

ANALYSIS

Item 7: Public Defense Commission Unrepresented Defendant/Persons Crisis

Analyst: John Borden

Request: Acknowledge receipt of a report on the unrepresented defendant/persons crisis.

Analysis: The Public Defense Commission (PDC) was directed by the Emergency Board in May 2024 to report to the Emergency Board in September 2024 with an update on the unrepresented defendant/persons crisis, including how PDC's Regional Pilot Programs are performing and how judicial district crisis plans are being implemented, as directed by SB 337 (2023) and reported to the Joint Interim Committee on Ways and Means in November of 2023.

PDC's report provides information on the current status of the crisis, budget estimates related the agency's response to the crisis, the federal court ruling in *Betschart et al. v. Garrett et al.*, Case No 3:23-cv-01097-CL, case management, an update on PDC's Regional Pilot Programs staffed with state staff, the Temporary Hourly Increase Program, and the need for additional investment. The report also includes a high-level summary of an Unrepresented Crisis Plan (July 2024) that was developed in response to a request from the Governor.

PDC reports that as of August 7, 2024, there were 3,324 unrepresented individuals, of which 155 were in-custody with 31 potentially subject to the *Betschart* decision. According to the Oregon Judicial Department's *Cases with Unrepresented Individual* dashboard, which reflects more up-to-date information, there are 5,005 unrepresented persons being reported as of August 23, 2024, of which 1,534 are on warrant status. This is the highest number since the state began tracking unrepresented defendants/persons in 2022.

For the 2023-25 biennium, PDC has focused the agency efforts on resolving the crisis by primarily relying upon the THIP and the Regional Pilot Programs. Since inception, THIP has allowed the agency to hire 345 hourly attorneys. At present, there are 214 THIP attorneys, of which 140 or 65% are non-contract providers and 74 or 35% are attorneys with capacity above their contracted capacity. Since its inception, THIP has provided representation to 4,453 defendants/persons.

PDC's three Regional Pilot Programs have been assigned a total of 411 cases, as of August 20, 2024. The workload of these trial offices is being managed using a weighted case-type standards and 2,080 work hours. PDC reports that the agency also able to monitor provider capacity under the Maximum Attorney Caseload (MAC) model across 94 contracts. Statewide, criminal MAC utilization stands at 87%, as of June 2024.

As part of a plan submitted to the Governor, PDC will, over the next 90 days, redirect unused HB 4002 attorney capacity to address crisis as well as work with public safety partners on case resolution dockets. PDC's will also be seeking Emergency Board approval to extend the THIP program from January 1 to June 30, 2025 along with two additional case assignment coordinators, add 25 additional MAC, and establishment of a Regional Pilot Program office in Coos Bay, Oregon. However, it is important to note that the Legislature has made significant investments in public defense to alleviate the crisis, which

continues to persist. The Legislature and Emergency Board require assurance that resources being provided to PDC are being effectively utilized and producing results before considering additional funding.

The report notes that for the 2025-27 biennium, PDC anticipates moving away from the current contract provider MAC model to a new caseload and workload model to help resolve the crisis. However, adoption of a new model will require additional legislative investment in the public defense system. PDC will also be requesting other investments including adding state staff to the Regional Pilot Program, funding for attorney recruitment and retention, increasing hourly rates for attorneys and investigations, and adding administrative and operational staff of the agency.

PDC's report demonstrates a marked improvement in the agency's identification and understanding of the various aspects of the public defense system capacity (provider, state, and hourly attorneys); however, further improvements are needed to fully understand the utilization of existing resources as well as the implications of moving to a new caseload and workload model.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report.

Request: Report on the Unrepresented Defendant/Persons Crisis, per direction of the May 2024 Emergency Board by the Oregon Public Defense Commission.

Recommendation: The Oregon Public Defense Commission is not under Executive Branch budgetary authority.

Discussion: This report was requested to provide an update regarding the unrepresented defendant crisis in Oregon's public defense system. The 2023 Legislative Assembly passed Senate Bill 337 (2023) to tackle systemic issues in public defense and the unrepresented defendant crisis. The May 2024 Emergency Board requested an update from the Oregon Public Defense Commission (OPDC) on the status of the unrepresented defendant/persons crisis, including how Public Defense Commission Regional Pilot Programs have been established and are performing, and how Judicial Crisis Plans authorized under Senate Bill 337 (2023) are being implemented.

Regional Pilot Programs

OPDC reports information about three offices created since the passage of Senate Bill 337:

- Northwest Regional Trial Division 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 2024 and covers Douglas, Jackson, and Klamath counties.
- Central Valley Regional Trial Division Office - opened in mid-April 2024 and covers counties in the mid-Willamette Valley.

The report makes several mentions of the number of cases taken by these offices however the information is not reported in a way that is easily comparable.

OPDC shares that geographic barriers and staffing shortages have impacted the ability to serve all regions effectively. OPDC has submitted a request to the September Emergency Board to open a new office in Douglas or Coos County to address growing unrepresented populations in southwestern Oregon. It is estimated it would take three to six months to assign attorneys to the region's in-custody list, with physical office setup taking up to six months.

OPDC Unrepresented Plan

In addition to the legislative report, on May 24, 2024, Governor Kotek requested from OPDC a plan to address the unrepresented client crisis, to which OPDC submitted a plan on July 26, 2024. OPDC provided links to these documents and summarized them in the report. Within 90 days of the plan, OPDC shared plans to utilize unused capacity by redirecting House Bill 4002 (2024) attorneys to prioritize unrepresented in-custody

cases, collaborate with public safety partners to improve case resolutions, request funding to extend the Temporary Hourly Increase Program, establish a state trial office in the southwest, add assignment coordination staff, increase Maximum Attorney Caseload positions, and continue existing programs.



Oregon

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August 26, 2024

Senate President Rob Wagner, Co-Chair
House Speaker Julie Fahey, Co-Chair
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairs:

Nature of the Request

The May 2024 Emergency Board item #9 states:

The Subcommittee's recommendation also includes instruction for the Public Defense Commission and the Judicial Department to report to the Emergency Board in September 2024 on the status of the unrepresented defendant/persons crisis, including how Public Defense Commission Regional Pilot Programs have been established and are performing, and how Judicial Crisis Plans authorized under SB 337 (2023) are being implemented.

Agency Action

This report provides an update from the Oregon Public Defense Commission (OPDC) on the current status of the unrepresented persons crisis. It includes an overview of the crisis, a summary of the Unrepresented Crisis Plan submitted to the Governor in July 2024, and an update on the Regional Pilot Programs established by the Commission. This report was approved at the OPDC meeting on August 21, 2024.

Action Requested

The Oregon Public Defense Commission requests acknowledgment and receipt of the attached report

Legislation Affected

No legislation is affected.

Sincerely,

Jessica Kampfe
Executive Director

cc:

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

Oregon Public Defense Commission

STATUS OF THE UNREPRESENTED
DEFENDANT/PERSONS CRISIS

August 20, 2024

NATURE OF THE REPORT

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EXECUTIVE SUMMARY

As of September 2024, Oregon continues to face a significant crisis in providing legal representation to unrepresented defendants. Despite various initiatives, including the introduction of Regional Pilot Programs, the Temporary Hourly Increase Program (THIP), and increased funding, the shortage of public defenders remains a critical challenge. This report outlines the current status of the crisis, the impact of recent legislative changes, and the effectiveness of OPDC's strategies to mitigate the issue.

Unrepresented Crisis:

The shortage of public defenders in Oregon has led to a growing number of unrepresented individuals. As of this report, there are 3,377 defendants currently without legal representation, including 179 who are in custody. This crisis has underlying causes dating back decades through underfunding and overworking of the public defense bar, these underpinnings have been well described by the Sixth Amendment Center's 2019 report "The Right to Counsel in Oregon"¹, and the American Bar Association's 2022 report "The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards"². The Legislature's 2021 amendment to Oregon's public defense statute mandated the adoption of national and regional best practices for caseloads. This led to the implementation of Maximum Attorney Caseloads (MAC), which exposed the severe shortage of public defenders in Oregon but also highlighted the limitations of using outdated caseload models that do not account for the complexities of modern public defense work.

The Commission recently adopted caseload and workload standards based on modern national best practices and will submit a series of Policy Option Packages (POP) over the next three biennium to implement these workload standards. These standards are key to the long-term solution to of the unrepresented crisis.

The unrepresented persons crisis varies across Oregon's counties based on factors such as population size, local practices, and provider capacity. Since January 2024, the in-custody unrepresented numbers have remained stable, but the out-of-custody numbers have increased. OPDC has implemented several initiatives to address the crisis, including:

- Opening three state trial offices staffed by state employees;
- Increasing the number of public defenders under contracts and hourly agreements;
- Enhancing recruitment and retention efforts;
- Collaborating with public safety partners to improve coordination.

However, despite these efforts, the crisis persists, particularly in light of the Ninth Circuit Court of Appeals' *Betschart* ruling, which mandates the release of certain defendants if not provided with an attorney within seven days of appearing in court. To address this ruling, the OPDC has had to prioritized certain *Betschart* cases to prevent releases but faces ongoing challenges.

¹ [Sixth Amendment Center, 2019, The Right to Counsel in Oregon](#)

² [American Bar Association, 2022, The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards](#)

Regional Pilot Programs and State Trial Offices:

In response to Senate Bill 337 (2023), which requires OPDC to employ 20% of the public defense workforce by 2031 and 30% by 2035, three Regional Pilot Programs have been established in the Northwest, Southern, and Mid-Willamette Valley regions. These offices have made progress in reducing the unrepresented list but face geographical and limited staffing challenges, particularly in rural areas. OPDC plans to expand these efforts with additional funding requests to the Emergency Board and the 2025 Legislative session to establish new offices in critical regions.

Conclusion:

The unrepresented persons crisis in Oregon remains a significant challenge despite implementing various strategies and establishing Regional Pilot Programs. Continued legislative support and increased funding are essential to addressing this crisis and ensuring all Oregonians can access effective legal representation. OPDC is committed to expanding its efforts and working collaboratively with public safety partners to achieve long-term solutions.

UNREPRESENTED OVERVIEW

BACKGROUND

OPDC is combatting an entrenched problem: there are 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 caseload maximums—Maximum Attorney Caseloads ("MAC") as an interim solution. The adoption of the MAC revealed the true scope of Oregon's public defender shortage. While the 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 new attorney recruitment.

To date, OPDC has enacted the following initiatives to address the unrepresented persons crisis³:

- Opened three state 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. Further evidenced by these numbers is that public safety inefficiencies must be addressed systemwide to promote long-term solutions to the crisis.

³ See Appendix C: OPDC Unrepresented Initiatives to Date of the [OPDC July 2024 Unrepresented Plan](#).

BUDGET

Below is an accounting of resources the Legislature has allocated to the crisis for unrepresented specific programs. This does not include the funding of current service level MAC, Preauthorized Expenses (PAE), or Court Mandate Expenses (CME).

Program	Source	Type	23-25 Biennium Legislative Budget	23-25 Biennium Actuals*
One Time disappropriations	SB 5701 (2024)	OPDC	\$ (12,000,000)	
Unrepresented Assignment Coordinator (OPA 2)	SB 5701 (2024)	OPDC	\$ 157,253	\$ 34,848
10 Additional MAC (6.25 FTE)	SB 5701 (2024)	Provider	\$ 3,000,000	\$ 1,050,408
State Trial Offices Salem Office	SB 5701 (2024)	Trial Office	\$ 3,147,289	\$ 511,244
THIP Oct 2023-June 2024	SB 5701 (2024)	THIP	\$ 7,900,000	\$ 7,851,793
CME for Unrepresented Crisis	HB 5532 (2024)	Hourly	\$ 1,500,000	\$ 2,696,555
PAE for Unrepresented Crisis	HB 5532 (2024)	Hourly	\$ 480,000	\$ 665,026
Hourly Rates for attorneys, investigators, and interpreters.	SB 337 (2023)	Hourly	\$ 14,656,343	\$ 11,927,879
Expedited Case Resolution Docket (Multnomah)	SB 337 (2023)	Provider	\$ 368,000	\$ 368,000
Juvenile Trial Retention Bonus for attorneys	SB 337 (2023)	Provider	\$ 1,234,365	\$ 617,183
Retention Bonus for attorneys (Other)	SB 337 (2023)	Provider	\$ 1,234,365	\$ 617,183
Adult Trial Retention Bonus for attorneys	SB 337 (2023)	Provider	\$ 7,406,190	\$ 3,703,858
State Trial Offices Pilot Program	SB 337 (2023)	Trial Office	\$ 4,301,204	\$ 1,401,387
Totals			\$34,766,590	\$18,635,490

Program	Source	Type	21-23 Self- Funded Budget	21-23 Biennium Legislative Budget	21-23 Biennium Actuals
On a one-time basis, procurement of indigent defense counsel in Multnomah, Washington, Marion, and Lane counties	5202 (2022)	Provider		\$ 12,800,000	\$ 6,800,000
Initial THIP start-up costs	Self-Fund	THIP	\$ 2,200,000		

Natural Savings from attrition and new 4 tier structure	Self-Fund	OPDC	\$ (14,400,000)		
10 million Eboard appropriation			\$ 6,000,000	\$ 6,600,000	\$ 12,594,200
THIP July 2022-June 2023	Dec 22 Eboard	THIP		\$ 1,600,000	\$ 6,980,245
Strategic reserves	Dec 22 Eboard	OPDC		\$ 2,500,000	\$ (2,880,245)
Supervised Civil Attorney pilot program	Dec 22 Eboard	OPDC		\$ 395,000	\$ 394,200
Retention incentives	Dec 22 Eboard	Provider	\$ 6,000,000	\$ 2,105,000	\$ 8,100,000
Totals			\$ (6,200,000)	\$ 19,400,000	\$ 19,394,200

Quantifiable Results

The results of all these programs cannot necessarily be counted by the number of cases taken. OPDC does try to measure both quantitative and qualitative metrics when possible. Some interventions, like the attorney retention bonus, had positive results in retaining attorneys, but it's difficult to say how many attorneys would have left the public defense without that bonus. However, OPDC surveyed providers who received the bonus, and 80% responded that it was beneficial in retaining attorneys. In the case of added MAC, especially before the 2023 contracts, OPDC cannot say this attorney was contracted with these specific dollars. Still, we can estimate how many cases would be covered with the number of MAC purchased. MAC is also not taking cases directly from the unrepresented list but instead preventing cases from joining the list. Below is the best estimate of these interventions' impact on the unrepresented crisis.

Program	Cases Taken 21-23 Biennium	Cases Taken 23-25 Biennium	Notes
One Time disappropriations			The disappropriation offset the cost of the 2024 Legislature's investments in public defense.
Unrepresented Assignment Coordinator (OPA 2)			Not nearly as many THIP cases would have been assigned without this position.
10 Additional MAC (6.25 FTE)		1696	**Case estimate based on 13 C Felonies/MAC/Month for 10 MAC funded for 15 months. Includes an 87% utilization rate.
State Trial Offices Salem Office		46	As of June 30, 2024, the Salem state trial office had taken 46 cases.

THIP Oct 2023-June 2024		6119	As of June 30, 2024, THIP had taken 6,119 unrepresented cases. This case count represents the total of all THIP and some hourly investments.
CME for Unrepresented Crisis			
PAE for Unrepresented Crisis			
Hourly Rates for attorneys, investigators, and interpreters.			
Expedited Case Resolution Docket (Multnomah)			
Juvenile Trial Retention Bonus for attorneys			80% of providers surveyed said this program positively impacted their ability to retain attorneys.
Retention Bonus for attorneys (Other)			
Adult Trial Retention Bonus for attorneys			
State Trial Offices Pilot Program		257	As of June 30, 2024, the Northern and Southern state trial offices had taken 257 cases.
On a one-time basis, procurement of indigent defense counsel in Multnomah, Washington, Marion, and Lane counties.			
Initial THIP Start-up Costs	Included in THIP case total.		
Natural Savings from attrition and new 4 tier structure			
10 million Eboard appropriation			
THIP July 2022-June 2023	Included in THIP case total.		
Strategic reserves			Used on THIP increase.
Supervised Civil Attorney pilot program			The program connected attorneys in 10 cases. At least one of the civil attorneys began accepting hourly cases as a direct result of their participation in this program.
Retention Incentives			80% of providers surveyed said this program positively impacted their ability to retain attorneys.

*23-25 Biennium Actuals through 6/30/2024 **Estimate

CURRENT STATUS

NUMBERS

As of August 7, 2024, there are 3,324 unrepresented individuals in Oregon. Of those, 155 are in custody, and 31 are potentially subject to *Betschart*. After removing the 53 cross-county individuals, the custody number goes down to 102.

Since January 2024, the in-custody numbers have remained relatively steady, while the out-of-custody numbers have increased. The crisis varies between counties. This is due to various and differing factors, including population, staffing challenges in public defense offices, DA charging practices, court practices, jail practices, the experience of the county's public defense bar, and provider capacity.

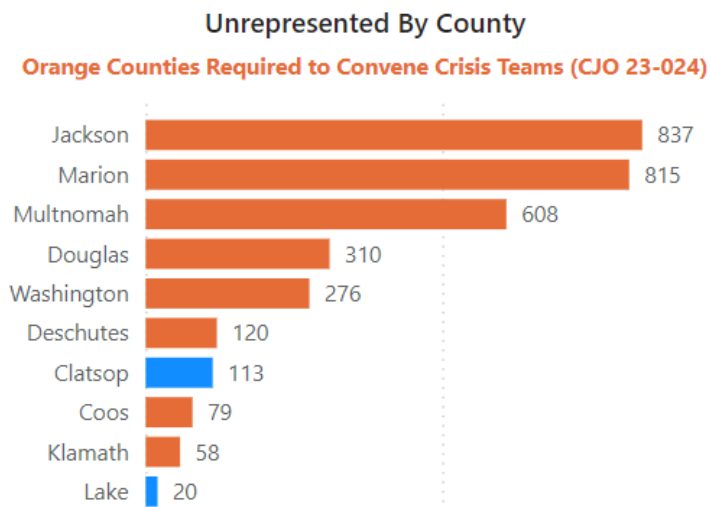
Case Type	In-Custody Count
Murder	1
A Felony	8
B Felony	17
C Felony	53
Misdemeanor	40
Contempt	4
Habeas	1

Cross-County Holds:

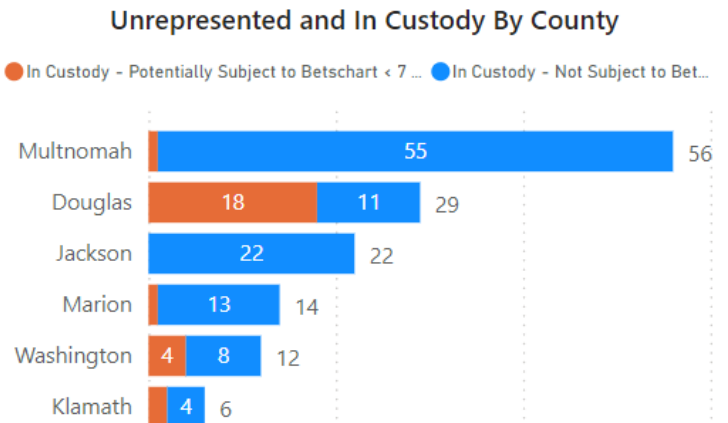
OJD's in-custody list includes individuals without legal representation on any case if they are in the physical custody of a jail. Some are in custody for a represented case while out-of-custody for an unrepresented case. These individuals are not held by their unrepresented case because they are in a different jail than their unrepresented case.

These "cross-county" cases are not prioritized as in-custody unrepresented. OPDC is working with OJD to improve tracking and communication of unrepresented numbers.

Out-of-custody top 10 counties:



In-custody top 6 counties. All other counties under 5 in-custody persons:



*Images captured 8/7/24 from Oregon Judicial Department Unrepresented Dashboard.

BETSCHART V. OREGON

On May 31, 2024, the Ninth Circuit Court of Appeals majority affirmed Judge McShane's ruling ordering the release of Oregonians arrested for crimes if they weren't provided an attorney by the state within seven days of appearing in court, subject to reasonable court-imposed conditions for release. This order does not apply to many cases, including murder and defendants who have had their release revoked.

Since this order took effect on June 19, OPDC has been working to prioritize these *Betschart* cases to prevent release under the order. It should be noted that release happens for many reasons unrelated to *Betschart*; OPDC efforts focus on cases that would be released only due to reaching the 7-day mark.

The following is a snapshot of a day managing *Betschart* cases:

On July 31, 2024, OJD reported 32 potential *Betschart* cases. Of those, 5 were on their 7th day in custody and would need to be released under the order (unless something else was holding them in custody, such as a parole hold or being in custody on a non-*Betschart* case). The remaining 27 were in custody for less than 7 days and, therefore, not yet subject to the order. Each day, OPDC staff review each case for up-to-date court and jail data. With they full picture in mind they must prioritize *Betschart* cases accordingly. On this day, that prioritization looked as follows

Of the 32 reported cases:

- 4 had been assigned counsel;
- 6 were released for non-*Betschart* reasons (typically non-person misdemeanors);
- 10 were being held on other non-*Betschart* charges, so they wouldn't be released if/when they reach 7 days; this includes all five \geq 7-day cases.

- This leaves 12 cases potentially subject to release under *Betschart*: 7 Measure 11 felonies;
- 4 Class C felonies;
- 1 Misdemeanor.

OPDC staff then spent the day working to find counsel for those case.

In addition to these efforts, OPDC meets weekly with OJD and the Oregon District Attorneys Association to review *Betschart* cases and flag any priorities or concerns.

OPDC has drafted a memo outlining how cases are prioritized. This process prioritizes cases based on severity, *Betschart* status, and custody status. As drafted, a Tier 1 case would be any murder or Jessica's Law case, any *Betschart* person felony, measure 11 or firearm case, or a domestic violence misdemeanor, and in-custody aid and assist cases. Tier 2 includes in-custody non-*Betschart* cases for the charges listed in Tier 1 and in-custody cases where a defendant has asserted their right to trial within 90 days under ORS 135.760. Tier 3 includes in-custody, regardless of *Betschart*, non-person felonies or person misdemeanors, property crimes, DUII, out-of-custody person felonies, aid and assist, and domestic violence misdemeanors. Tier 4 includes all cases not in Tiers 1-3.

OPDC has discussed these priorities with system partners and plans to present the memo to the Commission at the August meeting for final approval. The memo will then be shared with system partners, including OJD, DAs, and sheriffs.

OPDC PROVIDERS

When looking at OPDC provider types, there are those primarily taking unrepresented cases: THIP and state employees. Then there are OPDC contract providers taking cases in the ordinary course, preventing cases from becoming unrepresented and growing the list. Increasing the number of attorneys taking cases results in fewer cases going unrepresented, whether that's by appointing through contracts before cases join the list or taking cases directly off of the unrepresented list. Below is a summary of how different provider types impact the unrepresented numbers. For more information on caseloads and capacity, see the Remediation Plan IV under Caseloads.

TEMPORARY HOURLY INCREASE PROGRAM

When it comes to assigning counsel to a person eligible for public defense, OPDC contractors are first in line. Under normal circumstances, the court will assign 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 OPDC of the need to locate counsel. OPDC's most effective tool for locating counsel is the Temporary Hourly Increase Program (THIP). Beginning in August 2022, THIP pays attorneys an enhanced hourly rate for taking on unrepresented cases. THIP has successfully brought in new attorneys who would otherwise not take OPDC cases and has been an essential part of the unrepresented response.

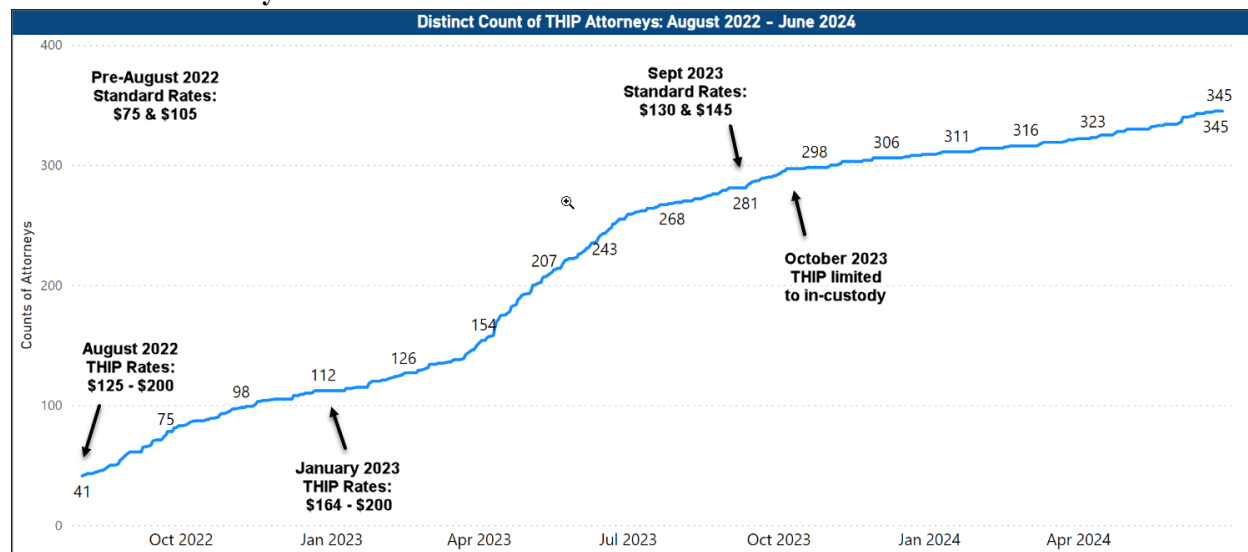
THIP was always intended to be a temporary program. Initially, it was designed as an emergency program, then later extended as a bridge until state employees started taking cases. In that time, it has been an incredibly successful program. Through THIP, OPDC assigns an average of 200 cases per month directly off the in-custody unrepresented list. Since its inception, 345 attorneys have taken 6,392 cases representing 4,453 clients through THIP. Since narrowing to only in-custody unrepresented cases, THIP has taken 1,442 cases representing 947 clients directly from the in-custody unrepresented list.

THIP has also brought in new lawyers into the system. Before 2022, when the hourly rate was \$75 and \$105/hour, about 1% of OPDC-assigned cases were taken hourly. Today, hourly cases account for nearly 10% of all OPDC-assigned cases. Of the 214 currently active THIP attorneys, 140 are not contracted providers with OPDC. Additionally, attorneys under contract have reached their monthly MAC before they are able to take on a THIP case, ensuring that OPDC is utilizing contracted capacity before paying hourly.

Table 2: Types of unrepresented cases taken through THIP since August 2022, both by number of clients and by number of cases.

Case Category	THIP Distinct Client Count	THIP Distinct Case Count
Misdemeanor	1,866	2,482
Minor Felony	1,414	1,773
Measure 11	504	522
Probation Violations-Criminal	376	464
Major Felony	404	438
Dependency/Termination	209	248
Murder	166	165
Delinquency	101	126
PCR/Habeas	79	80
Civil Commitment	72	74
Jessica Law	58	58
Probation Violations-Juvenile	6	14
Other	3	3
Total	4,453	6,392

Total THIP Attorneys over time



THIP is set to expire on December 31, 2024. During the 2025 session, OPDC will request funding to stabilize hourly attorney rates for all attorneys at a two-tiered rate of \$205 and \$230/hour beginning July 2025. This creates a gap in the hourly program where THIP rates would end before the market rates took over. In order to bridge that gap, OPDC will request an extension of THIP from January 1, 2025- June 30, 2025. This extension will allow OPDC to:

- Maintain the hourly attorneys with OPDC contracts;
- Bridge the gap between the end of THIP in December 2024 and the new hourly rates anticipated in July 2025;
- Allow for a smooth transition from THIP to an hourly panel of attorneys come July 2025.

Even with state employees on board and taking cases at or above capacity, the 10 trial division attorneys could not take on an additional 200 cases per month.

STATE TRIAL OFFICES

The commission is required by Senate Bill 337 (2023) to appoint public defenders as state employees over the next decade, with a mandate that twenty percent of the public defense workforce is employed by the agency by 2031 and that thirty percent of the public defense workforce is employed by the agency by 2035. The first phase of implementing these goals is the Regional Pilot Programs funded by the Legislature during the 2023 session. This program established three regional offices: a Northwest office serving Multnomah, Washington, and Clackamas Counties and a

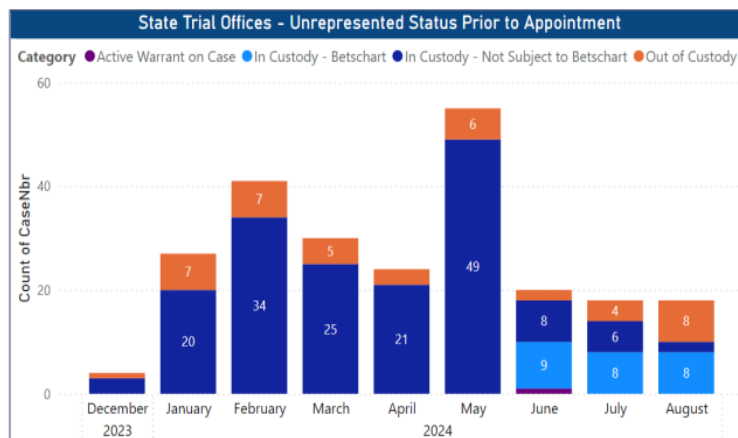
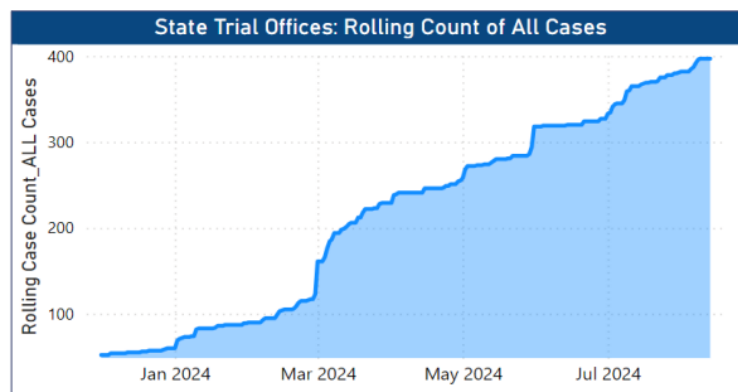
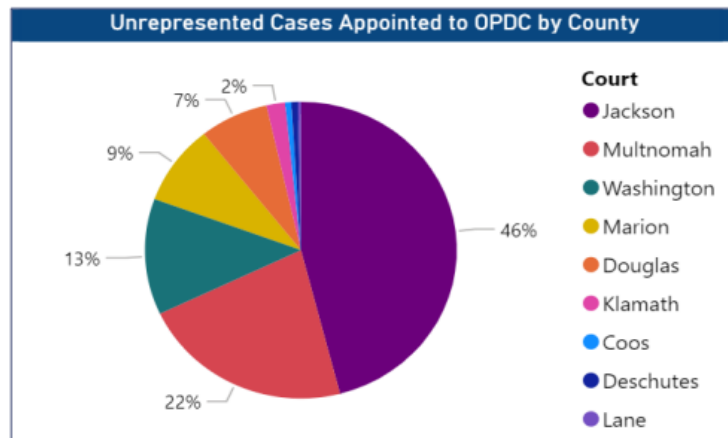
OPDC Trial Division Appointments			
Case Type	Closed	Open	Total
Mid Level Felony	25	68	93
Low Level Felony	27	45	72
Low Level Misdemeanor	38	34	72
Complex Misdemeanor	44	10	54
High Level Felony	8	45	53
Probation Violation	18	20	38
Homicide and Sex Cases	1	15	16
Total	161	237	398

As of 8/12/2024

Southern office serving Jackson, Klamath, and Douglas Counties. In early 2024, the Legislature approved OPDC accessing a Special Purpose Appropriation to establish an office in the Mid-Willamette Valley; this office is not geographically confined.

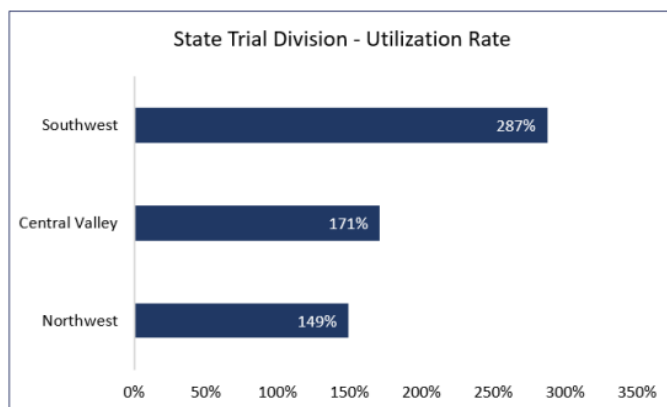
A Chief Defender was hired in August 2023 and worked with others in the agency to establish this new program. The first state trial attorney took their first case in December 2023, since that time, OPDC has hired eleven additional senior deputy defenders and taken 411 cases as of August 20, 2024. HB 4002 (2024) funded an additional eight deputy defenders who are currently being hired and onboarded. The included charts below show the total number of cases taken by the State Trial Offices, broken down by case type, and the location of those cases, along with a rolling case count to show the growth of the Trial Offices.

9 of the 11 attorneys currently have at least one homicide or sex case; one attorney has 4 homicide/sex cases. all attorneys are carrying between 2-9 high-level felonies and a mixture of mid-level and lower cases. In addition to targeting high-level cases, OPDC trial attorneys have proven valuable in securing counsel for *Betschart* cases. When counsel cannot be found for a person approaching 7 days in custody, OPDC appointment coordinators can work directly with the OPDC Trial Division to review workloads and take on cases at risk of release. Since June, the Trial Division has taken 25 *Betschart* cases.



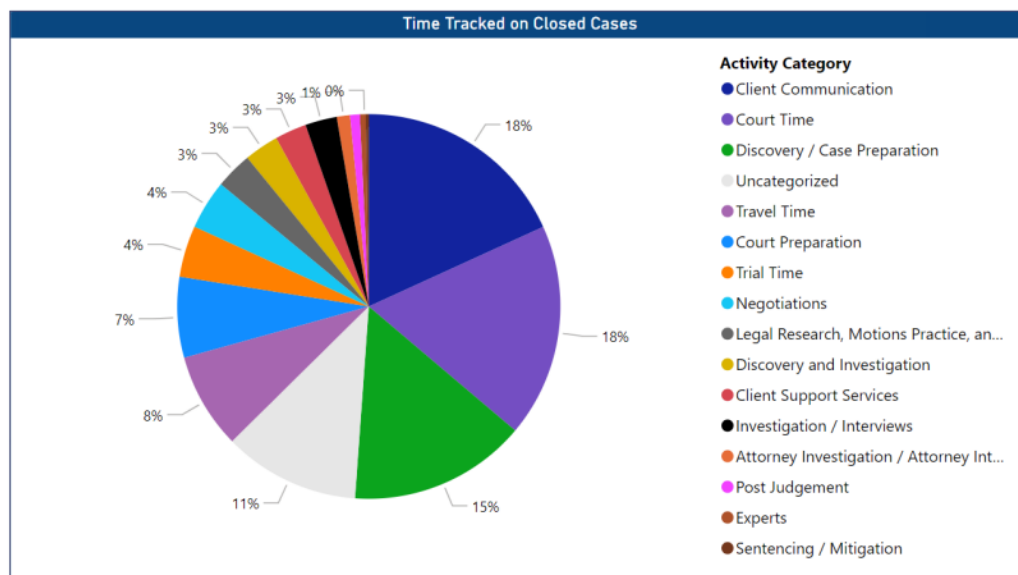
CASE MANAGEMENT

The OPDC Trial Offices manage their workload based on the Oregon Project report standards. This means that cases are weighted by case type on a 2,080-work-hour basis. Trial attorneys track their time, which uploads to a caseload dashboard, allowing real-time workload monitoring. This data enables the Chief Defender to track in real-time how much capacity individual lawyers may have and to whom additional cases can be assigned. It also allows OPDC to see how attorneys are spending time on cases and if that time aligns with the expected time based on the Oregon Project. All three offices are currently over their projected standards.



The trial offices are still using the Oregon standard and will switch to the National Public Defense Workload Standards⁴ that were adopted by the Commission in May once Moss Adams updates the 6-year plan. OPDC does not currently have the crosswalk to apply the case weights developed for Oregon's charges to the NPDWS. Moss Adams is doing that mapping now, and once it's complete, the Trial Division will switch to the standard adopted by the Commission.

These offices also track their time, which provides OPDC with valuable data. Of the 161 closed cases, 1,445 hours were tracked. 18% of those hours were tracked as "Client Communication," and 18% were tracked as "Court Time." Across all 398 cases, 16% (1,338 hours) were tracked by investigators, and 13% were tracked as "Discovery/Case Prep."



FUTURE PLANNING

⁴ [National Public Defense Workload Standards](#)

OPDC is committed to ensuring competent, client-centered representation for all those eligible for public defense in Oregon. To meet SB 337 goals for state-hired trial attorneys by 2031 and 2035 and reduce, eliminate, and prevent future unrepresented crises, OPDC is planning ways to expand the Trial Division. This expansion needs to balance the immediate need to take unrepresented cases, particularly in rural areas, and sustainably grow the Trial Division with appropriate managerial and staff support. The first is addressed through and September 2024 Emergency Board request to open an office serving the Southwest portion of the state. The Commission’s Policy Option Package 103 for the 2025 Legislative session addresses the second.

SW REQUEST

OPDC will request funding from the Emergency Board to establish a new state trial office serving Douglas County and the South Coast. OPDC currently has an office in Medford, serving Jackson, Douglas, and Klamath counties. While this office has been successfully taking cases in those counties, they primarily serve Jackson County due to the size of that county’s unrepresented list. Commute time from Medford to Klamath Falls and Roseburg also prevents attorneys from taking on more cases. While the pilot program initially grouped these three counties, in practice, Southern Oregon and Southwest Oregon should be separate offices due to both the need in the region and the geographic barriers.

In addition to geographic challenges, Douglas and Coos counties have unrepresented populations disproportionate to their size. This is primarily due to a lack of staffing, the difficulties of recruiting to rural areas, and the significant impact of conflict cases. OPDC anticipates that these staffing challenges will increase in the coming months, and setting up a Southwest office would allow us to prepare for that influx in cases.

A permanent office in the Southwest will stabilize the defense bar in a high-risk area and eliminate the region’s chronic staffing issues. The in-custody list in Douglas and Coos counties continues to grow as staffing impacts worsen. A Southwest office would likely have to pick up cases handled by departing contract attorneys and take on increasing in-custody numbers. With such a volatile situation, it is hard to predict how quickly a Southwest trial office of 6 attorneys could be assigned to all of the region’s in-custody list, but based on growth predictions, it would likely take 3 to 6 months.

In addition to increasing capacity in Douglas and Coos counties, the southern and mid-valley offices would also be able to increase their capacity as they will no longer have to spend significant time driving to Douglas and Coos.

2025-2027 BIENNIUM

During the 2025 session, OPDC will be submitting a Policy Option Package to increase the number of public defenders by forty, support staff by forty-six, managers by nine, and administrative staff by two. This would involve expanding the existing three offices and establishing three new offices in areas where there is a critical shortage of legal representation, and existing attorney capacity cannot meet the demand. The package also calls for an additional two chief deputy defender positions. These positions will allow the six offices to be divided into three regions – north, central, and south – for the purposes of supervision, with one chief deputy defender supervising the two offices in their region. These positions and offices will be added gradually during the 2025-2027 biennium.

Office / Region	Attorneys	Legal professionals	Investigators	Other
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Northwest (Portland)	7	3	2	2
Central Valley (Salem)	7	3	2	2
Southern (Medford)	7	3	2	2
South Coast (Coos Bay)	7	4	2	3
North Coast (Clatsop)	6	4	2	3
Klamath Falls	6	4	2	3
Total Package Positions	40	27	12	15

Finally, recruiting forty attorneys over two years is going to require a significant investment in advertising. The most effective recruitment tool thus far is posting the positions nationally through the Oregon State Bar at a cost of \$1,200 per posting. We are also testing targeted classified advertisements in state and local bar publications that range from \$100 to \$400 per posting. We would also like to test using a recruitment agency to target candidates in other states. To that end, this policy package includes a request for a \$20,000 recruitment budget.

CONTRACT PROVIDERS

Contract providers take the majority of public defense cases through contracted MAC. OPDC is currently contracted for 449.53 Adult Trial MAC, not including statewide and supervision MAC.

PROVIDER CAPACITY

OPDC can now monitor providers' maximum attorney caseload (MAC). A full-time contracted public defense provider is considered a 1.0 MAC, meaning they could take a maximum of 300 weighted misdemeanors per year. However, until recently, saying a contractor was a 1.0 MAC was misleading, as it did not factor in when that attorney started their contract. For example, an attorney could join a provider in January as a full-time 1.0 MAC, but OPDC would not expect them to take the total 300 weighted misdemeanors in the remaining 6 months of the contracted fiscal year. Even if they reached their maximum caseload by the end of the fiscal year (150 misdemeanors), it would appear they had only fulfilled 50% of their contracted MAC.

To correct this, OPDC has begun to report prorated MAC; this is the actual MAC an individual attorney can take on, dependent on the start date of their contract. Prorated MAC provides a more accurate data point to compare against reported MAC or the number of cases providers have reported taking. Using the prorated MAC and the reported MAC, OPDC is able to determine the MAC utilization rate.

OPDC program analyst reviewed criminal MAC utilization in April and identified any providers under 85%. They then met with those contract administrators from late April to early June to discuss caseloads

and reported MAC utilization. Of the 29 providers below 85%, six were for ethical reasons, mainly due to taking on complex murder cases, six are currently in discussion about how to increase caseloads, five had reporting errors that were artificially reducing their utilization rates, and corrections are being made, four have specialty contracts that are meeting expectations, three have recent staffing issues including medical leave which should resolve soon, three are still pending review, and two are having amendments made to reduce MAC so it can be reallocated to providers who can take more cases.

OPDC has submitted an organizational structure report to the September Emergency Board, which outlines package 60 changes. The most significant change in this package is the disentanglement of the contract/procurement work and the programmatic work these program analysts are currently doing. By creating new program analyst positions and hiring procurement positions, the current program analyst will be able to focus on quality management work, like reviewing provider capacity. They will be able to regularly monitor MAC utilization and work with providers to remove barriers before they occur or address potential problems earlier.

It is essential to note that while the introduction of MAC was a fiscally conservative solution and an important first step to ending the pay-per-case model, it has many shortcomings. 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 is an impediment to new attorney recruitment.

Criminal MAC Utilization: July 2023 thru June 2024

HomeCounty	Count of Contract	Prorated MAC	Reported MAC	MAC Utilization Rate
▲				
Baker	2	2.528	1.522	60%
Benton	1	8.436	7.265	86%
Clackamas	2	27.732	27.738	100%
Clatsop	2	4.745	4.864	103%
Clatsop, Columbia	1	0.413	0.344	83%
Columbia	2	4.657	4.127	89%
Coos	1	6.327	6.488	103%
Crook, Jefferson	1	8.944	8.197	92%
Curry	1	2.223	2.205	99%
Deschutes	3	20.855	19.054	91%
Douglas	5	8.692	7.929	91%
Gilliam, Hood River, Sherman, Wasco, Wheeler	2	5.539	4.913	89%
Grant, Harney	3	2.905	2.423	83%
Jackson	4	22.485	21.306	95%
Josephine	2	11.104	7.842	71%
Klamath	10	9.003	10.439	116%
Lake	2	0.724	1.028	142%
Lane	2	32.570	26.033	80%
Lincoln	1	6.215	6.988	112%
Linn	1	13.523	13.459	100%
Malheur	5	7.264	5.248	72%
Marion	4	36.801	25.224	69%
Morrow, Umatilla	1	3.802	3.256	86%
Multnomah	5	78.360	65.573	84%
Polk	2	4.203	4.170	99%
Statewide	12	29.452	17.370	59%
Tillamook	1	2.554	2.254	88%
Umatilla	4	7.336	7.232	99%
Union, Wallowa	2	3.655	3.331	91%
Washington	7	44.018	41.812	95%
Yamhill	3	8.166	8.772	107%
Total	94	425.233	368.407	87%

OPDC UNREPRESENTED PLAN

SUMMARY

On May 24, 2024, Governor Kotek sent a letter to OPDC to “to identify solutions and work towards resolving this crisis” and to provide a plan by August 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.” OPDC submitted a plan to the Governor on July 26, 2024⁵.

OPDC’s objective is to eliminate the in-custody unrepresented list by the end of March 2025 and the out-of-custody list by the end of March 2026. OPDC believes this can be accomplished by implementing the initiatives laid out in the plan.

Below is OPDC’s short-term crisis plan, which is a stop-gap measure to address the unrepresented crisis as OPDC works toward sustainable reform. It combines no-cost and low-cost strategies with strategic e-board requests. The objective of this plan is to eliminate the in-custody unrepresented list by March 2025 and the out-of-custody unrepresented list by March 2026⁶.

Please see the full Plan submitted to the Governor, which is appended to this report for details.

CRISIS PLAN

90 DAYS

In the next 90 days⁷, OPDC will enact the following initiatives to reduce the unrepresented numbers:

- Utilize unused HB 4002 attorney capacity and discuss with partners the possibility of redirecting HB 4002 attorneys to prioritize unrepresented in-custody cases;
- Work with public safety partners on case resolution dockets;
- Request funding from the emergency board to:
 - Extend the policy that pays an increased rate for attorneys representing persons in-custody without counsel (THIP) through the end of the biennium;
 - Establish a state trial office serving the southwest;
 - Add assignment coordination staff within opdc to identify lawyers more quickly for in-custody defendants;
 - Add an additional 25 c-felony qualified maximum attorney caseloads (MAC) positions to existing criminal contracts around the state.

In addition to these new initiatives, OPDC will continue effective existing programs and has crafted a series of Policy Option Packages for the next biennium designed to move toward long-term solutions while still supporting the crisis plan above.

⁵ See [OPDC July 2024 Unrepresented Plan](#).

⁶ Calculations dependent on external factors that may increase or decrease the unrepresented list. Please see Appendix A: OPDC Unrepresented Plan Limitations Memo and Appendix B: OPDC Unrepresented Plan Workbook of the [OPDC July 2024 Unrepresented Plan](#).

⁷ See Appendix D: Unrepresented Crisis Plan Report Summary of the [OPDC July 2024 Unrepresented Plan](#).

NEXT STEPS

In the intermediate term, OPDC is requesting the following through Policy Option Packages (POP) for the 2025-2027 biennium:

- Implement Phase 1 of OPDC’s workload model for criminal and juvenile caseloads, including adding support staff to shift non-lawyer work away from lawyers;
- Additional accounts payable and preauthorized expenses staffing;
- Invest in recruitment and retention;
- Increase and stabilize the hourly panel attorney and investigator rates;
- Continue to expand the state trial office divisions to meet the SB 337 requirements.

6-YEAR PLAN

OPDC has adopted a 6-year plan⁸ to build, stabilize, and maintain the public defense workforce as a long-term solution to these issues. While this letter is focused on immediate and near-term solutions, addressing the underlying problems within Oregon’s public defense system is the only way to fully resolve this crisis. Without investments in long-term solutions, the interventions above will only be stop-gap measures, and the cycle will continue.

⁸ [OPDC Six-Year Plan to Reduce the Public Defense Deficit](#)