FTE) and one full time support position (0.25 FTE) to open a Southwest Trial Representation Office. OPDC will self-fund through existing savings.

December Emergency Board Items – Commission Memorandum – November 13, 2024

Agency Recommendation:

This is an update on the agency's actions following our last commission meeting to restructure the December emergency board requests consistent with legislative feedback.

Fiscal Impact:

As stated above.

Agency Proposed Motion:

None



Oregon

Oregon Public Defense Commission

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Nov. 8, 2024

The Honorable Senator Rob Wagner, Co-Chair
The Honorable Representative Julie Fahey, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The Oregon Public Defense Commission (OPDC) requests to rebalance the projected unobligated savings in its Executive Division; Compliance, Audit, and Performance Division; Appellate Division; Adult Trial Division; Administrative Services Division; Parent Child Representation Program; and Special Programs, Contracts, and Distributions Programs. The aim is to address the projected overages in the Juvenile Trial Division and in the Court Mandated Expenses and Preauthorized Expense programs. The purpose of the rebalance is to fund, through current savings, (1) the additional costs associated with the unrepresented defendant's crisis; (2) the additional costs associated with the temporary hourly rates increase program for attorneys and investigators, which sunsets on Dec. 31, 2024; and (3) the cost overage in the Juvenile Trial division. The rebalance also aims to better align expenditures to budget.

Agency Action

OPDC has prepared a rebalance report based on expenditures as of Sept. 30, 2024, and for projections through June 30, 2025. This report to the December 2024 Emergency Board, addresses and requests critical financial adjustments required to balance the 2023-2025 Legislatively Approved Budget. The report details the requested movement of funding between appropriations to address projected expenditures against the agency's budgetary authority for the remainder of the 2023-2025 biennium.

OPDC is fully focused on trying to solve the unrepresented defendant's crisis. The attached rebalance report explains the agency's plan as it responds to fiscal challenges exacerbated by the state's unrepresented defendant crisis and the evolving demands placed on the public defense system. The commission has taken several actions to address this crisis, but one of the main stumbling blocks is the lack of reliable data. The agency has dedicated resources towards creating data sets to understand the crisis and make data-driven decisions. While the data is continuing to evolve, it has allowed the agency to develop better assumptions to project the costs and problems associated with the crisis and address them to the best of its ability with the staff and funding available.

Costs associated with the unrepresented persons crisis.

The Preauthorized Expense budget is expected to be overspent by approximately \$10.2 million through the end of the biennium, as projections have been recalculated for through Sept. 30, 2024. This differs from the Temporary Hourly Increase Program (THIP) report that was presented at the September 2024 Emergency Board. The projections in the previous report used data from earlier in the year, prior to the more mature and refined data that is available for this current report. During the late spring and summer of 2024, the commission made several policy changes to incentivize providers and vendors to engage more actively with the agency as it works to solve the crisis. This budget also realized the increased cost associated with the enhanced rate for investigators who provide services directly for the unrepresented crisis.

The agency took direction from the commission to improve the request for service programs and eliminate any backlog. The agency also took direction from the commission to institute changes in its payment policies and practices to ensure attorneys and others could bill more frequently and be paid within 30 days of receiving an invoice. Through “office hours” sessions for discussion and input and the creation of an accounts payable workgroup, the agency has used partners’ input to improve its essential business processes. These practices and changes have expedited our payment of invoices and our approval of requests for preauthorized expenses. In October 2024, both the preauthorized expense and the accounts payable units surpassed their processing totals from the previous calendar year, which is driving the budget overage.

The financial effect of more frequent payments, more requests for services, and changes to travel is expected to continue. To better reflect the effects of these changes, the budget unit has changed its projection methodology from a quarterly review to a rolling six-month average review. This will allow the agency to better understand the changes and keep track of and report on the effects of the increased caseload, workload, and policy changes. Direct effects include the large increase in the amount of travel payments and the equally, if not larger, increase in the number of psychological services and accompanying travel. It is important to note that the commission’s budget is historically based yet this crisis is not historical. Therefore, these cost overruns reflect better real-time costs of services. They are more fully described in the report under the preauthorized expense budget section.

Cost associated with the temporary hourly rates increase program for attorneys and investigators, which sunsets Dec. 31, 2024

The Court Mandated Expenses (CME) budget is projected to be overspent by approximately \$8.8 million as projections through the end of the biennium have been recalculated through Sept. 30, 2024. This presents a different picture than was presented at the September 2024 Emergency Board. Previous projections used data from earlier in the year, prior to the more mature and refined data that is available for this current report. During the late spring and summer of 2024, the commission made several policy changes to incentivize attorneys and others to engage more actively with the agency as it works to solve the crisis. The CME budget provides for expenses required by the court, mainly hourly attorney costs and psychological evaluations.

The current coverage is presented without factoring in two hires that approved by the September 2024 Emergency Board to help with case assignments for the Temporary Hourly Increase Program (THIP), which provides enhanced hourly rates to public defenders who accept appointments to in-custody unrepresented persons. The two new assignment coordinators have increased then number of assigned cases. We expect this trend to continue not only for THIP, but for hourly assignments overall. See chart below.

OPDC Unrepresented Analyst Hourly Assignments			
Distinct Client Count			
Date Completed	In Custody	Out of Custody	Total
October 2024	267	314	575
September 2024	202	125	324
July 2024	205	111	314
August 2024	181	126	305
June 2024	134	93	226
Total	926	754	1650

Like the preauthorized expense budget, to better reflect the effects of these changes, the budget unit has changed its projection methodology from a quarterly review to a rolling six-month average review. This strategy allows the agency to better understand the changes and keep track of and report on the effects of the increased caseload and policy changes. Direct effects include the large increase in the number of monthly payments to attorneys at varying rates, which is enticing to providers as they are no longer expected to carry the cost of cases through the life of the case.

Funding to cover the overage in the Juvenile Trial division.

On Nov. 1, 2024, a full-time attorney was added to a contract firm in Marion County to address a caseload need. This action, while necessary, will cause the Juvenile Trial division to eventually spend above its budgeted authority. To mitigate this potential, overspend, the agency is requesting to move \$100,000 out of the General Fund to this division’s budget.

Technical budget move to better align expenditures to budget.

The agency is requesting to move most of the budget (\$23.5 million) for psychiatric services from Court Mandated Expense (CME) to Preauthorized Expense (PAE), leaving funding in CME for those requests that are still court mandated. This move will align with and support a technical adjustment (package 060) in the 2025-27 current service-level budget.

General fund budget authority for psychiatric services was moved out of PAE (non-routine expenses at the time) and into CME due to a shift in how these services were being requested in the 2021-2023 biennium.

During the current biennium, this practice has shifted, and these services are being requested through the preauthorized expense process. Approximately \$16.16 million of expenditures for psychological services and related travel were moved from the PAE budget to the CME budget. This accounting action was necessary to ensure that PAE remains within budgeted authority until this requested rebalance occurs.

The agency plans to reverse the \$16.6 million expenditure move once the rebalance of this budget authority is completed to again ensure expenditures occur where the budget is. If the rebalance action is not approved, the agency will continue to make the necessary accounting actions to allow the PAE budget to remain within authority.

Addressing the budget problem

To partially address the projected overages in the Preapproved Expense and Court Mandated Expense programs and in the Juvenile division, the agency is requesting the following actions, which are further detailed in the attached rebalance report:

December 2024 E- Board Request			
General Fund	Increase	Reduction	Total
Court Mandate Expenses		(23,500,000)	(23,500,000)
Preauthorized Expense	23,500,000		23,500,000
			-
Administrative Services Division		(2,931,524)	(2,931,524)
Adult Trial Division-contracts		(8,150,000)	(8,150,000)
Adult Trial Division-pilot		(1,200,000)	(1,200,000)
Compliance, Audit, and Performance Division		(500,000)	(500,000)
Executive Division		(300,000)	(300,000)
Appellate Division		(500,000)	(500,000)
Parent Child Representation Program		(500,000)	(500,000)
Juvenile Trial Division	100,000	-	100,000
Court Mandated Expense	6,312,533		6,312,533
Preauthorized Expense	7,668,991		7,668,991
Totals	37,581,524	(37,581,524)	-

Action Requested

The commission requests (1) that Court Mandated Expense is appropriated \$6,312,533 in General Fund budget and expenditure authority; (2) that Preauthorized Expense is appropriated \$7,668,991 in General Fund budget and expenditure authority; (3) that the Administrative Services Division, Adult Trial Division, Compliance, Audit and Performance Division, Executive Division, Appellate Division, and Parent Child Representation Program are dis-appropriated by \$2,931,524; \$9,350,000; \$500,000; \$300,000; \$500,000; and \$500,000, respectively, in General Fund budget and expenditure authority; (4) that the Juvenile Trial Division is appropriated \$100,000 in General Fund budget and expenditure authority; (5) that Preauthorized Expense is appropriated \$23,500,000 in General Fund budget and expenditure authority; and (6) that Court Mandated Expense is disappropriated \$23,500,000 in General Fund budget and expenditure authority.

Legislation Affected

Oregon Laws 2023, chapter 481, section 1(7).	\$6,312,533
Oregon Laws 2023, chapter 481, section 1(6).	\$7,668,991
Oregon Laws 2023, chapter 481, section 1(5).	\$100,000
Oregon Laws 2023, chapter 481, section 1(9).	(\$2,931,524)
Oregon Laws 2023, chapter 481, section 1(4).	(\$9,350,000)
Oregon Laws 2023, chapter 481, section 1(2).	(\$500,000)
Oregon Laws 2023, chapter 481, section 1(1).	(\$300,000)
Oregon Laws 2023, chapter 481, section 1(3).	(\$500,000)
Oregon Laws 2023, chapter 481, section 1(8).	(\$500,000)
Oregon Laws 2023, chapter 481, section 1(6).	\$23,500,000
Oregon Laws 2023, chapter 481, section 1(7).	(\$23,500,000)

Sincerely,



Jessica Kampfe
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Allison Daniel, Policy and Budget Analyst, CFO

Oregon Public Defense Commission

DECEMBER 2024 REBALANCE REPORT & PLAN

Ralph H. Amador

NOVEMBER 8, 2024

NATURE OF THE REPORT

The Oregon Public Defense Commission is submitting a request to rebalance the 2023-2025 legislatively approved budget to the December 2024 Emergency Board. This report reflects an anticipated need to rebalance between appropriations that were established by the 82nd Legislative Assembly in the 2023 legislative session for various needs.

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EXECUTIVE SUMMARY

The Oregon Public Defense Commission (OPDC) submits this rebalance report to the December 2024 Emergency Board, addressing the critical financial adjustments required for the 2023-2025 legislatively approved budget. The rebalance plan responds to fiscal challenges exacerbated by the state's unrepresented defendant crisis and the evolving demands placed on the public defense system.

The report details the commission's current budget, projects that need to be added and changes that need to be made. It also includes a plan for moving funding between appropriations to remain within the agency's budgetary authority for the remainder of the 2023-2025 biennium.

Key drivers of this rebalance request include:

1. **Unrepresented Defendant Crisis:** OPDC continues to grapple with a severe shortage of public defenders, leading to systemic delays, increased caseloads, and budgetary strain. Efforts to address this crisis have necessitated significant investments in staffing and services, particularly within the adult trial division and the preauthorized and court-mandated expense budgets.
2. **SB 337 (2023):** This legislative action laid out a framework for public defense reform, compelling OPDC to adopt new rules, policies, and procedures. Implementation of these mandates has intensified budget volatility as the agency seeks to adapt its operations and workforce to meet growing demand.
3. **Budget Overages:** OPDC projects substantial overages in court-mandated expenses and preauthorized expenses, largely due to increased hourly caseloads, enhanced attorney and investigation costs, and increased spending on psychological services, travel, and other defense-related expenses. The agency has already taken steps to shift these costs but requires additional budget rebalancing to cover the deficits.
4. **Rebalancing Actions:** The report outlines a detailed plan to mitigate projected overages by reallocating \$14.08 million from various divisions, including savings from administrative and appellate operations. Key elements of this plan include:
 - Transfers of savings from divisions with budget surpluses, such as the administrative services and adult trial divisions.
 - Projected savings from the budget for a financial and case management system.
 - Funding additional unprojected costs in the juvenile trial division for caseloads.
 - Provides funding to partially address the projected overages in court mandated expense and preauthorized expenses programs.
 - Corrects a budget to expenditure alignment issued between the hourly programs.

OPDC remains committed to resolving the public defense crisis by improving data collection, aligning expenditures with real-time service needs, and adhering to national caseload standards. However, continued financial and legislative support will be essential to ensure that the agency can meet its constitutional mandate and maintain the integrity of Oregon's public defense system.

THE PUBLIC DEFENDER CRISIS IN OREGON: AN EXAMINATION

OPDC is combatting an entrenched problem: too few public defenders to meet the needs of Oregon's criminal justice system. This creates a constitutional crisis where Oregonians who qualify for a public defender do not have access to representation. To address this problem, OPDC must create systemic solutions that increase and stabilize our public defense workforce while protecting Oregonians' right to effective representation. We must, working in partnership with our public safety colleagues, address issues and inefficiencies across the system that stand in the way of this goal.

In 2021, the Legislature amended Oregon's public defense statute to require the commission to adopt caseloads based on national and regional best practices and adopt a workload plan. In 2021, the commission adopted annual maximum attorney caseloads (MAC) as an interim solution. The adoption of MAC revealed the true scope of Oregon's public defender shortage. While MAC was a fiscally conservative solution and an essential first step, it has shortcomings that are exacerbating the crisis. The MAC standard only regulates the annual number of cases a lawyer may accept. It does not account for the number of hours needed for each case. Further, the standard itself is based on caseload models of the 1970s and, therefore, does not reflect the current complexities of public defense work. In short, it does not accurately utilize the attorneys available, does not ensure quality representation, and impedes recruitment of attorneys.

OPDC has enacted the following initiatives to address the unrepresented persons crisis:

- Opened three trial offices with state employees providing direct representation to public defense clients in Oregon's circuit courts.
- Increased the number of public defenders appointed to represent clients under contracts with OPDC.
- Increased the number of part-time public defenders appointed to represent clients under hourly agreements with OPDC.
- Funded recruitment and retention efforts for contracted public defenders.
- Collaborated with public safety partners to improve coordination and communication regarding unrepresented persons.
- Improved ongoing data collection and sharing.

Despite numerous initiatives, the list of unrepresented persons who are in custody remains consistent, while the list of unrepresented persons out of custody has grown. Thus, although the commission has taken steps to address the constitutional crisis, the problem remains significant and will only fully improve when we have adequate funding to enact the new caseload and workload standards adopted by the commission in May 2024. The 2024 standards directly address the shortcomings of the 2021 MAC to allow OPDC to maximize the attorneys available while also creating a model that supports the recruitment and retention of effective attorneys. But we cannot do it alone. Public safety inefficiencies must be addressed systemwide to promote long-term solutions to the crisis.

BUDGET IMPACTS

Historical Funding: The commission's budget is constructed in accordance with established state budgeting rules and is therefore historically based. This means that the biennial budget, at its core, is the funding required to continue providing the current level of service, with inflation added on to specific line items for the upcoming budget cycle. This current service level of funding is based on historical expenditures from the previous period. There is consideration of additional funding for increasing caseloads as they are recognized by the official forecast, however this only applies to specific programs and only for the anticipated new case appointments in the upcoming period. If all things are equal, this methodology works, and during each budget cycle there is a period where the agency can request additional funding to address new programs, agency needs, and the effects of legislative and policy changes.

The problem this creates for the commission and its budget is that the unrepresented persons crisis has not historically been recognized and therefore was not a normally recognized expenditure when the current budget was created. Although there have been several funding additions to attempt to resolve the crisis, the evolution of the crisis has grown far beyond what could have been anticipated. This dynamic has caused areas of the budget to grow faster than anticipated and has changed the established methods for how services are compensated.

SB 337 Implementation: The 82nd Legislative Assembly made significant changes to the commission through Senate Bill 337 (2023), which provides a framework for developing public defense in Oregon. OPDC is now charged with creating and adopting rules, policies, and procedures to implement the mandated goals. Three sets of data inform the plan for providing public defense in Oregon:

1. The public defense forecast evaluated by the Department of Administrative Services' Office of Economic Analysis.
2. Caseload and workload standards, such as those in the American Bar Association's *The Oregon Project* and RAND's *National Public Defense Workload Standards*; and
3. Economic studies by third parties.

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

Commission Actions: Over the past two years, the commission has taken several actions to address this crisis. One of the main stumbling blocks is the lack of reliable data. Neither OPDC nor its partners had ever tracked the issue of unrepresented persons. As a result, OPDC needed to dedicate resources to creating datasets to first understand the crisis and then use the data to make decisions. While the data are still not perfect, OPDC has tracked the problem and addressed it to the best of its ability with the staff and funding available.

The commission needed to address the issues of compensation, recruitment, and retention not only for public defenders but also among the various investigators, interpreters, psychologists and others who perform the necessary services to provide adequate representation. This included changing policies and processes to make case appointments, approve requested services, and pay invoices in a timely manner. With those changes come additional expenditures that have not previously been recognized by the commission's budget. This creates a need

to move resources to where they are needed in lieu of where they have been historically budgeted. Also, because we are now paying providers faster, this tightens the elasticity of the budget.

The commission forecasts a deficit in court-mandated expenses and preauthorized expenses because of the changing nature of providing public defense. As the commission continues to evolve and implement the mandates outlined in SB 337, there will be volatility. The agency may need to continue to ask for rebalance actions until the program areas settle, the unrepresented crisis is under control, and the shortage of public defenders is solved.

FINANCIAL FORECASTS

The chart below demonstrates the current financial situation through Sept. 30, 2024. This chart does reflect a reclassification of expenditures relating to psychological services to include travel from preauthorized expenses, where they are recognized, to court-mandated expenses, where the budget sits. This action is necessary to ensure that the preauthorized expenses division remains solvent until rebalance actions are taken. This chart does not demonstrate the proposed rebalance moves. It does demonstrate where current savings reside.

<i>Month Ending September 30, 2024</i>	<i>LAB</i>	<i>Forecast</i>	<i>Variance</i>
Administrative Services Division	26,884,921	21,827,854	5,057,067
Adult Trial Divison	290,008,379	275,038,471	14,969,908
Appellate Division	26,424,696	25,864,093	560,603
Compliance, Audit, and Performance Division	7,069,293	6,412,616	656,677
Court Mandated Expenses	80,282,573	89,170,106	(8,887,533)
Executive Division	4,647,432	4,096,502	550,930
Juvenile Trial Division	51,227,439	51,304,662	(77,223)
Preauthorized Expenses	58,617,686	68,861,676	(10,243,990)
Parent-Child Representation Program	56,634,287	56,015,996	618,291
Special Programs, Contracts, and Distributions	12,438,908	13,591,324	(1,152,416)
TOTAL FUNDS	614,235,614	612,183,300	2,052,314

DIVISION SUMMARIES

EXECUTIVE DIVISION

Executive Division						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	3,975,649	2,045,525	1,548,503	0	3,594,028	(381,621)
Services and Supplies	671,783	163,379	339,095	0	502,474	(169,309)
Total Funds	4,647,432	2,208,904	1,887,598	0	4,096,502	(550,930)

Status Update:

- The executive division is projected to end the biennium within its budgeted authority.
- All positions are either filled or projected to be filled for the remainder of the biennium. Each position has any expected step increases factored in as well as the expected second cost-of-living adjustment (COLA) in early 2025.
- The division anticipates increased costs associated with the attorney general’s office, especially when the commission moves to the executive branch.
- The division will continue to monitor expenses associated with ethics counsel as they represent OPDC staff attorneys in litigation pertaining to the unrepresented persons crisis.
- The agency shows a modest projected savings and will offer funding to rebalance.

Next Steps:

- Continue to monitor expenditures and avoid large expenditures, especially ones that have not been included in the current projections.
- This division will offer \$300,000 of General Fund to mitigate other projected overages.

COMPLIANCE, AUDIT, AND PERFORMANCE

Compliance, Audit, and Performance Division						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	6,839,209	3,146,548	3,151,719	0	6,298,267	(540,942)
Services and Supplies	230,084	114,349		0	114,349	(115,735)
Total Funds	7,069,293	3,260,897	3,151,719	0	6,412,616	(656,677)

Status Update:

- The compliance, audit, and performance (CAP) division is projected to end the biennium within budget.
- All positions are either filled or projected to be filled for the remainder of the biennium. Each position has any expected step increases factored in as well as the expected second COLA in early 2025.
- The division anticipates increased unbudgeted costs associated with the attorney general's office as that office works with the commission to create a new master contract(s) for providers. There may also be other additional costs with increased representation as the commission moves to the executive branch.
- CAP received two unbudgeted, limited-duration positions at the September E-Board. These positions will act as case assignment coordinators for the unrepresented persons crisis. Recruitment is in process. The expenditures for these positions are included in remaining projections.
- The division shows a modest projected savings and will offer funding to rebalance.

Next Steps:

- Continue to monitor expenditures and avoid large expenditures, especially ones that have not been included in the current projections.
- This division will offer \$500,000 of General Fund to mitigate other projected overages.

APPELLATE DIVISION

Appellate Division						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	26,150,482	15,354,706	10,261,976	0	25,616,682	(533,800)
Services and Supplies	274,214	247,411	0	0	247,411	(26,803)
Total Funds	26,424,696	15,602,117	10,261,976	0	25,864,093	(560,603)

Status Update:

- The appellate division, which includes both criminal and juvenile, is projected to end the biennium within budget.
- All positions are either filled or projected to be filled for the remainder of the biennium. Each position has any expected step increases factored in as well as the expected second COLA in early 2025.
- The division will continue to monitor expenses associated with outside counsel as they represent OPDC appellate attorneys where a judge had appointed OPDC staff attorneys to unrepresented persons cases for which they are not qualified to provide representation.
- The division has incorporated the necessary training dollars to meet the Continuing Legal Education requirements of staff.
- The division shows a modest projected savings and will offer funding to rebalance.

Next Steps:

- Continue to monitor expenditures and avoid large expenditures, especially ones that have not been included in the current projections.
- This division will offer \$500,000 of General Fund to mitigate other projected overages.

ADULT TRIAL DIVISION

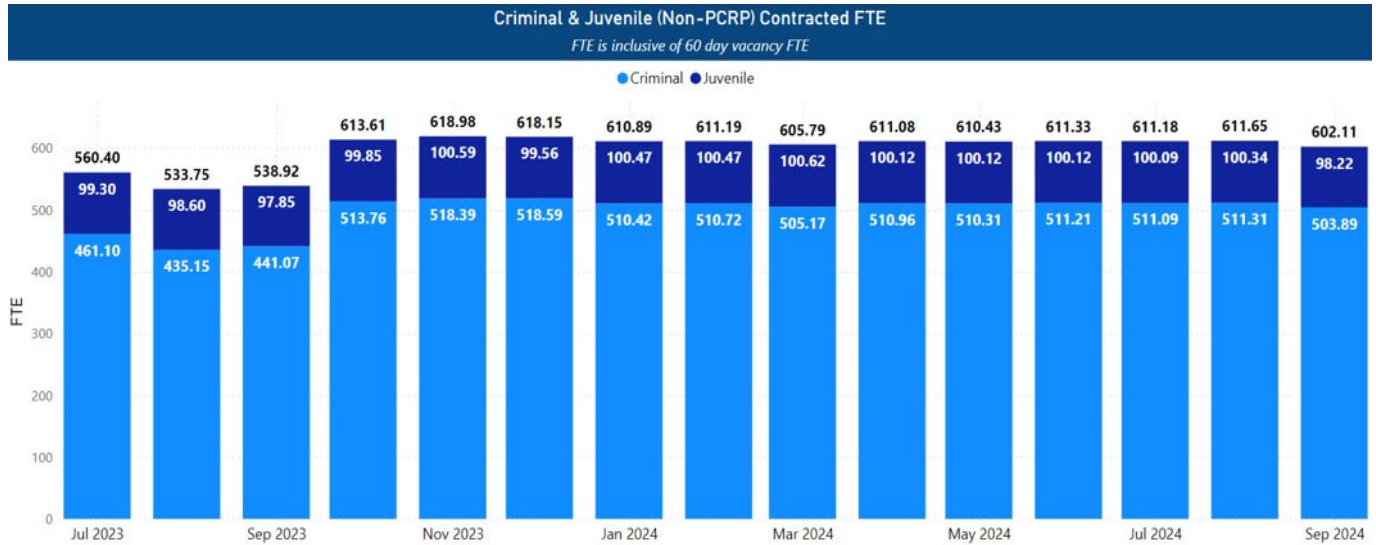
Adult Trial Division						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	8,777,562	2,440,913	4,911,727	0	7,352,640	(1,424,922)
Services and Supplies	281,230,817	165,770,771	101,997,918	0	267,768,689	(13,462,128)
Total Funds	290,008,379	168,211,684	106,909,645	0	275,121,329	(14,887,050)

Adult Trial Division w/o Pilot Project						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	145,441	58,080	0	0	58,080	(87,361)
Services and Supplies	279,137,800	165,373,275	100,858,095	0	266,231,370	(12,906,430)
Total Funds	279,283,241	165,431,355	100,858,095	0	266,289,450	(12,993,791)

Status Update:

- The first chart above is a wholistic view of the adult trial division. This includes provider contracts and funding for the pilot project, which is described in the next section. The second chart removes the funding associated with the pilot project demonstrates the savings absent the pilot project, which are around \$12.99 million.
- OPDC’s contracting is aligned with the biennial budget. Provider contracts are from July 1, 2023, to June 30, 2025. Costs and maximum attorney caseloads (MAC) are prorated when attorneys change their MAC or join or start a contract mid-cycle. MAC totals can fluctuate throughout a contract cycle as providers enter and exit contracts. MAC for a contract can be increased when a contractor identifies an attorney qualified to handle public defense cases and requests that OPDC authorize and fund that attorney to provide public defense services. MAC increases are only permitted when funded MAC is available.
- There have been several additional financial investments in this program area that have not been capitalized on. Continued vacancies in the system are adding to or allowing the positive budget variance to remain consistently high, which undermines the program’s efforts to increase capacity.
- The agency has obligated approximately \$4.75 million of the \$12.99 million projected savings for the remainder of the current biennium. These obligations are confirmed additions to contracts, meaning the contractor has firm commitment and a relatively certain effective or start date, or contractors are recruiting attorneys and OPDC has committed to provide funding when qualified attorneys can be added. This also includes funding for case managers and paralegals as provided in House Bill 5204 in support of House Bill 4002. As these obligations materialize, the agency expects to add approximately 22.84 attorney FTE to the November totals of 487.05 filled attorney FTE. The program is currently carrying 13 FTE vacancies, which is down considerably from the all-time high of 28.33 vacant FTE that the started the month of October 2024. These additions are extremely important as our contractors are our first line in combating the unrepresented crisis. Having and maintaining full contracts is an important factor in managing the crisis.
- **Chart 1** reveals a consistent drop in the amount of contracted full-time equivalency (FTE) in this program area. Since the high of 518.59 in December 2023, the level has not recovered.

Chart 1



- There has been a consistent increase in the number of hourly cases available.
- There has been a consistent number of firms and attorneys shutting off or temporarily not accepting cases in a specific period for various reasons. This adds to the unrepresented numbers as the cases cannot be assigned as planned.
- **Table 1** displays attorney retention since July 2023. A total of 109 public defenders have left the contracted ranks. The data accounts for 36 of these individuals as they are still in the system in some capacity. There is no accounting for 73, which is problematic in an environment where there is a documented shortage of public defenders.

Table 1

Contract Attorney Retention Since July 1, 2023								
HomeCounty	New Attys	Departed Attys	Net Attys	New Atty FTE	Departed Atty FTE	Departed Attys Now Hourly	Departed Attys Now State Trial	Atty Loss to Public Defense
Benton	2	1	1	1.95	0.95	1		0
Clackamas	6	4	2	5.67	1.55	2		2
Clatsop	1	1	0	0.99	0.98			1
Clatsop, Columbia	1		1	1.00				
Clatsop, Tillamook		1	-1		0.00			1
Columbia	1	1	0		0.10			1
Coos		4	-4		3.25	3		1
Coos, Curry, Douglas, Jackson, Josephine, Klamath		1	-1		0.00	1		0
Crook, Jefferson	1	1	0	1.00				1
Deschutes	8	12	-4	5.94	11.56			12
Douglas	3	3	0	2.20	2.95	3		0
Gilliam, Hood River, Sherman, Wasco, Wheeler	1	1	0	0.97	0.97			1
Grant, Harney	2	2	0	0.75	1.55			2
Jackson	7	8	-1	5.70	7.84		2	6
Josephine	1	2	-1	0.70	2.00	1		1
Klamath	3	2	1	2.55	1.00	1		1
Lake	1	2	-1	1.00	0.70			2
Lane	6	3	3	5.75	1.75	1		2
Lincoln	2	1	1	1.45	1.00			1
Linn	4	2	2	3.15	2.85	1		1
Malheur	4	1	3	3.80	1.00	1		0
Marion	13	16	-3	10.48	14.65	4	3	9
Morrow, Umatilla	1	1	0	0.40	0.40			1
Multnomah	21	18	3	19.00	17.60	3		15
Polk	4		4	2.45				
Statewide	3	1	2	2.30	0.00			1
Umatilla	2	2	0	2.00	1.50			2
Washington	18	20	-2	14.33	15.71	7	2	11
Yamhill	1		1	1.00				
Total	116	109	7	96.53	91.86	29	7	73

Next Steps:

- This program area has significant savings that can be shifted to where the caseload and cost are growing.
 - Moving \$8.15 million of program savings to rebalance problems in the hourly programs.
- Implement the actions associated with the programs plan for obligated funds.
- Continue to work with contactors to monitor and maintain contracts, relationships, and caseloads.
- Continue to keep the budget dashboard in real time and in sync with the contract database.
- Continue to meet with program staff and the data team.

ADULT TRIAL DIVISION – PILOT PROJECT

Pilot Project						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	8,632,121	2,382,833	4,911,727	0	7,294,560	(1,337,561)
Services and Supplies	2,093,017	397,496	1,139,823	0	1,537,319	(555,698)
Total Funds	10,725,138	2,780,329	6,026,857	0	8,788,422	(1,893,259)

Status Update:

- The above numbers are included in the overall adult trial division as the pilot project is a subset of this appropriation. The information in this section is intended to stand alone.
- During September, we created a more refined view of this program. This was done to update the personal services projections to a more realistic level that was reflective of the program’s hiring plan. We also aimed to identify savings that could be used to support potential changes to this program.
- OPDC has made significant progress in the policy area. In less than a year, the agency has opened three trial division offices and hired approximately 50 staff members. State attorneys have been assigned over 500 cases, mostly from the unrepresented list.
- All positions are either filled or projected to be filled for the remainder of the biennium. Each position has any expected step increases factored in as well as the expected second COLA in early 2025.
- There is a growing need for immediate coverage in the southwest corner of the state. We submitted a request to the Emergency Board in September, but it was deferred. We will present a scaled-down version at the Emergency Board in December.
- The agency will need additional space in Medford and Portland to accommodate the increased number of staff who will be added in 2025-2027 to keep pace with the requirements of SB 337.

Next Steps:

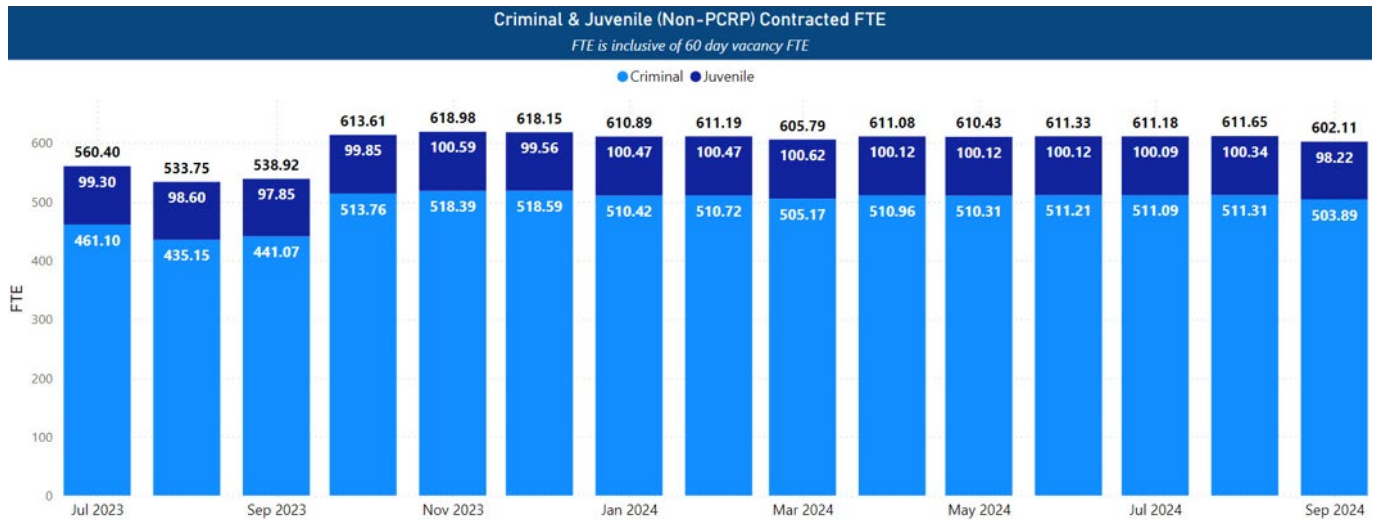
- This program will contribute \$1.2 million of projected savings to the rebalance problem.
- The program will focus on these three initiatives:
- Submit an Emergency Board request position authority to establish a southwest public defender office, which the agency will fund for the remainder of the 2023-2025 biennium with current savings.
- Seel to expand our presence in Medford to meet growing needs and additional public defenders mandated by SB 337.
- Seek to move our Portland office from Interstate Avenue possibly to available state space in the Portland State Office Building to meet growing needs and to accommodate additional public defenders mandated by SB 337.
- Develop business cases for the proposed expansions to include the 2025-27 roll-up costs, as the proposed 2025-27 current service-level budget, as submitted, may not support the extra costs for expansion and additional space.
- Continue to monitor expenditures and avoid large expenditures, especially ones that have not been included in the current projections.

JUVENILE TRIAL DIVISION

Juvenile Trial Division						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Services and Supplies	46,875,439	31,919,924	19,384,738	(4,352,000)	46,952,662	77,223
Other Funds						
Services and Supplies	4,352,000	0	0	4,352,000	4,352,000	0
Total Funds	51,227,439	31,919,924	19,384,738	0	51,304,662	77,223

Status Update:

- The Juvenile Division shows a slight overage due to the additional unprojected cost to cover caseload.
- The charts below demonstrate the consistency of FTE and vacancies in this program area.



Juvenile (Non-PCR) Contracted Vacancy FTE

Contract County	July 2023	Sept 2023	Jan 2024	July 2024	Sept 2024
Clackamas					0.60
Deschutes	0.15				
Jackson					0.20
Josephine		0.30			
Lane				0.80	
Malheur				0.70	
Washington			0.40		0.90
Total	0.15	0.30	0.40	1.50	1.70

Next Steps:

- Continue to work with contactors to monitor and maintain contracts, relationships, and caseloads.
- Continue to keep the budget dashboard in real time and in sync with the contract database.
- Continue to meet with program staff and the data team.
- Reclassify expenditure to recognize Title IV-E funding as received from the Oregon Department of Human Services – Child Welfare Division.
- Use \$100,000 of agency savings to cover the additional caseload cost.

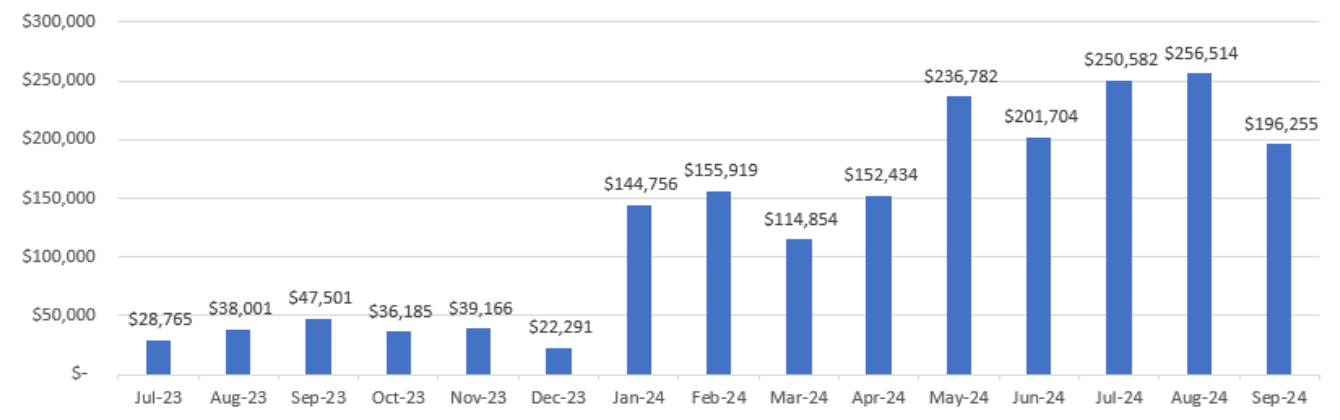
PREAUTHORIZED EXPENSES

Preauthorized Expenses						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Services and Supplies	58,617,685	36,887,830	55,473,846	(23,500,000)	68,861,676	10,243,991
Other Funds						
Services and Supplies	1	0	0	0	0	(1)
Total Funds	58,617,686	36,887,830	55,473,846	(23,500,000)	68,861,676	10,243,990

Status Update:

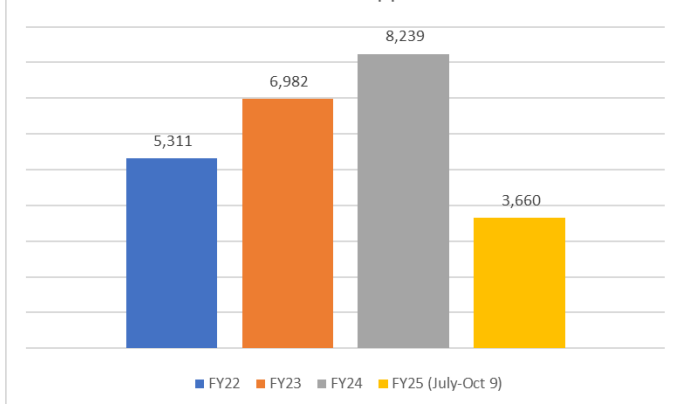
- This budget is currently projected to be overspent by more than \$10.2 million, with the assumption that the Temporary Hourly Increase Program (THIP) sunsets on Dec. 31, 2024, as scheduled. This projection differs from when the agency last reported. At the last report, the commission made a series of changes that altered the direction of expenditures to budgeted authority. These changes were made in response to the unrepresented persons crisis and the previous extensions and maturity of THIP.
- Through time and several process and business improvements and partnerships, the agency has been better able to identify and project expenses and to validate some previous projections as they relate directly to THIP and the crisis. While THIP has a lesser effect on this budget, the unrepresented persons crisis is the main driver of these increases.
- The agency is currently able to see some stability in how the expenditures are materializing and has begun using a 6-month rolling average to project expenditures for the remainder of the biennium.
- General fund budget authority for psychiatric services was moved out of preauthorized expenses (PAE) (non-routine expenses at the time) and into court-mandated expenses (CME) due to a shift in how these services were being requested in the 2021-2023 biennium. At the current service level, the authority was returned to PAE.
- Approximately \$16.16 million of expenditures for psychological services and related travel were moved from this budget to the CME budget. This action is necessary to ensure that PAE remains within budgeted authority until rebalance actions occur.
- As a part of this rebalance, the agency is requesting to move most of the budget (\$23.5 million) for psychiatric services from CME to PAE, leaving funding for those requests that are still court mandated. This move will align and support a technical adjustment (package 060) in the 2025-27 current service-level budget.
- Since the onset of the unrepresented defendant and persons crisis, the request for services has increased significantly. To keep up, the unit hired three people since the new year. One of those positions became permanent on July 1, 2024. At the Emergency Board in September, the agency was given two unbudgeted, limited-duration positions for the remainder of the biennium.
- Effective Jan. 1, 2024, the commission made several policy changes:
 - 8.8% increase in provider rates. This matched the inflation increase given to the agency for providers.
 - Approved full hourly rate of pay for travel for all vendors, except flat-rate vendors who were later approved for up to \$75 per hour. These changes were not included in the agency budget.
- The chart below shows the increase in travel cost because of these changes.
- The average amount from July–December 2023 was \$35,318 while the average amount from January–August 2024 was \$189,193, which is an increase of 436%.

Travel Time Expenditures by Month/Year (PAE)

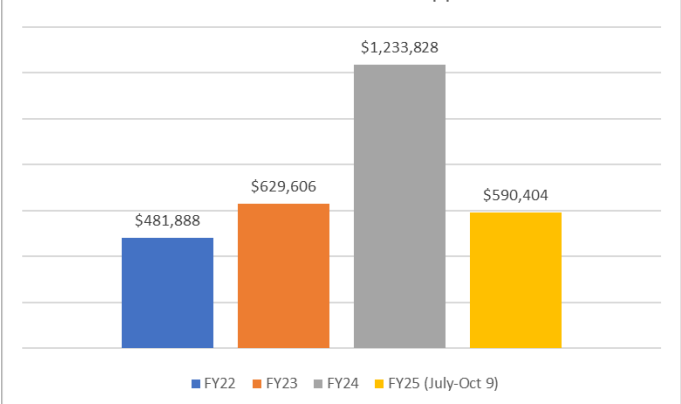


- The other unexpected increase in this area is psychological services and accompanying travel.
 - FY 2022 to FY 2023 shows an increase in hours approved for services of 5.28% and an increase of 8.99% in the amount of dollars approved for services.
 - FY 2023 to FY 2024 shows an increase in hours approved for services of 9.46% and an increase of 16.68% in the amount of dollars approved for services.
- The travel changes have had another unplanned expenditure, which is demonstrated on the charts below. The amount paid for each service is being increased. Previously, travel was assumed in the rate paid, but now it is an additional expenditure on top of the increasing number of services being approved. Isolating to just psychological services travel:
 - FY 2022 to FY 2023 shows an increase in hours approved for travel of 31.46% and an increase of 30.65% in the amount of dollars approved for travel.
 - FY 2023 to FY 2024 shows an increase in hours approved for travel of 18.00% and an increase of 95.97% in the amount of dollars approved for travel.
- At this point, we have approved more psychological and related travel than we have budget.

Travel Hours Approved



Amount of Travel Hours Approved



Next Steps:

- Monitor all PAE expenditures monthly to each agency object.
- Update projections monthly in accordance with six-month rolling average.

- Reproject the expenditures for psychological and related services.
- Rebalance the psychological and related services budget from the CME budget to the PAE budget, leaving money in CME to account for those requests that are truly court-ordered through the State Hospital.
- Reverse the \$16 million expenditure move done in September 2024, bringing the expenditures back into PAE from CME along with the budget.
- Rebalance \$7,688,991 of other agency unobligated savings to this budget. This leaves a need of \$2,750,000 to account for projected expenditures through the end of the biennium.

COURT MANDATED EXPENSES

Court Mandated Expenses						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Services and Supplies	75,832,906	53,150,940	8,069,499	23,500,000	84,720,439	8,887,533
Other Funds						
Services and Supplies	858,122	429,213	0	0	429,213	(428,909)
Special Payments	3,591,545	696,936	0	0	696,936	(2,894,609)
Total Funds	80,282,573	54,277,089	8,069,499	23,500,000	85,846,588	5,564,015

Status Update:

- This budget is projecting to be overspent by more than \$8.8 million, with the assumption that the Temporary Hourly Increase Program (THIP) sunsets on Dec. 31, 2024, as scheduled. This projection differs from when the agency last reported. At the last report, the commission had made a series of changes that have altered the direction of expenditures to budgeted authority. These changes were made in response to unrepresented persons crisis and the further extension and maturity of THIP.
- Through time and several process and business improvements as well as partnerships, the agency has been better able to identify and project expenses and to validate some previous projections as they relate directly to THIP and the crisis.
- The agency sees some stability in how the expenditures are materializing and has begun using a 6-month rolling average to project expenditures for the remainder of the biennium.
- Psychological services budget dollars were moved out of preauthorized expenses (PAE) (non-routine expenses at the time) and into court-mandated expenses (CME) due to a shift in how these services were being requested in the 2021-2023 biennium. In 2023-2025, expenditures continue to be realized in PAE, therefore there is a need to move the budgeted funds back through this rebalance request.
- As a part of this rebalance, the agency is requesting to move most of the budget (\$23.5 million) for psychiatric services from CME to PAE, leaving funding for those requests that are still court mandated. This move will align and support a technical adjustment (package 060) in the 2025-27 current service level budget.
- Approximately \$16.16 million of expenditures for psychological services and related travel were moved from the PAE budget to this budget. This action is necessary to ensure that PAE remains within budgeted authority until rebalance actions occur.
- The reports below are included to demonstrate that the number of hourly assignments is steadily increasing. Having limited resources, the agency started with one assignment coordinator and added another, but we have not been able to keep pace even though the caseload for unrepresented has been limited to those in custody.
- The CAP division received two unbudgeted, limited-duration positions at the September E-Board. These positions will act as case assignment coordinators for the unrepresented persons crisis.
- **Chart 1** below demonstrates the increase in the rolling 7-day average due to the addition of the second assignment coordinator and the introduction and implementation of a new process that automates the case assignment process.
- The additional case assignment coordinators are expected to help the agency find more attorneys, assign more cases, and lower the in-custody caseload.
- The adult trial division has seen a marked decrease in the number of attorneys on contract. Since July 2023, there has been a loss of 109 public defenders from contracts. Twenty-nine moved to taking unrepresented and THIP cases, seven joined OPDC and 73 are unknown. **Chart 2** shows the increase of THIP attorneys who are taking cases.
- More cases at the enhanced rates means more expenditures that are not covered by the budget. **Table 1** shows the consistency of this caseload and the dynamic problem the agency continues to chase.

Chart 1

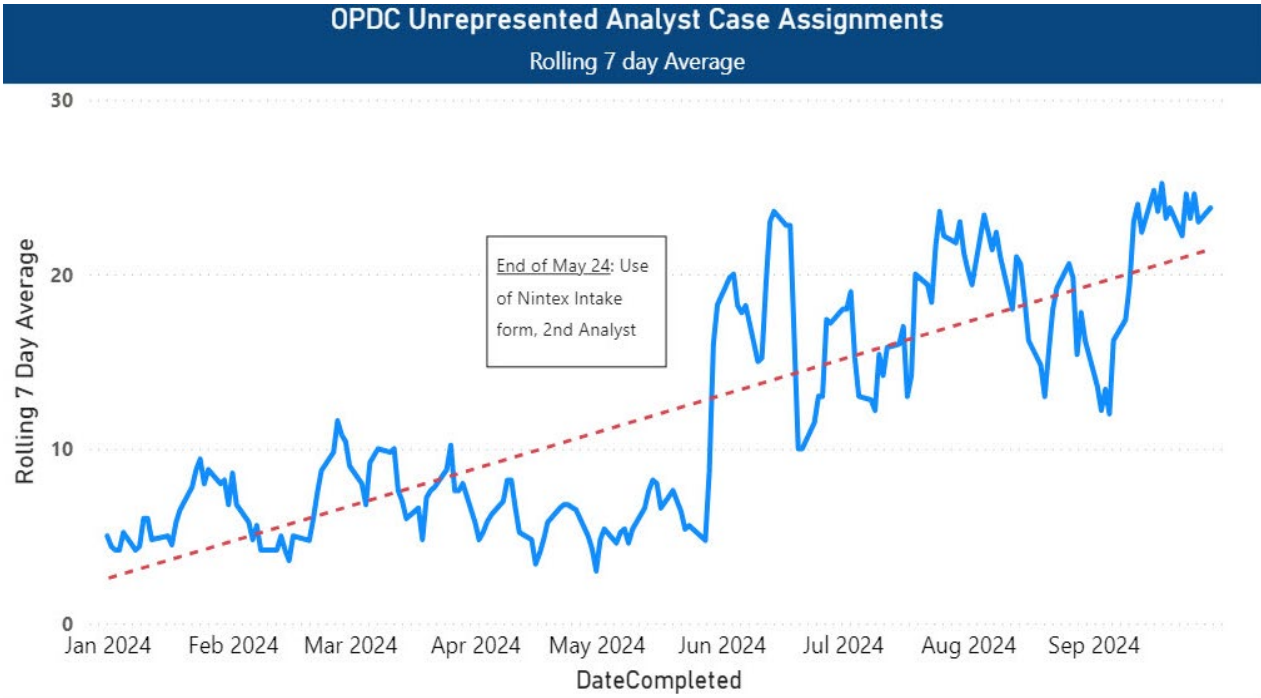


Chart 2

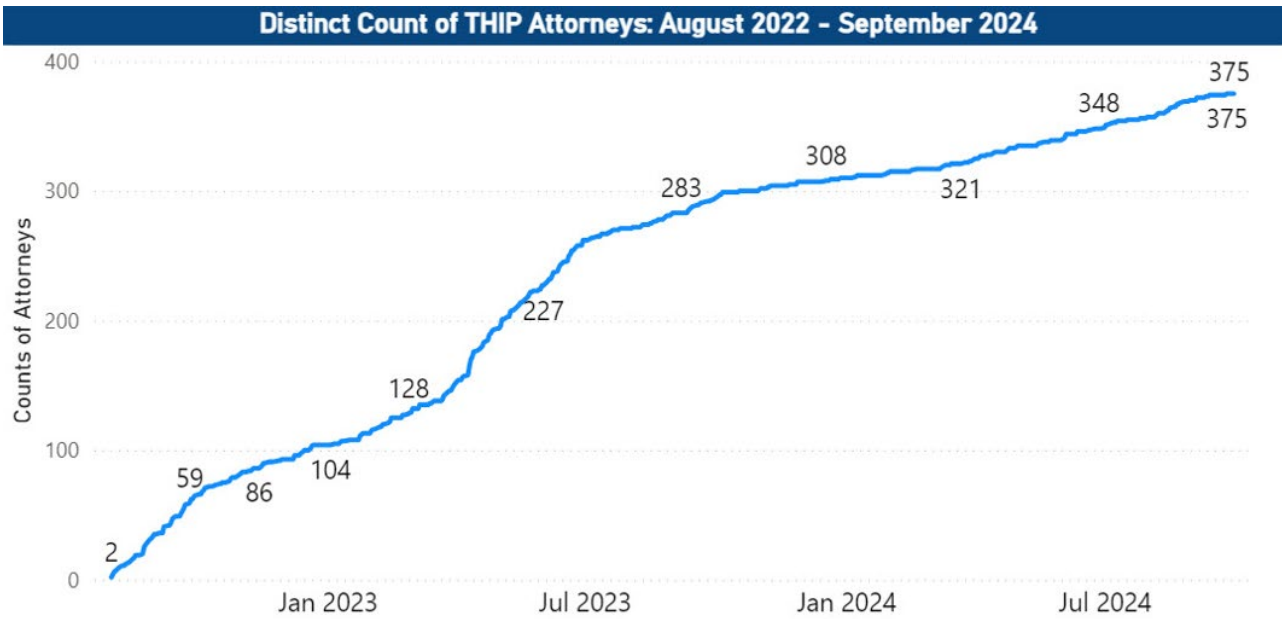


Table 1

THIP Caseload by Time			
Minimum Effective Date	Attorney Count	Client Count	Case Count
☒ July 2023	82	317	402
☒ August 2023	97	330	418
☒ September 2023	104	439	554
☒ October 2023	50	90	143
☒ November 2023	46	83	111
☒ December 2023	50	101	150
☒ January 2024	55	96	131
☒ February 2024	40	68	120
☒ March 2024	64	107	177
☒ April 2024	65	92	134
☒ May 2024	62	119	190
☒ June 2024	74	145	211
☒ July 2024	96	205	268
☒ August 2024	91	170	250
☒ September 2024	85	157	220
Total	302	2,377	3,479

Next Steps:

- Monitor all CME expenditures monthly and compare to each agency object code.
- Update projections monthly in accordance with six-month rolling average.
- Monitor the active caseloads, on both the contracted and the hourly.
- Continue to try to find a way to track the hourly cases.
- Continue to push for hourly contracts for all hourly attorneys to get an accurate headcount.
- Reproject the expenditures for enhanced attorney and related enhanced services.
- Rebalance psychological and related services budget from CME budget to the PAE budget, leaving money in CME to account for those requests that are truly court-ordered through the State Hospital.
- Reverse the \$16 million expenditure move done in September 2024, sending the expenditures back to PAE from CME along with the budget.
- Rebalance \$6,312,533 of other agency unobligated savings to this budget. This leaves a need of \$2,750,000 to account for projected expenditures through the end of the biennium.

PARENT CHILD REPRESENTATION PROGRAM

Parent Child Representation Program						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	443,905	269,408	174,497	0	443,905	0
Services and Supplies	44,222,382	32,382,175	23,184,920	(11,968,000)	43,599,095	(623,287)
Other Funds						
Services and Supplies	11,968,000	0	0	11,968,000	11,968,000	0
Total Funds	56,634,287	32,651,583	23,359,417	0	56,011,000	(623,287)

Status Update:

- Parent Child Representation Program (PCRP) shows a positive variance in the program area.
- There is a slight overage in personal services, which is solved by the overall positive variance.
- This program is the model of consistency due to the nature of the program, the limited number of counties, higher compensation and staffing assistance, and the limited caseload.

Next Steps:

- Continue to work with contactors to monitor and maintain contracts, relationships, and caseloads.
- Continue to keep the budget dashboard in real time and in sync with the contract database.
- Continue to meet with program staff and the data team.
- Reclassify expenditure to recognize Title IV-E funding as received from the Oregon Department of Human Services – Child Welfare Division.
- This program looks to transfer \$500,000 of General Fund to help address the rebalance issues.

ADMINISTRATIVE SERVICES DIVISION

Administrative Services Division						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	13,500,299	7,696,319	5,195,260	0	12,891,579	(608,720)
Services and Supplies	13,384,622	4,666,643	4,269,631	0	8,936,274	(4,448,348)
Total Funds	26,884,921	12,362,962	9,464,891	0	21,827,853	(5,057,068)

Status Update:

- The administrative services division (ASD) is projected to end the biennium with budget.
- All positions are either filled or projected to be filled for the remainder of the biennium. Each position has any expected step increases factored in as well as the expected second COLA in early 2025.
- The division anticipates increased unbudgeted costs associated with the attorney general's office, especially when the commission matriculates to the executive branch.
- Established three permanent full-time positions (0.99 FTE) and approved the downward reclassification of four permanent positions for procurement and contract administration. We are currently hiring one procurement specialist 2 and will start recruitments for two procurement specialist 1 positions and a procurement manager. One program analyst 4 is currently being recruited as there are incumbents for the three newly established positions.
- Established one limited-duration position (0.38 FTE) for a chief data officer; two limited-duration positions (1.00 FTE) for preauthorization of contractor expenses; and three limited-duration positions (1.38 FTE) for accounts payable activities. All positions are currently in recruitment.
- The agency shows a modest projected savings and will offer funding to rebalance.

Next Steps:

- Continue to monitor expenditures and avoid large expenditures, especially ones that have not been included in the current projections.
- This division will offer \$2,931,524 of General Fund to mitigate other agency projected overages. \$500,000 will come from all of ASD, and \$2,431,524 will come from the financial and case management system's (FCMS) budget (see below).

Administrative Services Division, Finance and Case Management System						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Personal Services	1,502,706	549,972	563,515	0	1,113,487	(389,219)
Services and Supplies	7,154,030	511,296	2,682,761	0	3,194,057	(3,959,973)
Total Funds	8,656,736	1,061,268	3,246,276	0	4,307,544	(4,349,192)

Status Update for FCMS:

- These numbers are in the overall table for the administrative services division. This section is purely informational to highlight the separation between this budget and the rest of the division's budget.
- The FCMS project projects a savings of \$4.3 million. This is a result of the timing of the project. Because the project is in the planning phase, the agency is using a basic projection model for services and supplies, which, if not spent, will contribute to the accumulated savings variance at the end of each month. Personal services projections are actual costs to include any step increases for staff and projected COLAs that are scheduled to appear.
- The project is finishing stage gate 2. All documents for portfolio management review (P3) have been completed. Stage gate 2 documents are 100% complete for final stage gate 2 review.
- Change management for the project is underway. Moss Adams is the contracted vendor and has launched the discovery phase, worked with OPDC on a communications plan, and started interviewing stakeholders.

- The Request for Proposal (RFP) was posted on Oregon Buys on Oct. 15.
- Program health remains amber due to budget, resource, and schedule health concerns. Scope health updates are green due to RFP approval. Scope is stable and is being properly managed through the change control process.

Next Steps:

- Moss Adams change management consulting track - Moss Adams is engaging stakeholders in individual and group interviews. Survey of providers closes Dec. 6.
- The agency proposes to use \$2,431,524 in project funds towards the rebalance. Here are the assumptions:
- As of September 2024, the project had spent \$1 million.
 - The projections for personal services will stay the same as the 6-month rolling average.
- Services and supplies (S&S) S&S in this budget are mainly IT professional services. The next 9-month projections are to spend \$2.6 million, leaving \$3.9 million in savings.
- There is a risk that the \$2.6 million plus the \$1.4 million of remaining variance savings (\$4 million in total) will not be enough to cover the project costs for the next nine months.
- The agency assumes that there will not be major project spending until after a contract is negotiated and signed, which is expected to occur in spring of 2025.
- What is not known is what the activities will be after the contract is signed.
- Will it be licensing or design, development, and implementation before the end of the biennium? The assumption is that project billing and payment by the selected vendor will be made in accordance with a contract deliverable plan – meaning we don't pay in advance, only after a deliverable has been invoiced and met.

SPECIAL PROGRAMS, CONTRACTS, AND DISTRIBUTIONS

Special Programs, Contracts, and Distributions						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Services and Supplies	10,855,627	6,964,043	5,049,000	0	12,013,043	1,157,416
Other Funds						
Services and Supplies	1,583,281	1,578,281	0	0	1,578,281	(5,000)
Total Funds	12,438,908	8,542,324	5,049,000	0	13,591,324	1,152,416

Status Update:

- An overage is projected due to the unknown amounts of discovery invoices that may be submitted. There is no pattern for how or when discovery invoices will be submitted to the commission for payment or for how much. The only constant is that we are required to pay the invoices when submitted.
- As there is no forecast or methodology, the agency has no mechanism to request additional funds to cover any overage. This is one area where we can only pay what we have.
- Contract payments that were placed in this budget are progressing on schedule.
- Contract payments for guardianship are going out as scheduled.
- We have requested and received all funding for the Byrne grant.
- This area has no funding to add to the rebalance plan.

Next Steps:

- Continue to monitor this budget.
- Report to the executive team when the budget gets below \$2 million so that we can communicate to vendors that our discovery funding is running out.
- Update projections to better reflect the remaining funding available for discovery payments.

REBALANCE

REBALANCE PLAN

- The first action that is being requested is to move the budget for psychological services and related services from court-mandated expenses to preauthorized expenses, leaving enough money in court-mandated expenses to account for those requests that are truly court-ordered through the State Hospital. This action will align the budget with expenditures. A part of this overall action will be administrative in nature as the agency will need to reverse the \$16.1 million expenditure move that was done in September.
- The second action that will inform the need for this rebalance is the reprojection of expenses in both court-mandated expenses and preauthorized expenses. These rejections are the six-month rolling average of recent expenditures in these program areas. This six-month average is important and applicable due to the recent changes the commission has made to various policies and procedures, which has changed the behavior of the expenditures. The projections are presented with the assumption that THIP sunsets in December 2025. There is a subsequent request to extend THIP through June 2025, in which case the below projections will need to be changed to reflect the effects of the extension.
- The revised projections have produced the following issues:
 - Court-mandated expenses is now projecting a General Fund overage of \$8,887,533.
 - Preauthorized expenses is now projecting a General Fund overage of \$10,243,990.
 - The rebalance will also provide additional funds to the juvenile trial division’s unplanned spend.

Court Mandated Expenses						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Services and Supplies	75,832,906	53,150,940	8,069,499	23,500,000	84,720,439	8,887,533
Other Funds						
Services and Supplies	858,122	429,213	0	0	429,213	(428,909)
Special Payments	3,591,545	696,936	0	0	696,936	(2,894,609)
Total Funds	80,282,573	54,277,089	8,069,499	23,500,000	85,846,588	5,564,015

Preauthorized Expenses						
General Fund	LAB	Expenditures	Projections	Adjustments	Forecast	Variance
Services and Supplies	58,617,685	36,887,830	55,473,846	(23,500,000)	68,861,676	10,243,991
Other Funds						
Services and Supplies	1	0	0	0	0	(1)
Total Funds	58,617,686	36,887,830	55,473,846	(23,500,000)	68,861,676	10,243,990

To mitigate these projected overages, the agency is requesting the following through a rebalancing action:

- Move \$500,000 of General Fund from the administrative services division.
- Move \$2,931,524 of General Fund from the financial and case management system (ASD).
- Move \$8,150,000 of General Fund from the adult trial division.
- Move \$1,200,000 of General Fund from the adult trial division’s pilot project funds.
- Move \$500,000 of General Fund from the appellate division.
- Move \$500,000 of General Fund from the compliance, audit, and performance Division.
- Move \$300,000 of General Fund from the executive division.
- Move \$500,000 of General Fund from the Parent Child Representation Program.
- Move \$100,000 of General Fund to the juvenile trial division.

- Move \$6,312,533 of General Fund to court-mandated expenses.
- Move \$7,668,991 of General Fund to preauthorized expenses.
- Move \$23,500,000 of General Fund to preauthorized expenses.
- Move \$23,500,000 of General Fund from court-Mandated expenses.
- These actions will produce \$14,081,524 General Fund to partially solve the \$19,131,524 General Fund projected overage. (see schedule below).

REBALANCE SCHEDULE

December 2024 E- Board Request				
General Fund	Increase	Reduction	Total	Legal Citation
Court Mandate Expenses		(23,500,000)	(23,500,000)	Oregon Laws 2023, Chapter 481, section 1(7)
Preauthorized Expense	23,500,000		23,500,000	Oregon Laws 2023, Chapter 481, section 1(6)
			-	
Administrative Services Division		(2,931,524)	(2,931,524)	Oregon Laws 2023, Chapter 481, section 1(9)
Adult Trial Division-contracts		(8,150,000)	(8,150,000)	Oregon Laws 2023, Chapter 481, section 1(4)
Adult Trial Division-pilot		(1,200,000)	(1,200,000)	Oregon Laws 2023, Chapter 481, section 1(4)
Compliance, Audit, and Performance Division		(500,000)	(500,000)	Oregon Laws 2023, Chapter 481, section 1(2)
Executive Division		(300,000)	(300,000)	Oregon Laws 2023, Chapter 481, section 1(1)
Appellate Division		(500,000)	(500,000)	Oregon Laws 2023, Chapter 481, section 1(3)
Parent Child Representation Program		(500,000)	(500,000)	Oregon Laws 2023, Chapter 481, section 1(8)
Juvenile Trial Division	100,000	-	100,000	Oregon Laws 2023, Chapter 481, section 1(5)
Court Mandated Expense	6,312,533		6,312,533	Oregon Laws 2023, Chapter 481, section 1(7)
Preauthorized Expense	7,668,991		7,668,991	Oregon Laws 2023, Chapter 481, section 1(6)
Totals	37,581,524	(37,581,524)	-	



Oregon

Oregon Public Defense Commission

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Nov. 8, 2024

The Honorable Rob Wagner, Co-Chair
The Honorable Julie Fahey, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The Oregon Public Defense Commission (OPDC) requests that the Emergency Board approve an extension of the Temporary Hourly Increase Program (THIP) from Jan. 1, 2025, to June 30, 2025. Based on projections, OPDC requests access to the special purpose appropriation for public defense to defray the incremental cost of extending the program. The agency also requests a general-purpose allocation from the Emergency Board to completely fund the request.

In May, the Emergency Board agreed to extend THIP from July 2023 to December 2024; funding was deferred until a future Emergency Board meeting. In September, OPDC submitted a report on that extension with a request to extend THIP through June 2025. The report was accepted, and the request for extension was deferred until December 2024.

On May 23, 2024, Gov. Tina Kotek requested that the commission submit a plan by Aug. 1, 2024, 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.” The commission submitted that plan to the governor. The plan included interventions that OPDC was taking, or planned to, take within existing resources. It also included interventions that would require legislative approval, funding through the Emergency Board, or both. This request is in line with that crisis plan.

Agency Action

Temporary Hourly Increase Program and Other Programs

When it comes to assigning counsel to a person eligible for public defense, OPDC contractors are first in line. Under normal circumstances, the court assigns an available attorney upon arraignment. However, when no attorney is available due to lack of capacity or conflicts of

interest, the court will assign OPDC as a placeholder. This puts the defendant on the unrepresented list and notifies the commission of the need to find counsel. The commission's most effective tool for locating counsel is the Temporary Hourly Increase Program (THIP). Beginning in August 2022, THIP began paying attorneys a higher hourly rate for taking unrepresented cases. THIP has brought in attorneys who would not otherwise serve some of the most vulnerable population. It has been an essential part of the response to the unrepresented persons crisis.

Intended to be a temporary emergency program, it was later extended as a bridge until state employees started taking cases. It has been incredibly successful. Through THIP, the commission has assigned an average of 200 cases per month directly off the in-custody, unrepresented list. Since its inception, 6,994 cases representing 4,829 clients have been taken through THIP. Since narrowing to only in-custody unrepresented cases, the program has taken 1,442 cases, representing 947 clients.

The program has also brought new lawyers into the system. Before 2022, when the rates were \$75 and \$105 an hour, about 1% of OPDC-assigned cases were taken hourly. Of the 252 currently active attorneys handling THIP cases, 166 are not contracted providers with OPDC. Attorneys under contract must reach their monthly maximum attorney caseload (MAC) before they are able to take on a THIP case, ensuring that OPDC is using contracted capacity before paying hourly providers.

The goal of this request is to continue THIP, which sunsets on Dec. 31, 2024, through the end of the biennium. As the program has changed and commission-driven policy changes have matured, our budget and data teams have been able to more accurately forecast the remainder of the biennium. These new projections have produced expected overages in the CME and PAE program areas due to THIP and the unrepresented persons crisis. As a result, the agency must rebalance all its resources to remain within its budgeted authority. To do so, we will need to tap into a special purpose appropriation.

The table on the next page shows the budget, expenditures, and projections for THIP if the program were extended to the end of the biennium. The program has a legislatively approved budget of \$13,213,374. From July 1, 2023, to Sept. 30, 2024, the program's expenditures were \$26,907,983. This means THIP is \$13,694,609 over budget. Notwithstanding the current deficit, we project the program's expenditures through the end of the biennium to be \$47,063,891. This would result in a deficit of \$33,850,517 between the program's budget and expenditures.

	Court Mandated Expenses	Preauthorized Expenses	Total
2023 - 25 Legislatively Approved Budget			
Non-THIP	65,897,147	55,340,161	121,237,308
THIP	9,935,850	3,277,524	13,213,374
Total 2023 - 25 LAB	75,832,997	58,617,685	134,450,682
Forecast from July 1, 2023, to June 30, 2025			
Non-THIP	25,026,368	83,933,601	108,959,969
THIP	38,635,815	8,428,076	47,063,891
Total forecast	63,662,183	92,361,677	156,023,860

Temporary Hourly Increase Program Extension

Extending the program would result in an incremental cost of \$2.5 million. The most significant cost is attorney fees followed by investigator fees. The table below forecasts the expected incremental costs if an extension were approved. In September, the Emergency Board established additional position authority to serve the program and to dispose pending applications for enhanced rates. The commission is in the preliminary stages of providing requisition notices on the state’s human resources information system, and the position authority expires at the end of the biennium. While the effect of additional resources in this program is unknown, staff believe those resources may cause a perceptible increase in the incremental costs.

Service	Status quo	Extended	Difference
Attorney fees	53,351,857	55,162,893	1,811,036
Investigator fees	29,890,558	30,521,266	630,708
Psychiatric fees	33,885,262	33,885,262	0
All other services	36,454,439	36,463,439	9,000
Grand total	153,582,116	156,032,860	2,450,744

2025-2027 Biennium

As the Legislative Fiscal Office acknowledged in its recommendation in May, THIP represents a continuing financial obligation to the state until a case assigned under the program is resolved. As such, expenditures are expected to continue to mount in the second year of the biennium and into the next biennium for unadjudicated cases. In addition, the program’s costs include payment

not just for hourly attorneys but also for expenses related to expert witnesses and investigations, which can be significant. Hourly attorneys and investigators representing THIP cases may also be reimbursed for travel and other allowable expenses. Those cases also come with roll-up costs into future biennia. The commission calculated those costs to provide full transparency to this body. Those roll-up costs will be included in the commission's policy option package 107, Temporary Hourly Increase Program Carryover, offered as part of the agency's requested budget. That policy option package is not a request to continue the program but to fund bills that will come in from cases previously assigned by the program.

Action Requested

The Oregon Public Defense Commission (OPDC) requests that the Emergency Board approve a request to extend the Temporary Hourly Increase Program from Jan. 1, 2025, to June 30, 2025. The commission can defray the incremental cost of extending the program using the remaining \$1,020,768 in the special purpose appropriation for public defense; however, it also needs to request \$1,429,976 of general-purpose allocation from the Emergency Board.

Legislation Affected

Oregon Laws 2023, chapter 605, section 1.	(\$1,429,976)
Oregon Laws 2023, chapter 605, section 9.	(\$1,020,768)
Oregon Laws 2023, chapter 481, section 1(7).	\$1,811,036
Oregon Laws 2023, chapter 481, section 1(6).	\$639,708

Sincerely,



Jessica Kampfe
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Allison Daniel, Policy and Budget Analyst, CFO



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Nov. 8, 2024

The Honorable Senator Rob Wagner, Co-Chair
The Honorable Representative Julie Fahey, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

Major changes to the Oregon Public Defense Commission's policies and practices, in addition to highly unpredictable expenditures in temporary stop-gap measures, have contributed to significant deficits in our Court Mandated Expenses and Preauthorized Expenses programs. The mounting number of unrepresented persons provides some context to the projected deficits in these programs. Data suggest that contracted public defenders may be taking fewer cases as applied to their maximum attorney caseload and instead taking hourly appointments. The number of unrepresented persons continues to mount, making the challenge in these programs particularly acute.

The agency is requesting to rebalance its appropriations to address the large increases in the hourly programs due to the unrepresented persons crisis. To mitigate projected overages in certain budgets, the agency will need to mobilize all unobligated available resources. The agency recognizes a need for the additional public defense services and anticipates adding provider capacity in January 2025. The agency is requesting \$5,150,000 from the special purpose appropriation that has been set aside for public defense to fund the projected overages in the Court Mandated Expense and Preauthorized Expense programs through the remainder of this biennium.

Agency Action

Overview of Court Mandated Expenses (CME) and Preauthorized Expenses (PAE)

Actual and planned spending for the Court Mandated Expenses and Preauthorized Expenses programs is influenced by three major factors:

First, staff considered the effect of the Temporary Hourly Increase Program (THIP) as it relates to increased attorneys' and investigators' fees. It is important to note that THIP may cause increased spending by other services, such as psychiatric fees, other experts' fees, and interpreters' fees that would not have otherwise been recognized until later under ordinary circumstances. Moreover, as part of the agency's analysis, staff considered an extension to the program, which is slated to expire on Dec. 31, 2024, to the end of the biennium.

Second, three significant changes to policy and practice contributed to the increased incidence of monthly claims paid by the agency and caused perceptible increases in average dollars paid per claim. For example, pursuant to the policy the commission adopted last year, service providers' travel time is paid at the provider's hourly rate. The agency subsequently encouraged service providers, particularly attorneys, to present monthly or regular claims to the agency.

Finally, the agency was strongly encouraged to quickly process invoices, which it has been doing.

Financial Forecast as of Sept. 30, 2024

The legislatively approved budget for Court Mandated Expenses is \$75,832,906. As of September 2024, total expenditures are \$51,550,658, which leaves \$24,282,339 or 32% for the remaining nine months of the biennium. (See Appendix, figure 1, figure 2.)

The legislatively approved budget for Preauthorized Expenses is \$58,617,685. As of September 2024, total expenditures are \$36,887,830 which leaves \$21,729,855 or 37% for the remaining nine months of the biennium. (See Appendix, Figure 3, Figure 4.)

Projections between Oct. 1, 2024, and June 30, 2025, at status quo

Projections are based on a rolling six-month average.

CME projections through June 2025, with THIP ending in December 2024, account for a 25% reduction in attorneys' fees from the enhanced rate to the guideline rate between March 2025 and June 2025. This accounts for an estimated savings of \$1,811,036, which yields a variance of -\$8,887,533 (See Appendix. Figure 5, column A.)

PAE projections through June 2025, with THIP ending December 2024, account for a 36% reduction in investigators' fees from the enhanced rate to the guideline rate between March 2025 and June 2025. This accounts for an estimated savings of \$639,812, which yields a variance of -\$10,243,991. (See Appendix. Figure 6, column A.)

Projections between Oct. 1, 2024, and June 30, 2025, with an extension of THIP

Projections are based on a six-month rolling average.

- CME projections through June 2025 result in a variance of -\$10,698,569 (See Appendix Figure 5, column B).

- PAE projections through June 2025 result in a variance of -\$10,883,803 (See Appendix Figure 6, column B).

Increased Number of Hourly Cases

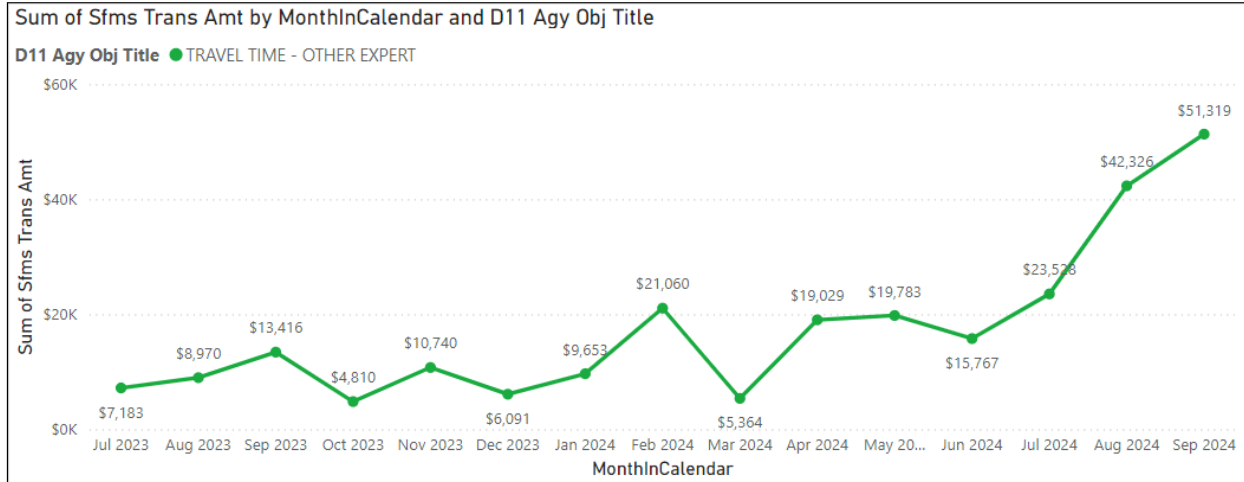
CME expenditures, specifically attorneys' fees at the regular guideline rate (non-enhanced), have shown a significant increase from July 2024 through September 2024. The average monthly attorneys' fees were \$579,669 from July 2023 to June 2024, compared to \$1,037,456 from July 2024 to September 2024. This rise is believed to correlate with the increasing number of attorneys departing from contracts, both in criminal and juvenile cases. Since July 2023, 119 contracted attorneys have left, with nine joining state trial offices and 33 transitioning to hourly agreements, resulting in a net loss of 77 attorneys from public defense. While the reasons for these departures remain unclear, the agency reports that 253 attorneys now have hourly agreements, with 166 not currently on contract and 87 under contract. Moving forward, the agency will closely monitor attorneys' fee expenditures to determine if the increase over the past three months represents a new average.

The psychiatric services' legislatively approved budget was initially included in the CME when the biennium's budget was adopted in 2023. The program covers court-mandated evaluations ordered by a judge and conducted at the Oregon State Hospital, with a projected monthly amount of \$7,500. Additionally, psychiatric evaluations requested by attorneys should be accounted for under PAE. However, attorney-requested evaluations were also being recorded under PAE. This misallocation significantly reduced the agency's working budget. Consequently, in September 2024, a technical adjustment moved \$16,182,432 from PAE to CME to maintain a positive balance for PAE. We anticipate moving this amount back to PAE, contingent upon the approval of the rebalance request. (See Appendix Figures 5, Figure 6.)

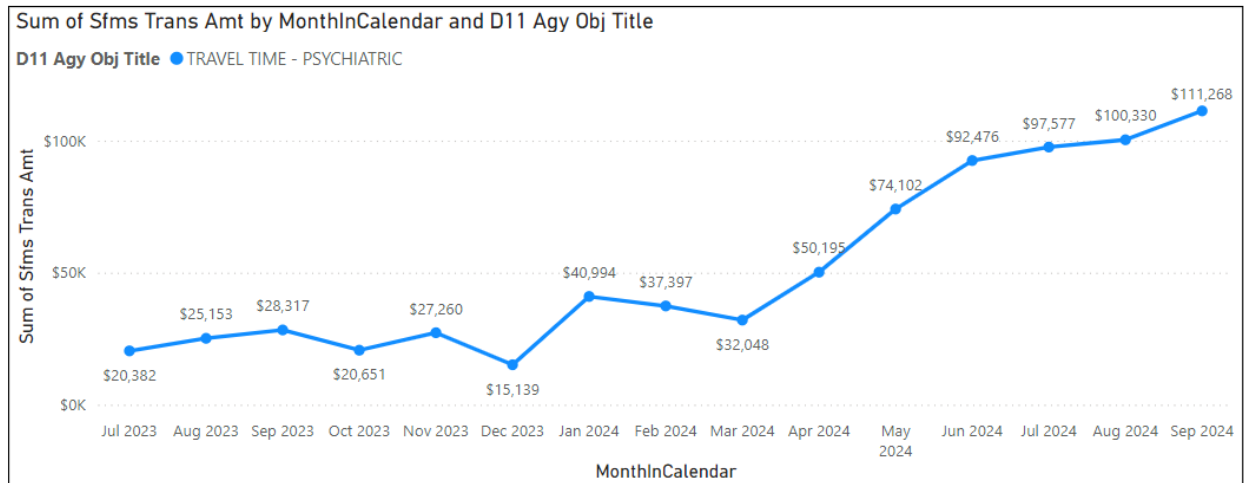
Changes to Commission's Policies and Practices

Service Providers' Travel Time at Provider's Hourly Rate in January 2024

The graphs below illustrate the increased expenses for other expert travel time and psychiatric travel time. The impact of the recent policy change has about a three- to four-month delay before the actual financial data is available for analysis. This delay, coupled with the fact that month-end closing takes 30 or more days, prevents the agency from promptly understanding the full financial impact of such policy changes on existing budgets. The two graphs below highlight the increased travel time expenditures for psychiatric and other experts. These figures represent travel time expenses only and do not include the cost of the experts' services.



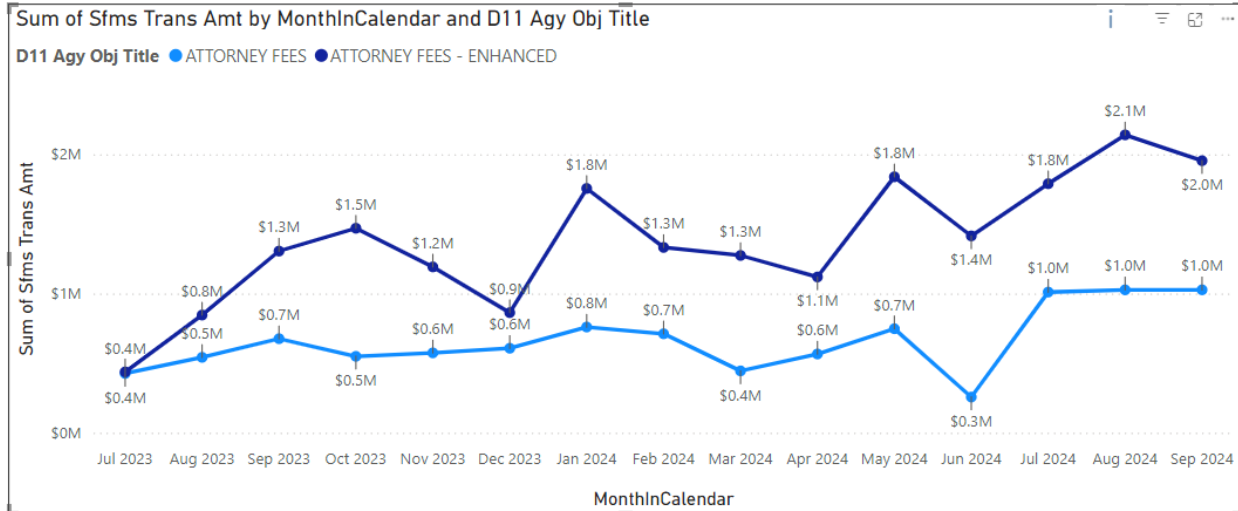
The monthly average for experts’ travel time was \$8,534 in calendar year 2023 versus \$30,615 so far in 2024. This is a 259% increase.



The monthly average for psychiatric travel was \$22,816 in calendar year 2023 versus \$70,709 so far in 2024. This is 210% increase.

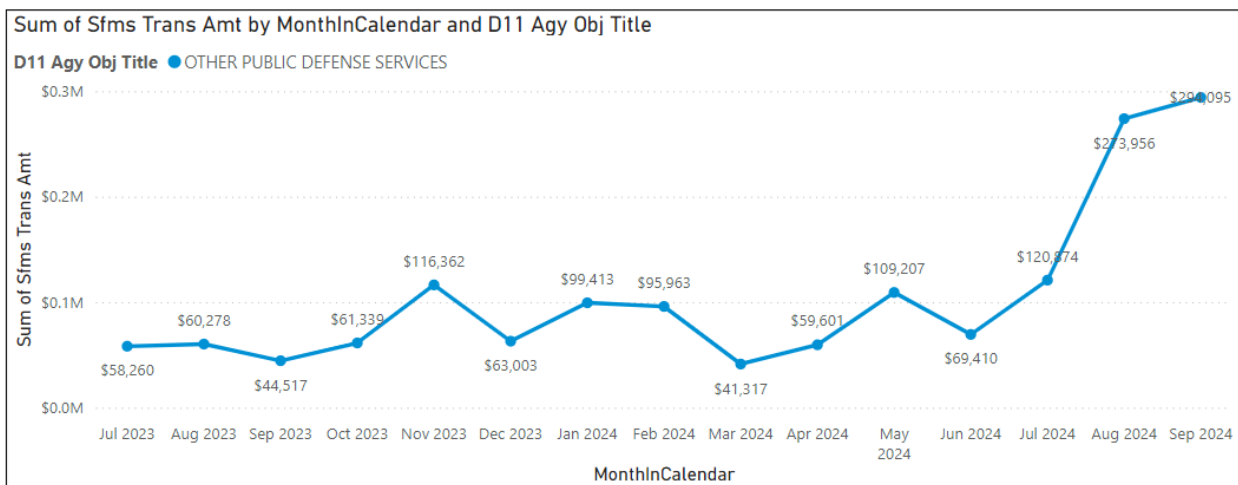
Agency Encourages Service Providers to Bill Monthly in April 2024

The commission's directive for attorneys to submit invoices monthly, rather than waiting until the case concludes, has led to an increase in monthly expenditures for attorneys’ fees and enhanced fees. Additionally, the commission's mandate for the agency to pay all invoices within 30 days of receipt has further contributed to this rise. The chart below illustrates the increase in attorneys’ fees and enhanced fees from July 2024 through September 2024. Invoice records indicate that a significant number of attorneys are now regularly submitting monthly invoices.



Commission-directed Policy of Rapid Payment

Below is a graph displaying a steady increase in the monthly expenditures for other public defense services. These are services that cannot be classified in any other category such as clients’ collect calls, document processing, discovery expert/data management, transcriptions of interviews, copies of records, subscriptions to Everlaw/Westlaw, web hosting, online legal research, and service processing.



In conclusion, the analysis of Court Mandated Expenses (CME) and Preauthorized Expenses (PAE) indicates several critical financial dynamics as the state navigates through the 2023-25 biennium.

1. **THIP Program Impact:** Regardless of whether the program sunsets in December 2024 or is extended to June 2025, the projections illustrate significant variances in expenditure, driven by shifts in attorneys’ and investigators’ fees.
2. **Increased Hourly Cases:** The rise in hourly cases highlights the financial strain due to the departure of contracted attorneys and the increase in attorneys opting for hourly

agreements. This transition is a key factor in the upward trend in attorneys' fees observed from July 2024 onwards.

3. **Psychiatric Services:** The technical adjustments and the pending rebalance of the psychiatric services budget underscore the need for accurate allocation between CME and PAE to maintain financial stability.
4. **Policy Changes:** The recent policy changes, including reimbursing travel time at the full rate and the mandate for monthly billing, have resulted in increased expenses. These changes, although aimed at improving efficiency, have a delayed financial impact due to the processing time for actuals.

The financial projections and current expenditure trends highlight the necessity for continued monitoring and adjustments to ensure that the budgetary allocations meet the evolving needs and challenges. The proactive adjustments and policy implementations are critical steps towards sustaining the financial health of the state's public defense system as we move into the remaining months of the biennium.

Action Requested

The commission requests that \$2,575,000 in increased budget and expenditure authority be appropriated to the Court Mandated Expense and Preauthorized Expense programs from the special purpose allocation for public defense services.

Legislation Affected

Oregon Laws 2023, Chapter 481, section 1(7)	\$2,575,000
Oregon Laws 2023, Chapter 481, section 1(6)	\$2,575,000
Oregon Laws 2023, Chapter 605, section 9(1)	(\$5,150,000)

Sincerely,



Jessica Kampfe
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Allison Daniel, Policy and Budget Analyst, CFO

Appendix

Figure 1

Legislatively Approved Budget	2023	2024	Grand Total
Court Mandated	\$65,897,056		\$65,897,056
Court Mandated THIP*	\$4,216,555	\$5,719,295	\$9,935,850
Grand Total	\$70,113,611	\$5,719,295	\$75,832,906
*Court Mandated THIP (Enhanced Attorneys Fees)			

Figure 2

CME Expenditures and Remaining Budget			
	Budget	Expenditures	Remaining Budget
23-Jul	\$70,113,702	\$941,325	\$69,172,377
23-Aug	\$70,113,702	\$1,591,745	\$67,580,632
23-Sep	\$70,113,702	\$2,165,245	\$65,415,387
23-Oct	\$70,113,702	\$2,182,911	\$63,232,476
23-Nov	\$70,113,702	\$2,069,392	\$61,163,084
23-Dec	\$70,113,702	\$1,641,831	\$59,521,253
24-Jan	\$70,113,702	\$2,957,462	\$56,563,790
24-Feb	\$70,113,702	\$2,407,678	\$54,156,112
24-Mar	\$70,113,702	\$2,060,658	\$52,095,454
24-Apr	\$75,832,997	\$2,000,707	\$55,814,043
24-May	\$75,832,997	\$3,001,088	\$52,812,955
24-Jun	\$75,832,997	\$1,968,204	\$50,844,751
24-Jul	\$75,832,997	\$3,236,985	\$47,607,766
24-Aug	\$75,832,997	\$3,699,867	\$43,907,899
24-Sep	\$75,832,997	\$19,625,560	\$24,282,339

Figure 3

Legislatively Approved Budget	2023	2024	Grand Total
Pre-Authorized Expenses	\$53,692,619	\$1,647,542	\$55,340,161
Pre-Authorized Expenses THIP*	\$1,145,026	\$2,132,498	\$3,277,524
Grand Total	\$54,837,645	\$3,780,040	\$58,617,685
*Pre-Authorized Expenses THIP (Enhanced Investigator Fees)			

Figure 4

PAE Expenditures and Remaining Budget			
	Budget	Actual by Month	Remaining Budget
23-Jul	\$54,837,645	\$1,644,355	\$53,193,290
23-Aug	\$54,837,645	\$3,164,237	\$50,029,053
23-Sep	\$54,837,645	\$3,133,654	\$46,895,399
23-Oct	\$54,837,645	\$2,564,593	\$44,330,807
23-Nov	\$54,837,645	\$3,536,400	\$40,794,407
23-Dec	\$54,837,645	\$2,659,938	\$38,134,469
24-Jan	\$54,837,645	\$3,583,763	\$34,550,706
24-Feb	\$54,837,645	\$3,738,719	\$30,811,987
24-Mar	\$54,837,645	\$2,345,861	\$28,466,126
24-Apr	\$58,617,685	\$3,163,193	\$29,082,973
24-May	\$58,617,685	\$4,589,770	\$24,493,203
24-Jun	\$58,617,685	\$3,611,992	\$20,881,211
24-Jul	\$58,617,685	\$4,561,777	\$16,319,434
24-Aug	\$58,617,685	\$5,429,540	\$10,889,893
24-Sep	\$58,617,685	(\$10,839,962)	\$21,729,855

Figure 5

Court Mandated Expenses (SCR: 450-00-00-00000)										
			A THIP expired on December 30, 2024				B THIP expired on June 30, 2025			
	Budget	Expenditures	Projections	Forecast	Variance	Expenditures	Projections	Forecast	Variance	
Legislatively approved	75,832,906	53,150,940	8,069,499	61,220,439	(14,612,467)	53,150,940	9,880,535	63,031,475	(12,801,431)	
Technical adjustment	(23,500,000)	0	0	0	0	0	0	0	0	0
Legislatively approved budget, net	52,332,906	53,150,940	8,069,499	61,220,439	8,887,533	53,150,940	9,880,535	63,031,475	10,698,569	

Figure 6

Preauthorized Expenses (SCR: 425-00-00-00000)										
			A THIP expired on December 30, 2024				B THIP expired on June 30, 2025			
	Budget	Expenditures	Projections	Forecast	Variance	Expenditures	Projections	Forecast	Variance	
Legislatively approved	58,617,685	36,887,830	55,473,846	92,361,676	33,743,991	36,887,830	56,113,658	93,001,488	34,383,803	
Technical adjustment	23,500,000	0	0	0	0	0	0	0	0	0
Legislatively approved budget, net	82,117,685	36,887,830	55,473,846	92,361,676	10,243,991	36,887,830	56,113,658	93,001,488	10,883,803	



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Nov. 8, 2024

The Honorable Rob Wagner, Co-Chair
The Honorable Julie Fahey, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs:

Nature of the Request

The Oregon Public Defense Commission (OPDC) requests position authority to open a southwest trial division office of two senior deputy defenders (0.50 FTE) and one legal secretary (0.25 FTE) in Coos County. The estimated cost is \$384,895, which OPDC can fund through savings in the adult trial division's pilot program section. The estimated roll-up cost for the 2025-27 biennium is \$1.5 million.

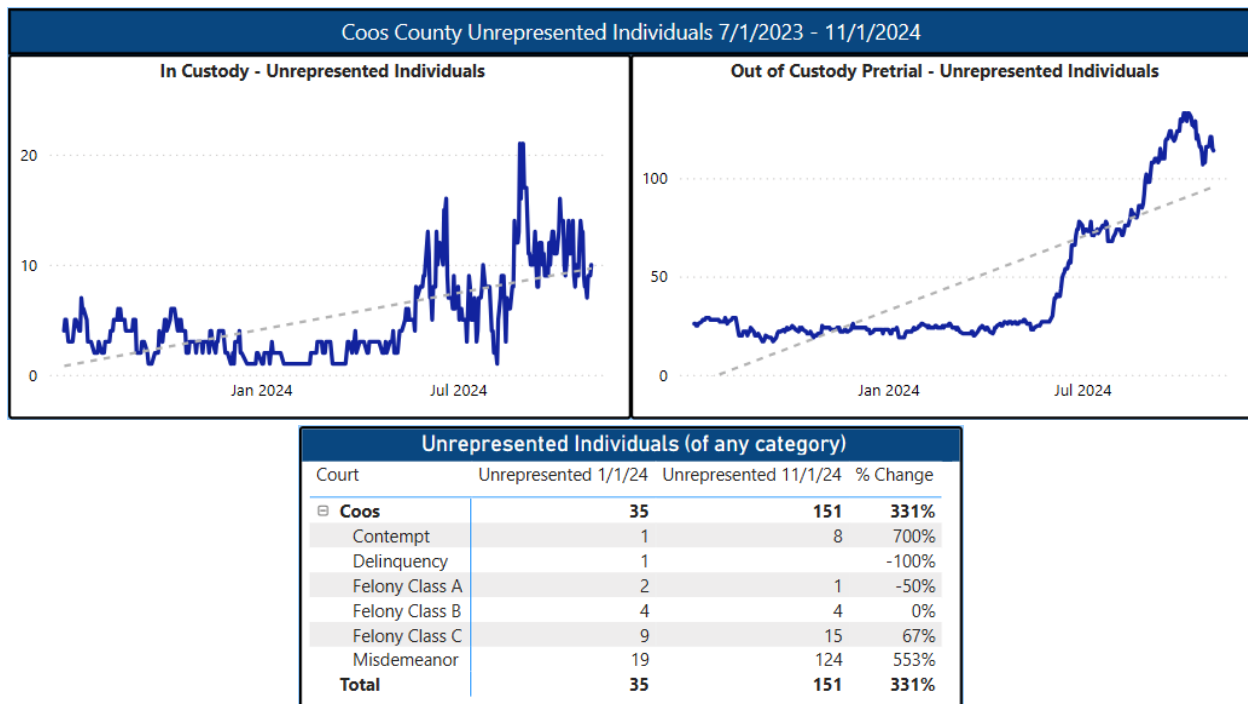
On May 23, 2024, Gov. Tina Kotek requested that OPDC submit a plan by Aug. 1, 2024, to "eliminate Oregon's unrepresented client crisis in both the near and long term, and that plan should be based in the realities of the current fiscal and legislative environment." The commission submitted that plan to the governor, which included interventions OPDC was taking, or planned to take, within existing resources. It also included interventions that would require legislative approval, funding through the Emergency Board, or both. This request is in line with that crisis plan.

Agency Action

The commission identified Coos County as a growing unrepresented hotspot and an underserved community that would benefit from a state trial division office to stabilize the region's shrinking public defense workforce. Coos County has an unrepresented population disproportionate to its size. This is primarily due to a lack of staffing, the difficulties of recruiting to rural areas, and increased case filings. OPDC anticipates that these staffing challenges will increase in the coming months. Setting up a southwest trial division office in Coos County would allow us to prepare for that influx in cases and better serve the needs of the county.

Unrepresented Numbers in Coos County

Coos County has seen an increase in the number of people unrepresented in 2024, especially since June 2024. As of Nov. 1, 2024, there were 114 out-of-custody pretrial unrepresented individuals in Coos County and 10 in-custody unrepresented individuals. In-custody numbers peaked at 21 people on Aug. 27 and Aug. 30 of 2024, and the out-of-custody pretrial individuals peaked at 133 on Oct. 6. Overall, Coos County has seen a 331% increase in unrepresented persons in all categories since January 2024. Coos County has the sixth-highest unrepresented persons count of any county in Oregon. This is true even though it is not a populous county. It has slightly higher unrepresented numbers than Deschutes County, despite being about one-third the size.



Data from the Oregon Judicial Department's "OPDS Unrepresented" dashboard, 11/1/24

This sudden and sharp increase in unrepresented cases is correlated with staffing problems within Coos County's criminal contract area. Since the end of June 2024, Coos County has lost four contract attorneys who were contracted for a total of 3.25 maximum attorney caseload (MAC), or 36% of their criminal attorneys' contracted capacity. Two of the attorneys who left the Coos County contractor indicated through OPDC's attorney vacancy form that their reason for leaving was high workloads.

The commission and the Coos County provider are concerned that the loss could destabilize the provider given that it is a small organization. Turnover and attrition have been fast-developing

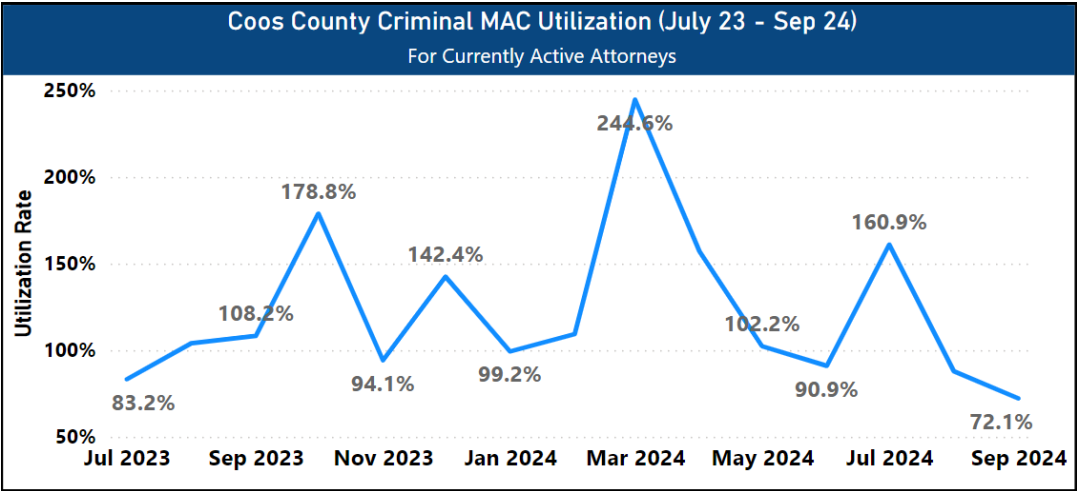
problems in Coos County, but funding for trial division positions would allow OPDC to recruit nationally in an effort to stabilize the workforce in this underserved community.

The commission’s central valley trial office in Salem is currently accepting appointments on Coos County cases. If we opened an office in Coos County, we would no longer have to fund travel and overnight expenses for attorneys traveling from Salem to Coos County to take cases. In September and October of 2024, the central valley office took five Coos County cases. The attorneys have already logged 38 hours in travel time for these five cases, which is 17% of all time logged for these cases. Comparatively speaking, travel time accounts for 8% of all time tracked to date for trial division attorneys. The relatively high amounts of travel time that central valley attorneys spend taking cases in Coos County ultimately reduces the amount of time these attorneys have to devote to other cases. The charts provided here show the distribution of cases taken by the southern and central valley offices in Coos County by count of cases, as well as a count of clients by the client’s highest charge. Our southern regional office in Medford has been unable to serve Coos County; however, OPDC recently relocated one of its central valley office attorneys to Coos County to meet the immediate need.

OPDC Trial Division Cases as of 11/1/2024	
Office Location	Case Count
Southern Regional Trial Division	309
Jackson	269
Douglas	16
Grant	10
Klamath	10
Harney	2
Marion	2
Central Valley Regional Trial Division	173
Marion	130
Douglas	22
Coos	9
Lane	4
Deschutes	2
Multnomah	2
Washington	2
Yamhill	2
Total	481

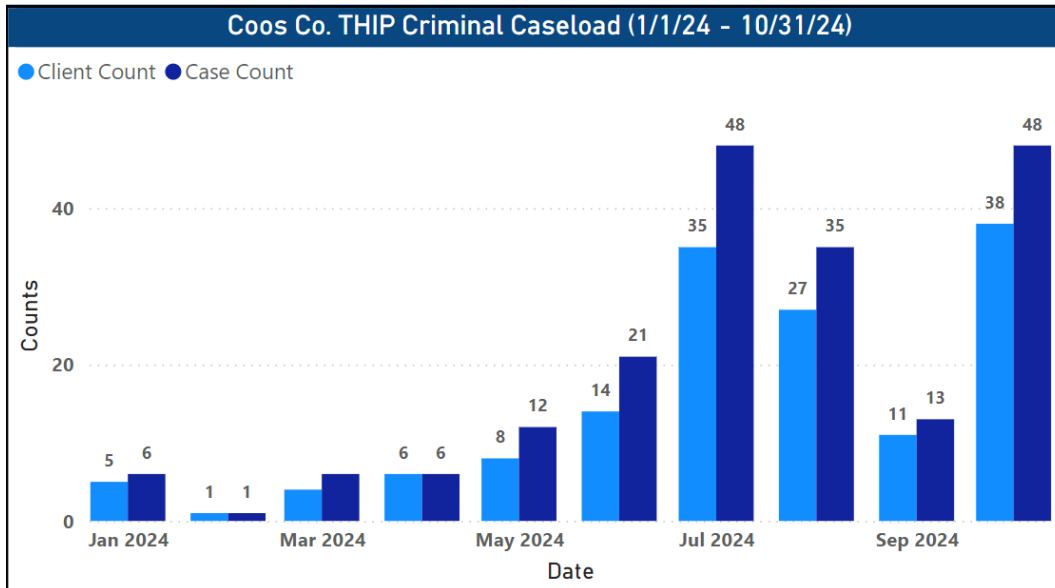
Three of the attorneys who left the Coos County contractor separated from the contract in July 2024. Combined, these attorneys reported 22 new appointments and 21 open cases in June 2024. These cases had to be redistributed to other attorneys who have remained under contract, limiting their capacity to pick up new cases as the contract period moves forward. Prior to these vacancies, the contract provider in Coos County was at 103% MAC utilization rate through June 2024. However, between having to reassign departing attorneys’ caseloads and continued vacancies, the Coos County provider is now at 122.8% MAC utilization for the attorneys actively under contract.

OPDC Trial Division Cases - Coos County - Count of Client by Highest Charge as of 11/1/24		
Case Type	Count of Clients	Count of Cases
Low Level Misdemeanor	3	4
High Level Felony	2	2
Complex Misdemeanor	1	1
Homicide and Sex Cases	1	1
Low Level Felony	1	1
Total	8	9



Three of the four attorneys who have left contract work have shifted their work to our Temporary Hourly Increase Program (THIP), which has seen a sharp increase in case assignments in Coos County over the past six months. Between Jan. 1 and Oct. 31, 2024, there were 137 clients assigned counsel through THIP on 196 criminal cases. The program targets clients who are held in custody without counsel. Analysts have helped find counsel willing to accept appointment on serious charges, including five murder cases, three Jessica’s Law cases, and 12 Measure 11 cases. In spite of the increased case assignments in THIP, the number of unrepresented individuals in the region has continued to rise, indicating an ongoing need for additional attorneys on top of existing capacity.

The Coos County provider is hiring at least three Supervised Practice Portfolio Examination (SPPE) applicants to fill its vacant positions. The Oregon State Bar’s new admission program allows law school graduates to apprentice for bar licensing instead of taking the bar examination. The apprentice program lasts eight months and allows participants to represent misdemeanor cases under the supervision of a licensed attorney. While this is an important mitigation strategy for Coos County and an investment in the workforce for the next biennium, there remains a significant need for felony-qualified lawyers.



Case County	Client Count	Case Count
<input checked="" type="checkbox"/> Coos	137	196
Misdemeanor	62	89
Minor Felony	41	53
Major Felony	14	15
Measure 11	12	12
Civil Commitment	11	12
Probation Violations-Criminal	7	8
Murder	5	5
Jessica Law	3	3
Total	137	196

Outcomes

A permanent office in Coos County would:

- Stabilize the defense bar in a high-risk area and eliminate the region's chronic staffing issues;
- Allow for Coos County cases to be handled by attorneys located in Coos County; and
- Greatly reduce driving time between our central valley and southern offices and Coos Bay, thereby increasing attorney capacity.

Just as contract staffing challenges have grown, so has the unrepresented list in Coos County. A southwest trial division office in Coos County would add much-needed capacity to the region and act as a buffer against further clients being added to the unrepresented list. The work of these attorneys would offer a greater chance to reduce the unrepresented list in Coos County over time. Attorneys would be able to start representing clients before the physical office space is opened (it can take up to six months to set up a physical office). Also, new southwest trial division

attorneys would enjoy stable conditions of employment, likely reducing turnover, which has proven to be so problematic in the region. In addition to increasing capacity in Coos County, attorneys in other trial division offices would be able to focus on work closer to home.

** Data presented in this report were compiled by the commission's data and research team. Third parties, whether they be providers, state agencies, or other stakeholders, should not extrapolate this data for other purposes.*

Action Requested

OPDC requests position authority to open a southwest trial division office of two senior deputy defenders (0.50 FTE) and one legal secretary (0.25 FTE) in Coos County. The estimated cost is \$384,895, which OPDC can fund through savings in the adult trial division's pilot program section. The estimated roll-up cost for the 2025-25 biennium is \$1.5 million.

Legislation Affected

None.

Sincerely,



Jessica Kampfe
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer
John Borden, Principal Legislative Analyst, LFO
Kate Nass, Chief Financial Officer
Allison Daniel, Policy and Budget Analyst, CFO



Date: November 13, 2024

To: Jennifer Nash, Chair of OPDC
Susan Mandiberg, Vice-Chair
OPDC Commissioners

From: Jessica Kampfe, Executive Director

Re: Comprehensive Public Defense Report

Nature of Presentation: Action Item

Background:

Section 98 of SB 337 (2023) states:

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

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

(2) No later than December 1, 2025, and no later than December 1, 2026, the Commission shall provide the interim committees of the Legislative Assembly

related to the judiciary with an updated version of the report described in subsection (1) of this section.

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

Although not required by SB 337, OPDC is providing this supplemental report to keep the legislature apprised of the above benchmarks, and it includes updates since the April 30, 2024 report (“Report 1”) was submitted to the legislature.

Agency Recommendation:

OPDC staff is recommending the Commission approve the Comprehensive Public Defense Report (Report 2) for submission to the legislature.

Fiscal Impact:

None.

Agency Proposed Motion:

I move the Commission to approve the agency’s Comprehensive Public Defense Report (Report 2) for submission to the legislature.

Oregon Public Defense Commission

COMPREHENSIVE PUBLIC DEFENSE REPORT

Report II (DRAFT)
November 30, 2024

NATURE OF THE REPORT

Section 98 of SB 337 (2023) states:

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

- (a) Financial projections for the Commission based on anticipated workload;
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- (c) The establishment of training and supervision requirements for public defense providers;
- (d) Steps taken to determine a reasonable hourly rate for appointed counsel who are not employees of the Commission or nonprofit public defense organizations that accounts for overhead expenses; and
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(2) No later than December 1, 2025, and no later than December 1, 2026, the Commission shall provide the interim committees of the Legislative Assembly related to the judiciary with an updated version of the report described in subsection (1) of this section.

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

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

Although not required by SB 337, OPDC is providing this supplemental report to keep the legislature apprised of the above benchmarks, and it includes updates since the April 30, 2024 report ("Report 1") was submitted to the legislature. The Oregon Public Defense Commission members approved this report at their November 13, 2024 meeting.

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FOUNDATIONAL REPORTS, STANDARDS, AND DOCUMENTS

The below reports, standards, and documents are referenced throughout this report and are the foundation of the agency's efforts to meet the service delivery mandates of ORS 151.216 – (1) the use of data and standards to implement a statewide workload plan and (2) the transition of the service delivery model. Each contains a link to an online version of the document.

American Bar Association Ten Principles of a Public Defense Delivery System (November 2023)

National Public Defense Workload Study (July 2023)

The Oregon Project (January 2022)

National Association for Public Defense Policy State on Public Defense Staffing (May 2020)

Moss Adams Hourly Rate and Economic Survey (May 2024)

DAS/OEA Public Defense Caseload Forecast (October 2024)

Six-Year Plan to Reduce the Representation Deficiency (October 2024)

Oregon Public Defense Commission '25-'27 Agency Request Budget (August 2024)

Senate Bill 337 (2023)

EXECUTIVE SUMMARY

SB 337 (2023) provides a framework for restructuring the provision of public defense services in Oregon. This report focuses on two high-level service delivery mandates of that legislation – (1) the use of data and standards to implement a statewide workload plan and (2) the transition of the service delivery model. The Oregon Public Defense Commission (OPDC) is required to create and adopt rules, policies, and procedures to implement the goals mandated by SB 337. This is the Commission’s second report on its plan to provide comprehensive public defense services in Oregon, and it contains updated information since the initial report was submitted to the legislature on April 30, 2024.

SERVICE DELIVERY – STANDARD SETTING AND THE WORKFORCE

In Report 1, the agency identified three sets of data and standards that inform the agency’s public defense workload. Since then, the agency has taken steps on a fourth data point. Those data points are:

- The Public Defense Forecast (How many cases are projected);
- Caseload and Workload Standards (How many attorney hours are needed per case);
- Core Staff Ratios (Which, and how many, non-attorney staff are needed to aid the attorney work)
- Compensation (What is the appropriate compensation for attorney and non-attorney work).

With this data, the state can quantify the number of public defense lawyers needed to represent all persons who qualify for a court-appointed attorney, and to do so within constitutionally mandated caseloads. It can quantify the number of non-attorney staff (e.g., legal assistants, investigators, social workers, and administrative support). And it can estimate the financial costs of providing these services.

The Oregon Public Defense Commission (OPDC) understands that the necessary investments to implement this workload plan will take time. In 2023, the OPDC hired Moss Adams to develop a Six-Year Plan to Reduce Representation Deficiency in criminal cases (Six-Year Plan) to help address this issue. Since Report 1, the Commission has taken several major steps toward building a public defense workload model based upon the data points above:

- The Commission adopted caseload standards, relying upon the National Public Defense Workload Standards (NPDWS) for criminal cases, and caseload standards from The Oregon Project for juvenile dependency and delinquency cases.
- The Commission adopted a workload standard of 1,578 hours of case specific work per full-time attorney per year.

- The Commission adopted core staff ratios based upon public defense best practices as recommended by the National Association of Public Defenders.
- The Commission received an Hourly Rate and Economic Survey, which makes compensation recommendations for public defense attorneys and core staff.
- The Commission adopted a Six-Year Plan, which aims to reduce representation deficiency in criminal cases.
- The Commission approved its Agency Requested Budget (ARB), which includes Policy Option Packages (POPs) that advance the first two years of the Six-Year Plan, including the Commission’s directives on caseload and workload standards, core staff ratios, and compensation.

A key directive for this report is for OPDC to provide “financial projections for the Commission based on anticipated workload.” Those projections are best viewed through the ARB, as that request is based upon Commission decisions regarding caseload and workload standards, core staff ratios, and compensation. Here is a timeline of the steps taken by the Commission since Report 1 to establish OPDC’s ARB.

Month/Meeting	Action Item
March Commission Meeting	<ul style="list-style-type: none"> • Briefing on Six-Year Plan • Briefing on caseload and workload standards
April	<ul style="list-style-type: none"> • OEA releases public defense forecast • Hourly Rate and Economic Survey completed
May Commission Meeting	<ul style="list-style-type: none"> • Briefing on Hourly Rate and Economic Survey • Approval of compensation formula • Approval of caseload and workload standards
June Commission Meeting	<ul style="list-style-type: none"> • Approve POP concepts, informed by adopted caseload and workload standards, the Hourly Rate and Economic Survey, and adopted core staff ratios.
July Commission Meeting	<ul style="list-style-type: none"> • Approve POP narratives
August Commission Meeting	<ul style="list-style-type: none"> • Approve ARB

POPs 102, 103, 104, and 105 include requests to implement OPDC’s workload plan for the ’25-’27 biennium. The foundation for these financial requests is the Commission’s decisions regarding caseload and workload standards, core staff ratios, and compensation. The total budget request for these POPs is \$683,993,693.

SERVICE DELIVERY – TRANSITION OF THE WORKFORCE

In addition to using data and standards to implement a statewide workload plan, the Commission must also transition its workforce toward a new service delivery model. Currently, OPDC contracts with non-profit public defender offices, consortia, law firms, and individual attorneys.

The contracts reimburse the various entity types with a fixed fee per month to cover a maximum attorney caseload (MAC), or a portion thereof.

SB 337 made several changes to the public defense workforce:

- Effective July 13, 2023, OPDC was directed to create a Trial Division that include state employees as full-time public defenders. Additionally, there were new obligations place on OPDC regarding administration, standard setting, training, and oversight of the workforce.
- Effective July 1, 2025, flat fee contracting is prohibited. Public defense services will be provided by OPDC Trial Division, non-profit public defender offices pursuant to workload contracts, private bar attorneys pursuant to workload contracts, and a panel of qualified counsel who are paid an hourly rate for their legal services.
- Effective July 1, 2027, the private bar will be transitioned to the panel of qualified counsel. Public defense providers in Oregon will be either state employees, employees at a non-profit public defender office, or attorneys who are paid hourly as part of a panel of qualified counsel.
- Effective January 1, 2031, at least 20% of the public defense attorney workforce shall be employees of the OPDC Trial Division.
- Effective January 1, 2035, at least 30% of the public defense attorney workforce shall be employees of the OPDC Trial Division.

OPDC has begun the transition to state employee public defenders. Three regional trial division offices have opened – a Northwest Regional Office, a Southern Regional Office, and a Central Valley Regional Office. These offices and others will grow significantly in the coming years, as SB 337 requires state-employed public defense attorneys to constitute at least 20% of the public defense workforce by 2031 and at least 30% by 2035.

Since Report 1, OPDC has begun the foundational work to create the panel of qualified counsel and establish policies regarding administration, standards, training, and oversight for all public defenders. This work includes the following:

- Updated qualification standards for public defense providers.
- Updated performance standards for public defense providers.
- Policies and procedures for an online billing system, which will be used by the panel of qualified counsel and other private vendors.
- Policies and procedures for the independent assignment of counsel by OPDC.
- Updated policies and procedures regarding complaints and investigations of public defense providers.

- Policies and procedures for performance assessments of public defense providers.
- Policies and procedures for reevaluation of attorney qualifications.
- Policies and procedures for financial audit of public defense providers.
- Creation of local supervising attorney program.
- Creation of mentoring program.
- Creation of training program.
- Creation of awards program.

OPDC is currently receiving technical assistance from the Sixth Amendment Center, with project management assistance from Moss Adams. The policies and procedures for the service delivery transition work will be complete by July 2025, although some components are ongoing and will continue past July. This report will provide updates on all these efforts.

SERVICE DELIVERY – STANDARD SETTING AND THE WORKFORCE

Four variables inform OPDC’s efforts to both build and implement a statewide workload plan, as required by ORS 151.216. With this data, the state can quantify the number of public defense lawyers needed to represent all persons who qualify for a court-appointed attorney, and to do so within constitutionally mandated caseloads. It can quantify the number of non-attorney staff (e.g., legal assistants, investigators, social workers, and administrative support). And it can estimate the financial costs of providing these services. Those variables include:

- The Public Defense Caseload Forecast (How many cases are projected).
- Caseload and Workload Standards (How many attorney hours are needed per case).
- Core Staff Ratios (Which, and how many, non-attorney staff are needed to aid the attorney work).
- Compensation (What is the appropriate compensation for attorney and non-attorney work).

Below is a breakdown of how OPDC has set standards for these variables. These variables all inform OPDC’s financial projections regarding the costs of its anticipated workload.

CASELOAD FORECAST

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

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

The forecast is comprised of 13 case types. Of note, the forecast is currently projecting a 22.4% increase in criminal cases for the '25-'27 biennium, which is largely attributable to increases in misdemeanor (34.4%) and probation violation (21%) cases, but also includes a projected increase in felony (8.4%) cases.

As the October forecast noted, there is no official advisory committee for the forecast, although work is in progress to create one. Partnering agencies continue to work with and learn from each other, with the expectation that the forecast will become more precise over each iteration. The next forecast will be published on April 15, 2025.

Public Defense Forecast - Biennial Summary

(October 2024 forecast)

	Biennium		Change	Percent
	2023-25	2025-27		
Felony	40,754	44,182	3,428	8.4%
Misdemeanors	73,288	98,486	25,198	34.4%
Treatment Court	1,658	1,677	19	1.2%
Probation Violation	28,141	33,257	5,116	18.2%
Appellate	2,864	2,868	3	0.1%
Post-Conviction Relief	853	866	13	1.6%
Habeas Corpus	234	284	49	21.0%
Civil Commitment	4,148	4,338	189	4.6%
TOTAL	151,941	185,957	34,017	22.4%

	Biennium		Change	Percent
	2023-25	2025-27		
Dependency*	15,786	15,741	-45	-0.3%
Delinquency**	6,396	6,696	299	4.7%
Probation Violation	3,889	3,945	56	1.4%
Appellate	587	595	8	1.3%
Treatment Court	289	310	21	7.2%
TOTAL	26,948	27,287	339	1.3%

* Includes Parents and Guardians.

** includes Measure 11, Murder, and All Other

CASELOAD AND WORKLOAD STANDARDS

ORS 151.216 provides several mandates to OPDC regarding attorney caseload and workload. Specifically, the Commission is required to:

- Establish and maintain a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution, and national standards of justice.
- Adopt policies for public defense providers that ensure caseloads are in accordance with national and regional best practices.

In November 2023, the ABA published an update to its “Ten Principles of a Public Defense Delivery System,” which is the most comprehensive public defense best practice when looking to “national standards of justice.” Principle 3, “Control of Workloads,” provides:

- The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations.

- Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable data-based methodology.
- Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded.

ORS 151.216 provides additional mandates to the Commission regarding attorney caseload and workload:

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

In response to these obligations, the Commission considered attorney caseload and workload standards at meetings in March through May 2024. Specifically, the Commission considered the caseload standards from The Oregon Project and the National Public Defense Workload Study (NPDWS).

The Oregon Project, *An Analysis of Public Defense Attorney Workloads* was published in January 2022 and was produced by the American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) and the Seattle-based accounting and consulting firm Moss Adams. The NPDWS was produced by the RAND Corporation, ABA SCLAID, the National Center for State Courts, and attorney Stephen Hanlon in September 2023. The NPDWS standards are the culmination of a comprehensive review and analysis of 17 previously released state-level studies, many of which the ABA conducted.

Both reports include recommended caseload and workload standards to ensure attorneys have sufficient time to provide their assigned clients with reasonably effective assistance of counsel

“pursuant to prevailing professional norms.”¹

On May 8, 2024, the Commission voted to adopt the NPDWS caseload standards for criminal cases, and The Oregon Project caseload standards for juvenile delinquency and dependency cases. The Commission also established an annual workload of 1,578 case specific hours per year for full-time public defense attorneys.² Rather than implement these standards immediately, the Commission elected to phase in the caseload and workload standards over 6 years (3 budget biennia), beginning July 1, 2025 with full implementation by July 1, 2030.³

The following chart demonstrates the number of attorney FTE required to meet the Commission’s caseload and workload standards for legal representation in criminal cases.

	YEAR 0	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	YEAR 6
Total Annual Caseload Hours	1,455,270	1,469,329	1,484,450	1,499,726	1,515,159	1,530,751	1,546,504
Number of Attorneys	506	585	664	743	822	901	980
Working Hours	1,578	1,578	1,578	1,578	1,578	1,578	1,578
Attorney FTE Caseload Hours	2,874	2,513	2,237	2,020	1,844	1,700	1,579
Attorney FTE Caseload Ratio	1.82	1.59	1.42	1.28	1.17	1.08	1.00

To fully implement the caseload and workload standards for criminal cases, OPDC will need to add 474 attorneys to the workforce, which is approximately 79 attorneys per year for six years. To fully implement the caseload and workload standards for juvenile cases, OPDC will need to add 302 attorneys to the workforce, which is approximately 50 attorney per year for six years.

CORE STAFF RATIOS

ORS 151.216 requires OPDC to ensure public defense resources are in accordance with national and regional best practices. In order to be properly resourced, a public defense workforce

¹ In Strickland v. Washington, 466 US 668 (1984), the United States Supreme Court established this standard as the measure of whether a person receives legal counsel consistent with the mandate of the Sixth Amendment.

² This is consistent with the number of billable hours per year for full-time attorneys at the Oregon Department of Justice.

³ On March 14, 2024, the Washington State Bar Board of Governors also adopted the NPDWS caseload standards for public defense cases but chose to phase in those standards over a three-year period, with full implementation by July 1, 2027. The Washington Supreme Court is currently reviewing this rule.

requires sufficient core staff to assist and enhance the work of the attorneys. Oregon’s public defense workforce lacks sufficient core staff, as the agency has not, until recently, invested in its development.

To build out this workforce, OPDC is relying upon staffing ratios recommended by the National Association for Public Defense:

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

These ratios inform OPDC’s budget requests for the non-profit public defender offices it contracts with, as well as its own Trial Division offices. The ratios also inform the number of private vendors the agency should anticipate funding through the preauthorized expense program that private bar and panel attorneys access to secure non-attorney services.

COMPENSATION

ORS 151.216 provides several mandates to OPDC regarding the compensation of all public defense providers:

- Ensure compensation is in accordance with national and regional best practices.
- Ensure funding and resources to support required data collection and training requirements.
- Recognize the need to 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.
- Adopt a compensation plan this is commensurate with other state agencies.

Additionally, SB 337 directed OPDC to conduct a survey and economic analysis by July 1, 2025 to establish a formula for the commission to use to calculate an hourly pay rate for the panel of qualified counsel, taking into account overhead expenses, market rates and regional differences in the cost of living. OPDC contracted with Moss Adams to conduct the survey and economic analysis, which was completed in April 2024. SB 337 also states:

- Once the hourly pay rate has been established, and beginning with contracts entered into

on or after July 1, 2027, the hourly pay for the panel of qualified counsel may not be lower than that amount.

- The hourly rate may not be lower than the hourly rate established by the Commission.
- The hourly rate shall be adjusted to reflect the same percentage amount of any positive cost of living adjustment granted to employees in the management service in other executive branch agencies.
- The hourly rate may not provide a financial conflict of interest or economic incentives or disincentives that impair an attorney’s ability to provide effective representation.

Taken together, these directives inform the Commission’s approach to the compensation of public defense providers. For attorneys and core support staff in the Trial Division, OPDC has tethered its compensation plan to staff at the Oregon Department of Justice.

For the panel of qualified counsel, the Commission has relied upon the Hourly Rate and Economic Survey to inform its recommendation on compensation. The Commission adopted the following formula to inform its decision on hourly rates for panel attorneys:



Using this formula, the Commission considered data from the market survey to determine whether OPDC should use a strategy that lags the market (25%), matches the market (50%), or leads the market (75%).

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

All figures are rounded to the nearest whole dollar.

Market data was also gathered for core staff positions:

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

The Commission selected the market match approach, and it directed OPDC to use the hourly rate from the 50th percentile for panel attorneys and core staff, adjusted for 1,578 billable hours per year, rather than 2,080 billable hours. Using this approach, the Commission established a two-tier hourly rate structure of \$205 and \$230 per hour, depending upon the case type. The Commission also relied upon this formula for establishing compensation for attorneys and core staff for other public defense contractors, such as non-profit public defender offices, consortia, law firms, and solo practitioners.

FINANCIAL CONSIDERATIONS OF WORKLOAD PLAN

There are short-term and long-term impacts to implementing the agency’s workload plan. The financial impact would be significant if OPDC attempted to implement this plan immediately. However, the Commission aims to implement the caseload and workload standards over a six-year period.

The short-term impacts are best understood through the ARB. The agency’s POPs have been crafted in reliance upon Commission decisions regarding caseload and workload standards, core staff ratios, and compensation. The agency is proposing to implement the decisions regarding core staff ratios, compensation, and one-third of the caseload and workload standards in the ’25-’27 biennium. The agency will then implement the remainder of the caseload and workload standards during the ’27-’29 and ’29-’31 biennia.

POPs 102, 103, 104, and 105 include requests to implement OPDC’s workload plan for the ’25-’27 biennium. The foundation for these financial requests is the Commission’s decisions regarding caseload and workload standards, core staff ratios, and compensation.

The total costs of POPs 102 through 105 are:

Policy Option Package	Cost Above Agency Current Service Level	
102	Criminal Contracts	\$446,303,164
103	Trial Division Build	\$21,863,302
104	Hourly Rates	\$38,919,169
105	Juvenile Contracts	\$176,908,058
Total		\$683,993,693

Long term, the agency's Six-Year Plan provides tools to forecast budget growth as caseload and workload standards are fully implemented. To fully implement the caseload and workload standards for criminal cases, OPDC will need to add 474 attorneys to the workforce, which is approximately 79 attorneys per year for six years. To fully implement the caseload and workload standards for juvenile cases, OPDC will need to add 302 attorneys to the workforce, which is approximately 50 attorney per year for six years. Corresponding core staff will also need to be added to the workforce.

SERVICE DELIVERY – TRANSITION OF WORKFORCE

Currently, OPDC’s public defense attorney workforce consists of the following:

- OPDC Trial Division (20 FTE Attorney),
- Non-profit public defender offices, pursuant to maximum attorney caseload (MAC) contracts (279 FTE Attorney),
- Private bar attorneys (consortia and law firms) pursuant to MAC contracts (410 FTE Attorney),
- Attorneys who are paid an hourly rate pursuant to accept appointments to cases.

SB 337 requires this workforce be transitioned over a period of time:

- Effective July 1, 2025, flat fee contracting is prohibited. Public defense services will be provided by OPDC Trial Division, non-profit public defender offices pursuant to workload contracts, private bar attorneys pursuant to workload contracts, and a panel of qualified counsel who are paid an hourly rate for their legal services.
- Effective July 1, 2027, the private bar will be transitioned to the panel of qualified counsel.
- Effective January 1, 2031, at least 20% of the public defense attorney workforce shall be employees of the OPDC Trial Division.
- Effective January 1, 2035, at least 30% of the public defense attorney workforce shall be employees of the OPDC Trial Division.

The sections below include summaries of where each component of that transition currently exists, and the steps taken toward ensuring compliance with SB 337.

STATE EMPLOYEES

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

- Northwest Regional Trial Division Office opened in December 2023 and accepts cases in Clackamas, Washington, and Multnomah counties.
- Southern Regional Trial Division Office opened in February 2024 and accepts cases in Douglas, Jackson, and Klamath counties.
- The Central Valley Regional Trial Division Office opened in April 2024 and currently has no geographical restrictions on case assignments.

These offices currently employ 43 people, including 20 attorneys, and it prioritizes appointments to cases from the Oregon Judicial Department's unrepresented list. In its ARB, OPDC is requesting to grow the Trial Division to a total of 111 positions, including 60 attorneys, during the next biennium, as it has requested funding for 40 additional attorneys and corresponding core staff. The Trial Division will need to grow significantly faster in subsequent budget cycles in

order to ensure the agency meets the 2031 and 2035 timelines.

NON-PROFIT PUBLIC DEFENDER OFFICES

OPDC currently contracts with 12 non-profit public defender offices that provide direct legal services to clients in 19 counties. These offices employ full-time public defense attorneys who provide all of their legal services to public defense clients. Current contracts with non-profit public defender offices include:

- Metropolitan Public Defender (Washington and Multnomah)
- Multnomah Defenders, Inc.
- Youth, Rights, & Justice (Multnomah)
- Public Defender of Marion County
- Public Defender Services of Lane County
- Umpqua Valley Public Defender (Douglas)
- Southern Oregon Public Defender, Inc. (Josephine and Jackson)
- Southwest Oregon Public Defender Services, Inc. (Coos)
- Deschutes Defenders
- Intermountain Public Defender, Inc. (Umatilla and Morrow)
- Columbia Gorge Defenders (Hood River, Gilliam, Wheeler, Sherman, and Wasco)
- Elkhorn Defenders (Baker and Malheur)

Currently, the agency funds 279 attorney FTE in these offices. In its ARB, the agency is requesting additional funding to increase attorney capacity for these offices.

Similar to state offices, non-profit public defender offices often have a supervision structure, core support staff, and policies regarding training. However, OPDC has not provided a funding structure to encourage or support those functions. In its ARB, the agency is requesting funding to non-profit public defender offices invest in those critical functions.

(PRIVATE BAR) CONSORTIA, LAW FIRMS, AND SOLO PRACTITIONERS

OPDC currently contracts with many private bar attorneys to provide public defense services. Some of these attorneys subcontract with a consortium, while others have their own law firm or are employed by a law firm. These providers generally perform legal services outside of their public defense work. Similar to non-profit public defender offices, these entities perform services pursuant to a MAC contract.

Currently, there are 410 attorney FTE performing public defense work pursuant to these contracts. OPDC will continue to contract with these entities for the '25-'27 biennium in the

same manner it contracts with non-profit public defender offices. However, effective July 1, 2027, OPDC will no longer enter into fixed monthly fee contracts with these entity types. Rather, private bar attorneys will have to apply to the panel of qualified counsel in order to accept appointments to public defense cases, and they will bill the agency directly for their work on an hourly rate basis.

PANEL OF QUALIFIED COUNSEL

Historically, a small percentage of the public defense workload has been performed by non-contract attorneys on an hourly rate basis. That percentage has increased in the past few years, particularly in light of the unrepresented person crisis and an increased hourly rate to serve those individuals.

With the mandates of SB 337, this component to the agency's service delivery model will increase significantly in the next three years. Beginning July 1, 2025, the currently hourly billing component to OPDC's service delivery model will be formalized into a panel of qualified counsel. Attorneys will be evaluated pursuant to qualification standards to determine the cases to which they can receive appointments. Panel attorneys will be supervised by other panel attorneys who have the requisite qualifications, and they will also have access to mentor attorneys. Supervising and mentoring attorneys will work with OPDC staff on supervision and oversight.

Panel attorneys will contract directly with the agency and bill the agency directly for their legal services pursuant to an hourly rate. Critical to the functioning of the panel is an online billing system, which will use billing codes that align with the agency's workload and performance standards. OPDC has released a RFQ for a financial and case management system (FCMS) which, once procured, will be the portal for panel attorney online billing.

The panel will grow significantly by July 1, 2027, as the private bar transitions to the panel of qualified counsel.

ADMINISTRATION, TRAINING, SUPERVISION, AND OVERSIGHT

The transition of the public defense service delivery model certainly impacts OPDC's business relationships with attorneys and core staff throughout Oregon. It also impacts the overall administration of public defense services, including how attorneys receive appointments to cases, and how public defense providers receive training, supervision, and oversight.

OPDC is currently receiving technical assistance from the Sixth Amendment Center, with project management assistance from Moss Adams, to implement the new service delivery mandates. Most of the service delivery transition work will be complete by July 2025, although some components are ongoing and will continue past July. Prior to July 1, 2025, OPDC will adopt

policies and procedures to implement the following components to the agency's service delivery transition:

Independent Assignment of Counsel: OPDC will develop processes and request resources to assume responsibility for the independent assignment of counsel. Currently, this process is not uniform statewide. OPDC staff, local administrators, and local court staff all participate in case assignment. Centralizing case assignment will allow OPDC to use attorney resources most efficiently. It will also significantly improve our data, as the agency will know in real time which cases attorneys are assigned to, rather relying upon reports submitted to the agency with months old data.

Standard Setting: OPDC will update its attorney qualification standards and performance standards. It will also create training standards that inform attorneys on compliance with the performance standards. The development of these standards will include participation and feedback from public defense providers.

Online Billing System and Audit Processes: OPDC will establish policies and procedures for panel attorneys to bill OPDC through an online portal, which will be implemented with the agency's FCMS procurement. The agency will also create billing codes that align with its workload and performance standards. Online billing will expedite payment to public defense providers. It will also provide the agency with better data, which can be used for both performance assessments and financial audit purposes.

Supervision and Mentoring: OPDC will rely on local attorneys to provide much of the supervision and training required to ensure attorney compliance with performance standards. OPDC will establish qualification standards for attorneys to serve as supervisors and/or mentors. A structured mentor system supports competence and cost-effectiveness through efficiency, as mentors reduce the time assigned counsel spend mastering complex issues. A structured program of local supervision allows local attorney leaders to champion the agency's mission and build support for strong public defense.

Performance Assessments and Reevaluation of Qualifications: Performance standards are a measuring tool for evaluating public defense providers, and performance standards with specific benchmarks can be measured through online billing. OPDC staff will create policies regarding the frequency of performance assessments and the timelines for reevaluating an attorney's qualifications.

Complaints and Investigations: Fair and prompt complaint investigation and resolution reduces bar complaints against attorneys, aids the enforcement of performance standards, and provides vulnerable people a process for redress. OPDC will update its policies and procedures regarding complaints and investigations, and it will do so in conjunction with the buildout of the Compliance, Audit, and Performance Division.

Awards Program: Awards ceremonies articulate the agency's mission and grow the key idea that high quality public defense is something the whole legal community is proud to support. OPDC will work with public defense providers to establish a program for rewarding excellence.

FUTURE REPORTING

OPDC will provide a third written report to the House and Senate Judiciary Committees by December 1, 2025, with additional information regarding OPDC's implementation of its statewide workload plan and the transition of the public defense workforce. Specifically, OPDC will provide updates on:

- Attorney caseload and workload
- Core staff ratios
- Compensation
- Non-profit public defender offices
- The panel of qualified counsel, including updates on transitioning the private bar to the panel
- The OPDC Trial Division, including the timeline and plan for its expansion by region
- Public defense administration, training, supervision, and oversight

OPDC is also available to provide updates to the House and Senate Committees on the Judiciary during the 2025 legislative session.



Date: November 13, 2024

To: Jennifer Nash, Chair of OPDC
OPDC Commissioners

Cc: Jessica Kampfe, Executive Director

From: Laura Sanchez, Human Resources Director

Re: Organizational Chart

Nature of Presentation: Action Item

Background:

Gov. Tina Kotek has requested by Nov. 1, 2024, an organizational chart for the Oregon Public Defense Commission that satisfies legislative requirements. Our human resources department consulted with the Chief Human Resources Office in the Department of Administrative Services (DAS) to create a chart that includes the following:

- the agency’s operational structure
- budgetary information for positions
- working titles (where applicable)
- employees’ names
- employees’ classifications
- job codes for workers
- job codes for positions (to identify under-, cross- and overfills on positions)
- position and personnel database and Workday identification numbers for ease of reference in other systems
- color coding to denote different budgets
- position full-time equivalencies during the biennium

To support scalability, the chart was created using a formula-based approach that uses data easily exportable from Workday. This will allow for straightforward management in the future with minimal manual effort needed, reducing the risk of inaccurate or incomplete data.

On Oct. 31, Jessica Knieling, DAS's chief human resources officer, approved the chart, which accompanies this memo.

Agency Recommendation:

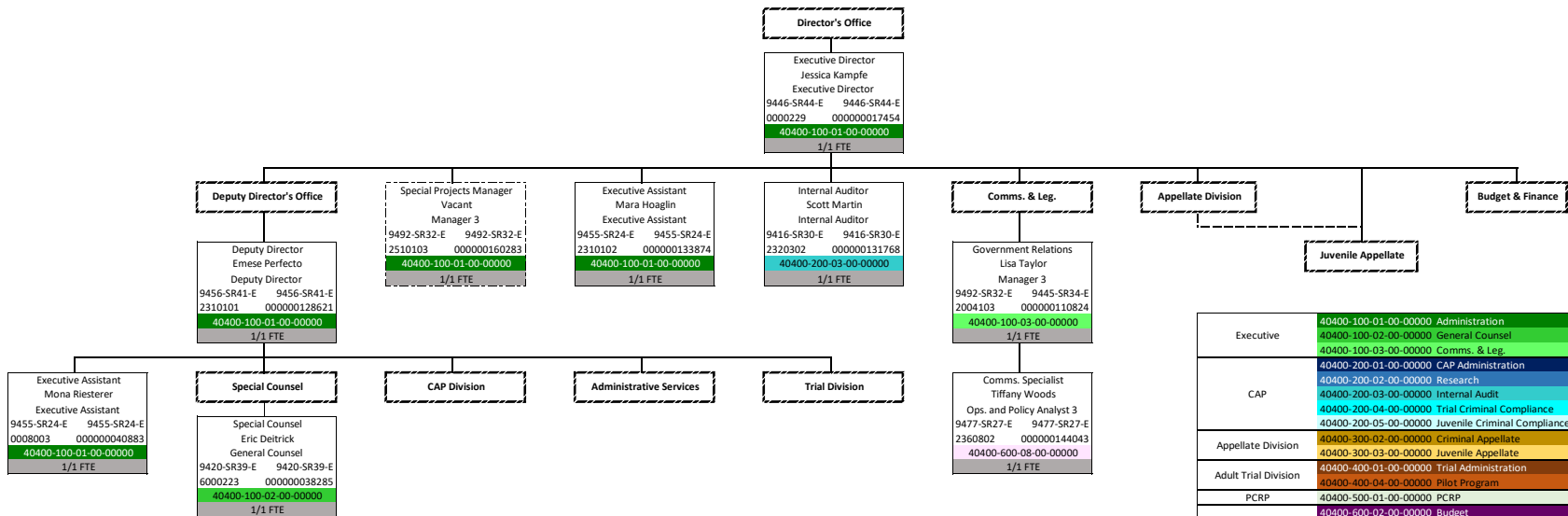
The Agency recommends that the Commission approve the above item for adoption by OPDC.

Fiscal Impact:

None.

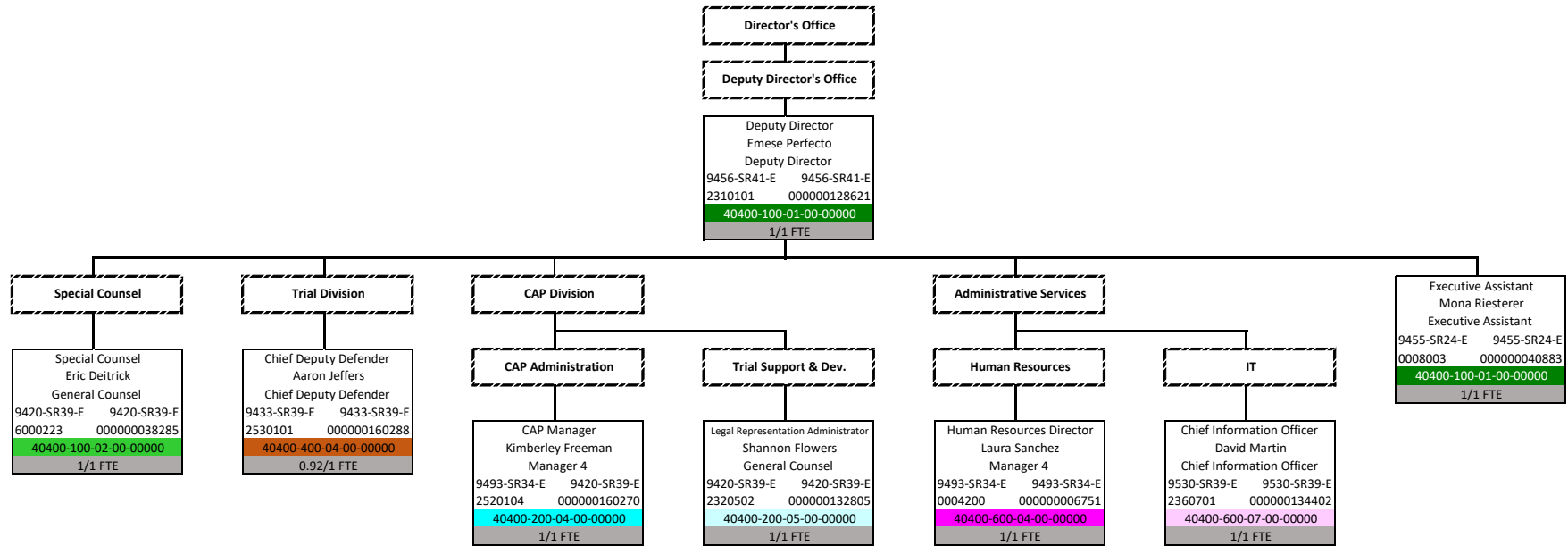
Agency Proposed Motion:

I move the Commission approve the adoption of this organizational chart model for future use by the agency.

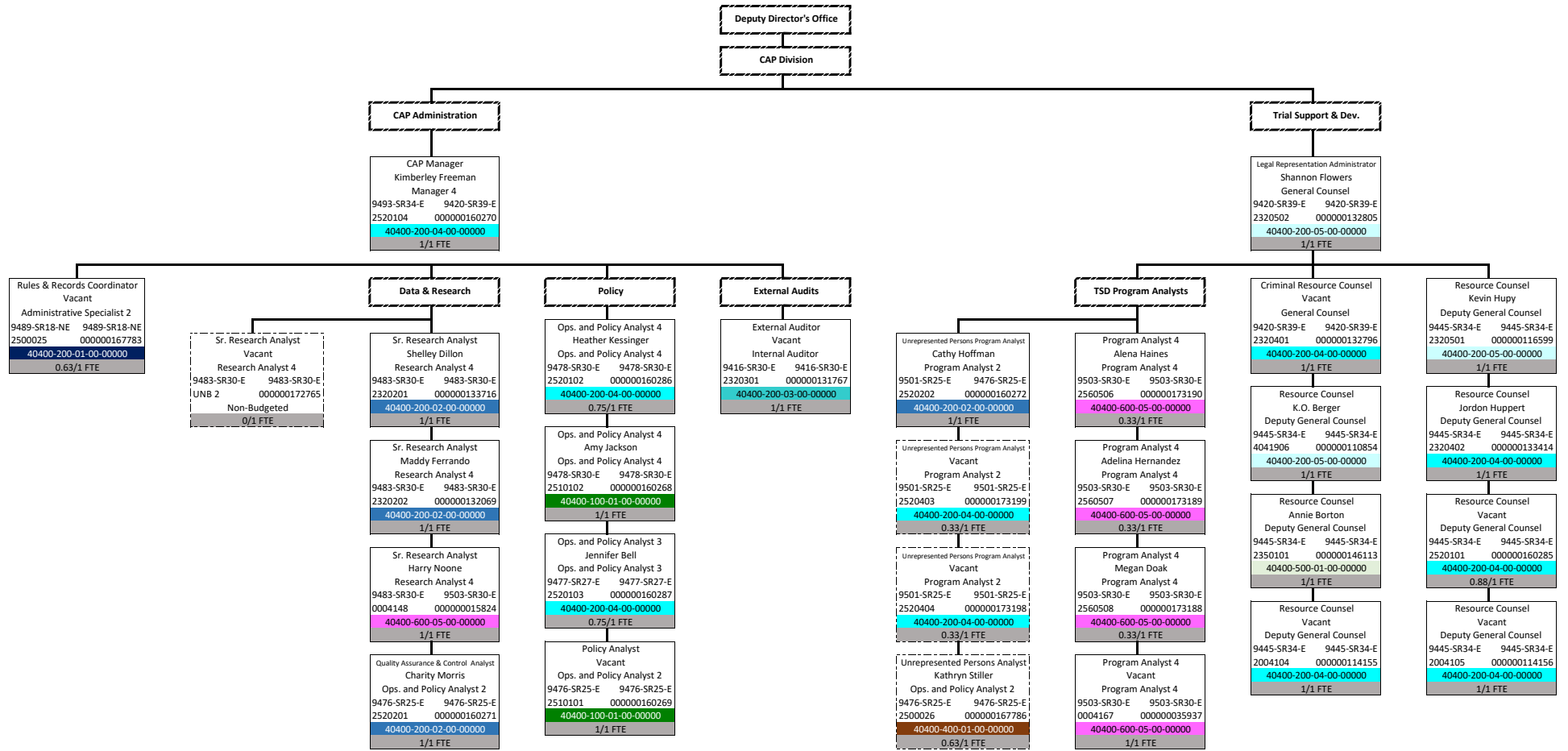


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Worker Job Code	Position Job Code
PPDB	Workday ID
Agency Cross Reference	
FTE/1 FTE	
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LD/Temporary Position	



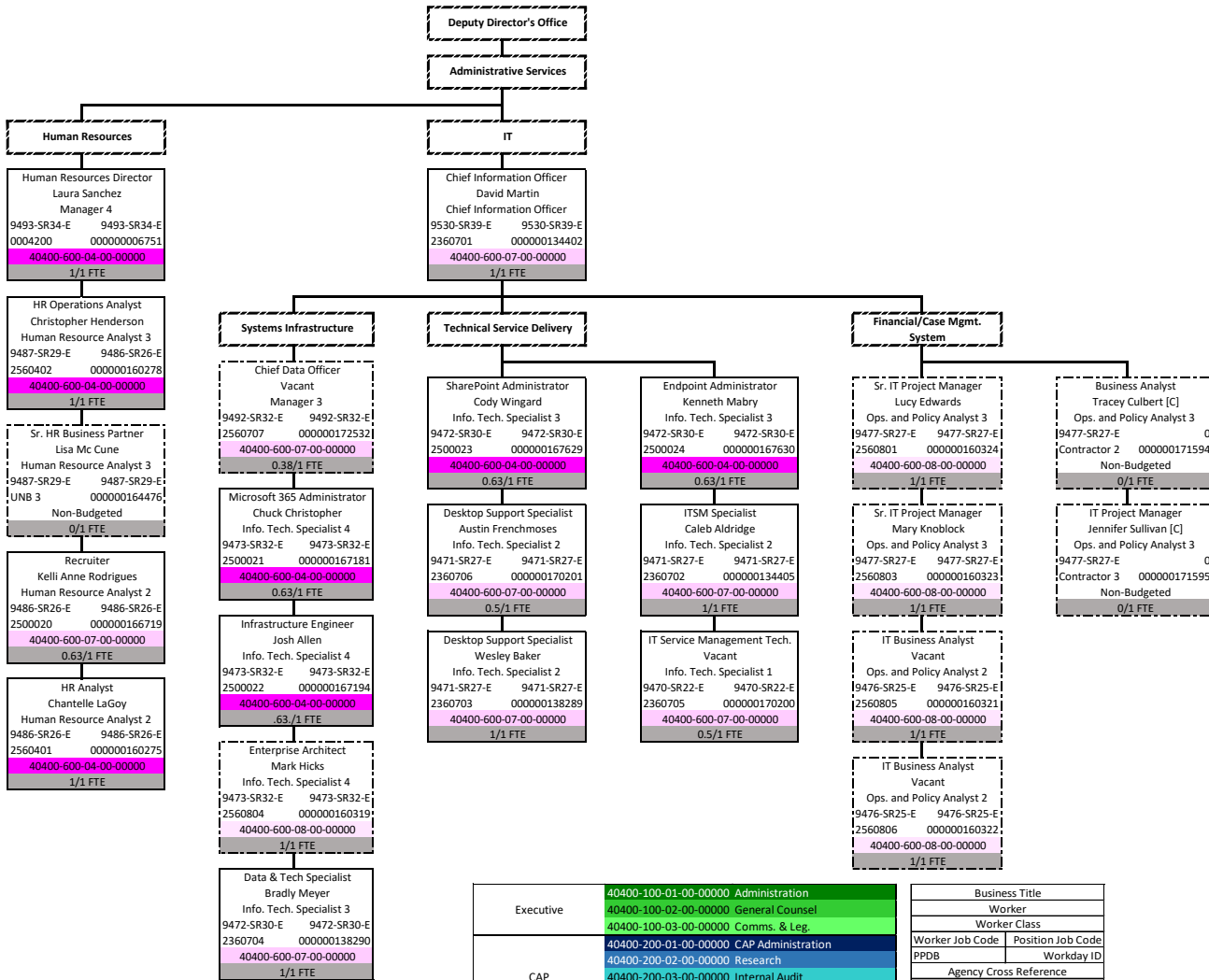
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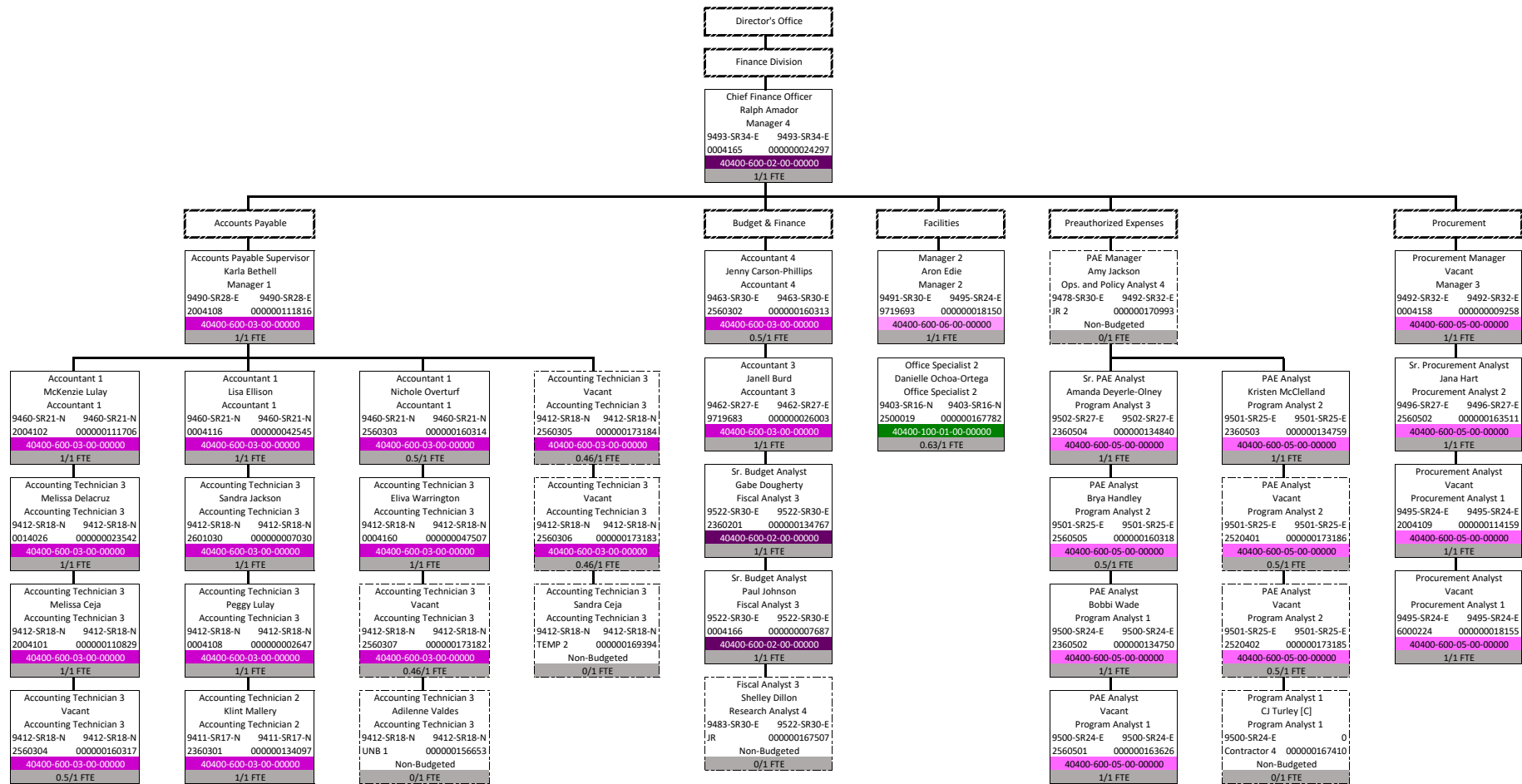
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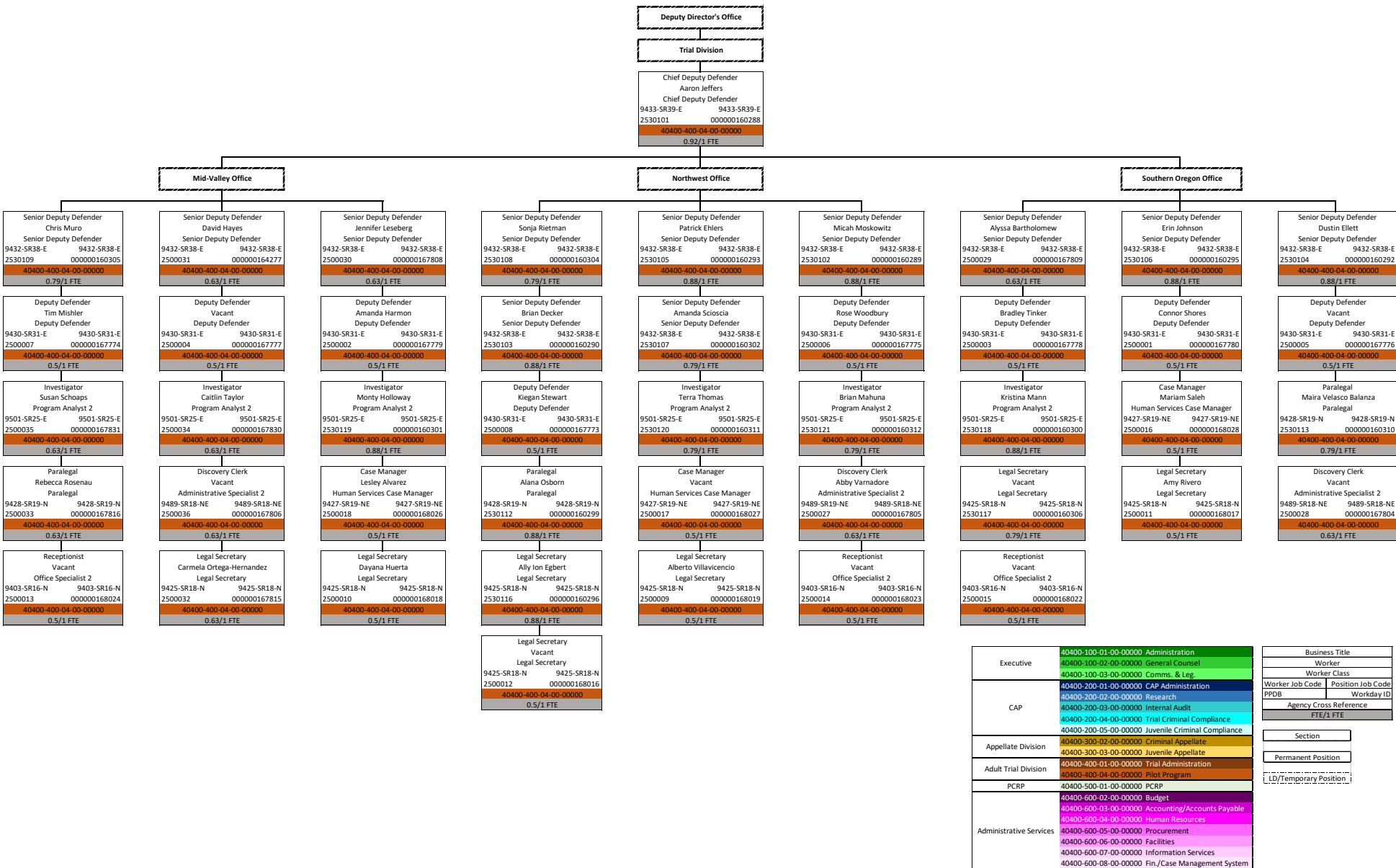


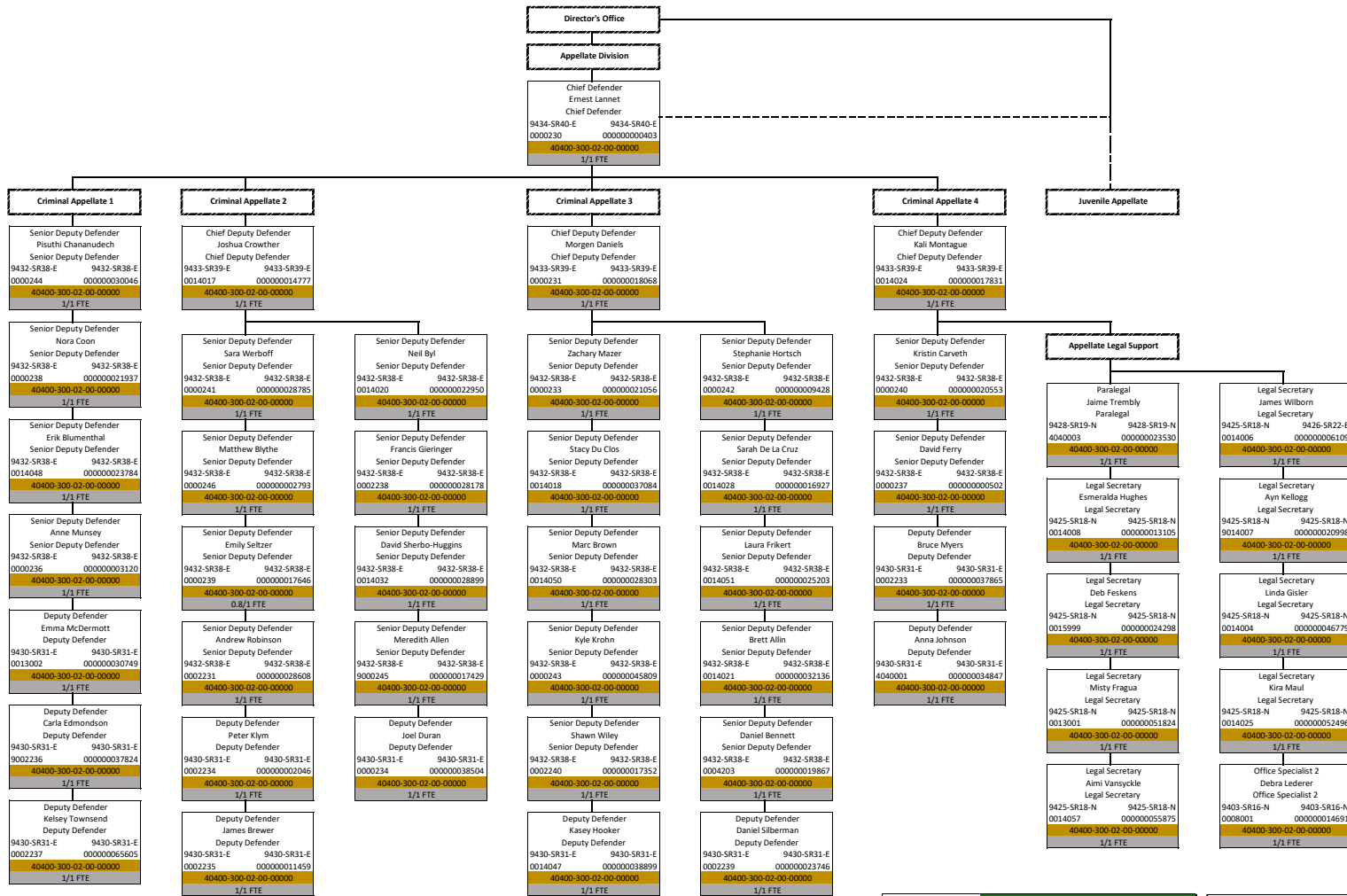
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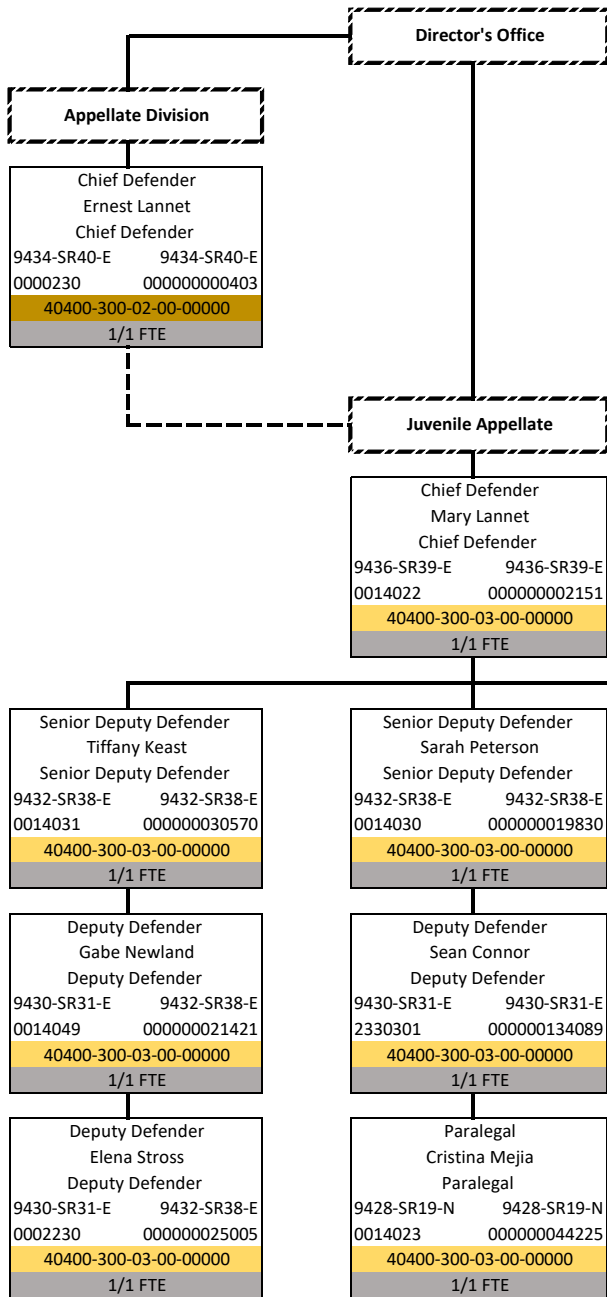


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FTE/1 FTE	

Section

Permanent Position

LD/Temporary Position

OPDC AUDIT COMMITTEE CHARTER

This charter defines the authority, responsibility, and structure of the Audit Committee (Committee), a “Special Committee” of the Oregon Public Defense Commission (OPDC or Commission). The Audit Committee is not a governing body.

A. Authority and Purpose of the Audit Committee

1. “Each agency having an internal audit function shall establish and maintain an audit committee¹.”
2. “The primary purpose of the Committee is to enhance the quality and independence of the audit function, thereby promoting the integrity of the internal and external audit processes².”

B. Duties

1. The Committee shall ensure the integrity and effectiveness of the Internal Audit function and provide guidance to enhance the quality of internal and external audits.
2. The Committee shall adhere to minimum committee governance requirements as outlined in Oregon Administrative Rule (OAR) 125-700-0135(5)(a) through (d).
3. The Committee and its members shall perform the following basic duties:
 - a. Ensure the independence of the Internal Audit function.
 - b. Provide input on risk assessments, which forms the basis of the Internal Audit Plan.
 - c. Provide input and approval of the Internal Audit Plan, which establishes audit priorities, goals and objectives, and a three-year auditing work schedule.
 - d. Inform the Commission Chair and the Executive Director in writing of any concerns regarding the job description of an internal auditor.
 - e. Inform the Commission Chair in writing if the Chief Audit Executive provides written notification of a scope or resource limitation placed on the Internal Audit function

¹ OAR 125-700-0135(5), first sentence.

² OAR 125-700-0135(5), second sentence. Note: On January 1, 2025, OPDC will become part of the Executive Branch to which Oregon Administrative Rules apply.

- f. Advocate for adequate budget resources to provide continuing professional education for Internal Audit staff, periodic external peer reviews as required by professional auditing Standards, and an adequate level of audit staff.
- g. Ensure follow-up of Internal Audit report findings and recommendations to determine whether proper corrective action has been completed or that Management has explicitly assumed the risk of not taking the recommended corrective action.
- h. Advise Management, the Chief Audit Executive, and Commission (as appropriate) if, in the judgement of the Committee, Management is assuming an unreasonable level of risk.
- i. Identify the level of audit resources that will provide the Committee and the Commission the desired amount and scope of information on which to make reliable risk-based decisions.
- j. Review internal and external audit findings, recommendations, as well as auditees' proposed mitigations and advise the Chief Audit Executive of any concerns.
- k. Understand the scope of internal and external auditors' reviews of internal control over financial and performance reporting, and obtain reports on significant findings and recommendations, together with Management's responses.
- l. Monitor the quality of the Internal Audit function and report to the Commission and Executive Director regarding actions to improve the function.
- m. Participate in the performance appraisal of the Chief Audit Executive.
- n. Provide input on any Commission request for audits to be performed by the Secretary of State Audits Division or other independent consultants.
- o. Ensure periodic external peer reviews of the Internal Audit function (external Quality Assurance Reviews) required by Oregon Administrative Rules and Standards. Receive external peer review reports and direct any applicable changes and improvements recommended therein.
- p. Review with Management, and the Secretary of State Audit's Division financial auditors, the results of the Audits Division's annual financial statement audit, including any difficulties encountered.
- q. Maintain confidentiality of communications and deliberations.
- r. Be informed by Agency Management of the appointment or dismissal of the Chief Audit Executive before such actions become effective. Objections, if any, of such

actions will be made part of the committee minutes and forwarded to Management and the Commission.

4. The Committee and its members shall perform the following duties at least annually:
 - a. Obtain from the Chief Audit Executive: a statement of Code of Ethics compliance and disclosures of actual or perceived conflicts of interest.
 - b. Obtain from the Chief Audit Executive annually: a report on compliance with auditing Standards and any challenges in meeting these Standards.
 - c. Receive and review the Internal Audit annual report prepared for the Oregon Department of Administrative Services.
 - d. Report to the Commission on Committee activities.
5. The Committee and its members shall perform the following duties periodically:
 - a. Every two years review and assess the adequacy of the Audit Committee charter and report any concerns to the Commission.
 - b. Periodically review significant exam findings by regulatory agencies, as well as audit findings and investigations of misconduct and fraud, to stay current on regulatory trends and relevant auditing matters.
 - c. Confirm annually, via Committee meeting minutes, that all responsibilities outlined in this charter have been carried out.

C. Composition

1. The audit Committee is composed of between seven and nine voting Members, a majority of whom shall not be employees of the Agency or Members of the Commission.
2. The audit Committee shall include the following voting members:
 - a. At least one Commission member, as appointed by the Commission Chairperson.
 - b. The Agency's Executive Director, or designee.
 - c. The Agency's Budget and Finance Manager, or designee.
 - d. Between four and six External Members, appointed by the Chairperson of the Committee, in consultation with the Agency Executive Director or designee, the Chief Audit Executive, and the other Committee Members, and ratified by the Commission.
3. The Chief Audit Executive, who serves as a non-voting member of the Committee.

4. Committee Chairperson

- a. The Chairperson of the Committee shall be an external member, not be an employee of the Agency or member of the Commission
- b. The Chair of the Committee will be filled by a current Committee member. Members may volunteer or accept nomination from other members.
- c. The Chair's term will begin upon affirmative vote by a majority of members.
- d. The term of office as Chair will be two years, with no term limits.

5. Terms of Office

- a. Agency members and the Commission member serving on the Committee may serve for as long as they hold their positions.
- b. External Members are appointed to two-year terms, but may serve consecutive two-year terms with Committee approval, subject to ratification by the Commission.

D. Appointment of Committee Members

1. Candidates for the Committee may be nominated by any member; nominations should reflect the Committee's need for a variety of perspectives.
2. The Committee Chairperson shall carry out the following duties regarding appointment of committee members:
 - a. Monitor turnover and take steps to bring in new Committee Members at least every four years.
 - b. Work with the Agency Executive Director or designee and the Chief Audit Executive to identify and initially screen candidates.
 - c. Consult with the Audit Committee members and the Executive Director to select new appointees.
 - d. Appoint new members subject to ratification by the Commission at their next meeting opportunity.
3. Diversity, Equity, and Inclusion (DEI) shall be considered in the selection of Committee Members. Failure to achieve or maintain a precise composition shall not prohibit the Committee from meeting or conducting activities.

4. Conflicts of Interest

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- a. It is the responsibility of an Audit Committee member to disclose a conflict of interest, whether actual or perceived, to the Committee.
- b. If there is any question as to whether Audit Committee member(s) should recuse themselves from a vote, the Committee should vote to determine whether the member should recuse themselves.

E. Removal of Committee Members

1. Audit Committee Members must attend, virtually or in person, no fewer than 3 of 4 quarterly Audit Committee meetings in a rolling 12-month period, unless excused by the Committee Chair.
2. External Members who fail to attend more than one quarterly meeting within a rolling 12-month period, unless excused by the Chair, may be removed from membership by the committee chair.
3. Any member of the Audit Committee may be removed, with or without cause, by a majority vote of the Audit Committee subject to ratification by the Commission. Pending the ratification of removal by the Commission, the removed Audit Committee member shall not participate in Audit committee debate or decisions unless the Audit Committee Chair determines otherwise and for good cause shown.
4. Members considering resignation should attempt to notify the Committee sufficiently in advance such that a replacement can be brought on in time for the subsequent quarterly meeting.

F. Meetings, Agendas, Minutes

1. Meeting schedule, quorum, and member duties
 - a. The Audit Committee meets quarterly, with additional meetings held as necessary. Meetings are usually about two hours per session.
 - b. Because of the amount of material typically covered during meetings, it is important that Members attend regularly, be punctual and come prepared, having reviewed the meeting materials.
 - c. A quorum is necessary to hold a meeting and conduct business. A quorum is composed of a majority of voting members.
 - d. Audit Committee action requires a quorum and the affirmative vote of at least one external member.
2. Agendas
 - a. Standing agenda items include

- i. Review and approval of the minutes for the prior meeting
 - ii. Roundtable time that allows Committee Members to bring forward any audit-related issues.
 - iii. A report on the state of Agency operations and finances from Agency management.
 - b. The Chief Audit Executive (CAE) will coordinate development of the remainder of the agenda by polling Committee Members one-to-two weeks prior to the quarterly meeting and three to five days prior to any supplemental meeting. The CAE and Committee Chair will finalize the agenda.
 - c. The Committee may invite guests, such as Secretary of State Audit Division managers, other Agency managers, or stakeholders, to present topics that promote Committee effectiveness.
 - d. At least once yearly, agenda items shall include:
 - i. A meeting between external Audit Committee Members and the Chief Audit Executive in the absence of the Commission member and Agency management.
 - ii. Time for the Committee to meet in the absence of the Chief Audit Executive.
 - iii. At least once a year, financial and performance audit managers from the Secretary of State's Audit Division will be invited to attend a Committee meeting, during which time shall be set aside for meeting with external Committee Members absent the Commission member, Agency management, and the Chief Audit Executive.
 - e. The Chief Audit Executive will distribute the meeting agenda and meeting-related material to Committee Members at least five working days before the next scheduled meeting.
 - f. A master file containing meeting agendas, minutes, and meeting materials shall be maintained by Agency management.
- 3. Staffing for Meetings
 - a. Agency Management will provide support staff to attend Committee meetings and prepare written minutes.
 - b. The support staff will provide an electronic draft of the minutes to the Chair and Chief Audit Executive for review and revision, as necessary, within seven days following the meeting.

4. Public Records

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Certain matters reviewed and deliberations by the committee may pertain to confidential information. The committee may designate those materials as confidential and for committee use only in which case committee members shall not disclose the information without the approval of the committee and said information shall, to the extent allowed by Oregon law, not be subject to public record disclosure.

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Oregon Public Defense Commission

FCMS Project

November 13th, 2024

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

David Martin, CIO, FCMS
Presenting



OPDC FCMS Stage Gate 3

Accomplishments

- 1. Change Management:** Moss Adams Discovery Interviews Conclude.
- 2. RFP Live on Oregon Buys:** Q&A Round in progress for managing the solicitation.
- 3. Budget/Scope/Schedule:** Stage Gate 3 Refinement +/-10% Alignment: In progress.
- 4. Procurement – Addendum:** In Progress.

OUR VISION

Next Steps

- Procurement Track: Q&A, Bids, Evaluations, and Demos.
- Change Management Discovery Findings & Output run through November.
- Stage 3 Work – Future State Process, 150-200 Use Cases, Benefits Management Plan, Cloud Workbook 10/1-3/30.



Risk Governance

- 1. EIS Stage Gate Approvals** – mitigating Stage Gate 3 review with LFO, DAS, EIS.
- 2. Bond Funding** – mitigating Bond Funding risk with application submitted to DAS for approval of \$13 million estimated.
- 3. Schedule** – risks around critical path for iQMS interviews, Change Management Discovery Sessions, Procurement Activities all running in October. SME's availability being managed closely.

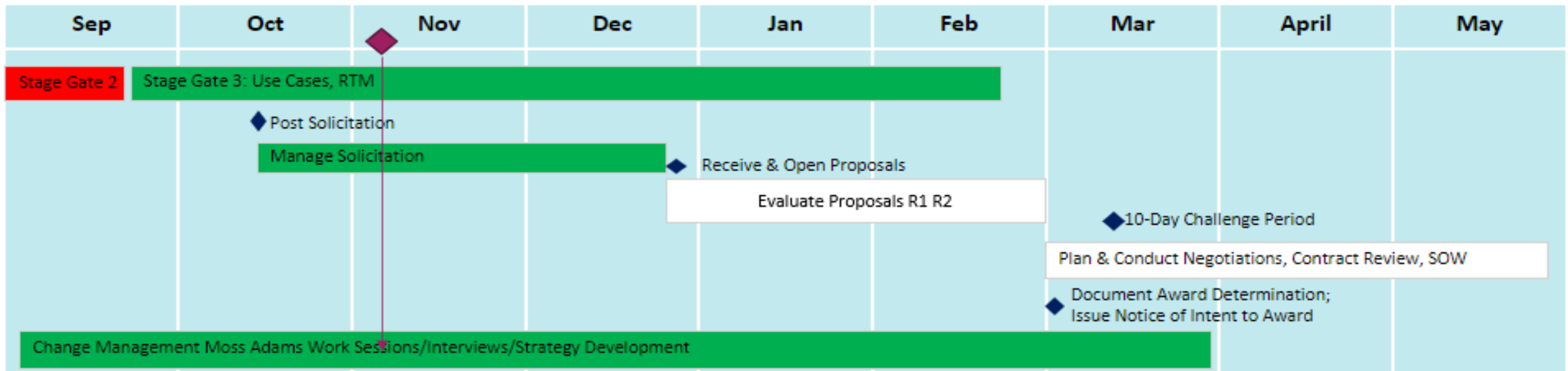
Schedule – Critical Path

- . Deadline for RFP Questions, November 15, 2024
- . Address RFP Questions: Nov. 5 - November 26, 2024
- . Protest Period runs: November 25-December 2, 2024
- . The RFP Protest period ends December 3, 2024
- . Proposals due deadline, December 20, 2024
- . Round 1 Evaluation complete, January 21, 2025
- . Round 2 Evaluations complete, February 21, 2025

Procurement Timeline

Current Dependencies

- Large sets of requirements take more time to score
- Timeline may shorten if a 3rd round is not needed
- Stage Gate 2 Approval Needed prior to RFP Send



Status

FCMS Monthly Project Status Report - September

Project Status – Medium Risk *Critical Path items for Procurement Timeline allow little lag in schedule presenting timeline constraints.

Budget Status – Medium Risk *Until Bond Funding is officially approved, and POP 101 approval completes; status unchanged.

Schedule Status - Medium Risk *Multiple resources assigned to multiple tracks scheduled at the same time: Moss Adams Change Management Discovery Phase, Procurement Milestones, iQMS interviews, Stage 3 Work.

Resources Status - Medium Risk *Moss Adams contractors for OCM & 2nd BA, 2nd PM onboarded, significant reduction in risk. 2nd PM and 2nd BA 50% allocated to FCMS on 3 tracks of work: Change Management, Procurement, Stage Gate 3. Significant Resource Alignment for Procurement and Change Management anticipated.

Scope Status - Low Risk *Stage Gate 2 Passed.

Thank you

