

Oregon Public Defense Commission

COMPREHENSIVE PUBLIC DEFENSE REPORT

Version I
April 30, 2024

NATURE OF THE REPORT

Section 98 of SB 337 (2023) states:

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

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

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

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

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 Section 98 of this 2023 Act is repealed on January 2, 2036.

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

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EXECUTIVE SUMMARY

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

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

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

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

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

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

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

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

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

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

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

SENATE BILL 337 (2023 LEGISLATIVE SESSION)

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

The three main components of SB 337 are:

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

Transition Timeline

January 1, 2024

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

January 1, 2025

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

July 1, 2025

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

July 1, 2027

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

January 1, 2031

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

January 1, 2035

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

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

FINANCIAL PROJECTIONS BASED ON WORKLOAD

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

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

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

CASELOAD FORECAST

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

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

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

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

CASELOAD AND WORKLOAD STANDARDS

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

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

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

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

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

The National Public Defense Workload Study² (September 2023) is the culmination of a comprehensive review and analysis of 17 previously released state-level studies, many of which the ABA conducted. For the first time, a comprehensive national workload study was created based on empirical data and the consensus of indigent defense experts reflecting modern criminal defense practice standards. This study demonstrates the widespread problem of excessive public defender caseloads and can be used to assist public defense agencies, policymakers, and other stakeholders in evaluating public defense workloads.

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

¹ [The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards \(americanbar.org\)](https://www.americanbar.org/publications/standards-for-the-practice-of-law/standards-for-the-practice-of-law-revised-2020/the-oregon-project-an-analysis-of-the-oregon-public-defense-system-and-attorney-workload-standards)

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

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

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

HOURLY RATES

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

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

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

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

FINANCIAL PROJECTIONS

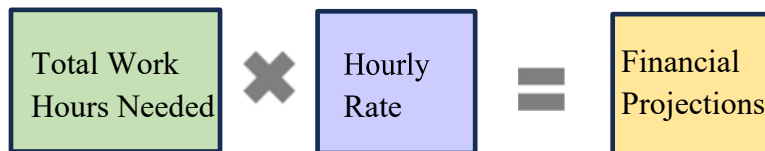
Once the caseload forecast has been translated into an attorney forecast, workload and caseload

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

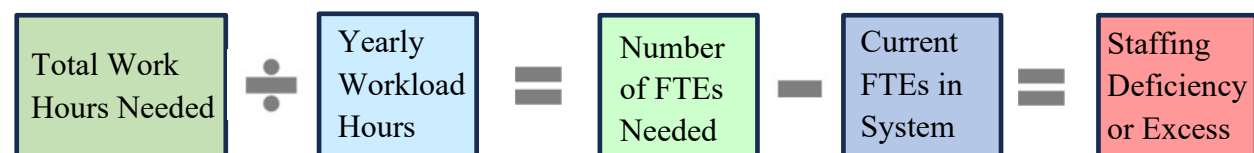
To perform the deficiency analysis, the caseload forecast (OEA forecast with attorney ratio) is multiplied by the caseload standards (time needed per case) to produce the hours required annually to provide reasonably practical counsel assistance under prevailing professional norms.



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



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



SIX-YEAR PLAN

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

The plan provides a two-pronged approach to form a strategy to eliminate excessive workloads for public defenders who manage the full spectrum of adult criminal case types by 2031. The two critical categories that drive the Six-Year Plan include:

- People and budget strategy - factors that address adding and reallocating resources

within and contracted by OPDC.

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

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

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

PUBLIC DEFENSE DELIVERY

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

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

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

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

STATE EMPLOYEES

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

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

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

NON-PROFIT PUBLIC DEFENDERS

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

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

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

CONSORTIA, LAW FIRMS, AND SOLO PRACTITIONERS

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

PANEL ATTORNEYS

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

TRAINING, SUPERVISION AND OVERSIGHT

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

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

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

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

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

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

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

FUTURE REPORTING

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