

ANALYSIS

Item 23: Public Defense Commission Trial Representation

Analyst: John Borden

Request: Transfer \$1,620,484 General Fund from the Public Defense Commission Court Mandated Expenses Division to the Trial Representation Division and establish of six permanent full-time positions (3.00 FTE) for state trial division public defense.

Analysis: The Public Defense Commission (PDC) is requesting to transfer \$1.6 million General Fund from the Court Mandated Expenses Division (CME) to the Trial Representation Division (TRD) and the establishment of six permanent full-time state attorney positions (3.00 FTE) within TRD for trial-level public defense. The request includes two Senior Deputy Defenders and four Deputy Defenders, and their associated services and supplies. The six attorneys would begin work on July 1, 2026. Included in the transfer is \$50,000 in anticipated costs for recruitment, targeted at attorneys both in and out-of-state.

Background

Oregon's public defense at the state trial level for financially eligible defendants is delivered through state-funded and administered contracts with local providers, private hourly rate attorney services, fixed rate contracts with the state's law schools, and state attorneys employed by PDC. Based on the first quarter of the 2025-27 biennium, local providers handled 86% of the public defense caseload, followed by private hourly rate attorney services at 10%, with state attorneys employed by PDC handling the remaining 4% of cases. The most recent Department of Administrative Services - Office of Economic Analysis public defense caseload forecast totals 210,701 adult and juvenile cases across trial and appellate courts.

Private hourly attorney pay services are viewed as necessary to avoid conflicts of interest in multi-defendant cases, to fill the gap needed by contractors being at capacity, or to fill gaps when contract attorneys lack the requisite qualifications needed to handle a case. While the majority of private hourly attorneys are delivered in urban areas, they also play a key service delivery role in rural areas of the state where there is insufficient demand to justify a contract provider, or the travel expense associated with a state attorneys employed by PDC.

Private hourly rate attorney services are currently set at \$155 for major trial and appellate levels of crimes and juvenile cases (Murder, Jessica's Law, Ballot Measure 11, Class A Felonies, Class B Felonies, Habeas Corpus, Mandamus, and Post Conviction Relief) and \$140 for all other lesser crimes. The hourly rates of pay attempt to compensate private attorneys for their

individual time and benefits, support staff, office space, liability insurance, etc. Private hourly attorney pay services are funded through the CME program, among other eligible court-mandated expenses. The 2025-27 legislatively adopted budget for CME is \$69.9 million total funds, with \$63.4 million General Fund and \$6.6 million Other Funds. Of the total budget, PDC reports that \$41.5 million General Fund is attributable to the payment of private hourly rate attorney services, but this amount is determined at the discretion of the agency and therefore is subject to change.

TRD is a state agency run trial division staffed with state-employed attorneys and their corresponding support staff of investigators, legal secretaries, paralegals, case managers, and office specialists. TRD attorneys' compensation is subject to the collective bargaining process and compensation can vary between attorneys due to their step in the compensation schedule. TRD is intended to strengthen the state's workforce of public defenders in alignment with the requirement in SB 337 (2023), which directs that at least 30% of appointed trial-level counsel should be employed by the Commission by January 1, 2035.

TRD is organized into Northwest, Southern, and Central Valley regional offices with two offices serving the Northwest region for a total of four regional offices across the state. The legislative priority for TRD is to address the unrepresented defendant/persons crisis by focusing on in-custody cases, out-of-custody defendants with serious charges, and then those defendants/persons who have been on the unrepresented list for extended periods. The regional offices are located in areas of the state where the crisis was most acute. The Central Valley Regional Pilot Program Office is intended to service not only the central Willamette Valley but also act as a statewide resource. The 2024 Legislature added TRD resources related to the recriminalization of certain drug offenses (HB 5204, 2024). The 2025-27 legislatively adopted budget for TRD is \$18.1 million General Fund and includes 46 positions (46.00 FTE), of which 20 are attorneys (20.00 FTE).

Service Delivery Cost Comparison Methodology

PDC's request to shift funding assumes that private hourly rate attorney services can be replaced with TRD state attorneys with more efficient service delivery (i.e., fewer hours per case), which will result in cost-savings to the overall public defense delivery system. Cost-savings arising from moving to a purportedly less expensive service delivery model would then be reinvested in additional TRD state attorney staff to expand public defense capacity.

PDC's methodological approach was to determine the cost of a TRD attorney's average yearly workload if it had been performed by hourly attorneys. PDC identified the number of clients served by each full-time TRD state attorney who worked full-time between September 1, 2024 and September 30, 2025, by case type, and then multiplied those clients by the average number of hours billed by private hourly attorneys based on historic billing data. The product of

this exercise was an equivalent number of hours that would be required to handle each TRD attorney's client caseload over that 12-month period, had those clients been served by hourly attorneys. On average, to serve TRD attorneys' clients would require 1,763.7 hours for major felony-level clients and 1,185.63 hours for minor felony, misdemeanor, and parole violations clients for an overall average of 2,949.34 "hourly equivalent." This "hourly equivalent" was then multiplied by current private hourly attorney rates of \$155 for major felonies and \$140 for all other case-types. This calculation indicates that the average annual equivalent for private hourly attorneys would be \$439,363, while those same clients could be served by a deputy TRD attorney for \$241,448 or a senior deputy for a cost of \$302,346 per year.

To determine the number of TRD state attorneys, PDC evaluated the agency's ability to absorb new attorneys within the existing capacity (e.g., attorney-managers, state investigators, legal secretaries, and other administrative support staff). This translated to two TRD Senior Deputy Defenders and four TRD Deputy Defenders, and their associated services and supplies for an overall total of \$1.6 million General Fund. Through this methodology, PDC could either pay for 3.7 client caseloads through private hourly rate providers, or they could hire six TRD attorneys and cover six client caseloads, the equivalent of six Maximum Assigned Caseload (MAC), which is the agency's policy standard for the minimum number of cases for each TRD state attorney (as well as provider contractor). PDC has no comparable standard for private hourly attorneys.

Simply replacing the 3.7 hourly caseloads with TRD attorneys would require the transfer of \$985,089 from Court Mandate Expenses to the Trial Representation Division to support four TRD positions and create savings of \$635,395 in Court Mandated Expenses. However, PDC is requesting to reinvest those savings into the TRD by adding two additional attorneys focused on the backlog of unrepresented cases in crisis counties.

Conclusion

The Legislative Fiscal Office has concerns with PDC's methodological approach around the comparability of cost factors, the conversion of hourly attorney time to available TRD attorneys, the sampling of hourly attorney cases (which is distorted by the former Temporary Hourly Increase Program), case priorities for state TRD attorneys whose focus should be on higher level crimes related exclusively to the unrepresented defendant/persons crisis, potential geographic implications of reducing hourly paid attorneys in rural areas, budget development for mandated caseload in CME, and the reinvesting resources (i.e., cost savings) above forecasted demand in a period of declining state resources. However, this type of agency initiative to more closely examine the underlying cost-drivers of public defense, is long-overdue and PDC is encouraged to undertake a more comprehensive analysis to better support future cost-savings initiatives.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means recommend transferring \$1,620,484 General Fund from the Court Mandated Expenses Division to the Trial Representation Division and authorize the establishment of six permanent full-time positions (3.00 FTE) for Public Defense Commission in a budget reconciliation bill during the 2026 legislative session for state trial division public defense.

23
Oregon Public Defense Commission
Bennett

Request: Transfer of \$1,620,484 General Fund appropriation made to the Court Mandated Expenses Division to the Trial Representation Division to establish six permanent, full-time positions (3.00 FTE).

Recommendation: Approve the request during the 2026 Legislative Session.

Discussion: The Oregon Public Defense Commission (OPDC) is requesting the reallocation of \$1,620,484 from the Court Mandated Expenses Division to the Oregon Trial Division (OTD) to fund six additional state-employed public defenders (four Deputy Defenders (2.00 FTE) and two Senior Deputy Defenders (1.00 FTE)). This strategic reallocation of resources will allow OPDC to fund these six positions for roughly the equivalent of four full-time hourly caseloads currently funded through the Court Mandated Expenses Division.

Oregon's public defense system is provided through a mix of capacity contracts, contracted hourly attorneys and OTD. OTD was established during the 2023-25 biennium to provide public defense services with state-employed public defenders. OTD currently includes 20 attorneys and support staff across four offices. Since establishment, OTD has handled over 3,200 cases statewide, with the vast majority of cases originating from the list of unrepresented defendants.

OPDC performed an analysis comparing the cost of hourly providers to the cost of OTD attorneys at equivalent workloads using data from the 2023-25 biennium. This analysis shows the typical workload covered by an OTD attorney costs the equivalent of \$440,000, if billed by an hourly provider, which is significantly more than the current cost of state-employed deputy defenders (\$241,448) or senior deputy defenders (\$302,346). This investment in the OTD will allow OPDC to handle more cases for the same cost compared to using hourly providers.

OTD attorneys provide benefits beyond cost savings, including enhanced geographic flexibility and accountability as well as the ability to focus on taking cases that address the unrepresented persons crisis. OPDC intends to use \$50,000 from this request to attempt to recruit out-of-state attorneys to fill these positions to enhance this investment's ability to expand the public defense workforce in Oregon.

Legal Reference: Transfer of \$1,620,484 General Fund appropriation made by chapter 588, section 1, Oregon Laws 2025, for the 2025-27 biennium as follows:

<u>Subsection</u>	<u>Amount</u>
(7)(a) Court Mandated Expenses Division, Standard court mandated expenses	\$-1,620,484
(8) Trial Representation Division	\$+1,620,484



Oregon

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December 11, 2025

The Honorable Senator Kate Lieber, Co-Chair
The Honorable Representative Tawna Sanchez, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Dear Co-Chairs Lieber and Sanchez:

Nature of the Request

The Oregon Public Defense Commission (OPDC) requests two interrelated actions. First, OPDC requests that \$1,620,484 be transferred from its Court Mandated Expenses Division to the Trial Representation Division. Second, OPDC requests authority for the creation of six positions within its Trial Representation Division, including four Deputy Defender positions (2.0 FTE) and two Senior Deputy Defender Positions (1.0 FTE). These positions would be funded through the transfer from Court Mandated Expenses Division to the Trial Representation Division, which also includes funds for recruiting out-of-state attorneys for these roles. In essence, this request aims to convert funding for four hourly caseloads into six full-time Oregon Trial Division attorney positions. This budget-neutral proposal would increase attorney capacity to address the unrepresented crisis without additional funding from the Legislature. Consequently, this strategic reallocation of resources offers a more efficient and fiscally responsible way to provide representation for indigent clients.

Agency Action

Background

Oregon delivers public defense through a mix of capacity contracts, hourly panel attorneys, and the state-run Oregon Trial Division (OTD). Both capacity contracts and the OTD operate under the Maximum Attorney Caseload (MAC) workload model, while hourly providers take cases on an ad hoc basis and submit bills for the hours they work on each case. Historically, a small percentage of the public defense workload in Oregon has been performed by hourly attorneys. The percentage of hourly attorneys has increased in recent years, particularly in response to the unrepresented persons

crisis and the targeted increases in hourly rates designed to attract lawyers to serve those unrepresented individuals through the now expired Temporary Hourly Increase Program (THIP). In the last fiscal year, hourly attorneys took the equivalent of just over 41 MAC across the state. Hourly attorney costs are borne by OPDC's Court Mandated Expenses (CME) Division. As of the 2025-27 biennium, hourly attorneys are paid \$155 per hour for Tier 1 case types, which include Murder, JLaw, Measure 11, Class A Felonies, Class B Felonies, Appeals, Habeas Corpus, Mandamus, Post Conviction Relief, and all Juvenile cases. For all other case types in Tier 2, hourly attorneys are paid \$140 per hour.

The Oregon Trial Division represents a significant advancement in public defense in the state. The Trial Division was launched less than two years ago and now operates four offices across three regions, employing 20 attorneys and support staff. Collectively, the division has handled over 3,200 public defense cases statewide, 80 percent of which originated from the unrepresented list. The Trial Division has worked with courts and district attorneys to establish early resolution dockets for more efficient case processing and has managed over 600 time-sensitive *Betschart* cases. Finally, the Trial Division works according to the same MAC standard applied to contract providers. The overall MAC utilization rate across the entire division for the 2023-2025 biennium was 106.99 percent. In all, the Trial Division demonstrates that targeted investments in public defense yield immediate benefits to Oregon's justice system.

Proposal

This proposed action seeks to shift funding designated for hourly representation of indigent clients to the Oregon Trial Division. The agency undertook an exercise to compare costs for clients represented on an hourly basis with those represented by the Trial Division to define the cost equivalence between the two provider types. To accomplish this, OPDC examined the client caseloads for OTD attorneys¹ over the past year and converted those caseloads to an equivalent hourly cost. To determine the equivalent hourly cost of each OTD attorney, the number of clients served by OTD attorneys between September 1, 2024, and September 30, 2025, was multiplied by the average number of hours billed to OPDC by hourly attorneys for each client type over the 2023-25 biennium.² For instance, in Table 1, OTD attorney *otd002* represented 30 clients with minor felony cases over the past year, and those cases were multiplied by 23.9 hours per client, which is the average number of hours OPDC was billed for by hourly providers for minor felony cases. The hours for each case type were then added together and sorted into "major hours" and "minor hours" so that those total hours could be multiplied by OPDC's current hourly rates, which are \$155 per hour for Tier 1 cases and \$140 per hour for Tier 2 cases. The final result, reported in the far-right column of

¹ Only attorneys who worked the full twelve months between 9/1/2024 and 9/1/2025 were included. Seven OTD attorneys were not included in the analysis because they did not meet this requirement.

² During the 2023-25 biennium, hourly providers billed OPDC for the following number of hours, on average, for the following case types: Murder – 475.68 hours, Jessica's Law – 157.36 hours, Measure 11 – 87.37 hours, Major Felony – 43.81 hours, Minor Felony – 23.9 hours, Misdemeanor – 14.2 hours, and Probation Violation – 8.36 hours.

Table 1, shows the equivalent hourly costs of each OTD attorney over a one-year period if those attorneys had billed those cases according to the past practices of the hourly attorneys utilized by OPDC.

Table 1. OTD Clients by Attorney and Crime Type with Equivalent Hourly Provider Costs

atty id	Clients Served (9/1/2024 - 9/30/2025)							Hourly Equivalence		
	Mur	Jlaw	M11	MajFel	MinFel	Misd	PV	T1 Hrs	T2 Hrs	Hrly Cost
otd002	0	0	4	18	30	22	28	1,137.94	1,263.48	\$353,267.90
otd003	0	0	2	9	69	58	16	568.97	2,606.46	\$453,094.75
otd004	0	1	7	9	30	41	6	1,163.03	1,349.36	\$369,180.05
otd005	0	1	9	29	30	27	13	2,213.91	1,209.08	\$512,427.25
otd007	0	1	8	22	26	0	0	1,819.90	621.40	\$369,080.50
otd011	0	2	10	9	20	33	21	1,582.41	1,122.16	\$402,375.95
otd012	0	1	8	14	24	14	29	1,469.42	1,014.84	\$369,837.70
otd013	0	3	12	10	30	31	0	1,958.26	1,157.20	\$465,538.30
otd014	0	1	22	24	33	37	8	3,130.28	1,380.98	\$678,530.60
otd015	0	1	14	18	31	26	14	2,168.70	1,227.14	\$507,948.10
otd016	2	1	15	18	70	3	1	3,207.40	1,723.96	\$738,501.40
otd017	1	2	9	11	20	6	0	2,058.37	563.20	\$397,895.35
otd018	0	1	4	16	34	5	1	1,207.68	891.96	\$312,064.80
otd020	0	0	7	9	16	6	0	1,005.67	467.60	\$221,342.85
Avg	0.21	1.07	9.36	15.43	33.07	22.07	9.79	1,763.71	1,185.63	\$439,363.25

Trial Division attorneys, therefore, work annual caseloads that would cost an average of \$439,363.25 to fund via the agency's hourly program. This figure far exceeds the annual cost of Trial Division attorney costs, which are currently \$241,448 per deputy defender and \$302,346 per senior deputy defender (salaries funded at step 6). With this gap in mind, OPDC proposes the strategic reallocation of \$1,620,484 from the hourly program to hire six deputy defenders within the Trial Division (four at the deputy defender level and two at the senior deputy defender level). This, in effect, will allow OPDC to replace the equivalent of four hourly caseloads while also funding two additional Trial Division attorneys with zero impact on the agency's budget and no additional cost to the state general fund.

Beyond the cost benefits described above, this approach would also be beneficial in other ways. First, the proposed positions will be used to bolster the agency's efforts to address the unrepresented defendant crisis. The new positions will be assigned to jurisdictions impacted by the crisis, with a particular focus on Multnomah and Washington Counties, increasing defense attorney capacity in those areas. These positions will focus on taking unrepresented cases, predominantly low-level felonies and misdemeanors, to address backlogs of unrepresented defendants.

Second, the OPDC Trial Division offers geographic flexibility that other public defense providers cannot because they are not limited to a specific county or judicial district. With its statewide reach, the Trial Division can allocate or reallocate attorney resources where they are needed most to address the unrepresented crisis or other emerging needs across the state. Additionally, the Trial Division can easily scale back its presence in certain jurisdictions as crisis conditions improve, which is preferable to cutting local provider contracts and positions when they are no longer necessary as the crisis wanes and demand for public defense decreases.

Third, OTD's employment relationship with OPDC provides more accountability to the Commission and the Executive Branch. Their work is directed by the agency, and they practice timekeeping with more detail than other providers, providing OPDC with valuable data on how long cases take to resolve and the types of work that go into them.

Finally, this proposed fund shift includes \$50,000 to recruit out-of-state attorneys to fill positions within the Trial Division. Given the current crisis, coupled with an attorney shortage in Oregon and across the country, it is critical that the state meaningfully expand its public defense workforce. Currently, OPDC lacks the funding to advertise in out-of-state publications and job databases and to attract out-of-state candidates through relocation assistance. By providing funds to the agency for this purpose, OPDC will be able to more effectively recruit and attract out-of-state attorneys to join the public defense workforce in Oregon.

Action Requested

OPDC requests the transfer of \$1,620,484 General Fund from the Court Mandated Expenses Division to the Trial Representation Division for the purpose of establishing two Senior Deputy Defenders (1.0 FTE) and four Deputy Defenders (2.0 FTE).

Legislation Affected

Oregon Laws 2025, Chapter 588, Section 1 (7) (a): (\$1,620,484)

Oregon Laws 2025, Chapter 588, Section 1 (8): \$1,620,484

Sincerely,

A handwritten signature in black ink, appearing to read "Ken Sanchagrin", with a stylized flourish extending to the right.

Ken Sanchagrin
Executive Director

cc:

Amanda Beitel, Legislative Fiscal Officer

John Borden, Principal Legislative Analyst, LFO

Kate Nass, Chief Financial Officer

Jonathan Bennett, Budget and Policy Analyst, CFO