



Agenda/Notes

Office of Governor Tina Kotek
RJC Criminal Justice Reform Committee
February 25, 2025 – Zoom
3:00 pm – 5:00 pm
Moderator – Javier Cervantes

MEMBERS

X	Babak Zolfaghari-Azar	X	Paul Solomon	X	Sterling Cunio
X	Michelle Love	X	Shay Huber	X	Tristen Edwards
	Nansi Lopez	X	Shaylie Pickrell		

OTHER ATTENDEES

	Andre Bealer	X	Yasmin Solorio	X	Constantin Severe
X	Valerie Colas	X	Javier Cervantes	X	Mae Lee Browning (OCDLA)
X	Grant Hartly (MPD)	X	Carl Macpherson (MPD)		

Topic/Lead	Notes/Main Points	Decisions/Action Items
OPDC and Executive Branch Any Substantive Updates (Constantin)	<p>Constantin: Prepared a baseline for this conversation.</p> <p>Paul: It might be worth going over what's changed now that their at the executive branch.</p> <p>Constantin: Will skip power point. For those of you who have looked at OPDC and the previous iteration. That agency was independent of the judicial branch. 337 along with reforming the commission and each of the three branches appointment authority. 99 percent of what they do is contracting, the procurement process has to follow executive branch standards, DAS policies, and statues that outline how an agency engages in procurement activity. The other big change involves how the agency interfaces with other parts of the state. If the agency was independent before, the commission has a lot of authority how the agency does its work. The governor is head of executive branch. A lot is a work in progress in what OPDC's lane, particular the commission and what is the governor's lane. The other piece is how ODPC has their tracking system.</p> <p>When you look at unrepresented crisis and how you resolve it, that has caused a lot of change at the agency and how the Governor's Office in particular – OPDC is unique where it has a lot of independent statutory authority. Biggest piece is the unrepresented piece, contracts, contract changes. It will be a pretty big</p>	

	<p>change. We have a lot of folks who are providers that could better tell you than I could. That is what has changed. We are in week six of them being in executive branch. A lot of changes were below the surface. They have been within OJD but independent. Lot has been bureaucratic of us learning to speak the same language.</p> <p>Paul: I have one question. Curious about recent OJD Knott report. The governor office response to that. Would be curious to hear from our panelist too and the issues raised in the report.</p> <p>Constantin: For folks tracking this, I don't think there's anything surprising in the Knott report. The expectation of the governor is that at minimum they would have equivalent caseload of our contract provider. Just on a fairness basis. It is really hard working at nonprofit, there is a lot of cross pressures – from my past experience. The six-year plan from the Governors prospective, she was not in a position to fund in the budget. If you were following OPDC's agency requested budget, it was around \$800 million dollars. Governor's budget made investments in trial division, case management system, and hourly system.</p> <p>Tristen: Thanks for that overview. For folks on this call, Aaron Knott is a lobbyist on OJD and wrote a report on OJD's perspective on different delivery models and their perspective. Will turn it over to our panelists. Last meeting Paul and I talked about different delivery models and the ins and outs. Its complicated, I've been learning about it for over 7 years and find it still complicated. Public defense is a priority for our committee, would like to advocate but we need to be educated in order to do so. Our hope after this meeting is to write a letter to the governor and hopefully can be used by different advocacy groups with our recommendations on what is needed to address underrepresented crisis that is cost effective to the state and is quality driven. Take this opportunity to tell us what you think.</p>	
<p>CBO Presentations Carl Macphersen or Grant Hartly (Metropolitan Public Defenders), (OCDLA's, Mae Lee Browning)</p> <ul style="list-style-type: none"> Experiences with OPDC recruiting and doing so with delivery models (Public Nonprofit 	<p><i>Grant and Carl share power point "MPD Update February 17, 2025"</i></p> <p>Carl: 2019 Sixth Amendment Center Report. So, these are the quick findings from the 6th amendment center report that the state does not provide sufficient oversight or financial accountability of its public defense system. The fixed fee case credit model pitted the financial self-interest of the attorney against the due process rights of their clients. So what this means is that</p>	<p>Presentations and documents discussed today to be distributed by email after meeting.</p>

Public Defense model, Consortia model, Trial Division model, and Hourly Public Defense model)

prior to 2019 the way Oregon funded public defense is, they had contractors but would pay per case. For example in 2019 they would pay you \$399 for a misdemeanor regardless of whether you spent two hours on the case or 40 hours on the case. The Sixth Amendment Center side is based on best practices that was unethical and unconstitutional because it incentivized attorneys to work lower number of hours on a case because working high numbers of hours on a case was against their financial self-interest. They said eliminate the case credit model, that was the main recommendation, and Oregon did do that. We really didn't, we just shifted it very similar to a case credit model just termed differently.

The reason why that's important is the remnants of this system are a big part of the reason why we have a problem today. For decades the entire criminal legal system in Oregon was used to overloading defense attorneys. You had defense attorneys that were intentionally overloading themselves because they would take double caseloads so that they could make more money, not all but some did. Then you had offices that were underfunded at those rates that were really trying to do their best for their clients but they weren't able to achieve what they needed to achieve without taking high caseloads. We have a system built on decades of overloading attorneys. The American bar report was a legislatively funded report that said we have a third of the public defenders we need. This was happening at the same time as the unrepresented population began. We had these two reports back-to-back and this one in particular that said that we just didn't have enough attorneys which is still the problem we have a shortage still.

Public Defense Delivery Models have four types.

1. **Public Defender Offices:** nonprofits, state, or county.
2. **Assigned counsel systems:** private attorneys/panels
3. **Contract System:** Contract with other group or individuals; often flat fee contracts which are strongly disfavored.
4. **Hybrid:** Oregon is a hybrid system. A hybrid system is a combination of the primary models.
 - In Oregon, nonprofit offices handle roughly 30 %
 - Consortium is roughly 60%
 - State Trial Division and hourly is roughly 10% or less.

The American Bar Association 10 principles of public defense delivery system (2002, revised August 2023). Highlighting independence of public defender agencies

and their lawyers, they shouldn't be treated different from private attorneys. The other to highlight is number ten, inclusion of public defense agencies as equal participants in the legal system.

Issues with the Current Delivery model in Oregon.

Grant: Temporary Hourly Increase Program (THIP). One of the band aids was for increasing the rate and bill hourly. You have two different tiers of public defense, attorneys billing at high hourly rate – bill substantial attorney fees making a good amount of money taking fewer cases. This is an incredibly costly program, that provides little consistency. There's no way for the state to forecast how much coverage to have for each county, unlike a contracted provider. It is necessary for rural parts of Oregon, but there needs to be oversight for their spending and quality of work provided.

Paul: It seems commission, the agency, has embraced hourly program. I've struggled with it from the start as it increases disparity. Any recommendations at this point to move away from hourly program, is commission still on board? Where is at these days?

Grant: We'll have recommendations at the end. Commission seems committed to hourly program, partly because I believe the governor's budget is committed to hourly program. It's not consistent with AVA ten principles. Hourly is really better spent for overflow. Costs are continuing to rise and affects nonprofits. Part of the hourly rate is there is a "soft cap". There's no enforcement mechanism for the hourly rate.

Carl: Almost every case in Oregon gets set for trial. There's lots of hours and time wasted the way the system is set up. The increase in Washington county alone increased by 18% for cases filed in 2023-2024.

Paul: How represented is Washington county as the rest of the state?

Carl: It's the highest. For Multnomah is about 7%. OJD said filings have increased over the past few years.

Grant: When you have a staff shortage, part of that is attrition and retention. We are seeing contractors flee to hourly program specifically is because they can handle less cases and make more money.

Grant: Rise in felony case files. Multnomah county had

drop in 2020, since then has risen and in 2023 has surpassed 2019 numbers. Lane county has reduced in cases since 2020. Clackamas county felon files has also dropped since 2019.

Carl: If you take the difference in 2023 and 2024, its about representative of the unrepresented crisis. Want to conclude with benefits and recommendation of the public defender office.

Most important principle is principle two: *Funding, structure, and oversight*. Where caseloads allow, public defense should be a mixed system: primary dedicated public defense offices, augmented by Public Defense providers to handle overflow and conflict of interest cases.

Grant: Value of nonprofit providers. They are the solution; they offer a variety of services.

- MPD offers barrier reduction services. We can provide additional stability to our clients and greater community.
- MPD offers case management for public defense clients.
- It is a cost-effective model for public defense delivery.
- Quality control: provide extensive training and meaningful supervision.

IF Oregon wants quality representation, servicing the state in post-conviction release, it needs to provide oversight and supervision. Right now, nonprofits are the only ones doing that. Addressing workforce shortage – we are doing robust nationwide recruitment.

Carl: Value principle 7: Experience, training and supervision. Principle 9: essential components of effective representation. Nonprofit public defender staff include attorney, investigators, legal assistant, case managers/social worker, office assistants, human resources, finance/accounting.

How we move forward:

1. Reasonable workload for Public defenders
2. Reasonable compensation for all public defenders
3. Support and expand nonprofit public defense providers
4. Increase the umber of public defenders and case managers
5. Be diligent about what new cases are added to he system and create new “off ramps” for those already there.

“MAC” means Maximum caseload and Workload limit. It’s supposed to be a ceiling, not a floor. OPDC presented recently and said the Governor’s requested budget is for about 42 more lawyers for the Trial Division, 55 more non-attorney staff for the Trail Division, 40 more lawyers added to the hourly program. Current service level is detrimental for nonprofit providers.

Tristen: How does OPDC plan to find/fill those?

Carl: We’ve lost four attorneys already.

Grant: It will need to be poaching, our office and another are doing nationwide recruitment.

Mae Lee OCDLA: I think the Governor’s Recommended Budget is a huge mistake and would be devastating to public defense. Our nonprofits are critical for bringing in law students. We owe MPD a huge debt of gratitude for bringing in as many law students as they do. My organization is OCDLA. We have 12 hundred members statewide. To be clear OCDLA supports funding and keeping both nonprofits and consortia, they're both our members, there can be tweaks to things and we recommend those. OCDLA has a EI committee that we created in 2020. Should probably just be upfront and say that Tristen Edwards is our chair. We created the EI committee in 2020 and thanks to Tristen’s leadership we really hit the ground running with recruitment. We invite law students to come to our conferences, pay for their travel costs and spend significant time mentoring law students. Its clear they are attracted to non-profit model. To not expand capacity to nonprofits is completely counter intuitive. They like comradery and bringing up new attorneys in nonprofit model. I think we are able to keep more public defenders around.

We’ve been recruiting law students, sending to non-profits. I think state trail division and hourly, there is no one to train law students. If they were to start this training program, it’s not cost effective and I don’t think you do is get the comradery like you do in the nonprofit office.

Javier: You sent us documents earlier, when would you like us to send it out? *(Materials added in “meeting materials” section of the minutes)*

Mae Lee: Yes please.

Tristen: Frankly confused by Governor's recommended budget. Specifically for this deep need to recruit, train, and bring new attorneys into the field. Sounds like because they don't have any training or supervision. OPDC I know currently, and correct me if I'm wrong, is hiring attorneys who have at least five years of experience. I mean is there anything within the governor's current budget that anticipates this need to train and recruit fresh new attorneys?

Mae Lee: I don't exactly know the answer to that but reading it and reading some other materials I don't know if that was taken into consideration but nonprofits are clearly the training grounds and always have been and would be so ineffective to have the ODC state trial level division training attorneys. Frankly some of the people that I try to recruit into public defense don't want to be a state employee. I would say some criminal defense attorneys are independent free spirits.

Paul: I remember concerns being expressed that we would be taking existing ranks filling those slots. We were told the state was going to engage in robust recruitment process across the country. Clearly that hasn't been the case. Some pressure has to be brought to bear on the agency as far as their recruitment practices.

Grant: That is one of the hard things. Shouldn't be a more attractive option, there lies the problem. It is a difficult to compete with. Some of it ties to what Mae Lee was saying. All they can bring in is lateral hires, because they are not set to train.

Carl: Agency told us they didn't have a national recruitment set up, which horrified me because that was the goal. We have an attorney recruitment at our office who is also a director of training. I legitimately spend hundreds of hours on recruitment. It's an important part of what we do.

Tristen: Shocking. Sending so much gratitude to all three of you. The reason we brought you here was because we wanted to be informed and what recommendations we can make to the governor. Our plan was to get this education and draft a letter to send to the governor on behalf of the committee. I heard OPDC say the hiring is on March 20th. We'll touch in with Javier and Valiere on that, are there other things we can do to give voice to

	<p>this issue?</p> <p>Paul: As individual members of this committee, there isn't anything stopping us providing public testimony on the 20th.</p> <p>Grant: What else can be done is just that – providing testimony, giving a story, correcting misinformation.</p> <p>Carl: Providing feedback to legislator and governor on issues that will help our state. This is a critically important 337 to adjust it. Legislators are angry at the agency. That is problematic when they aren't bringing experts in and can have long term effects.</p> <p>Paul: Really appreciate your time today.</p>	
<p>Legislative Update (Valerie)</p>	<p>Valerie: Compiled different things together based on committees' priorities. Preventing widening of criminal justice system. There are about 11 bills creating new crimes, and six that expand. Most have been referred to judiciary committee and have yet to be scheduled for any hearings. Still compiling spreadsheet and promise to send within a week or so, so you can track as well.</p> <p>Dept of Corrections – committee supported certain aspects of GIPA. That is HB 5004. Although agency do know when they will have hearings, not on OLIS yet. Can give those to you if you like.</p> <p>All of these are in ways and means public safety commission. CJC has yet to be rescheduled, was canceled. HB 5005.</p> <p>OYA budget bill is 5001. Looks like spring break is time for the to do their hearing.</p> <p>OPDC hearing is on March 20th, bill is 5031.</p> <p>Justice reinvestment equity program, SB 477. After judiciary should go to ways and means. Does not have a hearing date yet.</p> <p>Paul: It's the second or third week of March. They had their hearing.</p> <p>Babak: I don't think JREP will have a hearing since it's a budget ask, is that correct?</p> <p>Valerie: SB 477 sets funds, likely to go back to ways and means. Judiciary will have it referred to ways and means</p>	<p>Valerie to send list of bills being tracked.</p> <p>Tristen, Paul, and Mae Lee to connect in their individual capacities to write letters for public testimony.</p>

instead. Other bills committee was interested in were SB 938 which modified restorative justice grants, has been referred to judiciary side. Had public hearing on Feb 20th. Have work session scheduled for Feb 27th.

HB 2641– corner fields Aranda case. Hearing scheduled for tomorrow. OCLA submitted testimony. OCVLA has filed their testimony which includes one pager explaining why it’s important to have this. Will share the link.

<https://olis.oregonlegislature.gov/liz/2025R1/Downloads/PublicTestimonyDocument/134971>

Tristen: I think what makes the most sense is submitting written testimony supporting HB 2641. How do we do that through RJC endorsement?

Javier: We are almost done with that. Also highlighting how to do that.

Tristen: This hearing is happening tomorrow.

Valerie: This is a hearing before the committee for the public hearing. If it does pass, it will go back to senate, which it will likely. If the committee wants to provide a letter.

Tristen: If the committee doesn’t vote to support HB2641, there isn’t another hearing. Which is why I would really love for that process to get figured out.

Javier: I understand, lot of moving pieces, not for lack of trying. Almost to the finish line.

Tristen: Hoping we can think creatively, even if it’s not behalf on RJC council. Can we right a letter, and have folks sign on? Michelle and I were tasked on Aranda.









Javier: To be clear this will not be on behalf of the committee and will be based on individual capacities for the letter.

Tristen: Maybe we can email it around to committee members and ask for folks who are willing to sign on. We have until Friday at 3pm to submit testimony. Not like we have to have this ready by tomorrow, but still tight timeline. Just everyone be mindful.

Javier: Just reiterate this will be individually driven. The committee itself is not ready yet to provide testimony or write a letter on behalf of the council.

	<p>Valerie: Reminder that the committee cochairs will need to take the recommendations to the council, for council approval for RJC endorsement.</p> <p>Tristen: Right, we are each doing this in our own capacity.</p> <p>Javier: Would be honest most impact would be individual letters, rather than committee/council approval.</p> <p>Tristen: Michelle lets chat after this. This is just an incredibly important bill this session when it comes to CJR.</p> <p>Valerie: Maybe write a template and people sign on their own behalf.</p> <p>Tristen: Keep an eye on your email. You'll see something later this week.</p> <p>Valerie: Anything else that you'd like me to track?</p> <p>Tristen: RJC process has to be solidified before we can move forward. I mean we just need to know when RJC has come up with that process.</p> <p>Babak: In terms of those bills where new crimes were created. Mae shared there was one related to hospital worker assault – like occupational assault. Our organization just doesn't support the creation of new crimes. We aren't actively submitting testimony or lobbying. Our organization has those on our radar, we have a pretty ranking list 1-3.</p> <p>Tristen: In regard to ODPC conversation, action item is to write letter from this committee to Governor's office. We won't have a meeting before next hearing. I can take lead to put together a draft. Paul maybe you and I can connect afterwards.</p> <p>Paul: Appreciate everyone's attention and support. We will be back next month.</p>	
Update on Recruitment (Javier)	Javier: We opened our window for recruitment. Please send folks for recommendations, recruitment closes March 14 th .	
Work Plan Mapping (All)	<i>Workplan mapping postponed due to time constraints.</i>	

Adjourn	Meeting is adjourned by Javier.	
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Meeting Materials	<div> MPD Update February 17 2025.pdf</div>	<div> OCDLA Recruitment and Retention - May</div>	<div> 2024 OCDLA Recruitment and Ret</div>	<div> 2025 Legislative Agenda (Feb 25, 2025)</div>	<div> What defense attys say about SB 177.pdf</div>
	<div> SB 177 Timely Access to Information</div>	<div> HB 2641 Rule 609 Fair Trials one-pager</div>	<div> OCDLA one-pager (2025).pdf</div>		