

**Members:**

Jennifer Nash, Chair  
 Susan Mandiberg, Vice Chair  
 Peter Buckley  
 Robert Harris  
 Alton Harvey, Jr.  
 Tom Lininger  
 Paul Lipscomb

**Nonvoting Members:**

Brook Reinhard  
 Jasmine Wright  
 Rep. Paul Evans  
 Sen. Floyd Prozanski

**Executive Director:**

Jessica Kampfe

**Oregon Public Defense Commission**

*Meeting will occur in-person with a virtual option via Zoom.\**

*Wednesday, April 16, 2025*

*9:00 AM – approx. 1:00 PM PST*

*Hilton Garden Inn Crater Lake Conference Room:  
 1000 Welcome Way, Medford OR 97504*

**Administrative Announcement**

*This is a public meeting, subject to the public meeting law and it will be recorded. Deliberation of issues will only be conducted by Commission members unless permitted by the Chair. Individuals who engage in disruptive behavior that impedes official business will be asked to stop being disruptive or leave the meeting. Additional measures may be taken to have disruptive individuals removed if their continued presence poses a safety risk to the other persons in the room or makes it impossible to continue the meeting.*

# AGENDA

Approx. Time	Item	Lead(s)
9:00-9:05	Welcome	Chair Nash
9:05-9:20	Public Comment	
9:20-9:30	<b>Update:</b> <a href="#">Unrepresented Persons in Oregon Courts: Attorney Shortage</a>	Jessica Kampfe Madeline Ferrando
9:30-9:45	<b>Update:</b> Budget	Ralph Amador
9:45-10:10	<b>Update:</b> <a href="#">Legislative</a> • Policy Option Package Overview	Lisa Taylor
10:10-10:40	<b>Action Item:</b> <a href="#">Contract Policy Changes Approval</a>	Jessica Kampfe
10:40-10:55	<b>Action Item:</b> <a href="#">Audit Committee Member Confirmation</a>	Scott Martin
10:55-11:05	<b>Update:</b> <a href="#">Attorney Qualification Standards</a>	Jessica Kampfe
11:05-11:20	<b>**Break**</b>	

11:20-11:30	<b>Update:</b> <a href="#">Financial Case Management System</a>	David Martin
11:30-11:45	<b>Update:</b> Director's Update	Jessica Kampfe
11:45-12:00	<b>Briefing:</b> Oregon Trial Division	Alyssa Bartholomew
12:00-12:15	<b>Briefing:</b> Local Court Spotlight: Jackson County	Presiding Judge Benjamin Bloom
12:15-1:00	<b>Briefing:</b> Jackson County Site Visit	Various Local Public Defenders
1:00pm (Approximately)	<b>**Adjourn**</b>	

*\*To join the Zoom meeting, click this link: <https://zoom.us/j/97193307782>. This meeting is accessible to persons with disabilities or with additional language service needs. Our Zoom virtual meeting platform is also equipped with Closed Captioning capabilities in various languages, which agency staff can assist you with setting up ahead of meetings. Requests for interpreters for the hearing impaired, for other accommodations for persons with disabilities, or for additional interpreter services should be made to [info@opdc.state.or.us](mailto:info@opdc.state.or.us). Please make requests as far in advance as possible, and at least 48 hours in advance of the meeting, to allow us to best meet your needs. Listed times are an estimate, and the Chair may take agenda items out of order and/or adjust times for agenda items as needed.*

*The Commission welcomes public comment. Verbal and written comments must be directly related to agenda items. Please [click here](#) to review the guidelines for providing public comment on our website.*

*Next meeting: **May 21, 2025, 9am – 1pm via Zoom.***

*Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at:*

*<https://www.oregon.gov/opdc/commission/Pages/meetings.aspx>*



# Oregon Judicial Department

## Unrepresented Crisis – March 2025

### Key Insights

#### [Unrepresented Trends](#)

The total number of unrepresented persons and unrepresented cases continues to increase, reaching a new high on March 1, 2024, with 4,460 unrepresented persons and 4,881 unrepresented cases ([Figure 1](#) and [Figure 2](#)). While the rate of growth has slowed recently, the number of unrepresented cases has increased by 58% and the number of unrepresented persons has increased by 60% since April 1, 2024. Daily updates are available on the [Unrepresented Dashboard](#) on the OJD website.

#### [Unrepresented – Out-of-Custody](#)

The average number of days a person with an out-of-custody felony case is unrepresented has increased every month since September 2024, to an average of 118 days in February 2025. An out-of-custody felony case waits approximately 1.5 times longer for appointment of counsel than an out-of-custody misdemeanor case ([Figure 4](#)).

#### [Unrepresented – In-Custody](#)

After trending downward for three months, the average number of days a person who is in custody and is unrepresented on that case or any other case increased in February 2025 to an average of 25 days, a 108.3% increase from March 2024 ([Figure 5](#)).

#### [Criminal Case Filings](#)

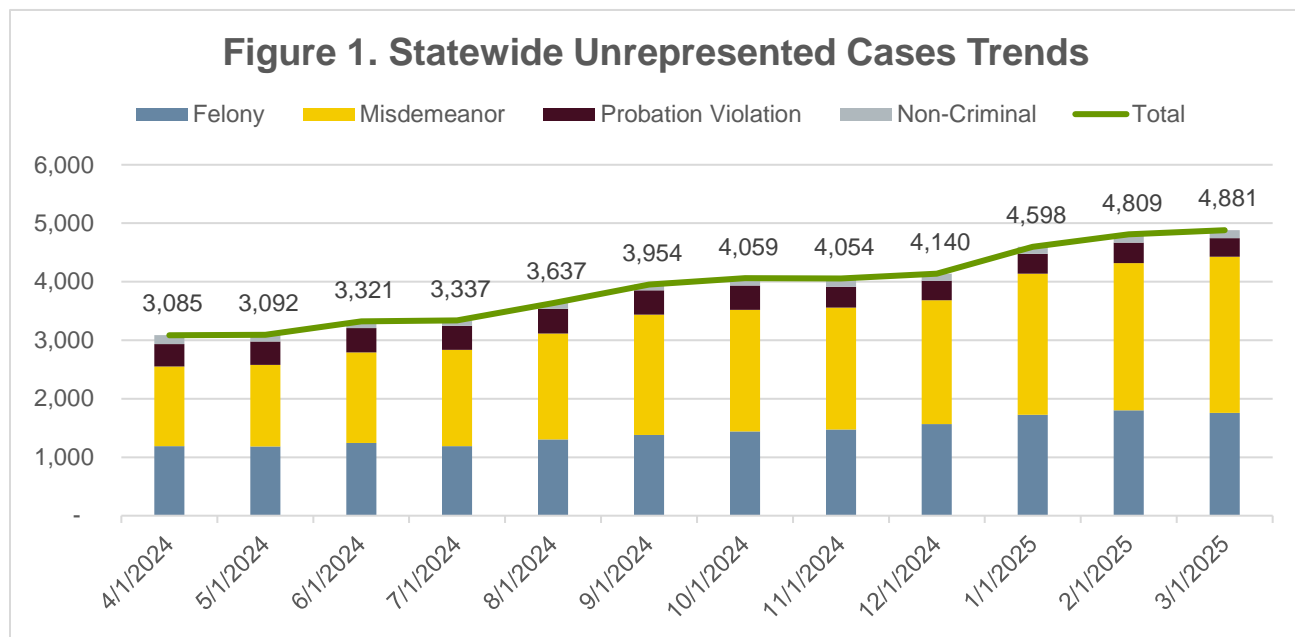
Criminal case filings decreased by 14.5% from the previous month to 5,251 cases filed in February 2025 ([Figure 6](#)).

#### [Unrepresented by County](#)

Multnomah, Marion, Jackson, Washington, Douglas, Klamath, Coos, and Union counties have the highest number of unrepresented persons in Oregon ([Figure 7](#)). Like Klamath County, Union County recently lost an attorney, causing a 135% increase in the number of unrepresented persons between February and March 2025.

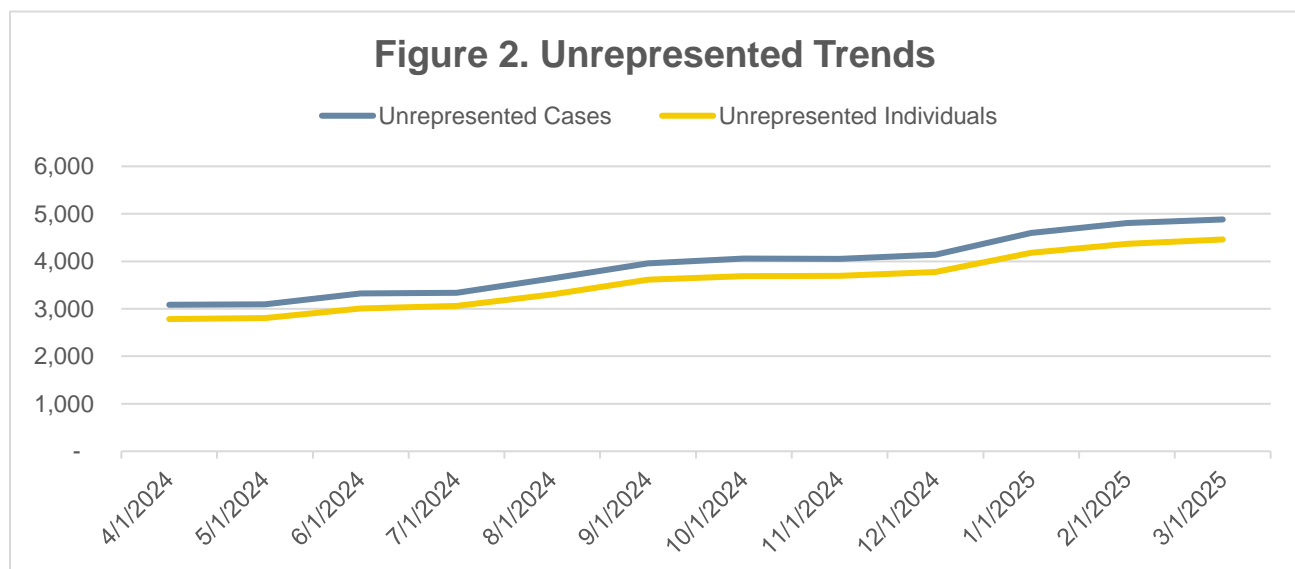
## Unrepresented Trends

**Figure 1** shows the number of unrepresented cases by case type. **A new high was reached on March 1, 2025, with 4,881 unrepresented cases.** The number of unrepresented misdemeanor cases increased between February and March 2025 by 6%; however, the number of unrepresented felony, probation violation, and non-criminal cases decreased.



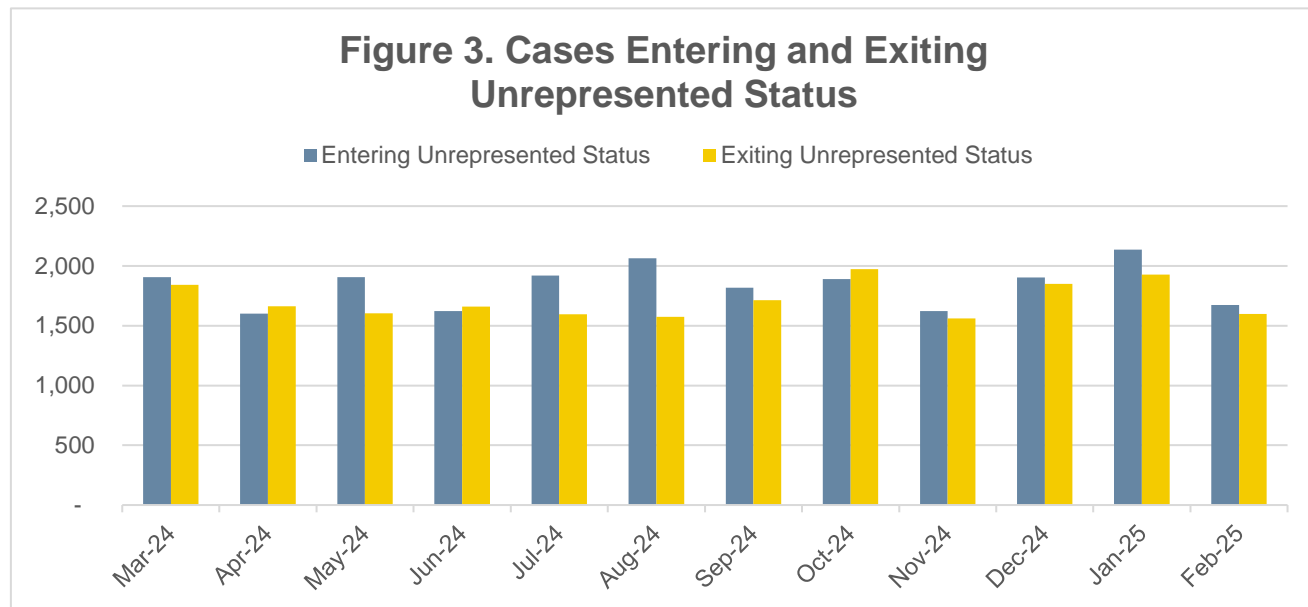
Source: OJD Odyssey Data (eCourt).

**Figure 2** shows the number of unrepresented cases and unrepresented individuals. **Another new record high was reached on March 1, 2025, with 4,460 unrepresented individuals.** The rate of growth for both unrepresented cases and unrepresented individuals has been decreasing in the past two months, after an increase of more than 10% between December 2024 and January 2025.



Source: OJD Odyssey Data (eCourt).

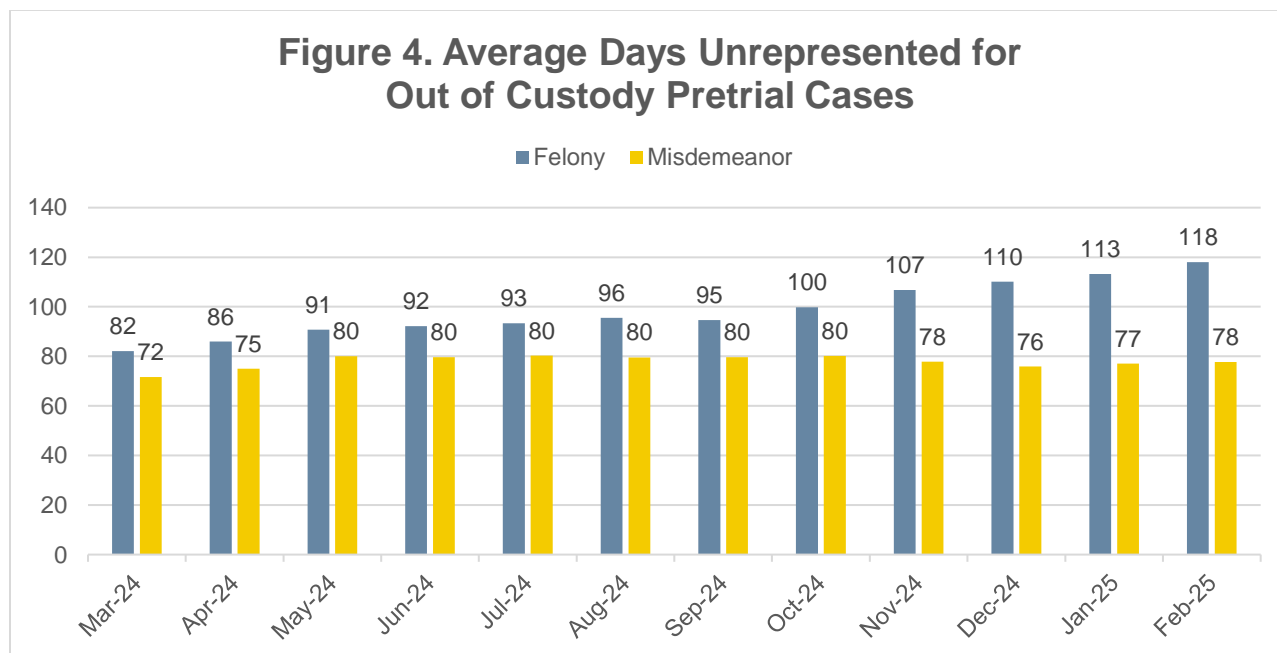
**Figure 3** shows the number of cases entering and exiting the unrepresented list each month. More cases entered the list than exited for the fourth consecutive month, and in nine of the last 12 months.



Source: OJD Odyssey Data (eCourt).

## Unrepresented – Out-of-Custody

**Figure 4** shows trends in the average number of days an out-of-custody felony or misdemeanor case is unrepresented by month. The average number of days an out-of-custody felony case is unrepresented continues to increase, reaching an average of 118 days in February 2025, a 43.9% increase from March 2024.

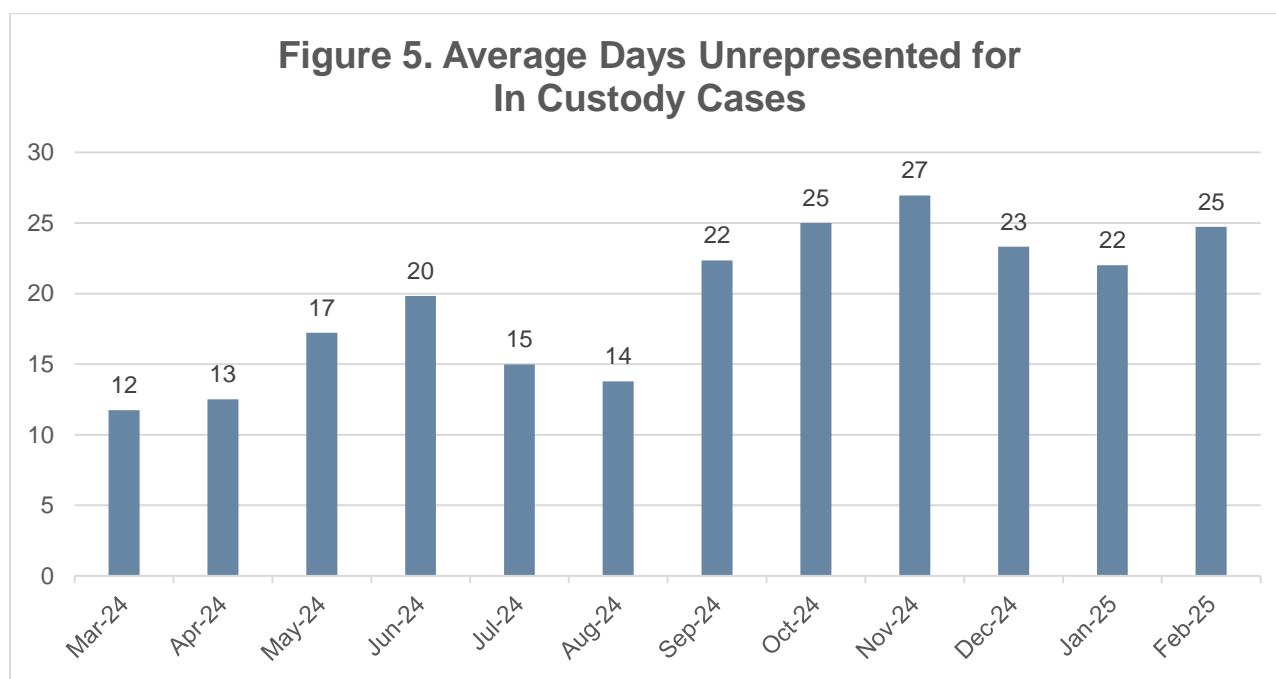


Source: OJD Odyssey Data (eCourt).

## Unrepresented – In-Custody

**Figure 5** shows trends in the average number of days a person is both in custody and is unrepresented in any case. The average number of days a person in custody and unrepresented on any case increased in February 2025 to an average of 25 days, a 108% increase from March 2024.

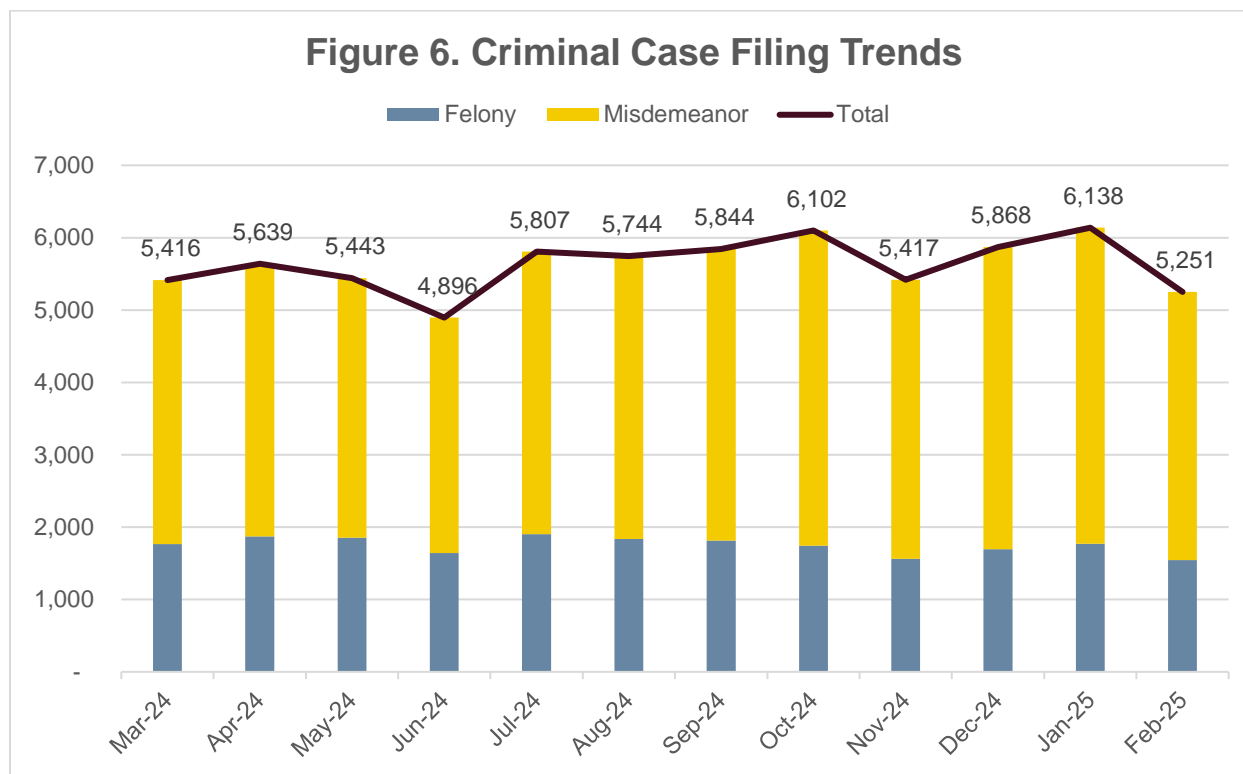
This chart primarily consists of people who are in custody and are unrepresented either on that in-custody case, another in-custody case, or an out-of-custody case. Because of the variety of circumstances in which being represented and unrepresented in different cases can occur while a person is in custody, this creates complexity in ensuring a person has appointed counsel on all their pending cases. If a person is being held in custody for reasons other than the unrepresented case, they might not be prioritized for appointment of counsel by OPDC because they will remain in custody for other reasons.



Source: OJD Odyssey Data (eCourt).

## Criminal Case Filings

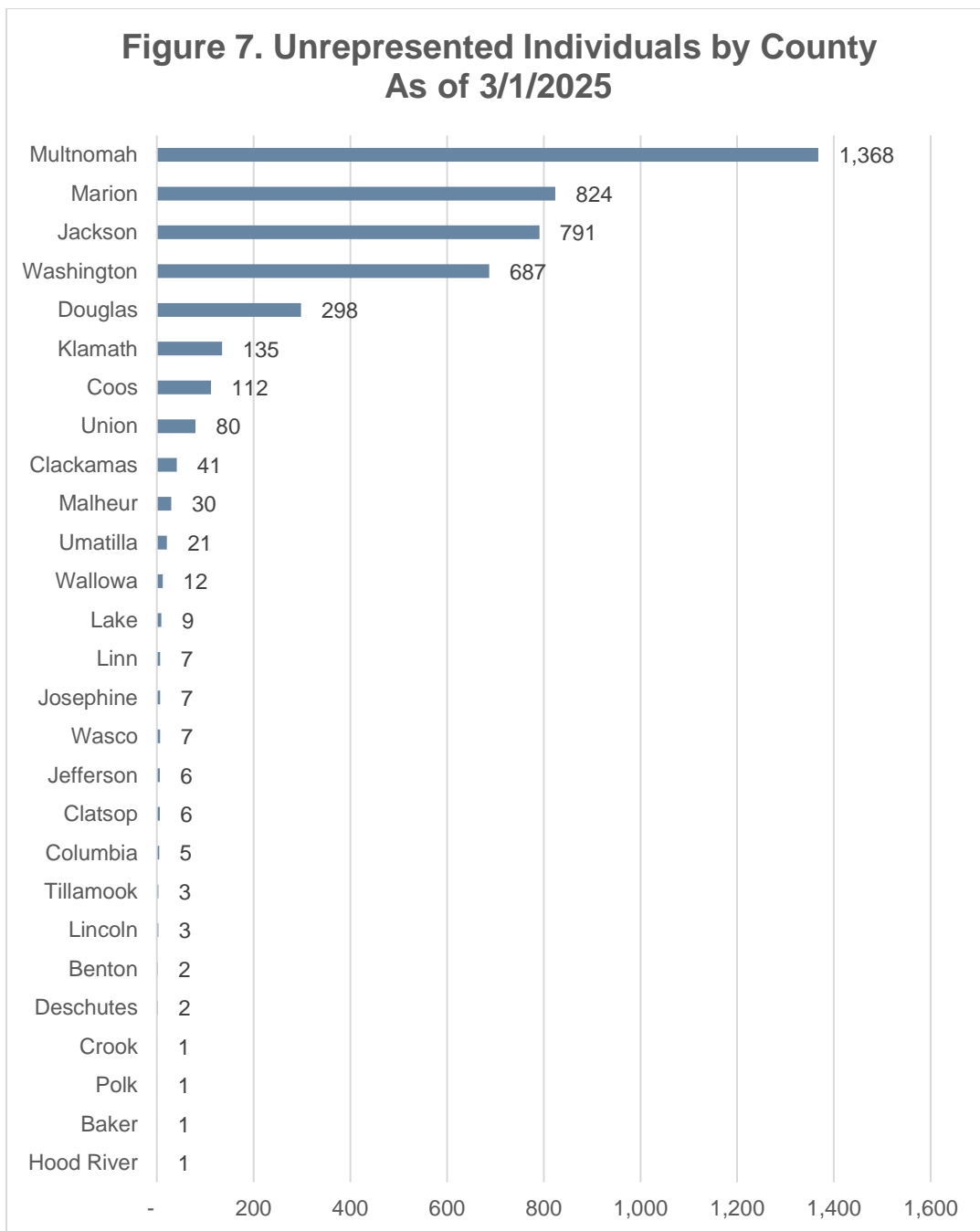
**Figure 6** shows the criminal case filing trends since March 2024. Criminal case filings decreased to 5,251 cases, a 14.5% decrease from January 2025. Criminal case filings decreased in most counties with the largest unrepresented populations.



Source: OJD Odyssey Data (eCourt).

## Unrepresented by County

**Figure 7** shows the number of unrepresented persons by county as of March 1, 2025. Multnomah, Marion, Jackson, Washington, Douglas, Klamath, and Coos counties have the highest number of unrepresented persons in Oregon. The county with the next highest number of unrepresented individuals is Union, with 80 unrepresented individuals, a 135.3% increase from February 13, 2025. Like Klamath County, which recently saw a sudden increase in unrepresented individuals, a defense attorney recently left Union County.



Source: OJD Odyssey Data (eCourt).



HB 2614-5  
(LC 2876)  
4/4/25 (JLM/ps)

Requested by HOUSE COMMITTEE ON JUDICIARY (at the request of Representative Jason Kropf)

**PROPOSED AMENDMENTS TO  
HOUSE BILL 2614**

1 In line 2 of the printed bill, after “Commission” insert “; creating new  
2 provisions; amending ORS 151.213 and 151.216 and section 102, chapter 281,  
3 Oregon Laws 2023; and declaring an emergency”.

4 Delete lines 4 through 9 and insert:

5 **“SECTION 1.** Section 102, chapter 281, Oregon Laws 2023, is amended to  
6 read:

7 **“Sec. 102.** (1)(a) The amendments to ORS 151.211, 151.216 and 151.219 by  
8 sections 93 to 95, [*of this 2023 Act*] **chapter 281, Oregon Laws 2023**, become  
9 operative on July 1, 2025.

10 **“(b)** The amendments to ORS 151.213 [*and 151.216*] by [*sections 100 and*  
11 *101 of this 2023 Act*] **section 100, chapter 281, Oregon Laws 2023**, become  
12 operative on July 1, 2027.

13 **“(c) The amendments to ORS 151.216 by section 101, chapter 281,**  
14 **Oregon Laws 2023, become operative on July 1, 2033.**

15 **“(2)(a)** A person who is a member of the Oregon Public Defense Commis-  
16 sion on July 1, 2027, may finish the person’s term as a commission member  
17 and is eligible for reappointment, but, beginning July 1, 2027, may be re-  
18 moved by the Governor only for [*inefficiency, neglect of duty or malfeasance*  
19 *in office*] **cause.**

20 **“(b)** The person serving as executive director of the Oregon Public De-  
21 fense Commission on July 1, 2027, may finish the person’s term as executive

1 director and is eligible for reappointment, but, beginning on July 1, 2027,  
2 *[serves at the pleasure of the voting members of the commission]* **may be re-**  
3 **moved by the Governor only for cause.**

4 “(3) The Oregon Public Defense Commission, the Oregon Department of  
5 Administrative Services and the Governor may take any action before the  
6 operative dates specified in subsection (1) of this section that is necessary  
7 to enable the commission to exercise, on and after the operative dates spec-  
8 ified in subsection (1) of this section, all of the duties, functions and powers  
9 conferred on those entities by the amendments to ORS 151.211, 151.213,  
10 151.216 and 151.219 by sections 93 to 95, 100 and 101, *[of this 2023 Act]*  
11 **chapter 281, Oregon Laws 2023.**

12 **“SECTION 2.** ORS 151.213, as amended by section 77, chapter 281, Oregon  
13 Laws 2023, is amended to read:

14 “151.213. (1) The Oregon Public Defense Commission is established in the  
15 executive branch of state government. *[Except for the appointment or removal*  
16 *of commission members, the commission and employees of the commission are*  
17 *not subject to the exercise of administrative authority and supervision by the*  
18 *Governor.]*

19 “(2)(a) Nine voting members and four nonvoting members shall be ap-  
20 pointed to the commission by the Governor as follows:

21 “(A) The Governor shall appoint:

22 “(i) One voting member who has been represented by a public defense  
23 provider.

24 “(ii) Two additional voting members, one of whom has experience as a  
25 public defense provider in juvenile delinquency or dependency cases.

26 “(iii) Two nonvoting members who are currently employed as public de-  
27 fense providers in this state, one of whom is from an urban area and one of  
28 whom is from a rural area.

29 “(B) The Governor shall appoint, from among persons recommended by the  
30 Chief Justice of the Supreme Court:

1 “(i) One voting member who is a retired judge.

2 “(ii) Two additional voting members, one of whom has experience as a  
3 public defense provider in criminal cases.

4 “(C) The Governor shall appoint, from among persons recommended by the  
5 President of the Senate:

6 “(i) One voting member who is a current dean or faculty member of an  
7 Oregon law school.

8 “(ii) One nonvoting member who is a member of the Senate at the time  
9 of appointment.

10 “(D) The Governor shall appoint, from among persons recommended by  
11 the Speaker of the House of Representatives:

12 “(i) One voting member who has expertise in juvenile law and criminal  
13 defense, or who is a juvenile justice or criminal justice reform advocate.

14 “(ii) One nonvoting member who is a member of the House of Represen-  
15 tatives at the time of appointment.

16 “(E) The Governor shall appoint one voting member from among persons  
17 jointly recommended by the President of the Senate and the Speaker of the  
18 House of Representatives.

19 “(b) When recommending and appointing members of the commission, the  
20 Governor, Chief Justice, President of the Senate and Speaker of the House  
21 of Representatives shall:

22 “(A) Consider input from individuals and organizations with an interest  
23 in the delivery of public defense services.

24 “(B) Consider geographic, racial, ethnic and gender diversity.

25 “(C) Ensure that members appointed to the commission have significant  
26 experience with issues related to public defense or in the case types subject  
27 to representation by public defense providers.

28 “(D) Ensure that members appointed to the commission have demon-  
29 strated a strong commitment to quality public defense representation.

30 “(c) The following persons may not be appointed to and may not serve as

1 members of the commission:

2 “(A) A prosecuting attorney.

3 “(B) A judge, magistrate or other person who performs judicial functions.

4 “(C) An employee of a law enforcement agency or the Department of  
5 Human Services.

6 “(d) A person who is primarily engaged in providing public defense ser-  
7 vices and who has a financial interest in the delivery of public defense ser-  
8 vices at the state level may not serve as a voting member of the commission.

9 “(e) As used in this subsection, ‘law enforcement agency’ means an entity  
10 that employs corrections officers, parole and probation officers, police offi-  
11 cers, certified reserve officers or reserve officers, as those terms are defined  
12 in ORS 181A.355.

13 “(3) The term of a member is four years beginning on the effective date  
14 of the Governor’s appointment, but members serve at the pleasure of the  
15 Governor. A member is eligible for reappointment if qualified for membership  
16 at the time of reappointment, but may serve no more than two consecutive  
17 four-year terms. The Governor may remove any member of the commission  
18 at any time. If a vacancy occurs for any cause before the expiration of the  
19 term of a member, the Governor shall make an appointment to fill the va-  
20 cancy, in the same manner as an appointment to a full term, to become im-  
21 mediately effective for the unexpired term.

22 “(4) A chairperson and a vice chairperson shall be elected by the voting  
23 members of the commission every two years with such functions as the  
24 commission may determine. A member is eligible for reelection as chair-  
25 person or vice chairperson.

26 “(5) A majority of the voting members constitutes a quorum for the  
27 transaction of business.

28 “(6)(a) All members of the commission shall:

29 “(A) Review the policies, procedures, standards and guidelines required  
30 by ORS 151.216 and provide input before the approval vote described in par-

1   agraph (b) of this subsection.

2       “(B) Review the **agency request** budget of the commission and provide  
3   input before the approval vote described in paragraph (b) of this subsection.

4       “(C) Meet as needed to carry out the duties described in this subsection.

5       “(b) The voting members of the commission shall:

6       “(A) Approve by majority vote the policies, procedures, standards and  
7   guidelines required by ORS 151.216 before those policies, procedures, stan-  
8   dards and guidelines may take effect.

9       “(B) Approve by majority vote the **agency request** budget of the com-  
10   mission before submission to the [*Legislative Assembly*] **Oregon Department**  
11   **of Administrative Services**.

12       “(7) The members of the commission may not:

13       “(a) Make any decision regarding the handling of any individual case;

14       “(b) Have access to any case file; or

15       “(c) Interfere with the executive director or any member of the staff of  
16   the executive director in carrying out professional duties involving the legal  
17   representation of public defense clients.

18       “(8) A member of the commission is entitled to compensation for services  
19   as a member, and to expenses, as provided in ORS 292.495.

20       “(9)(a) The Governor shall appoint an executive director of the commis-  
21   sion, subject to confirmation by the Senate in the manner prescribed by ORS  
22   171.562 and 171.565. The person appointed as executive director must be well  
23   qualified by training and experience to perform the functions of the office.

24       “(b) The term of office of the executive director is four years, but the  
25   executive director serves at the pleasure of the Governor.

26       “(c) Before the expiration of the executive director’s term, the Governor  
27   shall appoint a successor to take office upon the date of the expiration. The  
28   executive director is eligible for reappointment. If there is a vacancy for any  
29   cause, the Governor shall make an appointment to become immediately ef-  
30   fective for the unexpired term.

1       **SECTION 3.** ORS 151.213, as amended by sections 77 and 100, chapter  
2 281, Oregon Laws 2023, is amended to read:

3       “151.213. (1) The Oregon Public Defense Commission is established in the  
4 executive branch of state government. *[Except for the appointment or removal*  
5 *of commission members, the commission and employees of the commission are*  
6 *not subject to the exercise of administrative authority and supervision by the*  
7 *Governor.]*

8       “(2)(a) Nine voting members and four nonvoting members shall be ap-  
9 pointed to the commission by the Governor as follows:

10      “(A) The Governor shall appoint:

11      “(i) One voting member who has been represented by a public defense  
12 provider.

13      “(ii) Two additional voting members, one of whom has experience as a  
14 public defense provider in juvenile delinquency or dependency cases.

15      “(iii) Two nonvoting members who are currently employed as public de-  
16 fense providers in this state, one of whom is from an urban area and one of  
17 whom is from a rural area.

18      “(B) The Governor shall appoint, from among persons recommended by the  
19 Chief Justice of the Supreme Court:

20      “(i) One voting member who is a retired judge.

21      “(ii) Two additional voting members, one of whom has experience as a  
22 public defense provider in criminal cases.

23      “(C) The Governor shall appoint, from among persons recommended by the  
24 President of the Senate:

25      “(i) One voting member who is a current dean or faculty member of an  
26 Oregon law school.

27      “(ii) One nonvoting member who is a member of the Senate at the time  
28 of appointment.

29      “(D) The Governor shall appoint, from among persons recommended by  
30 the Speaker of the House of Representatives:

1 “(i) One voting member who has expertise in juvenile law and criminal  
2 defense, or who is a juvenile justice or criminal justice reform advocate.

3 “(ii) One nonvoting member who is a member of the House of Represen-  
4 tatives at the time of appointment.

5 “(E) The Governor shall appoint one voting member from among persons  
6 jointly recommended by the President of the Senate and the Speaker of the  
7 House of Representatives.

8 “(b) When recommending and appointing members of the commission, the  
9 Governor, Chief Justice, President of the Senate and Speaker of the House  
10 of Representatives shall:

11 “(A) Consider input from individuals and organizations with an interest  
12 in the delivery of public defense services.

13 “(B) Consider geographic, racial, ethnic and gender diversity.

14 “(C) Ensure that members appointed to the commission have significant  
15 experience with issues related to public defense or in the case types subject  
16 to representation by public defense providers.

17 “(D) Ensure that members appointed to the commission have demon-  
18 strated a strong commitment to quality public defense representation.

19 “(c) The following persons may not be appointed to and may not serve as  
20 members of the commission:

21 “(A) A prosecuting attorney.

22 “(B) A judge, magistrate or other person who performs judicial functions.

23 “(C) An employee of a law enforcement agency or the Department of  
24 Human Services.

25 “(d) A person who is primarily engaged in providing public defense ser-  
26 vices and who has a financial interest in the delivery of public defense ser-  
27 vices at the state level may not serve as a voting member of the commission.

28 “(e) As used in this subsection, ‘law enforcement agency’ means an entity  
29 that employs corrections officers, parole and probation officers, police offi-  
30 cers, certified reserve officers or reserve officers, as those terms are defined

1 in ORS 181A.355.

2 “(3) The term of a member is four years beginning on the effective date  
3 of the Governor’s appointment. A member is eligible for reappointment if  
4 qualified for membership at the time of reappointment, but may serve no  
5 more than two consecutive four-year terms. The Governor may remove any  
6 member of the commission at any time [*for inefficiency, neglect of duty or*  
7 *malfeasance in office*] **for cause**. If a vacancy occurs for any cause before the  
8 expiration of the term of a member, the Governor shall make an appointment  
9 to fill the vacancy, in the same manner as an appointment to a full term, to  
10 become immediately effective for the unexpired term.

11 “(4) A chairperson and a vice chairperson shall be elected by the voting  
12 members of the commission every two years with such functions as the  
13 commission may determine. A member is eligible for reelection as chair-  
14 person or vice chairperson.

15 “(5) A majority of the voting members constitutes a quorum for the  
16 transaction of business.

17 “(6)(a) All members of the commission shall:

18 “(A) Review the policies, procedures, standards and guidelines required  
19 by ORS 151.216 and provide input before the approval vote described in par-  
20 agraph (b) of this subsection.

21 “(B) Review the **agency request** budget of the commission and provide  
22 input before the approval vote described in paragraph (b) of this subsection.

23 “(C) Meet as needed to carry out the duties described in this subsection.

24 “(b) The voting members of the commission shall:

25 “[*(A) Appoint an executive director of the commission. The term of office*  
26 *of the executive director is four years, but the executive director serves at the*  
27 *pleasure of the voting members of the commission.*]

28 “[*(B)*] **(A)** Approve by majority vote the policies, procedures, standards  
29 and guidelines required by ORS 151.216 before those policies, procedures,  
30 standards and guidelines may take effect.



1        “[C)] (B) Approve by majority vote the **agency request** budget of the  
2 commission before submission to the [*Legislative Assembly*] **Oregon De-**  
3 **partment of Administrative Services.**

4        “(7) The members of the commission may not:

5        “(a) Make any decision regarding the handling of any individual case;

6        “(b) Have access to any case file; or

7        “(c) Interfere with the executive director or any member of the staff of  
8 the executive director in carrying out professional duties involving the legal  
9 representation of public defense clients.

10       “(8) A member of the commission is entitled to compensation for services  
11 as a member, and to expenses, as provided in ORS 292.495.

12       “(9)(a) **The Governor shall appoint an executive director of the**  
13 **commission after consultation with the commission. The appointment**  
14 **is subject to confirmation by the Senate in the manner prescribed by**  
15 **ORS 171.562 and 171.565. The person appointed as executive director**  
16 **must be well qualified by training and experience to perform the**  
17 **functions of the office.**

18       “(b) As used in this subsection, ‘consultation with the commission’  
19 must include, but is not limited to, consulting with the chairperson  
20 of the commission prior to the recruitment of a new executive direc-  
21 tor, allowing the chairperson or another commission member desig-  
22 nated by the chairperson to participate in the interview process, and  
23 allowing commission members to review and provide comment on the  
24 top three candidates prior to the final appointment.

25       “(c) The term of office of the executive director is four years, but  
26 the Governor may remove the executive director at any time for  
27 cause.

28       “(d) Before the expiration of the executive director’s term, the  
29 Governor shall appoint a successor to take office upon the date of the  
30 expiration. The executive director is eligible for reappointment. If

1 **there is a vacancy for any cause, the Governor shall make an ap-**  
2 **pointment to become immediately effective for the unexpired term.**

3 **“SECTION 4.** ORS 151.216, as amended by section 78, chapter 281, Oregon  
4 Laws 2023, is amended to read:

5 “151.216. (1) The Oregon Public Defense Commission shall:

6 “(a) Establish and maintain a public defense system that ensures the  
7 provision of public defense services consistent with the Oregon Constitution,  
8 the United States Constitution and Oregon and national standards of justice.

9 “(b) Adopt policies for public defense providers that:

10 “(A) Ensure compensation, resources and caseloads are in accordance  
11 with [*national and regional best practices*] **the requirements of the Oregon**  
12 **and United States Constitutions;**

13 “[*(B) Ensure all public defense provider contracts provide for compensation*  
14 *that is commensurate with the character of service performed;*]

15 “[*(C)*] **(B)** Ensure funding and resources to support required data col-  
16 lection and training requirements; and

17 “[*(D)*] **(C)** Recognize the need to consider overhead costs that account for  
18 the cost of living and business cost differences in each county or jurisdiction,  
19 including but not limited to rent, professional membership dues, malpractice  
20 insurance and other insurance and other reasonable and usual operating  
21 costs.

22 “(c) Establish operational and contracting systems that allow for over-  
23 sight, ensure transparency and stakeholder engagement and promote equity,  
24 inclusion and culturally specific representation.

25 “(d) Review the caseload policies described in paragraph (b)(A) of this  
26 subsection annually, and revise the policies as necessary and at least every  
27 four years.

28 “(e) Adopt a statewide workload plan, based on the caseload policies de-  
29 scribed in paragraph (b)(A) of this subsection, that takes into account the  
30 needs of each county or jurisdiction, practice structure and type of practice

1 overseen by the commission.

2 “(f) Submit [*the budget of the commission to the Legislative Assembly after*  
3 *the budget is submitted to the commission by the executive director and ap-*  
4 *proved by the voting members of the commission. The chairperson of the com-*  
5 *mission shall present the budget to the Legislative Assembly]* **an agency**  
6 **request budget to the Oregon Department of Administrative Services**  
7 **as described in ORS 291.208.**

8 “(g) Adopt a compensation plan, classification system and affirmative  
9 action plan for the commission that are commensurate with other state  
10 agencies.

11 “(h) Adopt policies, procedures, standards and guidelines regarding:

12 “(A) The determination of financial eligibility of persons entitled to be  
13 represented by appointed counsel at state expense;

14 “(B) The appointment of counsel, including the appointment of counsel  
15 at state expense regardless of financial eligibility in juvenile delinquency  
16 matters;

17 “(C) The fair compensation of counsel appointed to represent a person  
18 financially eligible for appointed counsel at state expense;

19 “(D) Appointed counsel compensation disputes;

20 “(E) The costs associated with the representation of a person by appointed  
21 counsel in the state courts that are required to be paid by the state; and

22 “(F) The types of fees and expenses subject to a preauthorization re-  
23 quirement.

24 “(i) Reimburse the State Court Administrator from funds deposited in the  
25 Public Defense Services Account established by ORS 151.225 for the costs of  
26 personnel and other costs associated with location of eligibility verification  
27 and screening personnel pursuant to ORS 151.489 by the State Court Ad-  
28 ministrator.

29 “(j) Develop, adopt and oversee the implementation, enforcement and  
30 modification of policies, procedures, minimum standards and guidelines to

1 ensure that public defense providers are providing effective assistance of  
2 counsel consistently to all eligible persons in this state as required by stat-  
3 ute and the Oregon and United States Constitutions. The policies, proce-  
4 dures, standards and guidelines described in this paragraph apply to  
5 employees of the commission and to any person or entity that contracts with  
6 the commission to provide public defense services in this state.

7 “(k) Set minimum standards by which appointed counsel are trained and  
8 supervised.

9 “(L) Establish a system, policies and procedures for the mandatory col-  
10 lection of data concerning the operation of the commission and all public  
11 defense providers.

12 “(m) Enter into contracts and hire attorneys to bring the delivery of  
13 public defense services into and maintain compliance with the minimum  
14 policies, procedures, standards and guidelines described in this subsection.  
15 All contracts for the provision of public defense services to which the com-  
16 mission is a party must include a requirement for collection by the commis-  
17 sion of data determined by the commission to be qualitatively necessary for  
18 any report required to be submitted to the Legislative Assembly.

19 “(n) At least once every two years, report to the interim committees of  
20 the Legislative Assembly related to the judiciary, in the manner provided in  
21 ORS 192.245, and to the Governor and Chief Justice, concerning compliance  
22 metrics for the minimum standards described in this subsection and recom-  
23 mendations for legislative changes.

24 “(o) Develop standard operating expectations for persons and entities  
25 providing public defense services.

26 “(p) In consultation with the Judicial Department, ensure the existence  
27 of policies that create a standardized process for determining and verifying  
28 financial eligibility for appointed counsel under ORS 151.485.

29 “(q) Ensure access to systematic and comprehensive training programs for  
30 attorneys for the purpose of meeting statewide standards set by the commis-

1 sion.

2 “(r) Enter into contracts or interagency agreements with the Oregon De-  
3 partment of Administrative Services for the purpose of supporting state  
4 public defense population forecasts and other related forecasts.

5 “(s) Establish any other policies, procedures, standards and guidelines for  
6 the conduct of the commission’s affairs and promulgate policies necessary to  
7 carry out all powers and duties of the commission.

8 “(2) When establishing the minimum policies, procedures, standards and  
9 guidelines described in this section, the commission shall adhere to the fol-  
10 lowing principles:

11 “(a) Appointed counsel shall be provided sufficient time and a space  
12 where attorney-client confidentiality is safeguarded for meetings with cli-  
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14 “(b) The workload of appointed counsel must be controlled to permit ef-  
15 fective representation. Economic disincentives or incentives that impair the  
16 ability of appointed counsel to provide effective assistance of counsel must  
17 be avoided. The commission may develop workload controls to enhance ap-  
18 pointed counsel’s ability to provide effective representation.

19 “(c) The ability, training and experience of appointed counsel must match  
20 the nature and complexity of the case to which the counsel is appointed.

21 “(d) The same appointed counsel shall continuously represent a client  
22 throughout the pendency of the case and shall appear at every court ap-  
23 pearance other than ministerial hearings.

24 “(e) The commission shall establish continuing legal education require-  
25 ments for public defense providers who are employed by or contract with the  
26 commission that are specific to the subject matter area and practice of each  
27 type of court-appointed counsel.

28 “(f) The commission and public defense providers shall systematically re-  
29 view appointed counsel for efficiency and for effective representation ac-  
30 cording to commission standards.

1 “(3) The commission shall be organized in a manner for the effective de-  
2 livery of public defense services as prescribed by the policies and procedures  
3 created pursuant to statute to financially eligible persons and consistent  
4 with the budgetary structure established for the commission by the Legisla-  
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6 “(4) The commission shall hire attorneys to serve as appointed counsel,  
7 including at the trial level in Oregon circuit courts, and may establish a  
8 trial division within the commission consisting of attorneys employed by the  
9 commission who are trial-level public defense providers.

10 “(5) The policies, procedures, standards and guidelines adopted by the  
11 commission must be made available in an accessible manner to the public  
12 on the commission’s website.

13 “(6) Policies, procedures, standards and guidelines adopted by the com-  
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18 der this section and transferred duties, functions and powers as they occur.

19 “(7) The commission may accept gifts, grants or contributions from any  
20 source, whether public or private. However, the commission may not accept  
21 a gift, grant or contribution if acceptance would create a conflict of interest.  
22 Moneys accepted under this subsection shall be deposited in the Public De-  
23 fense Services Account established by ORS 151.225 and expended for the  
24 purposes for which given or granted.

25 “[*(8) With the approval of a majority of the voting members of the com-*  
26 *mission, the commission may advocate for or against legislation before the*  
27 *Legislative Assembly or policies or budgets being considered by the Legislative*  
28 *Assembly.*]

29 “(8) **The commission shall maintain an accurate and current list of**  
30 **all attorneys providing public defense services in this state and the**

1 **qualifications for each attorney.**

2 “(9) The commission shall request that the Governor include in the  
3 Governor’s requested budget, for each fiscal period, at a minimum, the  
4 amount of funds identified by the commission as being necessary to carry out  
5 the duties and activities of the commission.

6 “(10) The commission may adopt rules pursuant to ORS chapter 183.

7 **“SECTION 5.** ORS 151.216, as amended by sections 78 and 94, chapter  
8 281, Oregon Laws 2023, is amended to read:

9 “151.216. (1) The Oregon Public Defense Commission shall:

10 “(a) Establish and maintain a public defense system that ensures the  
11 provision of public defense services consistent with the Oregon Constitution,  
12 the United States Constitution and Oregon and national standards of justice.

13 “(b) Adopt policies for public defense providers that:

14 “(A) Ensure compensation, resources and caseloads are in accordance  
15 with [*national and regional best practices*] **the requirements of the Oregon**  
16 **and United States Constitutions;**

17 “[*(B) Ensure all public defense provider contracts provide for compensation*  
18 *that is commensurate with the character of service performed;*]

19 “[*(C)*] **(B)** Ensure funding and resources to support required data col-  
20 lection and training requirements; and

21 “[*(D)*] **(C)** Recognize the need to consider overhead costs that account for  
22 the cost of living and business cost differences in each county or jurisdiction,  
23 including but not limited to rent, professional membership dues, malpractice  
24 insurance and other insurance and other reasonable and usual operating  
25 costs.

26 “(c) Establish operational and contracting systems that allow for over-  
27 sight, ensure transparency and stakeholder engagement and promote equity,  
28 inclusion and culturally specific representation.

29 “(d) Review the caseload policies described in paragraph (b)(A) of this  
30 subsection annually, and revise the policies as necessary and at least every

1 four years.

2 “(e) Adopt a statewide workload plan, based on the caseload policies de-  
3 scribed in paragraph (b)(A) of this subsection, that takes into account the  
4 needs of each county or jurisdiction, practice structure and type of practice  
5 overseen by the commission.

6 “(f) Submit [*the budget of the commission to the Legislative Assembly after*  
7 *the budget is submitted to the commission by the executive director and ap-*  
8 *proved by the voting members of the commission. The chairperson of the com-*  
9 *mission shall present the budget to the Legislative Assembly]* **an agency**  
10 **request budget to the Oregon Department of Administrative Services**  
11 **as described in ORS 291.208.**

12 “(g) Adopt a compensation plan, classification system and affirmative  
13 action plan for the commission that are commensurate with other state  
14 agencies.

15 “(h) Adopt policies, procedures, standards and guidelines regarding:

16 “(A) The determination of financial eligibility of persons entitled to be  
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18 “(B) The appointment of counsel, including the appointment of counsel  
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28 “(i) Reimburse the State Court Administrator from funds deposited in the  
29 Public Defense Services Account established by ORS 151.225 for the costs of  
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1 and screening personnel pursuant to ORS 151.489 by the State Court Ad-  
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3 “(j) Develop, adopt and oversee the implementation, enforcement and  
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19 All contracts for the provision of public defense services to which the com-  
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23 “(n) At least once every two years, report to the interim committees of  
24 the Legislative Assembly related to the judiciary, in the manner provided in  
25 ORS 192.245, and to the Governor and Chief Justice, concerning compliance  
26 metrics for the minimum standards described in this subsection and recom-  
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28 “(o) Develop standard operating expectations for persons and entities  
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30 “(p) In consultation with the Judicial Department, ensure the existence

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2 financial eligibility for appointed counsel under ORS 151.485.

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6 “(r) Enter into contracts or interagency agreements with the Oregon De-  
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10 “(4) The commission shall hire attorneys to serve as appointed counsel,  
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12 trial division within the commission consisting of attorneys employed by the  
13 commission who are trial-level public defense providers.

14 “(5)(a) The commission shall establish, supervise and maintain a panel of  
15 qualified counsel who contract with the commission and are directly assigned  
16 to cases. The commission shall develop a process for certification of attor-  
17 neys to the panel with periodic eligibility and case review. Panel attorneys  
18 are not employees of the commission.

19 “(b) The payment of panel counsel:

20 “(A) May not be lower than the hourly rate established by the commis-  
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22 “(B) Shall be adjusted to reflect the same percentage amount of any pos-  
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25 “(C) May not provide a financial conflict of interest or economic incen-  
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28 “(6)(a) The commission may enter into contracts for the provision of  
29 public defense services with nonprofit public defense organizations **and pri-**  
30 **vate law firms.**

1 “(b) The commission may enter into contracts with entities that subcon-  
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4 “(c) The commission may not enter into a contract or agreement that pays  
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3 **“SECTION 6.** ORS 151.216, as amended by sections 78, 94 and 101, chap-  
4 ter 281, Oregon Laws 2023, is amended to read:

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25 “(d) Review the caseload policies described in paragraph (b)(A) of this  
26 subsection annually, and revise the policies as necessary and at least every  
27 four years.

28 “(e) Adopt a statewide workload plan, based on the caseload policies de-  
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22 Governor's requested budget, for each fiscal period, at a minimum, the  
23 amount of funds identified by the commission as being necessary to carry out  
24 the duties and activities of the commission.

25 “(12) The commission may adopt rules pursuant to ORS chapter 183.

26 “**SECTION 7. Section 8 of this 2025 Act is added to and made a part  
27 of ORS 151.211 to 151.221.**

28 “**SECTION 8. (1) The Oregon Public Defense Commission may enter  
29 into a contract with an entity that subcontracts with other entities  
30 or persons for the provision of public defense services only if the entity**

operates in accordance with this section.

**“(2) An entity described in subsection (1) of this section shall:**

**“(a) Designate an administrator who:**

**“(A) Actively manages the distribution of cases within the entity;**

**“(B) Has the authority and the responsibility to address concerns and complaints about representation by attorney members of the entity raised by the court, public defense clients and the commission; and**

**“(C) Serves as the point contact for external and administrative matters.**

**“(b) Have a defined policy concerning membership structure, including eligibility and admission criteria concerning attorneys who may join the entity and how entity members are admitted, and the voting rights, participation expectations and financial contributions required of members.**

**“(c) Have a policy concerning conflict resolution that:**

**“(A) Establishes professional and ethical expectations for attorney members in accordance with the requirements of the Oregon State Bar and the commission;**

**“(B) Contains a dispute resolution mechanism that is a structured process for handling internal conflicts; and**

**“(C) Sets clear criteria and conditions for voluntary withdrawal from the entity and grounds for removal of an attorney member due to misconduct or nonparticipation.**

**“(d) Ensure compliance with commission oversight, data reporting requirements and all other policies and procedures of the commission.**

**“(e) Hold regular meetings of the governing structure of the entity, if the entity has five or more attorney members, or with all attorney members of the entity, if the entity has fewer than five attorney members.**

1       “(3) An entity described in subsection (1) of this section with five  
2 or more attorney members shall additionally have a board of directors  
3 or a steering committee with responsibilities that include but are not  
4 limited to the following:

5       “(a) The approval of entity policies, budgets and initiatives;

6       “(b) Ensuring attorney performance and compliance with legal and  
7 financial obligations;

8       “(c) Oversight of the administrator; and

9       “(d) Resolving disputes among members of the entity.

10       “SECTION 9. Section 8 of this 2025 Act becomes operative on Jan-  
11 uary 1, 2026.

12       “SECTION 10. Sections 7 and 8 of this 2025 Act are repealed on July  
13 1, 2033.

14       “SECTION 11. This 2025 Act being necessary for the immediate  
15 preservation of the public peace, health and safety, an emergency is  
16 declared to exist, and this 2025 Act takes effect on its passage.”.



**Date:** April 16, 2025

**To:** Jennifer Nash, Chair of OPDC  
Susan Mandiberg, Vice Chair of OPDC  
OPDC Commissioners

**Cc:** Jessica Kampfe, OPDC Director

**From:** Jessica Kampfe, OPDC Director  
Trial Support & Development

**Re:** Proposed Maximum Attorney Caseload (MAC) Adjustments  
Stakeholder Feedback and Revisions

**Nature of Presentation:** Action Item

**Background:**

Oregon Public Defense Commission (OPDC) Trial Support & Development has developed several new policies with the goal of adjusting the way that case weight was calculated under the Maximum Attorney Caseload (MAC) model. The policies will help OPDC bridge the gap between the MAC model and workload model. OPDC Trial Support & Development drafted the policies and solicited stakeholder feedback from contract administrators (or their designees), the Oregon Judicial Department, local court judges, and the Oregon District Attorney's Association (ODAA). Feedback was taken in person and through email. Written feedback was recorded and has been presented to the commission.

**Reduced Caseload Program (RCP)**

- **Policy 404.200.04.008 Reduced Caseload Program for First Year Attorneys Policy – PCRP \_ Working Draft**
- **Policy 404.200.04.009 Reduced Caseload Program for First Year Attorneys Policy \_ Working Draft**

This policy accounts for attorneys in their first year being unable to accept full caseloads as they acclimate to Oregon public defense practice. The policy is

limited to only attorneys at the first level of qualification. There are two policies to account for the difference in the MAC model and the PCRCP model of practice. Feedback from the public defense community has been generally supportive requesting that we lower the first-year standards even further. Feedback from non-public defenders has been more diverse from questioning the need for the policy, to being supportive but concerned with the impact on the overall availability of defense providers. After hearing provider feedback, the policy was changed to increase the number of cases allowed under the policy to reflect the current number of cases attorneys in their first year are taking.

### **Updates since March 26<sup>th</sup> Draft**

- None

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. The team used bar numbers to estimate attorneys which would have fallen under this program. Were the program to be implemented OPDC expects to see an increase in MAC utilization rates corresponding to a decrease in overall MAC of about 2% as we lower the expected MAC of first year attorneys to align with their practical ability to accept cases. The PCRCP portion of this policy will not impact MAC as PCRCP is not a MAC based system but would reduce the number of cases taken under PCRCP contracts. Implementation will require OPDC to create a method of tracking attorneys in the program.

## **Co-Counsel Requirements**

- **Policy 404.200.04.004 Co-Counsel Policy \_ Working Draft**

This policy was created primarily to document the process OPDC currently uses to evaluate and grant requests for co-counsel in cases. The agency debated adding murder 2, JLAW, and all potential life sentence cases to the cases which require mandatory co-counsel, eventually deciding to create a new class of presumptive co-counsel for these cases. The policy also moves to align with the proposed attorney qualification standards by formalizing the rule that attorneys are allowed to co-counsel cases one degree above their qualifications. Originally, the policy set out to create a weight distribution between lead counsel and other attorneys working on the case, however this was abandoned due to the level of difficulty involved and the time allotted to the project. Work on how to split the weight of non-mandatory co-counsel cases is ongoing. Work to create a streamlined request form for co-counsel is similarly ongoing.

Feedback on this policy was mixed from all stakeholders. While everyone acknowledges that co-counsel on a case is required in certain circumstances and that the agency requires set guidelines on when and how to grant co-counsel, opinions differ on whether OPDC should require co-counsel at any level of case and at what level. There were also concerns about the availability of multiple attorneys for cases in rural jurisdictions, though these concerns were echoed in urban jurisdictions.

### **Updates since March 26<sup>th</sup> Draft**

- None

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. The team has low confidence in the data related to co-counsel cases but does not expect this policy to have an impact on MAC. OPDC's confidence level is due to inconsistent use of the co-counsel field in reporting. OPDC has not been requiring reports to use this field. If this policy is implemented it will require OPDC to redesign the process for requesting and approving co-counsel and will require retraining on reporting co-counsel cases to increase the accuracy of OPDC's data in this area.

### **Early Withdrawal**

- **404.200.04.006 Partial Weighting for Early Withdraw from Cases \_ Working Draft**

This policy was developed to reduce MAC utilization (or the amount of an attorney's MAC taken up by) of cases where an attorney withdraws from a case prior to its completion. The policy divides the weight into percentages of the total case weight based on the time between appointment and the court's average time to disposition standards to calculate a percentage of weight based on the length of representation. While this is admittedly not a perfect metric as much of the work on a case is often at the front end of a case, OPDC wanted a metric that would be applied across the policy. The policy also sets the timeline for when an attorney must close a case after the client receives a warrant and how those cases will be weighted. Once OPDC develops a true workload model, it expects this policy to become unnecessary.

Feedback from the public defense community was universally negative towards this policy citing it as an example of the agency's attempt to force them to do more work without a commiserate increase in funding. Non-public defender feedback was more favorable. They tended to laud the policy

as assuring that OPDC received the benefit of what they were paying for in terms of work on cases, however OPDC staff is concerned that this interpretation of the policy creates a risk that we will be moving back to a pay per case system.

### **Updates since the March 26<sup>th</sup> Draft**

- Changed the timeframe during which an attorney receives no weight for a case from 24 hours to 5 days to account for feedback on how long it takes to run conflict checks. 5 days matches the current contract timeframe.
- OPDC staff discussed feedback regarding giving flexibility to attorneys who feel the work they performed on the case is greater than the work accounted for in this policy. This flexibility is achieved through OPDC's Extraordinary Case Circumstances weighting process, as referenced at the end of the policy.
- Deleted reference to the Attorney Warrant Removal policy. The deletion was made because OPDC is no longer recommending that policy move forward but does not substantively change this policy.

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. Based on those reports OPDC estimates that reducing the weight applied to cases under this policy would increase potentially available MAC by 3%. This is likely an overestimate as OPDC is not currently able to account for the balance of weight returning to the attorney if the case is reactivated. OPDC expects the largest impact of this policy in measure 1Is and minor felonies.

Implementation of this policy will require OPDC to develop a method of re-applying full weighting if the case is returned to the original attorney.

### **Credit for Subsequent Attorneys Policy**

- **404.200.04.007 Partial Weighting for Second and Subsequent Attorneys \_ Working Draft**

This policy reduces the weight for cases which are transferred within the same law firm. The subsequent attorney within the firm should have access to the "case file" or all of the prior attorney's work on the client's case and will not need to recreate that work. The subsequent attorney is still required to do due diligence and so the policy grants reduced weight to the subsequent attorney. The policy also sets OPDC's order of priority for case assignments when an attorney withdraws.

The public defense community feedback on this policy has been universally



negative. They noted that the policy unfairly impacts larger firms and does not apply to cases taken under the hourly program, they argued that this pushed attorneys away from contracts which will ultimately be more expensive for the agency. Feedback from non-public defenders was more positive with the exception of the presiding judge in Lane County.

### **Updates since March 26<sup>th</sup> Draft**

- None

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. OPDC is unable to fully analyze the impact of this policy due to limitations in the available data. Implementation of this policy would require new logic in OPDC's system to identify cases being reassigned within the same firm within consortia (OPDC is currently able to track reassignments within in non-profits).

### **Warrant Cases**

- **Policy 404.200.04.003 Attorney Warrant Removal Policy \_ Working Draft**

The initial purpose of this policy was to comply with ORS 135.050 (6) and provide judges with a method to remove an attorney from a case where the attorney's client had been in warrant status for 90 days. Data from the Oregon Judicial Department on warrants shows that between 2018 and 2022 78% of warrants that were served were served within the first 90 days. The draft of the policy submitted for feedback also set guardrails on the court's ability to remove attorneys from cases. After receiving feedback but prior to submission to this commission's March 26th, 2025, meeting the policy was amended to require attorneys to withdraw from the case after 90 days unless the client is in custody elsewhere or withdrawal would otherwise violate the attorney's responsibilities. According to the partial weighting policy discussed above this would reduce the weight of the case based on the date the warrant was issued. OPDC staff has concerns that requiring attorneys to submit withdrawals, rather than the current contract requirement that they close reporting, may be an infringement on the attorney/client relationship and may be unethical.

Feedback from the public defense community <sup>(OBJ)</sup> on this policy proposal was mixed. There were questions about the practicality of the policy and how much work it would actually free up and debates on how much work

attorneys were performing for clients who had warrants. Feedback from non-public defenders was also mixed. Some were concerned about the amount of work it placed on the courts to track and process removals for cases on warrant status while others were concerned that it placed too many guardrails on removing attorneys. The feedback from non-public defenders was generally positive regarding the idea of removing attorneys from cases in warrant status and reducing the weight of those cases. The commission should note that the policy submitted to stakeholders for feedback was significantly modified prior to submission to the commission.

### **Updates since the March 26<sup>th</sup> Draft**

- None

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. The expected MAC impact from this policy is a gain of 1.13 MAC. This does not account for the weight that would be reapplied if the cases are reactivated and so will decrease once OPDC is able to implement that tracking.

### **Vacancies**

- **Policy 404.200.04.010 Vacancy Funding \_ Working Draft**
- **Revision to 404.070.003 Vacancy Funding Effective Date 10/1/2023**

The purpose of the updates to this policy is to adapt the agency's ability to continue funding vacancies in the flat budget expected from the legislature for the next biennium. The policy reduces the amount of time for which OPDC will fund a vacancy, restricts funding to attorney vacancies only, and allows contractors to keep the position authority provided they show diligent recruitment efforts which the proposed policy defines. It should be noted that this policy does not account for the hiring of multiple new attorneys at once, or 'attorney classes.' OPDC is working on a proposal separate from this policy which will accommodate the ability to hire new attorneys in classes.

Feedback from the public defense community was generally negative regarding this policy, pointing out that they were already experiencing significant difficulties recruiting lateral hires within the current policy timelines. The most concerning feedback was that the policy may force contractors to violate the Family Medical Leave Act (FMLA). Feedback from non-public defenders was generally supportive of this policy with the exception of the Presiding Judge of Lane County who cited this as a place where a whole state solution might damage individual counties.

### **Updates since the March 26<sup>th</sup> Draft**

- Updated the policy in response to feedback to account for Oregon Family Leave Act (OFLA). Contractors would be required to notify OPDC of OFLA leave and would have position authority on that vacancy maintained for up to 120 days but will not receive funding during that vacancy.
- OPDC Staff received feedback regarding differentiating this policy between solo attorneys and firms. OPDC staff did not have sufficient information on how various entity types use vacancy funding to evaluate this feedback and so chose not to move forward with that separation at this time.

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. OPDC paid for 21.83 prorated MAC worth of vacancies in criminal contracts. OPDC does not expect this policy to have an impact on MAC.

### **Contract Compliance**

- **Policy 404.200.04.005 Contract Compliance Policy \_ Working Draft**

This policy shifts the contract compliance language from the current contracts into a policy document. The policy is largely identical to the current contract compliance language with additional options for OPDC to address contract violations. The policy aims to give the agency maximum flexibility to address contract violations while supporting the attorneys who are working cases. Currently the agency has very few options other than reduce contract funding which is not the agency's preferred option.

Feedback from the public defense community was generally cautious about this policy. While they agreed that the agency needed a contract enforcement mechanism and were supportive of the agency's increased ability to work with attorneys collaboratively. However, they were concerned about the lack of trust between the agency and attorneys impacting the way this policy worked in practice. Specific concerns were voiced over the agency's forcing contract attorneys to take more cases than they were able or reducing payments, returning to the prior pay-per-case model. Feedback from non-public defenders was more varied, ranging from general support or calls to go further to fears that the policy was overly punitive and would ultimately damage the defense bar.

### **Updates since the March 26<sup>th</sup> Draft**

- Added clarification that OPDC is accounting for the overall contract MAC utilization and not the prorated MAC.
- OPDC continues to refine its process for ethical shutoffs and is developing a policy specifically regarding what information attorneys must submit to notify OPDC of an ethical shut off. OPDC hopes to have that policy to present to the commission prior to contracting.

### **OPDC Data Analysis**

The OPDC Data Team reviewed the proposed policy as it would have applied to the current contract reports from July 2023 to January 2025. The prong of this policy requiring contract administrators to assure that attorneys working under their contract maintain caseloads of at least 85%. Assuming that this policy could bring all contracts up to at least 85% utilization would increase available MAC by 21.54. This does not account for contracts which shut off due to ethical considerations and thus may be a high estimate.

### **Agency Recommendation:**

The agency recommends the commission approve the Reduced Caseload, Co-Counsel, Partial Weighting for Early Withdrawal and Subsequent Attorneys, and Contract Compliance Policies as well as the changes to the Vacancy Funding Policy. The agency recommends the commission not adopt the Warrant Removal Policy as it met with considerable negative feedback from contractors and does not significantly benefit the agency.

### **Fiscal Impact:**

Unknown

### **Agency Proposed Motion:**

The agency recommends the commission move to adopt the policies effective with the next contract cycle.

Policy Name: Reduced Caseload Program for First Year Attorneys Policy - PCRCP	Number: 404.200.04.008
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** Oregon Public Defense Commission (OPDC) understands that new attorneys cannot handle a full caseload due to lack of experience and knowledge. This policy will provide those attorneys a reduced caseload to allow for appropriate training and supervision. This policy reduces the open caseload for attorneys in the Parent Child Representation Program.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all attorneys in their first year of practice after licensure by the Oregon State Bar (OSB) who are practicing pursuant to a contract with the Parent Child Representation Program (PCRCP).

**DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Assigned counsel program:** OPDC hourly contract program (currently being developed).

**Criminal attorney 1:** Attorneys who are qualified by OPDC at Criminal Attorney 1 pursuant to the OPDC Attorney Qualification Standards.

**Delinquency attorney 1:** Attorneys who are qualified by OPDC at Delinquency Attorney 1 pursuant to the OPDC Attorney Qualification Standards.

**Dependency attorney 1:** Attorneys who are qualified by OPDC at Dependency Attorney 1 pursuant to the OPDC Attorney Qualification Standards.

**First year of licensure:** This begins when the attorney is sworn into OSB and continues for one year after that date.

**Reduced caseload program (RCP):** Program to reduce caseload for first year attorneys to allow for appropriate training and supervision.

**RCP beginning date:** Date is determined by OPDC in consultation with the contracting entity employing the new attorney. This is the date that the attorney is expected to start picking up cases.

**POLICY:** If an OPDC contractor hires an attorney in their first year of being licensed by OSB, and the contractor believes that the attorney qualifies to be in RCP, the contractor must notify OPDC and provide OPDC with information relating to the attorney's education and legal employment experience. Upon receiving that information, OPDC will determine whether the attorney qualifies for RCP. If the attorney qualifies for RCP, OPDC will notify the contract administrator and determine RCP beginning date.

To qualify for RCP:

- a. The attorney must be in their first year of licensure by OSB or have less than one year of experience of direct representation of public defense clients as a licensed attorney if attorney is or was licensed in another state;
- b. Be part of a mentoring or supervision program that has been approved by OPDC; and
- c. Be qualified (directly or with supervision) by OPDC as Delinquency Attorney 1, or Dependency Attorney 1.

Attorneys in RCP will have a monthly open caseload of 55 cases for the first year of employment.

Attorneys must remain qualified at their initial qualification level in order to be part of RCP. If an attorney in RCP is qualified by OPDC for Delinquency Attorney 2, or Dependency Attorney 2, they will be removed from RCP. Attorneys in RCP can co-counsel level 2 (Delinquency Attorney Level 2 or Dependency Attorney Level 2) cases without losing RCP status, if co-counseling is part of the OPDC-approved mentoring and supervision program.

If an attorney in RCP moves from one contracting entity to another contracting entity, their time on RCP continues based on their RCP beginning date. If the new entity has a PCRPP contract and has a OPDC approved mentoring or supervision program, the attorney will not lose RCP status. If the new entity has a Maximum Attorney Caseload (MAC)-based contract and has an OPDC approved mentoring or supervision program, OPDC and the new entity will coordinate to ensure the attorney retains their RCP status but under the standards for that contract type.

If an attorney in RCP leaves a contracting entity to become part of the Assigned Counsel Program, the attorney loses their RCP status.

If an attorney in RCP leaves a contracting entity to become part of the OPDC Trial Division, Trial Support & Development will work with OPDC Trial Division to ensure the attorney retains their RCP status but under the standards for criminal cases.

Contracting entities will not have a reduction in contract funding for attorneys participating in RCP.

Policy Name: Reduced Caseload Program for First Year Attorneys Policy	Number: 404.200.04.009
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** Oregon Public Defense Commission (OPDC) understands that new attorneys cannot handle a full caseload due to lack of experience and knowledge. This policy will provide those attorneys a ramp-up in caseload to allow for appropriate training and supervision. This will also resolve an issue of determining the Maximum Attorney Caseload (MAC) utilization analysis to accurately show the MAC utilization for first year attorneys.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all attorneys in their first year of practice after licensure by the Oregon State Bar (OSB) who are practicing pursuant to a contract with a Maximum Attorney Caseload. This policy does not apply to law students participating in a clinical program or to participants in the Bar's Supervised Practice Portfolio Examination (SPPE) Program.

#### **DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Assigned counsel program:** OPDC hourly contract program (currently being developed).

**Criminal attorney 1:** Attorneys who are qualified by OPDC at Criminal Attorney 1 pursuant to the OPDC Attorney Qualification Standards.

**Delinquency attorney 1:** Attorneys who are qualified by OPDC at Delinquency Attorney 1 pursuant to the OPDC Attorney Qualification Standards.

**Dependency attorney 1:** Attorneys who are qualified by OPDC at Dependency Attorney 1 pursuant to the OPDC Attorney Qualification Standards.

**First year of licensure:** This begins when the attorney is sworn into the Bar and continues for one year after that date.

**Reduced caseload program (RCP):** Program to reduce caseload for first year attorneys to allow for appropriate training and supervision.

**RCP beginning date:** Date is determined by OPDC in consultation with the contracting entity employing new attorney. This is the date that the attorney is expected to start picking up cases.

**POLICY:** If an OPDC contractor hires an attorney in their first year of being licensed by OSB and the contractor believes that the attorney qualifies to be in RCP, the contractor must notify OPDC and provide OPDC with information relating to the attorney's education and legal employment experience. Upon receiving that information, OPDC will determine whether the attorney qualifies for RCP. If the attorney qualifies for RCP, OPDC will notify the contract administrator and determine RCP beginning date.

To qualify for RCP:

- a. The attorney must be in their first year of licensure by OSB or have less than one year of experience of direct representation of public defense clients as a licensed attorney if attorney is or was licensed in another state;
- b. Be part of a mentoring or supervision program that has been approved by OPDC; and
- c. Be qualified (directly or with supervision) by OPDC as Criminal Attorney 1, Delinquency Attorney 1, or Dependency Attorney 1.

Attorneys in RCP will have a caseload equivalent of 200 misdemeanor cases for the first year of employment. Attorneys in RCP will not be required to have monthly prorated MAC limits.

Attorneys must remain qualified at their initial qualification level in order to be part of RCP. If an attorney in RCP is qualified by OPDC as for Criminal Attorney 2, Delinquency Attorney 2, or Dependency Attorney 2, they will be removed from RCP. Attorneys in RCP can co-counsel level 2 cases without losing RCP status, if co-counseling is part of the OPDC-approved mentoring and supervision program. If an attorney in RCP moves from one contracting entity to another contracting entity, their time in RCP continues based on their RCP beginning date. The new entity must be under a qualifying contract and have a OPDC approved mentoring or supervision program or the attorney will lose RCP status.

If an attorney in RCP leaves a contracting entity to become part of the Assigned Counsel Program, the attorney loses their RCP status.

If an attorney in RCP leaves a contracting entity to become part of the OPDC Trial Division, their time in RCP continues based on RCP beginning date.

Contracting entities will not have a reduction in contract funding for attorneys participating in RCP.



Policy Name: Co-Counsel Policy	Number: 404.200.04.004
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** The Oregon Public Defense Commission (OPDC) understands that certain circumstances may require or justify the addition of a second or subsequent attorney to a case. Consistent with its efforts to be transparent and consistent in decision making this policy will set out the requirements for cases to be considered for co-counsel as well as rules which apply to co-counsel case reporting and compensation.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all cases where an attorney is requesting additional attorneys to aid in representation.

#### **DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Public Defense Attorney:** Attorney appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

**Lead Counsel:** The attorney who retains ultimate decision-making authority on all attorney issues in the case (note that the client retains ultimate authority in many case related decisions). In cases where multiple attorneys are assigned the attorneys are responsible for designating a lead counsel for the case. Lead counsel must meet OPDC qualification standards for the case type.

**Co-Counsel:** A second attorney who either meets the qualification level for the type of case, exceeds it, or is one level of qualification lower than the case requires. Co-counsel may handle any portion of the case work up to an even share with lead counsel.

**Attorney Under Supervision:** An attorney who is handling all or the bulk of work on a case while under the supervision of a more experienced attorney according to the OPDC Supervision Policy or by agreement under the OPDC Attorney Qualification

Standards. Though the supervising attorney may be listed by the court as co-counsel in the case, they are not considered co-counsel under this policy.

**Associate Counsel:** An attorney assigned purely to assist with legal research or case preparation. Associate/Research counsel does not serve as an expert, is not appointed to the case, and does not provide direct client representation. Associate/Research counsel may be approved in cases where it's reasonable and necessary, i.e., murder, juvenile waiver, cases subject to ORS 137.719 and 137.725, Jessica's Law cases or any case in which OPDC deems an Associate/Research attorney is reasonable and necessary.

**POLICY:** Lead Counsel is responsible for locating co-counsel for their cases and applying to OPDC for approval of co-counsel where approval is discretionary or notifying OPDC of who will co-counsel the case where co-counsel is mandatory.

Cases for which OPDC will consider funding co-counsel are as follows:

1. **Cases for which co-counsel is mandatory**

In all cases charging Aggravated Murder under ORS 163.095, Murder in the first degree under ORS 163.107, and cases in which the State moves the court to waive juvenile court jurisdiction pursuant to ORS 419C.349 or ORS 419C.352, OPDC requires that there must be at least two attorneys sharing responsibility for the case as Lead and Co-Counsel. Counsel need not seek permission from OPDC prior to a second attorney seeking appointment from the court. A third or subsequent attorney may be approved on these cases at OPDC's discretion as described below.

2. **Cases for which co-counsel is presumptive**

In all cases charging Murder in the second degree under ORS 163.115, cases charged under Jessica's Law, and cases subject to a life sentence under ORS 137.719 or 137.725 OPDC presumes that a second attorney is necessary without additional justification from Lead Counsel. While Counsel need not seek permission from OPDC prior to seeking appointment of co-counsel on these cases they should notify OPDC in the same manner as described below.

3. **All other cases**

In all cases other than those set out in section 1 of this policy, OPDC may approve a second or subsequent attorney upon the request of the case's lead counsel. In order to request co-counsel, the lead attorney should submit the request in the method prescribed by OPDC. Once submitted, the OPDC will evaluate the request and either approve or deny it based on the following factors:

- a. Severity of charges. Cases where the charges are particularly severe or where the penalty for conviction is high are inherently more difficult than less severe cases and may require additional attorney resources.
- b. Complicated or novel issues of law or fact. Cases with these issues require additional investments of time from attorneys to research and develop arguments and may require a second attorney to collaborate on generating defenses, creating motions, or working with the client.
- c. The need for attorneys to gain experience. To be able to competently handle more serious case types, newer attorneys can work with more seasoned

attorneys as co-counsel. OPDC qualification guidelines require that an attorney have co-counsel experience to qualify for certain advanced case types and the opportunity to advance in the career of public defense is important to the retention of dedicated attorneys. Cases where an attorney needs experience may be considered for additional attorneys regardless of the presence of other factors in this policy. Attorneys requesting an additional counsel under this section may be required to provide a supervision plans to OPDC. If the contractor is receiving supervision funding the supervision plan provided under that policy may be sufficient.

- d. The need for mentorship attorneys. There are times when an attorney is in need of mentorship from a more experienced attorney regardless of the case type or complexity. Such mentorship may be a result of the attorney's conduct, a complaint regarding their work, or at the direction of OPDC.
- e. Local Counsel. OPDC may approve the assignment of a second attorney when lead counsel takes a case outside of their home jurisdiction.
- f. Other. OPDC retains discretion to appoint second or subsequent attorneys as required to assure constitutional representation on all cases.

To apply for OPDC approval for co-counsel or to give notice to OPDC for presumptive co-counsel, a lead attorney should submit the request in the manner proscribed by OPDC. To be considered requests must include at least the following information:

- Case identifying information such as a case number and client's name.
- The name of the lead attorney.
- The name and OPDC certification level of requested co-counsel.
- For discretionary co-counsel requests lead counsel should also include a justification for the appointment of co-counsel.
- If the lead attorney is requesting to add a third or subsequent attorney who is not certified under OPDC's guidelines for the case type being requested, a justification for the addition of that attorney should be included along with any proposed supervision plans.

To apply for associate counsel:

- If the associate counsel is accepting appointment under contract, Lead Counsel should follow the same provisions for requesting co-counsel above and specify associate counsel. OPDC and counsel will agree on appropriate case weighting for the associate counsel prior to authorizing representation.
- If the associate counsel is accepting the case hourly, Lead Counsel should apply through the Pre-Authorized Expenses policy.

Unless otherwise agreed to by the attorneys and OPDC, all attorneys for a client should share a funding model and not mix between contract and attorneys under the Assigned Counsel Program. Once OPDC has approved co-counsel for a case or if the case requires mandatory co-counsel, lead counsel or co-counsel need to file a motion for and order to appoint co-counsel with the appropriate court. The court retains final discretion on the appointment of co-counsel. Co-counsel must be appointed by the court to receive funding from OPDC. Attorneys supervising attorneys under supervision need not be appointed co-counsel in a case provided they are following Co-Counsel Policy

their supervision agreement with OPDC. Associate/research counsel need not be appointed to receive funding.

Policy Name: Partial Weighting for Early Withdraw from Cases	Number: 404.200.04.006
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** The Oregon Public Defense Commission (OPDC) understands that certain circumstances may require an attorney to withdraw from a case prior to the resolution of the case. In such cases OPDC will reduce the total weight applied to those cases pursuant to this policy.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all attorneys under a criminal contract with OPDC which includes case weighting provisions. This policy applies only to criminal cases.

#### **DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Case Closure:** A case is closed when the attorney makes clear to the client - through either a closing letter, or the attorney is removed from the case by court order, or both, or by operation of law - that the attorney is no longer representing the client in the legal matter.

**Withdrawal as Counsel:** When an attorney requests the court remove them from a case that would not meet other conditions of case closure.

#### **POLICY:**

- 1) When to Close a Case: Contractors shall close a client's criminal case when the final judgment or order has been entered into the court register and the Contractor has met all contractual obligations, or a judge has signed an order removing the attorney from the case, or a bench warrant for a client's failure to appear has been active for 180 consecutive days.
- 2) Case Weighting when Contractor Closes the Case Prior to Conclusion: Case weighting in the OPDC contracts is based on an attorney completing all necessary tasks for a criminal client's case prior to the case's closing. These tasks include, but are not limited to, review of discovery, investigation of each charge,

court appearances, necessary client communication, and ultimate resolution of the case. Withdrawal prior to the completion of those events will result in partial weighting of that case by OPDC. Partial weighting for cases will be according to the following:

- **Criminal misdemeanors:** within 5 days from case assignment the attorney will receive no weight for the case, after 24 hours but no more than 15 days from appointment shall receive 50% of the case weighting, after 15 days but prior to 40 days 75% of the case weighting, after 40 days attorneys will receive 90% of the case weighting.
- **Criminal felonies other than murder:** within 5 days from case assignment the attorney will receive no weight for the case, after 24 hours but no more than 60 days from appointment shall receive 50% of the case weighting, after 60 days but prior to 120 days 75% of the case weighting, after 120 days attorneys will receive 90% of the case weighting.
- **Criminal murder:** within 5 days from case assignment the attorney will receive no weight for the case, after 24 hours but no more than 180 days from appointment shall receive 50% of the case weighting, after 180 days but prior to 365 days 75% of the case weighting, after 365 days attorneys will receive 90% of the case weighting.

If an attorney closes a case because a client has had a warrant issued for 180 days, the date of withdrawal for the purpose of calculating the length of time an attorney was appointed to the case is the date that the warrant was issued. If the same attorney is later reappointed to the same case, they will receive the balance of the weight for that case.

Nothing in this policy should be construed to limit an attorney's duties of representation to any of their clients. OPDC recognizes that all cases are unique and that not all cases may be completed within the timelines outlined above. OPDC is committed to attorneys being compensated for their work on cases and attorneys who feel that the amount of work they performed on a case is not reflected in this policy may request extraordinary case weighting as prescribed by OPDC policies.



Policy Name: Partial Weighting for Second and Subsequent Attorneys	Number: 404.200.04.007
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** The Oregon Public Defense Commission (OPDC) understands that certain circumstances may require an attorney to withdraw from a case prior to the resolution of the case and that despite the withdrawal of the attorney a judge may appoint another attorney to represent the same client on the same case. The subsequent attorney is presumed to benefit from work completed by prior attorneys and will not require the full amount of time cases normally take from start to finish. This policy adjusts the weight of subsequent attorneys accordingly.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all attorneys under a contract with OPDC which includes case weighting provisions. This policy applies only to criminal cases. Murder cases or cases charged under Jessica's Law are exempt from partial weighting for second and subsequent attorneys.

#### **DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Case Closure:** Contractor shall close a client's case when: The final judgment or order has been entered into the court register, and the Contractor has met all contractual obligations, a judge has signed an order removing the attorney from the case, or a bench warrant for a client's failure to appear has been active for 90 days.

**Withdrawal as Counsel:** When an attorney requests the court remove them from a case that would not meet other conditions of case closure.

**POLICY:** When reassigning cases because of the withdrawal of an attorney, or if an attorney is otherwise unavailable to continue representation, the case should be reassigned to a different attorney within the same firm. If there are no available attorneys within the same firm, then within the same contract entity. If there are no attorneys available within the same contract entity, then to other entities within the same judicial district.

After a change of attorneys within the same firm the subsequently appointed attorney, if appointed under contract, will receive 50% of the base weight for the case. Attorneys may request additional case weight through the process designated by OPDC.

Nothing in this policy should be construed to limit an attorney's duties of representation to any of their clients. OPDC is committed to attorneys providing highly skilled and client-focused representation to all their clients.



Policy Name: Attorney Warrant Removal Policy	Number: 404.200.04.003
Division: Compliance, Audit & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** To require attorneys to withdraw from cases after a client has a warrant outstanding for set period of time.

**AUTHORITY:** ORS 135.050 (6) and ORS 151.216

**APPLICABILITY:** This policy applies all contract attorneys.

**DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Bench Warrant:** A warrant issued by a court after a defendant has failed to appear for a previously scheduled court hearing.

**POLICY:**

An attorney who has accepted a case under a contract for a maximum attorney caseload must close the case if the client has had a bench warrant outstanding for 90 consecutive days. This policy does not apply if the client is in custody in another jurisdiction.

If a defendant returns to court after the attorney has closed the case under this policy but within the same OPDC contract the attorney should be reappointed to the case.

Policy Name: Vacancy Funding	Number: 404.200.04.010
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** To establish criteria and notice requirements related to funding of an unfilled contracted attorney position.

**AUTHORITY:** ORS 151.216; ORS 151.219

**APPLICABILITY:** This policy applies to all contracts for public defense services. It is applicable when an attorney is leaving a contract and the contract is continuing with OPDC. This policy supersedes any previous memorandum or version of the policy and procedures.

**DEFINITIONS FOR PURPOSES OF THIS POLICY:**

Representational services: Attorney services, appropriate support staff services, investigation, appropriate sentencing and disposition advocacy, legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which OPDC is to pay Contractor do not include fees and expenses authorized as preauthorized expenses or case support services as defined by OPDC.

**Vacancy:** When an attorney, investigator, case manager, or paralegal discontinues providing representational services under a contract with OPDC for Public Defense Services.

**Full time equivalent (FTE) attorney:** An FTE Attorney is an attorney under contract with OPDC to provide representational services.

**Diligent Recruitment Efforts:** Any of the following constitutes diligent recruitment efforts:

- Active negotiations with a specific applicants, as shown by an offer letter or other proof of negotiations;
- Posting of the vacancy in at least three local, regional, or national job boards within two weeks of the learning of the vacancy;
- Efforts as described by the Contractor that demonstrate active efforts to fill the vacant FTE and subject to OPDC's discretion regarding whether these efforts are diligent.

**POLICY:** Sixty (60) days of partial funding will be provided for Attorney Vacancies. The purpose in providing 60 days of continued partial funding for an attorney vacancy is to allow the contractor flexibility and support when an attorney leaves a contract while the contractor works to replace the previous attorney. In order to receive partial funding for a vacancy, Contractor must intend to, and be actively working toward, filling the vacant position.

Contractor shall notify OPDC of an impending vacancy within 48 hours of becoming aware of an OPDC funded attorney or non-attorney is planning to leave the contract.

In the event of an Attorney Vacancy, OPDC will fund 50% of the exiting attorney's monthly FTE compensation for a period of 60 days, beginning on the day after the previous employee's last day of employment. Position authority continues for an additional 30 days if the Contractor demonstrates diligent recruitment efforts.

In the event of a vacancy for non-Attorney FTE positions funded under contract, OPDC will cease to provide funding on the day after the previous employee's last day of employment. Contractors may submit pre-authorized expense requests to cover necessary work during any resulting recruitment period to replace the departed employee. Contractor will notify OPDC of its intent to attempt to replace the departed employee within two weeks of beginning of the vacancy. If Contractor intends to replace the departed employee, Contractor will retain the right to fill the position for up to 60 days after the previous employee's last of employment.

In the event of an attorney or non-attorney vacancy that qualifies for protected leave under state or federal law, Contractor will provide notice to OPDC pursuant to this policy of the protected leave designation and the expected duration of the protected leave. During protected leave, Contractor will retain position authority for the duration of the protected leave, up to 120 days, but will not receive position related funding. If an employee resigns following the conclusion of a protected leave period, the standard vacancy policies above will apply, beginning on the day after the previous employee's last day of employment.

Policy Name: Contract Compliance Policy	Number: 404.200.04.005
Division: Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

**PURPOSE:** To provide notice and guidance regarding potential breach of contract terms and requirements.

**AUTHORITY:** ORS 151.216

**APPLICABILITY:** This policy applies to all contracts for public defense services.

**DEFINITIONS FOR PURPOSES OF THIS POLICY:**

**Contractor:** Any entity that has a contract with OPDC for legal services.

**Oregon State Bar (OSB) Performance Standards:** The Specific Standards for Representation for the applicable case type on the OSB website.

**POLICY:** To ensure compliance with contracts, Oregon Public Defense Commission (OPDC) sets out the following contract compliance procedures.

- Contractor agrees to accept appointments to represent eligible clients and, if applicable, to assign cases to attorneys performing legal services in accordance with their contract with OPDC unless doing so would violate the OSB Rules of Professional Conduct or the contract management provisions described below.
- Contractor shall monitor case assignments for each attorney performing services under this contract to ensure the number of case assignments in a month, or open cases under Parent Child Representation Program (PCRP) for each attorney are within 15% of the monthly prorated Maximum Attorney Caseload (MAC) or the PCRP workload limit associated with that attorney's contracted Full Time Equivalent (FTE).

- Contractor agrees to ensure that all attorneys performing services under this contract are qualified under OPDC's attorney qualifications and are following the OSB Attorney Performance Standards for the case to which they are appointed. Contractors are responsible for ensuring that all attorneys working under the contract understand and abide by all of the contract requirements. Attorneys will not be compensated for work on any case for which they are not qualified by OPDC without prior written approval by OPDC. Attorney should submit the request in the manner proscribed by OPDC prior to commencing work on the case.
- If Contractors or individual attorneys cannot fulfill their performance standards obligations for new clients, beyond their current existing clients for ethical reasons, they must submit a form designated by OPDC for that purpose. OPDC will work with Contractor or attorneys to determine the underlying cause for the ethical shutoff. OPDC may not decrease a Contractor's attorney FTE, the financial value attached to the contract, or any other form of compensation if the Contractor has temporarily shut off case assignments for ethical reasons.
- Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in any other paid legal work unless agreed to by OPDC in writing and only if additional paid work will not interfere with their work on appointed cases.

## **Enforcement**

If OPDC reasonably believes that any attorney performing services under this contract has not accepted appointments consistent with their yearly contract obligations, maintained an open caseload (PCRCP only), or has not met performance standards for two consecutive months, OPDC will engage Contractor in the following manner:

1. OPDC will set a meeting with Contractor to discuss the circumstances leading to the lack of ability to meet contract and/or performance expectations and to determine:
  - a. Whether changing filing trends within the jurisdiction resulted in the attorney's low case number;
  - b. Whether the low case numbers or lack of meeting performance requirements were caused by an attorney's ethical responsibility to current clients and the attorney has filed the required ethical shut off form; or
  - c. Whether other performance-related factors have resulted in the attorney or entity not being able to meet their caseload or performance expectations.
2. OPDC and Contractor will develop, if necessary, a plan to bring Contractor and any attorneys performing services under this contract back within the contract and/or performance expectations. The initial plan will last for 90 days, subject to extension by agreement of OPDC and Contractor, and may include:

- a. Requirements that Contractor accept or refrain from accepting cases, unless doing so would cause attorney/s to violate the Rules of Professional Conduct;
  - b. Requirements that Contractor accept cases as needed from neighboring jurisdictions;
  - c. Requirements that Contractor or attorneys successfully complete training program(s) designed to assist with factors that were identified as causes for the Contractor or attorneys' inability to meet caseload or performance expectations; and/or
  - d. Requiring Contractor or attorneys to participate in a mentoring program approved by OPDC.
3. At the end of the plan period, OPDC will determine, at its discretion, whether further corrective actions are necessary and likely to result in necessary improvement.
4. If additional corrective actions are necessary, OPDC may, at its discretion implement any or all of the following actions:
- a. Withhold an incremented 1% of total contract funds increasing every 90 days up to 5% or until such time as the problems are ameliorated;
  - b. Reduce the FTE in the contract;
  - c. Reduce the qualification level of the attorney/s;
  - d. Require more intensive mentoring/oversight until such time as the problems are resolved; and/or
  - e. Termination of the contract.



**Date:** April 16, 2025

**To:** Jennifer Nash, Chair of OPDC  
Susan Mandiberg, Vice Chair of OPDC  
OPDC Commissioners

**Cc:** Jessica Kampfe, Executive Director

**From:** Scott Martin, Chief Audit Executive

**Re:** 2025 Internal Audit Committee Appointments and Reappointments

**Nature of Presentation:** Action Item

**Background:** Per Oregon Administrative Rule 125-700-0135 (5) “Each agency having an internal audit function shall establish and maintain an audit committee.” The primary purpose of the audit committee, per section (5)(b), “is to enhance the quality and independence of the audit function, thereby helping to ensure the integrity of the internal audit process.” The audit committee, per section (5)(a) of that rule, is required to have a written charter that “describes the authority, responsibilities, and structure of the audit committee.” Per the audit committee charter implemented by OPDC in December of 2022, and consistent with section (5)(c) of the cited rule, the audit committee structure includes at least one commission member. The audit committee is also required to include the Executive Director and the Budget and Finance Manager, or their designees, who serve for as long as they hold their positions at OPDC.

The charter further requires “between four and six external members appointed by the Chairperson of the Committee, in consultation with the OPDC Executive Director or designee, the Chief Audit Executive (CAE), and the other Committee Members, and ratified by the Commission”. The external members are appointed for two-year terms, but with Committee approval may serve consecutive terms with no specified limit.

The audit committee has three external members, John Hutzler, Reid Kajikawa and DeAnna Horne, who have completed their initial two-year terms and gained approval by the audit committee to serve a consecutive two year term.

**John Hutzler** – (The current Audit Committee Chair) A retired Internal Auditor with 30 years of experience including work at three state agencies and three local government agencies.

**Reid Kajikawa** – An active Public Defender with 20 years of experience who is also the current Director of Training at Public Defender Services of Lane County and the supervising attorney of the University of Oregon School of Law's Criminal Defense Clinic.

**DeAnna Horne** – An active Public Defender based in Oregon City with 22 years of experience.

The Audit Committee has three additional external member vacancies. The Audit Committee Chair in collaboration with the Audit Committee, Executive Director and CAE has appointed Jaclynn Moore and David Terry to the Audit Committee subject to ratification by the commission. With these appointments the Audit Committee leaves open one external member position.

**Jaclynn Moore** – Jaclynn is a Certified Internal Auditor (CIA) and Certified Paralegal (CP) with over seventeen years of auditing experience among varied governmental organizations. She currently works for the Oregon Military Department as the CAE and Chief Risk Officer (CRO). Her dual role is unique among Internal Auditors and demonstrates her functional objectivity and the high degree of confidence placed in her by the Oregon Military Department. In addition, Jaclynn serves as the chairperson for Oregon's Chief Audit Executive Council (CAEC) which leads monthly discussions of state auditing issues among chief audit executives across the state. Finally, she is a relied upon mentor more broadly within the state's internal auditor community.

**David Terry** – David is a Certified Public Accountant (CPA), CIA, and Certified Fraud Examiner (CFE) and has twenty-two years of auditing experience among a variety of state government organizations. He currently works for Portland State University (PSU) as the Director of Internal Audit wherein he is responsible for the development and oversight of the university's first Internal Audit function. In addition, David has served on several audit committees previously to include: the Oregon Department of Education, Higher Education Coordinating Commission and Clackamas County. Finally, his experience serving on both public and private audit committees is a valued source of best practice and compliance knowledge.



**Agency Recommendation:** The appointment of both skilled and experienced internal auditors on OPDC’s audit committee supports compliance with state statutes and rules as well as Institute of Internal Audit (IIA) standards. In addition, both new appointees have earned the CIA designation and have the appropriate experience to serve as the Audit Committee Chair of the Audit Committee for succession planning purposes if needed.

Similarly, the reappointment of two experienced public defenders and the highly experienced Internal Auditor (currently serving as the Audit Committee Chair) ensures a continuum of related experience and insight from those important communities.

**Fiscal Impact:** None.

**Agency Proposed Motion:** Ratification of three Audit Committee reappointments by the Audit Committee Chair to serve consecutive two-year terms on the Audit Committee and the ratification of appointments for two new Audit Committee members to serve two-year terms on the Audit Committee.



**Date:** April 16, 2025

**To:** Jennifer Nash, Chair, OPDC  
Susan Mandiberg, Vice Chair, OPDC  
OPDC Commissioners

**Cc:** Jessica Kampfe, Executive Director

**From:** Trial Support & Development Team

**Re:** Draft Attorney Qualification Standards

**Nature of Presentation:** Briefing on Updates

**Background:**

On February 19, 2025, the Commission was presented with a briefing of the draft Attorney Qualification Standards. In response to the Commission feedback and after completion of work that was already in progress, several additions and changes were made to the original draft.

The inclusion of standards for equivalent experience and supervision provide pathways to qualification for attorneys who do not meet the face of the proposed qualifications, and these standards are responsive to many of the questions raised by the Commission regarding ensuring that the new standards do not restrict our existing provider pool from handling current case types.

The following sections of the standards have been changed:

- Qualification Standards for All Public Defense Attorneys
  - Rules of Professional Conduct – Added language for client file retention.
  - **Accessibility – NEW!** Added requirements for accessibility and proximity to clients.

- Qualification Standards for Representation in Criminal Proceedings, Criminal Attorney 1.
  - Minimum Qualifications, (Section 3., a., i.) - Added additional language to include the completion of a term of an Oregon law school criminal clinic as approved pathway to qualification if the candidate proves a letter of support from the clinical supervisor.
- Qualification Standards for Representation in Criminal Proceedings
  - **Criminal Attorney 5 – NEW!** - Added case assignments and minimum qualifications for Criminal Attorney 5 (aggravated murder).
- Qualification Standards for Representation in Delinquency Proceedings, Delinquency Attorney 1.
  - Minimum Qualifications (Section 3., c., i.) - Added additional requirement language to include a presentation of a letter from immediate supervisor certifying the person’s ability to represent clients in misdemeanor level or delinquency cases.
- Qualification Standards for Representation in Post-Conviction Relief (PCR) Proceedings.
  - **PCR Attorney 3 – NEW!** - Added case assignments and minimum qualifications for PCR Attorney 3 (aggravated murder).
- **Process for Attorney Qualification – NEW!**
- **Qualification Process – NEW!**
- **Equivalent Experience Qualification Standards – NEW!**
- **Practicing Under Supervision Standards – NEW!**
- Appendix, removed from Qualification Standards and appended to this memorandum

### **Implementation:**

As with the core staff qualification and performance standards, full implementation of these qualification standards requires a thoughtful transition plan to ensure that existing public defense providers have the time and resources needed to meet them. OPDC will also need additional funding to implement training programs to support compliance with these standards.

OPDC will be updating its internal procedure guide for attorney qualification application review and processing.

The current proposal envisions a six-month transition period before qualification under the newly adopted standards are implemented. After implementation, attorneys who have gaps in their existing qualifications due to the new standards can be qualified provisionally as they work to complete any outstanding requirements. The proposed qualification process would have attorneys recertify triennially, to align with their Oregon State Bar CLE certification. We do not anticipate that providers currently handling cases will be downward qualified as a result of implementation; however, adoption of these standards will ensure high quality representation for OPDC-funded representation going forward.

**Agency Recommendation:**

The agency recommends the commission accept the briefing, with the understanding that the agency will bring the Attorney Qualification Standards back before the Commission for adoption at its May 2025 meeting.

**Fiscal Impact:**

To be determined once a full implementation and transition plan has been developed. Full implementation of these standards will likely require investments in OPDC infrastructure and staff, to implement training programs and other supports contemplated by these standards. Such investments are not part of the agency's request budget for 2025-27 and would need to be planned for in future legislative sessions.

**Agency Proposed Motion:**

None.

# Appendix A: Workgroup Participants

OPDC appreciates the time and expertise that public defense stakeholders contributed to revising the agency's qualification standards for public defense attorneys.

## Criminal Standards

Charles Peirson, Multnomah Defenders Inc  
Carl Macpherson, Metropolitan Public Defenders  
Caine Smith, Public Defender Services of Lane County  
Eve Costello, Costello and Costello  
Frankie Hupy, Public Defender of Marion County  
James Schaeffer, Eagle Cap Defenders Inc  
Jordon Huppert, Oregon Public Defense Commission (facilitator)  
Joshua Gums, Columbia Gorge Defenders  
Kevin Leik, Clackamas Indigent Defense Corporation  
KO Berger, Oregon Public Defense Commission (facilitator)  
Sean Magraw, Clackamas Indigent Defense Corporation  
Melissa Parker, OPC Inc, Marion County Association of Defenders  
Reid Kajikawa, Public Defender Services of Lane County  
Robert Manske, Southwestern Oregon Public Defense Services

## Aggravated Murder Criminal and PCR

Bryan Boender, Boender & Payment Attorneys  
Christopher Clayhold, Christopher Clayhold, Attorney at Law  
Greg Scholl, Multnomah Public Defenders  
Jeff Ellis, Law Office of Alsept & Ellis  
Laurie Bender, Laurie Bender, P.C.  
Lynne Morgan, Lynne B. Morgan, Attorney at Law  
Richard Wolf, Richard Wolf, P.C.

## Delinquency Standards

Annie Borton, Oregon Public Defense Commission (facilitator)  
DeAnna Horne, Juvenile Advocates of Clackamas  
Elizabeth Wakefield, Metropolitan Public Defenders  
Jeff Jorgensen, Marion Juvenile Advocacy Consortium  
Judah Largent, Riddle and Largent  
KO Berger, Oregon Public Defense Commission (facilitator)  
Kevin Ellis, Metropolitan Public Defenders

Matthew Muphy, Youth Rights Justice  
Norah Van Dusen, Levi Merrithew Horst, PC  
Robert Vieyra-Braendle, Marion Juvenile Advocacy Consortium  
Stacey Kay Lowe, Southwestern Oregon Public Defense Services

## Dependency Standards

Annie Borton, Oregon Public Defense Commission (facilitator)  
Dawn Andrews, Metropolitan Public Defenders  
Holly Preslar, Josephine County Defense Lawyers  
Jennifer Kinzey, Ridehalgh & Associates  
Jennifer Stoller, Youth Rights Justice  
Karen Stenard, Lane County Juvenile Lawyers Association  
Kevin Hupy, Oregon Public Defense Commission (facilitator)  
Melissa Riddell, Riddell and Largent  
Rebecca Shaleger, Mockingbird Legal  
Tahra Sinks, Marion Juvenile Advocacy Consortium  
Victoria Moffet, 22<sup>nd</sup> Circuit Defenders

## Quasi-Criminal Standards

Allison Knight, Lane County Public Defenders  
Amanda Marshall, Juvenile Advocates of Clackamas  
Bailey Moody, Marion County Association of Public Defenders  
Ginger Mooney, Ginger G. Mooney, LLC  
Jordon Huppert, Oregon Public Defense Commission (facilitator)  
Joseph Westover, Metropolitan Public Defenders  
KC LeDell, Metropolitan Public Defenders  
Kevin Hupy, Oregon Public Defense Commission (facilitator)  
Meg Huntington, Equal Justice Law  
Rebecca Blaney, Metropolitan Public Defenders  
W. Edward Neusteter  
Xavier-Michael Moroney, Clackamas Indegent Defense Corporation

# Appendix B: Sources Reviewed

## All Workgroups

Moss Adams LLP, *Six-Year Plan to Reduce Representation Deficiency* (DRAFT Mar 15, 2024).

Oregon Public Defense Commission, *Quality Management Plan* (DRAFT April 8,

2024).

## Criminal Standards

American Bar Association, *The Oregon Project* (2022)

Committee for Public Counsel Services, *Assigned Counsel Manual*

Idaho Code § 19-855 (2013) (qualifications of counsel)

New York State Bar Association Committee on Mandated Representation, 2021 Revised Standards for Providing Mandated Representation

Office of Public Defense Services, *Best Practices for Oregon Public Defense Providers* (2010)

Oregon State Bar, *Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases* (2014)

RAND Corporation, *National Public Defense Workload Study* (2023)

*Standards for Qualification of Attorneys for Appointment to Death Penalty Cases Pursuant to Article 26.052, Texas Code of Criminal Procedure, for the Third Administrative Judicial Region*

Wisconsin Administrative Code, PD 1.01 to 1.08

Washington Standards for Indigent Defense, Standard 14: Qualifications of Attorneys, CrRLJ 3.1

### *Additional Aggravated Murder Materials Reviewed:*

*American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases* (adopted by the Public Defense Commission in 2014)

*American Bar Association Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.*

## Delinquency Standards

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Committee for Public Counsel Services, *Assigned Counsel Manual, Performance Standards Governing Representation of Juveniles in Delinquency and Youthful Offender Cases*

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Louisiana Public Defender Board Trial Court Performance Standards for Attorneys Representing Children in Delinquency Proceedings (2019)

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The Gault Center, *National Youth Defense System Standards* (2024)

Wisconsin Office of the State Public Defender, Checklist for Youth Justice Defense Counsel

## Dependency Standards

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Admin. Order No. 2015 – 40 (Arizona 2015)

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Montana Public Defender Commission Practice Standards, Section XXII, *Representation of Children in Dependent/Neglect Cases* (2018)

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Washington Defender Association's Immigration Project, *7 Steps to Putting Together Your PCR Claim*

Washington State Bar Association, *Performance Guidelines for Attorneys Representing Respondents in Civil Commitment Proceedings*

Washington Supreme Court Standards for Indigent Defense



# Attorney Qualification Standards (DRAFT)

April 2025

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# Qualification Standards for All Public Defense Attorneys

## *Licensure to Practice Law in Oregon*

To be certified to provide legal representation funded by OPDC, an attorney must have an active license to practice law in Oregon and be in good standing with the Oregon State Bar.

## ***Rules of Professional Conduct***

All attorneys providing legal representation funded by OPDC must have reviewed, be familiar with, and agree to abide by the current version of the Oregon Rules of Professional Conduct, **and agree to maintain client files for a period of no less than ten years, unless required by the Oregon State Bar to maintain the client files for a longer period of time.**

## ***Constitutional Law***

All attorneys providing legal representation funded by OPDC must have reviewed and be familiar with the current versions of the United States Constitution and the Oregon Constitution.

## ***Caseloads***

All attorneys providing legal representation funded by OPDC must commit to providing competent and effective representation to each client and to ensuring that the size and complexity of their caseloads do not interfere with providing competent representation to each client or lead to the breach of professional obligations.

## ***Court Rules***

All attorneys providing legal representation funded by OPDC must have reviewed and be familiar with all court rules applicable to the types of cases and geographic areas in which they provide legal representation, such as the Uniform Trial Court Rules, supplementary local rules, and Oregon Rules of Appellate Procedure.

## ***Accessibility***

**All attorneys providing legal representation funded by OPDC must maintain a working email address, a working phone including the ability for incarcerated clients to reach their assigned counsel, a reliable internet connection, and either a formal office space or ready access to formal meeting spaces for meeting with clients, family members, witnesses, etc. No attorney providing legal**



**representation funded by OPDC shall agree to take cases in a judicial district that would prevent them from maintaining client contact or otherwise providing adequate representation to all clients pursuant to the performance standards.**

# Qualification Standards for Representation in Criminal Proceedings

## Criminal Attorney 1

### Case Assignments

An attorney certified by OPDC as a Criminal Attorney 1 (CA1) may accept appointment in:

- Misdemeanor cases, as defined under ORS 161.545;
- Probation violation proceedings where the underlying crime was a misdemeanor;
- Arraignments on all cases; and
- Contempt proceedings, as defined under ORS 33.015.

### Minimum Qualifications

To be certified as a Criminal Attorney 1, an attorney must meet at least the following criteria:

1. Has reviewed and is familiar with the current versions of the:
  - a. Oregon Criminal Code, ORS chapter 161 through 169;
  - b. Oregon Vehicle Code, ORS chapter 801 through 826;
  - c. Oregon Evidence Code, ORS chapter 40; and
  - d. The criminal drug offenses and other crimes outside of the Criminal Code;
2. Has reviewed, is familiar with, and agrees to abide by the current versions of:
  - a. American Bar Association, *Criminal Justice Standards for the Defense Function* (4th ed 2017);
  - b. Office of Public Defense Services, *Best Practices for Oregon Public Defense Providers* (2010);
  - c. OPDC performance standards for criminal representation, when adopted;
  - d. Oregon State Bar, *Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases* (Apr 2014);
  - e. American Bar Association, *Ten Principles of a Public Defense Delivery System* (Aug 2023);

3. Satisfies at least one of the following:
  - a. Meets both of the following conditions:
    - i. Represented clients in criminal cases as a certified law student under the Oregon Supreme Court Rules on Law Student Appearances, for at least six months **or for the complete term of an Oregon law school criminal clinic**, and within three years prior to requesting qualification under this standard; and
    - ii. Presents a letter from their immediate supervisor certifying the person's ability to represent clients in misdemeanor cases;
  - b. Has served as counsel or co-counsel in at least two criminal cases that were tried to a jury;
  - c. Has served as co-counsel in at least five criminal cases. Such service shall have included attendance at court appearances and client interviews in each case;
  - d. Has served as a judicial clerk for at least six months in a court that regularly conducted criminal trials within three years prior to requesting qualification under this standard; or
  - e. Has completed an OPDC-approved training program, when available.

## Criminal Attorney 2

### *Case Assignments*

In addition to appointments a Criminal Attorney 1 may accept, an attorney certified by OPDC as a Criminal Attorney 2 (CA2) may accept appointment in:

- Felony cases as defined under ORS 161.525 other than those requiring certification as a Criminal Attorney 3 or Criminal Attorney 4; and
- All probation violations in which the underlying crime was a felony.

### *Minimum Qualifications*

To be certified as a Criminal Attorney 2, an attorney must meet at least the following criteria:

1. Has been certified by OPDC as a Criminal Attorney 1;
2. Has represented clients in misdemeanor cases for at least 12 months if their practice is at least half-time criminal defense work or 18 months if their practice is less than half-time criminal defense;
3. Has represented clients in at least 100 criminal cases from arraignment, or immediately thereafter, through the conclusion of the case;

4. Has drafted at least five motions and argued at least two substantive pretrial motions (including motions to suppress, motions *in limine*, release motions in which witnesses are examined or evidence is taken, motions to compel discovery, etc.) before a judge. A copy of a motion or case number in which it was filed should be submitted with the application for certification. The motion must be one that the applicant attorney was the primary drafter of but need not be in a case on which the applicant was the lead attorney;
5. Has completed an OPDC-approved training or trainings on felony sentencing and the collateral consequences of felony convictions, when available;
6. Can demonstrate their use of investigators in cases;
7. Can demonstrate an understanding of the process for locating and obtaining funding for an expert witness in a case (including psychiatric evaluators, substance use evaluators, medical experts, etc.);
8.
  - a. As lead counsel has tried at least four misdemeanor cases, at least one of which was before a jury; or,
  - b. In the alternative to at most two of the trials required in subsection 8.a., an attorney may:
    - i. Co-counsel cases tried to a jury as second chair if they take sole responsibility for at least two of the following sections of the trial: jury selection, opening statement, closing argument, direct examination of a witness or cross examination of a state's witness;
    - ii. Argue at least one contested sentencing to a judge; and
    - iii. Submit letters of reference from the lead counsel in those trials attesting to the applicant attorney's ability and competence to represent clients in felony cases;
  - c. Applicant attorneys may submit a letter to OPDC explaining why they are unable to meet the requirements of this section and OPDC may consider exceptions to the required four trials if an attorney is unable to meet that requirement based on factors beyond the attorney's control.
9. In at least one felony case tried to a jury, has served as co-counsel with an attorney who has previously tried felony cases and is otherwise qualified to try felony cases under these standards. As co-counsel applicant attorney must participate substantially in the planning and trial of the case including contact with the client as well as court appearances; and
10. The attorney has completed OPDC-approved trainings, when available, on:
  - a. Jury selection;
  - b. The Oregon criminal felony sentencing guidelines;
  - c. The Oregon post-prison supervision process; and
  - d. Collateral consequences of criminal felony convictions.

# Criminal Attorney 3

## Case Assignments

In addition to appointments a Criminal Attorney 2 may accept, an attorney certified by OPDC as a Criminal Attorney 3 (CA3) may accept appointment in:

- All cases brought under ORS 137.700 other than murder;
- In cases charging criminally negligent homicide or manslaughter, provided they have co-counsel who is also certified as at least Criminal Attorney 3;
- Felony offenses listed in ORS 163.305-163.479 and 163.665-163.693 (sex offenses); and
- Cases charged under 161.610 (Firearm minimum cases); and
- For all material witnesses or witnesses who are assigned an attorney after invocation of their rights.

## Minimum Qualifications

To be certified as a Criminal Attorney 3, an attorney must meet at least the following criteria:

1. Has been certified by OPDC as a Criminal Attorney 2;
2. Has represented clients in felony cases for at least 18 months;
3. Has represented at least 45 clients in felony matters from arraignment, or immediately thereafter, through the conclusion of the case;
4. Has co-counseled at least three cases filed under ORS 137.700 with a lead counsel who is certified as a Criminal Attorney 3 or 4. During these cases the attorney must be co-counsel from the beginning of the case until the resolution of the case;
5. Has tried at least one case charged under ORS 137.700 as co-counsel with an attorney who is certified as a Criminal Attorney 3 or 4. The case tried may be one of the same cases used to satisfy the requirements of subsection 4 but may also be a case that does not meet that requirement;
6. As lead counsel has tried at least four felony cases to a jury;
7. As either lead or co-counsel during pretrial motions hearings or trial the applicant attorney has presented an expert witness. The attorney may be lead or co-counsel in the overall trial;
8. The applicant attorney has a professional network of support and can provide the names of at least three attorneys certified by OPDC as a Criminal Attorney 3 or 4 who demonstrate this support; and

9. Has demonstrated proficiency in and knowledge of working with clients with a mental disorder, including the use of psychological evaluations for fitness to proceed questions as well as mitigation.

## **Criminal Attorney 4**

### ***Case Assignment***

In addition to appointments a Criminal Attorney 3 may accept, an attorney certified by OPDC as a Criminal Attorney 4 (CA4) may accept appointments:

- As lead counsel in all cases charging any degree of non-capital murder;
- As solo counsel in cases charging criminally negligent homicide or manslaughter;
- For crimes charged under Jessica's Law; and
- For any charge for which the penalty could be a potential life sentence.

### ***Minimum Qualifications***

To be certified as a Criminal Attorney 4, an attorney must meet at least the following criteria:

1. Has been certified by OPDC as a Criminal Attorney 3 and has been practicing at that level for at least two years;
2. As lead counsel has tried to a jury at least five cases that require certification as a Criminal Attorney 3, including at least one case in which a felony sex offense was alleged;
3. a. Has represented clients as co-counsel in at least:
  - i. One case charged under Jessica's Law from the beginning of the case through its resolution;
  - ii. One case charging any degree of murder from the beginning of the case through its resolution; and
  - iii. One trial before a jury charging either any degree of murder or a charge under Jessica's Law;b. In the alternative to subsection 3.a., an applicant may show that they have:
  - i. Practiced criminal defense for at least five years; and
  - ii. As lead counsel has tried at least ten cases to a jury. Trials must have been within 12 years of the application and at least five of the trials must have been cases requiring certification as a Criminal Attorney 3. These may be the same trials used to satisfy subsection 2;

4. Has completed an OPDC-approved training course on how to represent clients in murder and/or Jessica's Law cases, when available; and
5. Provides letters from at least three people, including at least one attorney who was lead counsel in one of the cases used to satisfy subsection 3 of this rule or if the applicant is qualifying through subsection 4 at least two letters from the attorneys who are certified by OPDC as Criminal Attorney 4 under these rules stating that the applicant possesses a high level of learning, scholarship, training, experience, and ability to provide competent representation to defendants charged with a crime for which the most serious penalties can be imposed, including handling cases involving co-defendants, a significant number of witnesses, and cases involving suppression issues, expert witnesses, mental state issues, and scientific evidence.

## **Criminal Attorney 5**

### **Case Assignments**

**In addition to appointments a Criminal Attorney 4 may accept, an attorney certified by OPDC as a Criminal Attorney 5 (CA5) may accept appointments:**

- **As lead counsel in all cases charging capital murder.**

### **Minimum Qualifications**

**To be certified as a Criminal Attorney 5, an attorney must meet at least the following criteria, as determined by a standing committee comprised of the Murder Resource Counsel (contracted with OPDC); one current lawyer who is qualified by OPDC for Criminal Attorney 5 cases and has been assigned an Aggravated Murder case within the previous two years, and one OPDC Resource Counsel:**

1. **Has been certified by OPDC as a Criminal Attorney 4 and has been practicing at that level for at least 5 years;**
2. **Can demonstrate:**
  - a. **substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;**
  - b. **skill in the management and conduct of complex negotiations and litigation;**
  - c. **skill in legal research, analysis, and the drafting of litigation documents;**
  - d. **skill in oral advocacy;**

- e. skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including but not limited to fingerprints, ballistics, forensic pathology, DNA evidence, digital evidence and “junk” science;
  - f. skill in analyzing and handling digital evidence from different kinds of sources and/or the knowledge of what experts to hire to assist the defense team in this area;
  - g. skill in the investigation, preparation and presentation of evidence bearing on mental conditions and status;
  - h. skill in the investigation, preparation, and presentation of mitigation evidence;
  - i. skill in the elements of trial advocacy, such as jury selection including the National College of Capital Voir Dire (NCCVD) method, cross-examination of witnesses, and opening and closing statements;
  - j. understanding of the standards set forth in Guidelines 10.2 to 10.15.2 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty Cases, Revised Edition, February 2003 (as adopted by OPDC in 2014).
  - k. understanding of and agrees to fulfill the current version of the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.
3. Has attended two of the following capital murder trainings in the last three years:
- a. Capital Case Defense Seminar offered by the California Public Defenders Association and the California Attorneys for Criminal Justice;
  - b. Making the Case for Life offered by the National Association of Criminal Defender Lawyers;
  - c. National Capital Voir Dire Training Program offered by NCCVD; or
  - d. Any capital defense training program approved by OPDC which should include presentations in one or more of the following areas in order to be approved:
    - i. relevant federal, state and international law;
    - ii. pleading and motion practice;
    - iii. pretrial investigation, preparation, and theory development regarding guilt/innocence and penalty;
    - iv. jury selection;
    - v. trial preparation and presentation, including use of experts;



- vi. ethical considerations particular to capital defense representation;
  - vii. preservation of the record and of issues for appeal and post-conviction review;
  - viii. ethical obligation of trial counsel to cooperate with post-conviction counsel;
  - ix. counsel's relationship with the client and their family;
  - x. post-conviction litigation in state and federal courts; and
  - xi. presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science; or
  - xii. analyzing, handling and using digital evidence.
- 4. Was lead counsel on five (5) cases at the Criminal Attorney 4 level to resolution;
  - 5. Has acted as co-counsel on two (2) Murder in the First-Degree case to resolution of the case; and
  - 6. Submits three letters from lawyers qualified by OPDC as Criminal Attorney 5, including at least one attorney who was lead counsel in one of the cases used to satisfy subsection 5 of this rule. The letters must outline the reasons that the writer believes that the applicant possesses a high-level of learning, scholarship, training, experience and/or ability to provide competent representation for defendants charged with Capital Murder cases.

# Qualification Standards for Representation in Delinquency Proceedings

## Delinquency Attorney 1

### ***Case Assignments***

An attorney certified by OPDC as a Delinquency Attorney 1 (DelA1) may accept appointments in the following cases:

- Misdemeanor-level cases as defined under ORS 161.545 excluding misdemeanor-level sex offenses;
- Misdemeanor-level probation violations excluding misdemeanor-level sex offenses;
- Misdemeanor-level Formal Accountability Agreements (FAA) excluding misdemeanor-level sex offenses;
- Extradition pursuant to the Interstate Compact for Juveniles (ICJ); and
- Status offense cases.

### ***Minimum Qualifications***

To be certified as a Delinquency Attorney 1, an attorney must meet at least the following criteria:

1. Has reviewed and is familiar with the current versions of the:
  - a. Oregon Juvenile Code, ORS chapter 419A through 419C;
  - b. Oregon Criminal Code, ORS chapter 161 through 169;
  - c. Oregon Vehicle Code, ORS chapter 801 through 826;
  - d. Oregon Evidence Code, ORS chapter 40; and
  - e. The criminal drug offenses and other crimes outside of the Criminal Code;
2. Has reviewed, is familiar with, and agrees to abide by:
  - a. American Bar Association, *Standards Relating to Juvenile Delinquency and Sanctions* (1980);
  - b. Oregon State Bar, *Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases* (Apr 2014);

- c. National Juvenile Defender Center (now The Gault Center), *National Juvenile Defense Standards* (2012);
  - d. The Gault Center, *National Youth Defense System Standards* (Feb 2024);
  - e. Campaign for the Fair Sentencing of Youth, *Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence* (2015); and
  - f. American Bar Association, *Ten Principles of a Public Defense Delivery System* (Aug 2023); and
3. Satisfies one of the following:
- a. Meets the requirements to be certified as a Criminal Attorney 1 and
    - i. Has completed an OPDC-approved delinquency training, when available; or
    - ii. Has completed an OPDC-approved mentorship with a mentor who is certified as a Delinquency Attorney 3 or 4. Mentorships must include observations in court of at least an admission and dispositional hearing and a contested adjudication or motion hearing. It should also include observation of at least five youth meetings, of which at least two must be the initial meeting, an introduction to the local bench and bar, and a discussion of ethical issues facing juvenile defenders; or
  - b. Does not meet the requirements to be certified as a Criminal Attorney 1; but
    - i. Has co-counseled three delinquency cases with an attorney certified as a Delinquency Attorney 3 or 4 from initial meeting through disposition, including informal dispositions; and
    - ii. Has completed an OPDC-approved training program or an OPDC-approved mentorship program as described under 3.a.ii of this section, when available; or
  - c. Can demonstrate expertise and competence in juvenile delinquency practice by completion of an OPDC-approved training, when available, or an OPDC-approved mentorship program as described in 3.a.ii of this section, if available; and one of the following:
    - i. Completion of a juvenile delinquency law school clinic program within three years prior to requesting qualification under this standard **and presentation of a letter from their immediate supervisor certifying the person's ability to represent clients in misdemeanor level delinquency cases**; or
    - ii. Service as a judicial clerk for at least six months in a juvenile court within three years of requesting qualification under this standard; or
    - iii. Practice as a juvenile defender in another state for at least six months.

# Delinquency Attorney 2

## Case Assignment

In addition to appointments a Delinquency Attorney 1 may accept, an attorney certified by OPDC as a Delinquency Attorney 2 (DelA2) may accept appointments in the following cases:

- Misdemeanor-level sex cases;
- Felony-level cases excluding felony-level sexual offenses and ORS 137.707 cases; and
- Cases in which the State wants to hold a youth as a material witness.

An attorney certified as Delinquency Attorney 2 may also accept appointments for formal accountability agreements (FAA), juvenile post-adjudication relief (JPAR), and probation violations for the above case types.

## Minimum Qualifications

To be certified as a Delinquency Attorney 2, an attorney must meet at least the following criteria:

1. Has been certified by OPDC as a Delinquency Attorney 1 for at least nine months;
2. As Delinquency Attorney 1, has represented clients in ten cases through disposition, including informal dispositions, including at least one contested hearing in which witnesses were examined;
3. Can demonstrate their use of investigators in cases;
4. Can demonstrate an understanding of the process for locating and obtaining funding for an expert witness in a case (including psychiatric evaluators, substance use evaluators, medical experts, etc.);
5. Can demonstrate experience with written motion or mitigation advocacy as shown by submission of a redacted written motion or mitigation letter for which the applicant was the primary author;
6. Has served as co-counsel with an attorney who is certified as a Delinquency Attorney 3 on at least two Delinquency Attorney 3 level cases from the start of the case through disposition, including informal dispositions, and co-counseled at least one adjudication. The attorney need not be on the case that counts as the adjudication from the beginning if the attorney meets the following requirements:
  - a. The attorney must have had sole responsibility for at least two of the following sections of the adjudication: opening statement, direct examination of a witness, cross-examination of a state's witness or closing argument; and

- b. Submits letters from the lead counsel in the adjudication attesting to the applicant attorney's ability and competence to represent youth in felony-level cases;
7. Has completed OPDC-approved trainings, when available, on:
  - a. Collateral consequences of a juvenile adjudication;
  - b. Juvenile sex offenders and treatment;
  - c. The Oregon Youth Authority system;
  - d. Adolescent brain development; and
  - e. Mental health issues in youth and how to identify them; and
8. Upon request, can present an additional showing of expertise and competence in juvenile delinquency practice by submitting three letters from delinquency defense attorneys who are familiar with the work of the attorney requesting qualification as a defense attorney representing youth in juvenile court within the last two years. These letters cannot be from the same attorney who attests to the applicant's work in section 6.b. above.

## **Delinquency Attorney 3**

### ***Case Assignments***

In addition to appointments a Delinquency Attorney 2 may accept, an attorney certified by OPDC as a Delinquency Attorney 3 (DeIA3) may accept appointment in the following cases:

- Felony-level sex offense cases, including sex offender registration hearings;
- Cases with offenses listed in ORS 137.707, excluding first-degree and second-degree murder cases; and
- Any case, excluding aggravated, first-degree, and second-degree murder, cases, in which the state has indicated an intent to file a motion to waive juvenile court jurisdiction. An attorney may not be lead counsel on such a case until they have met the requirement in 4.a. below.

An attorney certified as Delinquency Attorney 3 may also accept appointments for formal accountability agreements (FAA), juvenile post-adjudication relief (JPAR), and probation violations for the above case types.

### ***Minimum Requirements***

To be certified by OPDC as a Delinquency Attorney 3, an attorney must meet at least the following criteria:

1. Has been certified as a Delinquency Attorney 2 for at least eighteen months;

2. Has handled, as a defense attorney, ten Delinquency 2 level cases through disposition, including informal dispositions and two contested hearings in which the attorney examined witnesses;
3. Can meet one of the following categories of requirements:
  - a. Category 1
    - i. Has co-counseled with a Delinquency Attorney 3 or 4 at least five Delinquency 3 cases as a defense attorney from initial appearance through disposition, with at least two adjudications at which the attorney had sole responsibility for at least two of the following:
      1. Opening statement;
      2. Direct examination of a witness;
      3. Cross-examination of a state's witness; and/or
      4. Closing argument; and
    - ii. The attorney has completed OPDC-approved trainings, when available, on:
      1. Jury selection;
      2. The Oregon Criminal Felony Sentencing Guidelines;
      3. The Oregon post-prison supervision process; and
      4. Collateral consequences of criminal felony convictions; or
  - b. Category 2
    - i. Has co-counseled to jury trial, with Criminal Attorney 3 or 4, one case charged under 137.700 at which the attorney must have had sole responsibility for at least two of the following sections of the trial:
      1. Jury selection;
      2. Opening statement;
      3. Direct examination of a witness;
      4. Cross-examination of a state's witness; and/or
      5. Closing argument; and
    - ii. The attorney has completed OPDC-approved trainings, when available, on:
      1. Jury selection;
      2. The Oregon Criminal Felony Sentencing Guidelines;
      3. The Oregon post-prison supervision process; and
      4. Collateral consequences of criminal felony convictions; and

4. Can meet one of the following requirements:
  - a. Has co-counseled one case in which the State has indicated an intent to file a motion to waive juvenile court jurisdiction through resolution of that issue; or
  - b. Has completed OPDC-approved training on motions to waive juvenile court jurisdiction, when available;
5. Can demonstrate proficiency in and knowledge of working with youth with mental health issues; and
6. Has a professional network to support the applicant attorney as the need arises and can provide the names of at least three attorneys certified as Delinquency Attorney 3 or 4 who acknowledge this support.

## **Delinquency Attorney 4**

### ***Case Assignment***

In addition to appointments a Delinquency Attorney 3 may accept, an attorney certified by OPDC as a Delinquency Attorney 4 (DeLA4) may accept appointment as lead counsel in aggravated, first-degree, and second-degree murder cases.

An attorney certified as Delinquency Attorney 4 may also accept appointments for formal accountability agreements (FAA), juvenile post-adjudication relief (JPAR), and probation violations for the above case types.

### ***Minimum Qualifications***

To be certified as a Delinquency Attorney 4 an attorney must meet at least the following criteria:

1. Has been qualified by OPDC as a Delinquency Attorney 3 for at least two years;
2. As lead counsel has tried at least five cases requiring certification as a Delinquency Attorney 3;
3. Meets one of the following requirements:
  - a. Has co-counseled at least one Delinquency 4 or Criminal 4 case from the beginning of the case through its resolution with an attorney certified by OPDC to handle the case; or
  - b. Has practiced juvenile delinquency defense for at least five years and has tried 15 cases to resolution. Adjudications must have been within 12 years of the application and at least five of the adjudications must have been cases which require Attorney 3 qualifications (criminal or delinquency). If criminal, then the trials must have been to a jury. These may be the same trials or adjudications used to satisfy section 2 above;

4. Has co-counseled a case in which the State indicated an intent to file a motion to waive juvenile court jurisdiction from the time that the State indicated such intent through the resolution of the case;
5. Has completed an OPDC-approved training on representing youth in murder cases, when available; and
6. Provides letters from at least three people, including the attorney who was lead counsel in one of the cases used to satisfy 3.a.) above. If the attorney is qualifying pursuant to 3.b., then at least two letters must be from attorneys who are certified as Delinquency Attorney 4. Submitted letters must state whether the attorney possesses a high level of learning, scholarship, training, experience, and ability to provide competent representation to youth facing a Delinquency 4 level case, including handling cases with co-youth, a significant number of witnesses, suppression issues, expert witnesses, mental state and mental health issues, and scientific evidence.



# Qualification Standards for Representation in Dependency Proceedings

## Dependency Attorney 1

### *Case Assignments*

An attorney certified by OPDC as Dependency Attorney 1 (DepA1) may accept appointments to:

- Represent eligible parties in dependency proceedings initiated under ORS 419B.100;
- Serve as guardian *ad litem* for a parent in dependency proceedings initiated under ORS 419B.100 (excluding permanent guardianship proceedings); and
- Represent eligible parties in court oversight of agreements for voluntary placement of a child under ORS 418.312.

### *Minimum Qualifications*

To be certified as a Dependency Attorney 1, an attorney must meet at least the following criteria:

1. Has reviewed and is familiar with the current versions of:
  - a. Oregon Juvenile Code, ORS chapter 419A through 419C;
  - b. Oregon Evidence Code, ORS chapter 40;
  - c. ORS chapter 109 (concerning parent-child relationships);
  - d. ORS chapter 409 (concerning Department of Human Services' child welfare programs);
  - e. Indian Child Welfare Act (ICWA), 25 U.S.C. §§ 1901-63 (ICWA), PL 105-89 (ASFA);
  - f. Adoption and Safe Families Act of 1997, PL 105-89;
  - g. Oregon Administrative Rules Chapter 413;
2. Has reviewed is familiar with, and agrees to abide by the current versions of:
  - a. OPDC performance standards for dependency representation, when adopted;
  - b. Oregon State Bar, *Specific Standards for Representation in Juvenile Dependency Cases* (2017);

3. Satisfies one of the following:
  - a. Completion of an OPDC-certified training on processes related to dependency cases, when available;
  - b. Confirmation from an OPDC-approved attorney mentor that the attorney has sufficient understanding of the judicial, quasi-judicial, and administrative processes regulating state intervention in families in Oregon; or
  - c. Twelve months' experience representing parties in dependency proceedings in Oregon or another state if that practice is at least half-time, or 18 months' experience if less than half-time;
4. Proficiency in litigation as shown by:
  - a. Examples of four of the following activities from matters the attorney handled in public or private practice:
    - i. Contested adjudication on the merits before a jury, referee, or circuit court judge, which would satisfy two of the four activities needed under this provision;
    - ii. Contested motions for which witnesses were called to testify;
    - iii. Administrative hearings (before an administrative law judge) in which witnesses were called to testify;
    - iv. Depositions;
  - b. Certification by OPDC for Criminal Level 2 or Delinquency Level 2;
  - c. Completion of an OPDC-certified trial practice training curriculum, when available; or
  - d. Confirmation from an OPDC-approved attorney mentor that the attorney has sufficient litigation experience to adequately represent the clients to whom they are appointed;
5. Proficiency in client communication and interviewing, as demonstrated by confirmation from an OPDC-approved attorney mentor that the attorney has sufficient experience communicating with and advising clients with substantial trauma; or
  - a. One of the following:
    - i. Twelve months' experience working with vulnerable or trauma-impacted populations; or
    - ii. Completion of OPDC-approved training on trauma-informed communication or communication with children or persons with developmental disabilities or diminished capacity, when available;
  - b. And one of the following:

- i. Six months' experience representing individual clients if that practice is at least half-time or 12 months if less than half-time (may be concurrent with the above); or
  - ii. Twelve months' experience representing institutional clients (may be concurrent with the above);
6. Proficiency in the utilization of core staff and experts, as demonstrated by any of the following:
  - a. Review of OPDC and/or court records indicates familiarity with OPDC's Pre-Authorized Expenses process;
  - b. Completion of an OPDC-certified expert witness utilization training; or
  - c. Confirmation from an OPDC-approved attorney mentor that the attorney has a sufficient practice network to assist in the identification and funding of relevant core staff and experts.

## Dependency Attorney 2

### Case Assignment

In addition to appointments a Dependency Attorney 1 may accept, an attorney certified by OPDC at Dependency Level 2 (DepA2) may accept appointment to:

- Represent eligible parties in termination of parental rights proceedings initiated under ORS 419B.500;
- Serve as a guardian *ad litem* for a parent in termination of parental rights proceedings initiated under ORS 419B.500;
- Represent eligible parties in permanent guardianship proceedings initiated under 419B.365; and
- Serve as a guardian *ad litem* for a parent in permanent guardianship proceedings initiated under ORS 419B.365;

### Minimum Qualifications

To be certified as a Dependency Attorney 2, an attorney must meet at least the following criteria:

1. Has been certified by OPDC as Dependency Attorney 1 for at least 12 months if their practice is at least half-time dependency work or 18 months if their practice is less than half-time;
2. Satisfies one of the following conditions:
  - a. Has observed two contested termination of parental rights or permanent guardianship trials submitted to a judge for consideration;

- b. Has co-counseled one contested termination of parental rights or permanent guardianship trial submitted to a judge for consideration; or
- c. Has completed an OPDC-approved termination of parental rights and permanent guardianship training curriculum, when available.

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# Qualification Standards for Representation in Civil Commitment Proceedings

## Civil Commitment Attorney 1

### *Case Assignment*

An attorney certified by OPDC as a Civil Commitment Attorney 1 (CCA1) may accept appointment in proceedings under ORS chapters 426 and 427 other than proceedings alleging that a person is “extremely dangerous” under ORS 426.701.

### *Minimum Qualifications*

To be certified as a Civil Commitment Attorney 1, an attorney must meet at least the following criteria:

1. Has reviewed and is familiar with the following:
  - a. ORS chapters 426 and 427; and
  - b. Oregon Evidence Code, ORS chapter 40;
2. Has tried three civil, juvenile, or criminal cases to a jury or the bench;
3. Satisfies one of the following:
  - a. Has observed five complete civil commitment hearings from start to finish;
  - b. Has co-counseled two complete civil commitment cases which resulted in a hearing;
  - c. Completion of an OPDC-approved training on Civil Commitment practice, when available;
4. Has demonstrated knowledge of mental health issues and proficiency in working with clients experiencing mental health issues; and
5. Familiarity with the resources available for those facing commitment and alternatives to commitment.

## Civil Commitment Attorney 2

### *Case Assignment*

In addition to appointments a Civil Commitment Attorney 1 may accept, an attorney certified by OPDC as a Civil Commitment Attorney 2 (CCA2) may accept

appointments in proceedings alleging that a person is “extremely dangerous” under ORS 426.701.

### ***Minimum Qualifications***

To be certified as a Civil Commitment Attorney 2, an attorney must meet at least the following criteria:

1. Certified by OPDC as a Civil Commitment Attorney 1;
2. Certified by OPDC as a Criminal Attorney 3 or must ensure that a Criminal Attorney 3 is co-counsel on each petition;
3. Certified as a PSRB Attorney 1;
4. Has acted as lead counsel on a minimum of three proceedings under chapters 426 or 427 that resulted in a contested adjudication;
5. Has knowledge of the statutes governing the commitment of individuals determined to be “extremely dangerous” and the consequences of being committed under those statutes;
6. Complete an OPDC-approved training on extremely dangerous persons cases, when available.

# Qualification Standards for Representation in Psychiatric Security Review Board (PSRB) Proceedings

## PSRB Attorney

### *Case Assignment*

An attorney certified by OPDC as a PSRB Attorney (PSRBA) may accept appointments in proceedings before the Psychiatric Security Review Board.

### *Minimum Qualifications*

To be certified as a PSRB Attorney 1, an attorney must meet at least the following criteria:

1. Has reviewed and has a working knowledge of the constitutional rights of clients under PSRB jurisdiction and OAR chapter 859;
2. Familiarity with the Oregon State Hospital and the process of how a person moves through that system;
3. Is certified as a Civil Commitment Attorney 1 or has handled five cases in which a client's fitness to proceed was raised;
4. Has been lead counsel in:
  - a. Three civil, criminal, or juvenile cases tried to a jury or the bench;
  - b. Six administrative hearings before an administrative law judge; or
  - c. Three contested hearings in which witnesses were called.

# Qualification Standards for Representation in Post-Conviction Relief (PCR) Proceedings

## PCR Attorney 1

### *Case Assignment*

An attorney certified by OPDC as a PCR Attorney 1 (PCRA1) may accept appointments in all post-conviction relief proceedings under ORS chapter 138 for which the attorney is certified to provide representation in the underlying criminal case, other than those in which the underlying conviction is for any degree of murder or aggravated murder.

### *Minimum Qualifications*

To be certified as a PCR Attorney 1, an attorney must meet at least the following criteria:

1. Has reviewed and is familiar with:
  - a. Post-conviction relief statutes, ORS 138.510 to 138.686, and caselaw interpreting it;
  - b. Federal *habeas corpus* statutes and caselaw concerning exhaustion of state remedies;
  - c. The law regarding procedural default;
  - d. Relevant statutes of limitations;
2. Understands the Oregon Rules of Civil Procedure and Oregon Evidence Code, ORS chapter 40, as demonstrated by:
  - a. Having previously drafted and filed at least three civil pleadings, including *habeas corpus* or PCR petitions, in state or federal court;
  - b. Having litigated at least three prior civil cases, including PCR and *habeas corpus*, to judgment in state or federal court; and
  - c. Having reviewed chapters 5 and 23 through 27 of Oregon State Bar, *Oregon Civil Pleading and Litigation* (2020);
3. Satisfies one of the following categories of requirements:
  - a. Has tried at least four cases of the same level as the underlying criminal case to verdict as lead counsel; or
  - b. Satisfies all of the following conditions



- i. Is certified by OPDC as a Criminal Attorney 1;
  - ii. Is knowledgeable of criminal trial procedures, defenses, sentencing guidelines, and constitutional rights of the criminally accused; and
  - iii. Has tried at least two civil cases to verdict, five criminal cases before a jury, or ten delinquency cases before a judge;
4. Has litigated four contested hearings or depositions in which the attorney examined expert witnesses;
5. Can demonstrate their use of investigators in cases; and
6. Has co-counseled two post-conviction relief cases or is acting under the supervision of lead counsel who is certified as a PCR Attorney 1.

## PCR Attorney 2

### *Case Assignment*

In addition to appointments a PCR Attorney 1 may accept, an attorney certified by OPDC as a PCR Attorney 2 (PCRA2) may accept appointment in all post-conviction relief proceedings under ORS chapter 138 in which the underlying conviction is any degree of murder other than aggravated murder.

### *Minimum Qualifications*

To be certified as a PCR Attorney 2, an attorney must meet at least the following criteria:

1. Is certified as a PCR Attorney 1;
2. Has been certified as a PCR Attorney 1 for at least 12 months;
3. Is certified as a Criminal Attorney 4; and
4. Has litigated at least five PCR cases to a decision by the court in which the underlying convictions were subject to ORS 137.700 or similar mandatory minimum sentences.

## PCR Attorney 3

### *Case Assignment*

**In addition to appointments a PCR Attorney 2 may accept, an attorney certified by OPDC as a PCR Attorney 3 (PCRA3) may accept appointment in all post-conviction relief proceedings under ORS Chapter 138 in which the underlying conviction is aggravated murder.**

### **Minimum Qualifications**

To be certified as PCR Attorney 3, an attorney must meet at least the following criteria, as determined by a standing committee comprised of the Murder Resource Counsel (contracted with OPDC); one current lawyer who is qualified by OPDC for PCR Attorney 3 cases and has been assigned a Murder in the First Degree PCR case within the previous two years and one OPDC Resource Counsel:

1. Has been certified by OPDC as a PCR Attorney 2 and has been practicing at that level at least three (3) years;
2. Has civil case experience including knowledge of Rules of Civil Procedure and how to conduct a civil case including but not limited to pleadings, timelines and depositions;
3. Has conducted five (5) evidentiary hearings in a PCR case where multiple witnesses were called and arguments made before the court;
4. Can demonstrate:
  - a. substantial knowledge and understanding of the relevant state, federal and international law, both procedural and substantive, governing capital cases;
  - b. skill in the management and conduct of complex negotiations and litigation;
  - c. skill in legal research, analysis, and the drafting of litigation documents;
  - d. skill in oral advocacy;
  - e. skill in use of expert witnesses and familiarity with common areas of forensic investigation, including but not limited to fingerprints, ballistics, forensic pathology, DNA evidence and “junk” science;
  - f. skill in investigation, preparation and presentation of evidence bearing on mental condition and status;
  - g. skill in the investigation, preparation and presentation of mitigation evidence;
  - h. understanding of the standards set forth in Guidelines 10.2 to 10.15.2 of the American Bar Association Guidelines for the Appointment and Performance of Defense Counsel in Death Penalty cases, Revised Edition, February 2003 (as adopted by OPDS in 2014); and
  - i. understanding of and agrees to fulfill the current version of the ABA Supplementary Guidelines for the Mitigation Function of Defense Teams in Death Penalty Cases.
5. Has attended one of the following conferences within the last three years:

- a. **Capital Case Defense Seminar offered by the California Public Defenders Association and the California Attorneys for Criminal Justice – Post-conviction track;**
  - b. **Anthony G. Amsterdam Capital Post-Conviction Skills Seminar (“The Habeas Institute”);**
  - c. **Annual National Federal Habeas Corpus Seminar (NHS); or**
  - d. **OPDC-approved training program in one or more of the following areas in order to be approved:**
    - i. **relevant state, federal and international law;**
    - ii. **civil pleading and motion practice;**
    - iii. **ethical considerations particular to capital defense;**
    - iv. **trial preparation and presentation, including use of experts;**
    - v. **preservation of the record; or**
    - vi. **presentation and rebuttal of scientific evidence, and developments in mental health fields and other relevant areas of forensic and biological science.**
- 6. Handled five (5) PCR Attorney Level cases to resolution;**
- 7. Has co-counseled two (2) cases at the PCR Attorney 3 level cases to resolution of the case;**
- 8. Submits three letters from lawyers qualified by OPDC at PCR Attorney 3, including at least one attorney who was lead counsel in one of the cases used to satisfy subsection 6 of this rule. The letters must outline the reasons that the writer believes that the applicant possesses a high-level of learning, scholarship, training, experience and/or ability to provide competent representation for defendants in post-conviction status on Capital Murder cases.**

# Qualification Standards for Representation in *Habeas Corpus* Proceedings

## Habeas Corpus Attorney 1

### **Case Assignment**

An attorney certified by OPDC as a Habeas Corpus Attorney 1 (HCA1) may accept appointment in extradition cases arising out of criminal cases and related petitions for *habeas corpus*.

### **Minimum Qualifications**

To be certified as a Habeas Corpus Attorney 1, an attorney must meet at least the following criteria:

1. Understands the Oregon Rules of Civil Procedure and Oregon Evidence Code, ORS chapter 40, as demonstrated by:
  - a. Having previously drafted and filed at least three civil pleadings, including *habeas corpus* or PCR petitions, in state or federal court;
  - b. Having litigated at least three prior civil cases, including PCR and *habeas corpus*, to judgment in state or federal court and
  - c. Having reviewed chapters 5 and 23 through 27 of Oregon State Bar, *Oregon Civil Pleading and Litigation* (2020);
2. Has been certified by OPDC as a Criminal Attorney 1;
3. Has taken at least ten criminal or juvenile cases to trial or adjudication as lead counsel, or at least two civil cases to verdict;
4. Has co-counseled at least two *habeas corpus* cases or is acting under the supervision of an attorney certified as Habeas Attorney 1;
5. Has read and understands *Michigan v. Doran*, 439 U.S. 282 (1978);
6. Has read and understands the Uniform Criminal Extradition Act, ORS 133.743 to 133.857.

# Habeas Corpus Attorney 2a

## Case Assignment

In addition to appointments a Habeas Corpus Attorney 1 may accept, an attorney certified by OPDC as a Habeas Corpus Attorney 2a (HCA2a) may accept appointments in *habeas corpus* proceedings challenging the state's authority to confine the petitioner.

## Minimum Qualifications

To be certified as a Habeas Corpus Attorney 2a, an attorney must meet at least the following criteria:

1. Has been certified as a Habeas Corpus Attorney 1; and
2. Has experience with and understanding of the Oregon Sentencing Guidelines.

# Habeas Attorney 2b

## Case Assignment

In addition to appointments a Habeas Corpus Attorney 1 may accept, an attorney certified by OPDC as a Habeas Corpus Attorney 2b (HCA2b) may accept appointments in *habeas corpus* proceedings challenging the conditions of the petitioner's confinement.

## Minimum Qualifications

To be certified as a Habeas Attorney 2b, an attorney must meet at least the following criteria:

1. Has been certified as a Habeas Attorney 1;
2. Demonstrated knowledge of the use of medical or psychiatric records in litigation by:
  - a. Having litigated four contested hearings or depositions in which the attorney examined expert witnesses;
  - b. Having handled ten cases in which they consulted with a client about medical or psychiatric records;
  - c. Having handled five cases in which the client had diminished capacity or the question of diminished capacity was evaluated by a psychologist, psychiatrist, or neurologist; or
  - d. Completion of an OPDC-approved training on working with clients with diminished capacity, when available; and
3. Can demonstrate their use of investigators in cases.

# Process for Attorney Qualification

Attorneys seeking to be qualified pursuant to these Standards must submit an application on the OPDC website and upload the appropriate attachments as necessary.

1. OPDC will review the qualification materials and may request additional supporting documentation. Not all attorneys who meet the minimum qualifications for a case type will be approved for appointment to cases of that type.
2. OPDC will notify the attorney of the case types for which the attorney has been approved for qualification and/or the reason for its decision not to approve the attorney for qualification for all case types for which qualification materials were submitted.
3. In each case type for which an attorney has sought certification, OPDC may:
  - a. Approve
  - b. Deny
  - c. Provisionally Qualify
4. Provisional qualification is reserved for circumstances in which the attorney meets most but not all qualification standards and the attorney:
  - a. Anticipates meeting the remaining standards imminently, and
  - b. Provides a justification for requesting provisional qualification in anticipation of completing the remaining standards. Failure to meet the remaining standards within a reasonable period following provisional approval will result in loss of the provisional qualification.
5. *Requests for Reconsideration.* An attorney who is not approved for appointment in a requested case type may request reconsideration by submitting to OPDC, within 21 calendar days of the notice of denial of qualification, additional information including supporting documents, if any, that the attorney believes demonstrates that the attorney meets the qualification criteria. Requests for Reconsideration may be reviewed by the Compliance, Audit, and Performance Committee.
6. All attorneys providing legal representation funded by OPDC must notify OPDC if they elect to change: their name, their place or name of business, their contact information, or the nature of their practice.

OPDC may review and revise an attorney's qualifications at any time based on information received that implicates the attorney's ability to provide adequate assistance to their clients.

Attorneys accepting cases for which they are not qualified will not be compensated for work on those cases.

## Qualification Periods

Attorneys currently approved to handle cases under OPDS's prior Qualification Standards may continue to handle cases at previously approved levels for a period of six months from the date of adoption of these standards, after which all attorneys must requalify every three years, to coincide with the date of their triennial Continuing Legal Education (CLE) certification with the Oregon State Bar.

- *For example, an attorney whose CLE certifications are due in December 2025, will requalify with OPDC at that time. An attorney who submitted their CLE certification in January 2025, will requalify with OPDC by January 2028.*

An attorney who is requalified or newly qualified by OPDC within one year of their triennial CLE certification date need not requalify until the following CLE certification date.

- *For example, an attorney who submits and is approved to have OPDC increase their certification from Criminal Attorney 1 to Criminal Attorney 2 on January 1, 2026, and who has a CLE certification date of November 1, 2026, need not requalify until November 1, 2029.*

OPDC may suspend or terminate contracts or modify qualification approvals for failure to timely requalify.

# Equivalent Experience Qualification

1. An attorney who has practiced in a relevant area of law in a state other than Oregon or in a comparable practice area and who wishes to be certified in an area or practice level but does not meet the requirements set forth in the Attorney Qualification Standards due to differences in jurisdictional practices or types of experience must submit an application, in writing, explaining why their experience should satisfy the requirements of zealous and competent advocacy for the relevant practice area. The application should include, at minimum:
  - a. A curriculum vitae;
  - b. A list of five to ten representative cases, including dispositions and a brief explanation of the work the applicant performed on each;
  - c. Five representative pleadings or portions of pleadings no longer than ten pages each;
  - d. An explanation of what part(s) of the relevant Qualification Standards the applicant can meet directly or by comparison to other equivalent work;
  - e. An explanation of what part(s) of the relevant Qualification Standards the applicant cannot meet and why the applicant believes their experience mitigates that shortcoming;
  - f. An explanation of what measures the applicant has taken to familiarize themselves with relevant Oregon practice and procedure and, if available, names of practitioners whom they are able to seek additional guidance from going forward;
  - g. Relevant training programs attended or taught and/or certifications obtained; and
  - h. Three letters of support from attorney defense practitioners or judges, who are familiar with the applicant's abilities and attest to the applicant's learning, scholarship, training, experience, and ability to provide competent representation in the relevant practice area and level.
2. In determining whether an applicant will be qualified, OPDC will consider, *inter alia*:
  - a. The length of time the applicant has practiced;
  - b. The amount of direct client representation that prior practice entailed;
  - c. The percentage of time the applicant has devoted to the relevant practice area; and
  - d. Any indicia of competence in the relevant practice area. Time spent in a role supervising other attorneys in the relevant practice area will be considered favorably as evidence of competence.



3. **After review of the Equivalent Experience Application, OPDC will notify the applicant what practice area(s) and level(s), if any, OPDC will qualify the applicant for. After initial qualification, the applicant will thereafter move up qualification levels via the Attorney Qualification Standards process.**

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# Practicing Under Supervision

OPDC may, in its discretion, allow an attorney who does not otherwise meet the Attorney Qualification Standards to practice “under supervision.” An attorney practicing “under supervision” working under an approved supervision plan may accept cases one level above their independent qualification (or at Level 1, if not independently qualified), except no attorney may accept appointment under supervision at Criminal Attorney Levels 4 or 5, or Delinquency Attorney Level 4. Prior to approving appointment under supervision, OPDC must approve both the supervision plan and the supervisor qualifications.

## 1. Approved Supervision Plans must have:

- a. A procedure for regular check-ins with each attorney being supervised and the frequency of these check-ins;
- b. A procedure for random observation of individual attorneys in court. Newer attorneys and attorneys who have just moved up in qualification standards should be observed relatively frequently, but the plan must include observation of all attorneys during the pendency of the supervision plan. The court observations must be documented, including but not limited to type of case, type of hearing observed, whether witnesses were called during the hearing, etc.;
- c. A procedure for random file review with each attorney being supervised. The supervising attorney should randomly select cases from the supervised attorney’s current caseload for the file review to ensure that, among other things, the client is receiving adequate attention, all issues have been spotted and addressed, appropriate motions have been filed or are in preparation, investigation is appropriate and progressing, and the use of expert witnesses has been considered and appropriately pursued;
- d. A procedure for the supervising attorney to document concerns raised about individual attorneys, including a procedure for addressing complaints or concerns from a client, judge, or opposing counsel;
- e. A procedure for how case assignments will be monitored; and
- f. An annual performance evaluation for each attorney.

## 2. Qualified Supervisors must:

- a. Be qualified by OPDC and have practiced at the relevant practice level for at least one year with a majority of their practice being in the relevant practice area, and
- b. Have taken an OPDC Supervisor Training Course, when available; and
- c. Be willing to comply with OPDC Supervision Policies.

Organizations seeking supervisory approval should submit Supervision Plans and Supervisor Qualification applications at [\[URL\]](#).

### ***Duration***

**Supervision authorization will expire after one year. At the expiration of the supervision authorization, the attorney may apply for independent qualification or submit an application to renew authorization to practice under supervision.**

# Oregon Public Defense Commission

## Financial & Case Management System Update

April 16, 2025

**Jessica Kampfe, Executive Director**  
[Jessica.Kampfe@opds.state.or.us](mailto:Jessica.Kampfe@opds.state.or.us)

**David Martin, CIO, FCMS**  
Presenting



FCMS April 2025

# Agenda



**CONTRACT AWARD  
STATUS**



**SCHEDULE**



**ACCOMPLISHMENTS**



**UPCOMING  
MILESTONES**



**BUDGET**



**Q&A**

# Implementation Planning Phase Approval & Contract Award Status



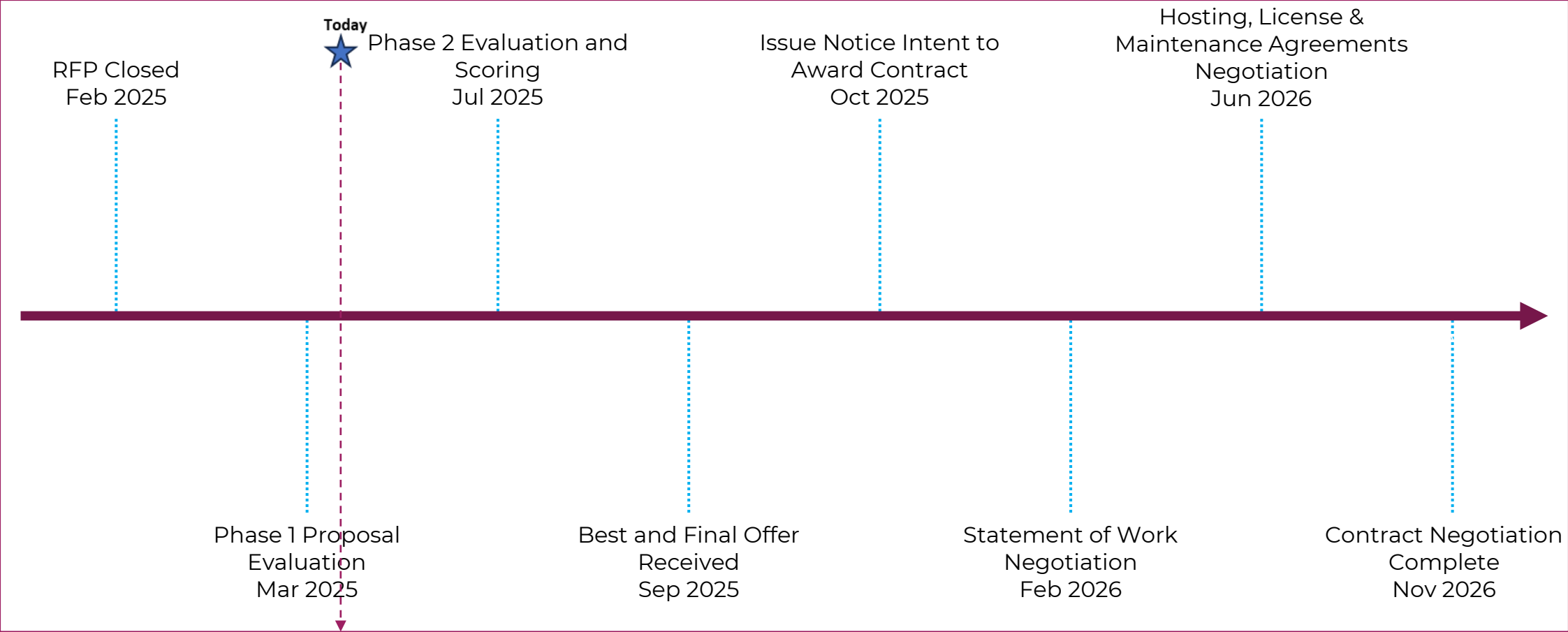
## **Contract Award, Negotiations, and Execution:**

The procurement is on track with proposals in Evaluation Phase 2. The procurement schedule has been updated to project completion of proposal evaluation, followed by contract award, negotiations, and execution.



**Implementation Planning:** Implementation Planning Phase (Stage Gate 3) is in process. The FCMS team is working toward use case completion, governance artifact completion, as well as budget and schedule refinement.

# Procurement Schedule



*(Revised schedule is available)*



# Accomplishments



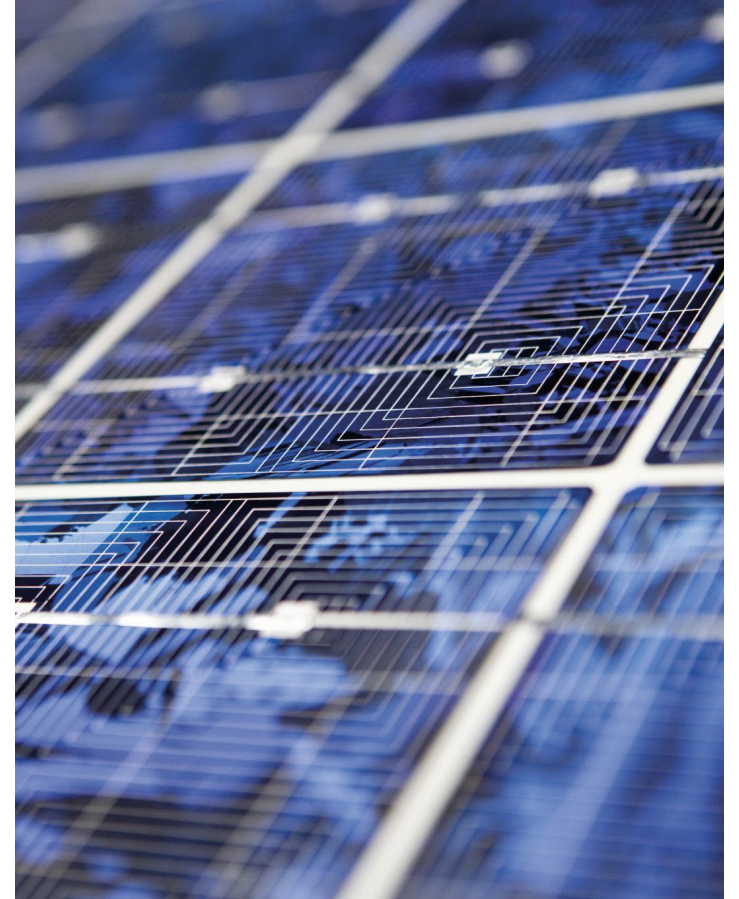
Future state process mapping and Use Cases are completed for the Financial Division. Appellate Division "happy path" process mapping is also complete.



The Benefits Management Plan was completed and is in review with our Portfolio Management Team.



Procurement Phase 1 of proposal evaluation is complete.





# Upcoming Milestones



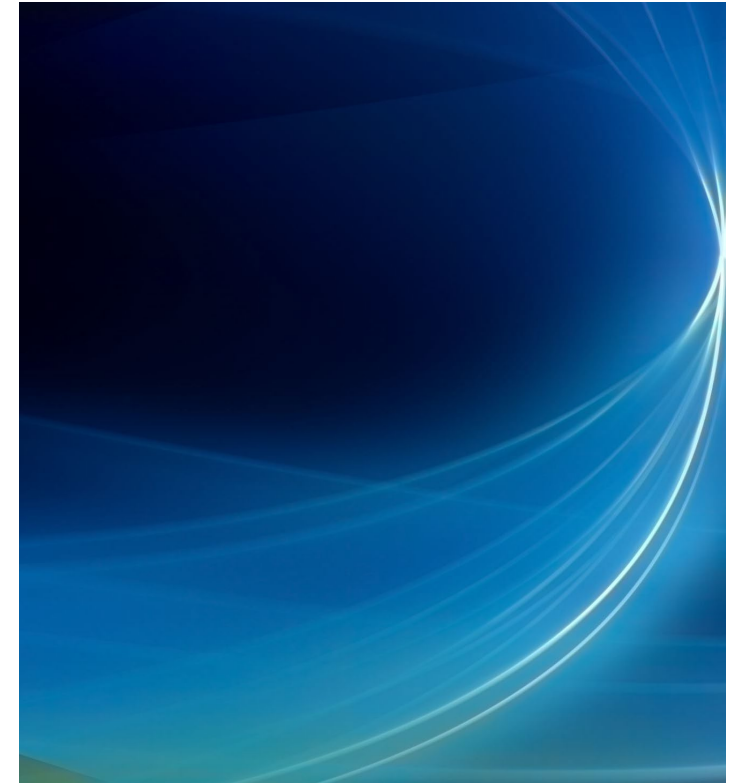
Appellate Future State Diagrams for Exception Processes & All Appellate Use Cases are scheduled to be completed by end of April 2025.



Implementation Planning work will continue with refreshing 14 project artifacts including updating the Scope, Schedule, Budget.

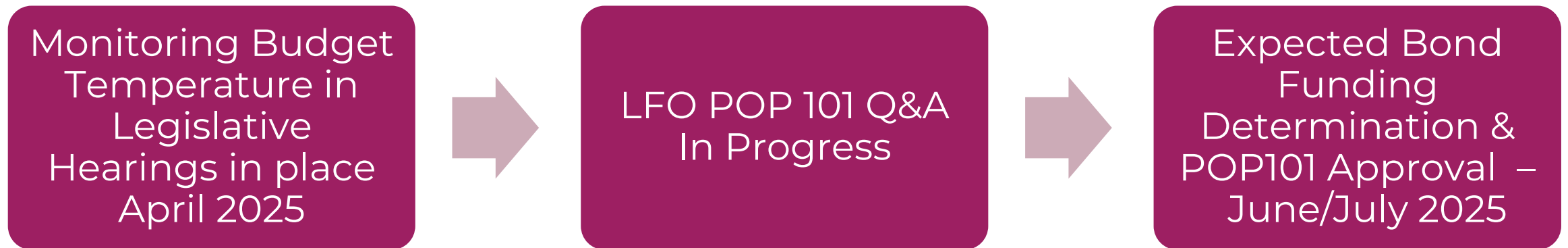


Procurement Phase 2 evaluation of project team presentation of revised proposals and solution demonstration.



FCMS April 2025

# Budget



# Q&A