



Oregon

Oregon Public Defense Commission

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Senator Kate Lieber, Co-Chair
Representative Jason Kropf, Co-Chair
Joint Committee on Addiction and Community Safety Response
900 Court Street NE
Salem, OR 97301-4048

Dear Co-Chairs and Committee members,

Thank you for the opportunity to provide input on HB 4002. I am submitting this testimony as the Executive Director of the Oregon Public Defense Commission (OPDC). The Commission has not taken an official position on this bill and as such, I provide this testimony as 'neutral' on the bill. My intent is to provide this Committee and the Legislature with information about how HB 4002 will impact OPDC and the public defense function as a whole. My testimony is based on the -1 amendments dated 2/2/2024.

The public health issue of addiction is one of grave concern for the Commission. The Commission is also grappling with addressing a crisis of unrepresented persons. Oregon has 1/3 the number of lawyers it needs to represent clients in the criminal justice system. Despite the legislature's historic investment in public defense, the Commission has been unable to secure counsel for approximately 3000 Oregonians who are eligible for public defenders. Any amendments to legislation that creates criminal consequences for drug use that can create opportunities for early intervention, through investments in programs before judicial involvements will reduce or eliminate the need for public defenders. The re-criminalization of drug possession under proposed legislation will result in persons being charged with non-person misdemeanors. There is no current capacity in our public defense system to provide those persons with a lawyer. Those defendants would be placed on the [unrepresented persons list](#) and we estimate their cases would take 18 to 36 months from their arrest to have a public defender appointed and to have their case resolved.

Assumptions

All defendants charged under HB 4002 will be eligible for a public defender, this is supported by the fact that public defenders provide 90% of defense counsel in Oregon, and it is reasonable to assume that those charged with drug crimes are more likely than the general public to be eligible for a public defender.

Most of the people charged under HB 4002 will join the unrepresented list because there are not currently enough public defenders to represent all eligible persons. Oregon provides trial level public defense through contracted public defenders, hourly public defenders, and a pilot program of state employees. Most of Oregon's contracted attorneys are operating at their ethical or

contractual maximum attorney caseload already. Therefore, adding new cases to the criminal justice system will require the appointment of counsel outside of the contracted public defenders, thus relying on hourly attorneys and our pilot state trial level public defenders. Currently, there is a list of over 2600 cases where individuals are unrepresented and awaiting the appointment of counsel. Adding additional cases filings to communities with a large list of persons awaiting counsel will result in an increased number of unrepresented persons.

Average Attorney Cost for Hourly Cases*:

Case Type	Hourly Rate	Average Hours Per Case**	Average Cost of Case
Low-Level Misdemeanor***	\$130	22.26	\$2,893.80
Complex Misdemeanor	\$130	36.98	\$4,807.40
Low-Level Felony****	\$130	39.78	\$5,171.40
Mid-Level Felony	\$145	47.73	\$6,920.85
High-Level Felony	\$145	148.95	\$21,597.75
Homicide and Sex Cases	\$145	552.46	\$80,106.70
Probation Violations	\$130	8.33	\$1,082.90

*Official fiscal number will be provided by the commission in response to LFO’s fiscal request.

These numbers are for information use only.

**Determined by the [Oregon Study](#) using a Delphi method for review.

***Includes possession of a controlled substance C misdemeanors.

****Includes Delivery of Controlled Substance, including with enhancements.

HB 4002 Oregon Public Defense Commission Impacts

Clarification on Deflection Process

I appreciate the intent of the deflection process contemplated in HB 4002. However, the bill is not clear as to how a citation becomes a charge filed by a District Attorney if deflection was not completed. Clarification on this process is essential for OPDC to determine how many PCS citations will become prosecutions.

It seems clear that the goal of deflection is to prevent individuals from ever entering the justice system. We are supportive of this goal.

Section 20 Return to Boyd Delivery

The return to Boyd delivery standards will have a substantial fiscal impact on OPDC. By adding possession with intent to transfer to the definition of delivery, based on prior experience, we will see a substantial increase in delivery charges. These charges will require additional Felony qualified attorneys. For providing a fiscal impact for this section we will look at DCS charges pre and post Hubble.

Section 21 Delivery in Certain Locations

This section provides enhancements for delivery within 500 feet of treatment facilities and temporary residence shelters, or within public parks and increases sentencing for certain DCS offenses. While this sentencing enhancement won't increase the case type, so won't be factored in to the fiscal calculation, in practicality it will result in additional attorney and investigation work.

I would also like to point out that including parks in this enhancement it sure to bring in many more individuals facing homelessness, as parks are often where these people are living. Working with homeless clients provides an enhanced level of work for attorneys and investigators. While we don't have a way to factor in that cost, it should be noted.

Section 25 Affirmative Defense to Possession of a Controlled Substance

OPDC appreciates what section 25 is attempting to do, provide an affirmative defense to people who are incorrectly prosecuted even after having completed a deflection program. However, without the deflection clarification discussed above, the creation of this affirmative defense is confusing, making it seem as if this defense is available for all defendants charged under this section.

Non-Attorney Resources

In addition to attorney costs, all of the charges brought under HB 4002 will have additional non-attorney costs associated with them. These include investigation, expert witnesses, case managers, psychologist, and other expenses that are routine in mounting a defense. As many of those charged with drug crimes are experiencing addiction and other behavioral health impacts, these non-attorney costs can often be higher or more complex than a non-drug case.

Finally, I would like to address an issue I have been alerted to around the fiscal impact of both Measure 110 and the potential impact of HB 4002. When Measure 110 was passed in 2020, the OPDC, then the Public Defense Services Commission, was operating under a flat fee pay per case system. An attorney received a flat rate per case based on case type, no matter how long a case took to close. Today attorneys are paid either hourly or via contracts which include a limit to the number of cases that can be taken per year. We cannot look at the funding for PCS charges pre-Measure 110 to determine the cost of those charges today. The public defense system in Oregon is drastically different then it was in 2020 and relying on such outdated and inapplicable data would be inaccurate and would not provide the legislature with useful data to determine the cost to public defense.

Sincerely,



Jessica Kampfe
Executive Director
Oregon Public Defense Commission