

# Oregon Public Defense Commission

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COMPREHENSIVE PUBLIC DEFENSE REPORT

Report II  
November 15, 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 Section 98 of this 2023 Act is repealed on January 2, 2036.

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 Statement 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.

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

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.

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#### 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 placed 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%
<b>TOTAL</b>	<b>151,941</b>	<b>185,957</b>	<b>34,017</b>	<b>22.4%</b>

	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%
<b>TOTAL</b>	<b>26,948</b>	<b>27,287</b>	<b>339</b>	<b>1.3%</b>

\* 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.”<sup>1</sup>

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.<sup>2</sup> 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.<sup>3</sup>

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

<sup>1</sup> 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.

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

<sup>3</sup> 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 that 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
<b>Total Employee Cost:</b>	<b>\$94</b>	<b>\$118</b>	<b>\$134</b>
Overhead (40%)	\$38	\$47	\$54
Profit (10%)	\$13	\$17	\$19
<b>Market Calculated Rate:</b>	<b>\$145</b>	<b>\$182</b>	<b>\$207</b>

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

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 50<sup>th</sup> 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 proposed 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 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.

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### 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 they prioritize 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.

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#### 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 for non-profit public defender offices to invest in those critical functions.

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#### (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.

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## 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.