



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,

As the Chair and Executive Director of the Oregon Public Defense Commission we are submitting the following testimony to provide input on the impact HB 4002-24 will have on the public defense workforce. As the state agency charged with establishing and maintaining a public defense system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice, OPDC will be significantly impacted by HB 4002-24.

First, the public health issue of addiction is one of grave concern for the Commission. Many public defense clients are also grappling with addiction and behavioral health issues. The interplay between the justice system, homelessness, addiction, and mental health is something that we and our providers see daily. We appreciate the work the legislature is doing to address these multi-faceted issues and support the investments in behavioral health and housing that can prevent individuals from ever needing public defense services.

OPDC appreciates the support the Legislature has provided public defense in addressing the crisis of unrepresented persons. Through legislative investments and structural changes, OPDC has increased its contracted Maximum Attorney Caseload (MAC) by 25% since July 2022. Through historic investments made by the legislature in 2023, OPDC was able to purchase 54.23 more MAC in our 2023-25 contracts. With these investments the Commission has stabilized the unrepresented numbers and decreased the in-custody unrepresented numbers drastically since July 2023. However, we are currently unable to secure counsel for approximately [2,800 Oregonians](#) who are eligible for public defenders.

OPDC has provided a fiscal impact statement for HB 4002-24 as requested by the legislative fiscal office, however, a fiscal impact statement does not fully capture the workforce issues created by the bill. This session, OPDC is already asking to access a SPA so we can contract for 10 public defender caseloads to reduce the current service gap. In addition to those 10, we would need to contract for 38.83 more public defender caseloads to provide constitutionally competent and effective legal representation for all persons who qualify for a public defender given the increased demand created by HB 4002-24. That includes an additional:

- 26.15 misdemeanor qualified attorneys to handle the Drug Enforcement Misdemeanor charges, probation violations, and additional misdemeanor charges resulting from

recriminalization.

- 12.69 low level felony qualified attorneys to handle the felony drug charges that arise from the return to the Boyd standard, as well as the additional felony charges from police searches due to recriminalization of drug possession.

According to the Oregon Judicial Department's data, persons charged with misdemeanors and minor felonies currently make up 86% of the individuals on the unrepresented person's list. Therefore, the creation of new misdemeanors and minor felonies will further stretch already scarce public defense resources. OPDC anticipates that many persons charged under HB 4002 will join the backlog of unrepresented persons waiting for a public defender.

We submitted [testimony](#) on the sections of the -1s that will impact public defense's fiscal costs. Below we've provided similar fiscal impact information on the -24s, as well as some potential actions that could offset the workforce impact this bill will have on public defense. Our request is that legislators amend HB 4002 to prevent persons from entering the criminal justice system. Barring that we believe the options below would help us to build the workforce needed to provide attorneys for those charged under HB 4002.

Thank you,

Jessica Kampfe
Executive Director
Oregon Public Defense Commission

Jennifer Nash
Chair
Oregon Public Defense Commission

Oregon Public Defense Commission
Mitigation and Workforce Development Options

Section 34-35 Possession of Controlled Substances (Drug Enforcement Misdemeanor Provisions)

The public defense workforce for all level of misdemeanor offenses is low. According to the Oregon Judicial Department's data, half of all unrepresented persons are facing misdemeanor charges. The creation of any new misdemeanor drug offense, regardless of classification, will further exasperate this workforce shortage.

Mandatory pre-booking diversion, or deflection, programs mitigate the impacts of this law on the unrepresented persons crisis by connecting drug users with behavioral health treatment before they enter the criminal justice system and need a public defender. However, the pre-booking diversion, or deflection, programs articulated in the -24 amendment is optional and therefore significantly less likely to be adopted in a consistent manner, if at all. Optional pre-booking diversion, or deflection, will increase the demand for misdemeanor qualified public defenders.

OPDC recommends that legislators amend HB 4002 to include mandatory pre-booking diversion, or deflection, programs so that drug users charged with DEM have an opportunity to connect with behavioral health services before entering the criminal justice system and requiring the appointment of a public defender.

Section 24: Delivery of Controlled Substances (Delivery Based on Boyd Standard)

Oregon law allows the State to prosecute individuals who take a substantial step toward the delivery of drugs to another by charging them with the attempted delivery of a controlled substance. This is consistent to the way the state's other inchoate crimes are charged across the criminal code. HB 4002's proposed change to Oregon's delivery statute would make the attempted delivery of drugs the same crime as the actual delivery of drugs.

This change will result in a significant increase in charges for class A and B felonies. OPDC, reviewed delivery of a controlled substance caseload reporting data from pre-pandemic, pre-Hubbell, and based on that review we anticipate 1,430 more A/B felony delivery charges to be brought every year. That number represents nearly half of the increased demand on the public defense workforce created by HB 4002.

Section 25: Delivery in Certain Locations

This section creates sentencing enhancements for the delivery of a controlled substance within 500 feet of treatment facilities and temporary residence shelters, or within 30 feet of public parks. Sentencing enhancements increase the workload for public defenders as explained in the ABA's Oregon Study. Additionally, this portion of the law will more heavily impact the unhoused population. Serving unhoused persons will require more social workers, case managers, and investigators. In addition to an attorney shortage, Oregon's Public Defense system faces an investigator shortage because our hourly rates for investigators are less than those paid by the federal public defenders and Oregon's private criminal defense bar.

Section 26-27 Reevaluation of Release Guidelines

OPDC has prioritized the appointment of counsel for persons who are in jail. This prioritization occurs both in our efforts to identify counsel for qualified individuals on the unrepresented persons list as well as the targeted application of the Temporary Hourly Increased Program (THIP). THIP qualifies attorneys and investigators who are appointed to represent persons who are in custody without a lawyer for higher hourly rates. This is a temporary program that is set to expire in June of 2024. OPDC anticipates an increase in THIP eligible cases if the Chief Justice of Oregon's Supreme Court reevaluates pretrial release guidelines to detain more people in jail before trial.

Section 51-52 Conditional Discharge

A public defender who is appointed to represent an individual remains that person's lawyer until their case is closed. For individual's offered conditional discharge after successfully completing a period of probation, the appointed lawyer remains that individual's counsel through the period of probation until conditional discharge is granted or denied. This will increase the time to disposition for public defense cases and limit public defender's ability to accept appointment for new clients.

Building and Investing in Public Defense Workforce

Oregon does not currently have the public defense workforce needed to provide constitutionally competent and effective legal representation for all persons who qualify for a public defender and further does not have the workforce to meet the increased demand created by HB 4002. The legislature should consider long term investments to build more public defense capacity in the state.

Building the public defense workforce

Building the public defense workforce to meet the needs of all persons who qualify for a public defender will take time. Strategic investments in the next generation of public defenders are an important step towards meeting that need. These investments could include:

- **Graduating Class:** In October of 2024 the Oregon State Bar will license a collection of lawyers, many of whom are currently in their 3rd year of law school and awaiting graduation in May 2024. The Oregon Legislature could provide additional funds for OPDC to buy MAC in October of 2024. Funding this investment now is an important recruitment tool that would allow public defense law firms to offer current 3rd year law student positions as public defenders in the fall and increase the number of misdemeanor qualified public defenders.
- **Supervised Practice Portfolio Examination Support:** In 2024 Oregon will become the first state to allow admission to the bar based on a supervised apprenticeship instead of the bar

exam. These ‘apprentices’ would be able to take on misdemeanor cases while under supervision. Costs for these apprentices along with the supervision required, could be less than a normal misdemeanor MAC.

Additional State Employees

OPDC could quickly increase the capacity in our Northwest and Southern Oregon offices by investing in more state employee trial level attorneys, legal secretaries, case managers, and investigators. These strategic investments in core staff along with additional attorneys allow us to increase the quantity and quality of public defense by utilizing diverse professional staff to meet targeted workload needs.

Extend the Temporary Hourly Increase Program (THIP)

THIP is currently set to expire in June, 2024 as the state increases its reliance on state employees. However, the increased demand for public defenders created by HB 4002 could be mitigated by extending THIP.

Investing in Non-Attorney Resources

Oregon can increase the capacity of existing public defense lawyers by investing in core staff. Currently, public defense attorneys spend significant time on tasks that could be more efficiently accomplished by dedicated and trained professional staff such as social workers, case managers, legal secretaries, paralegals, and investigators.