

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.

Jordon A. Huppert

From: Stacey Lowe <slowe@swopds.org>
Sent: Tuesday, March 4, 2025 5:22 PM
To: Resource Counsel; jordan.a.huppert@opdc.state.or.us
Subject: Written response to policy proposals
Attachments: OPDC Response to Proposed Policy Changes.doc

Good evening,

Thank you for allowing the opportunity to provide written feedback. I am happy to assist in any way I can. Please do not hesitate to reach out to me with any questions or concerns. I hope you have a fantastic evening.

Stacey K. Lowe
OSB #043485
Lawyer/Director
Pronouns: she/her
Southwestern Oregon Public Defender Services
465 Elrod Ave. Suite 201
Coos Bay, OR 97420
Office 541-267-2472
Cell 541-808-5389
Fax 541-267-6853

CONFIDENTIALITY NOTICE

This email, including any attachments, may contain information that is confidential and is for the use of the intended recipient only. Any review, reliance, forwarding, or distribution by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies of the email and any attachments.

SOUTHWESTERN OREGON PUBLIC DEFENDER SERVICES, INC.

DIRECTOR
Stacey K. Lowe

OFFICE MANAGER
Laynie Wilson

INVESTIGATORS
Robie Sell
Bradley Howell

ASSISTANT PUBLIC DEFENDERS
Robert Manske Ana Tinker Colwell
M. Jon Reagan James von Hippel
Andrew G. Wilson

CASE MANAGER
Josie Sigler

COMMENTS OPDC POLICY DRAFTS DISCUSSED FEBRUARY 27, 2025:

Co-Counsel Policy –

“We can’t afford it” is what one tells their children when declining to buy them something at the store not what one tells a citizen charged with murder when discussing to have or not to have co-counsel and if a court were to decline to appoint a second chair in a murder case I believe OPDC’s approval for a second chair is and should be sufficient for the second attorney to work on the case both because of the statutory authority given to OPDC by the legislature and if necessary through the extraordinary case credit system should the agency choose to utilize that route.

Reduced Caseload Program for First Year Attorneys Policy –

I believe both numbers are still too high, but this is a good place to start.

Attorney Warrant Removal Policy –

This is helpful in cases where we are prevented from taking a case because we are currently representing someone on warrant status, who we may have never met or have no confidential information on, and who is a witness or co-defendant on a different case to a defendant currently appearing for court. However, the case weighting is strange given that OPDC is seeking two-year contracts, and a lot can happen in that time frame. What happens if the originally assigned attorney has left the provider’s employ? What if that assigned attorney is at or over capacity when this individual is picked up? What if that attorney is on protected leave? Looking for more ways to short current providers on the amount of credit given when we are already working so hard and being underfunded is simply unfair and uses resources better directed at truly stabilizing the public defense workforce.

This raises another issue for me which is the agency’s prior actions in situations when an attorney is on protected leave in accordance with Oregon’s new law and existing federal law. If an entity alerts OPDC that this attorney will not be taking case for a few weeks, or months, while on leave why is the agency treating that as a vacancy and removing the funding for that position? While we may not have to pay the employee’s salary, we are still be paying other expenses for that employee such as medical/dental/vision insurance, and the associated overhead and we certainly are unable to recruit for their position, in addition, others within the office put out extra work to cover their existing cases while they are out.

EROSION OF THE RIGHTS OF ONE IS EROSION OF THE RIGHTS OF ALL.

MAIN OFFICE: 465 Elrod Avenue, Suite 201

Coos Bay, OR 97420

(541) 267-2472 / FAX (541) 267-6853

Toll-Free (877) 763-6442

Partial Weighting for Early Withdrawal from Cases & for Second and Subsequent Attorneys –

I am addressing these together because it makes sense to me. First, I think that it is patently unfair and unjust that the THIP program attorneys will get paid for all of their work and at a much higher rate while OPDC is attempting to nickel and dime contracted providers at every opportunity when we are already making much less and shouldering a much greater burden and percentage of the work. We too should get paid for the work that we do, and I can tell you from my experience in my county that due to the fast pace we are required to practice at and move cases forward at we do a lot of work right away. For each case type the number of cases a full time attorney handling only that case type can do in a year at 100% of MAC divided by the number of working hours in a year will reveal the approximate number of hours OPDC would expect an attorney to spend on each case of that type and if an attorney has spent that amount of time on a case they should get the full credit. It shouldn't matter if they are the first or third attorney appointed to handle that case. If they have spent ½ the amount of time on that case, they should get ½ the credit and so on. Choosing to use length of time an attorney has had a case is not related to the amount of work done and can greatly advantage some attorneys and greatly disadvantage others. This kind of policy only pushes more providers out of public defense because it does not account for actual work done. In addition, the presumption that an attorney taking over the case will have anything to benefit from is a fallacy. Even if it were true it often doesn't matter because frequently the clients who request new attorneys do so because they do not like what their current attorney is telling them. So clients may attempt to get different advice by saying "my other attorney said. . ." requiring the new attorney to do additional otherwise unnecessary work to show the client that this asserted advice is unhelpful, and there are cases where the prior attorney did provide inaccurate information for one reason or another, and the new attorney must then do extra work to provide the client with the necessary information to show them that the previous advice was in fact incorrect and that the advice they are currently receiving is correct. There is also the relationship building phase which still must happen and can be made even more difficult due to the previous representation, and there is typically a shorter time period in which the new attorney must get up to speed. It is also frequently the case that the clients who have had multiple attorneys are quite difficult and require more work due to that factor alone. For these reasons and more I am sure this policy would disincentivize folks from taking cases that started with another attorney. Please understand that you still have to review all the same discovery, meet with the client, do your own independent investigation, aside from motions filed which the new attorney may or may not agree with I don't understand what exactly OPDC thinks the benefit is. Finally, the process OPDC uses to grant additional case weight is inconsistent and unpredictable. In my experience with that system, even cases that should be granted extra credit under OPDC's own rules are often not granted that credit and there is nothing contractors can do about it.

Vacancy Funding Policy –

This policy is completely unworkable for rural counties we simply cannot, despite our best efforts, fill vacancies within 60 days. In addition, past attempts to prevent the loss of NEEDED positions

SOUTHWESTERN OREGON PUBLIC DEFENDER SERVICES, INC.

DIRECTOR
Stacey K. Lowe

OFFICE MANAGER
Laynie Wilson

INVESTIGATORS
Robie Sell
Bradley Howell

ASSISTANT PUBLIC DEFENDERS
Robert Manske Ana Tinker Colwell
M. Jon Reagan James von Hippel
Andrew G. Wilson

CASE MANAGER
Josie Sigler

within our office have resulted in hiring decisions we were forced to make that we would not have otherwise made. While the positions were preserved, these decisions caused other serious problems within the office. This is another policy that is very harmful to public defense contractors particularly rural nonprofit offices. It would be preferable and likely much more effective if the reason behind these policies were to be shared so that we could assist in coming up with alternatives that might meet OPDCs goals while not causing harm to our offices.

Contract Compliance Policy –

If the goal of OPDC and the legislature is to increase the number of practicing public defenders and to do so in the most economically efficient way possible then the goal should be to draw attorneys into nonprofit public defender offices like SWOPDS. However, these proposed policies and the recent recommendations by OPDC combined with the lack of support for the contracted providers who handle approximately 86% of the criminal cases classified as public defense cases is driving attorneys out of and away from our offices.

OTHER:

In addition to my comments above regarding the individual policy drafts here are a few more thoughts for consideration. Funding focused on the fringes of the providers can never hope to solve the crisis. Over the last 3-4 years my small 9 attorney office has brought one retired attorney back into public defense, recruited one practicing attorney from another state as well as interviewed several other practicing out of state attorneys, hired and trained two new graduates who are still practicing just not with our office and are currently training one new bar member and 3 SPPE licensees. That is a total of 8 for one small office, and a total of 3 of whom came from out of state. We are part of the provider model handling 86% of all public defense work and we are the model doing nearly if not all of the training and recruitment and we are the same group who is intentionally being underfunded and overworked, and the policies being considered today with only a single exception exacerbate that by functionally requiring more work from us for even less funding again. This is a path to destruction. My office is already operating in deficit nearly every month and has been for years and that cannot continue if the office is to survive. That is simple math.

What is equally if not more important is that those of us who are doing this work and training the next generation of public defenders simply cannot keep up this pace forever under these conditions.

EROSION OF THE RIGHTS OF ONE IS EROSION OF THE RIGHTS OF ALL.

MAIN OFFICE: 465 Elrod Avenue, Suite 201

Coos Bay, OR 97420

(541) 267-2472 / FAX (541) 267-6853

Toll-Free (877) 763-6442

I know this to be true because I am currently doing it, and I am exhausted! I need a new case management system, I need some new hardware, I need new time tracking capabilities for my staff and document integration, I need to be able to send secure emails and have a client portal so that our clients can access their discovery from the library if they have no place to keep or access it otherwise. I need to be able to pay my staff competitive wages so that they don't have to work full-time and still qualify for food stamps! I need another case manager. I need caseloads to be lower so that we aren't burning attorneys out.

What is being asked of us to enable us to help our clients meaningfully, which is what we do, is unrealistic and unsustainable. We do it because our clients need our help, and we care, but the bottom line is that the actions taken thus far by OPDC and proposed today are pushing us all out and are going to cause offices like mine to collapse. I have been saying this for years now and I do not believe I am being heard. The only way to solve this crisis is to support and fund the providers who are already doing most of this work. If my office had more funding and could hire more attorneys we could take cases in Douglas, Curry and Jackson. If, however, our funding stream remains as is and we are unable to compete with other employers, we will continue to lose attorneys and each time we start a new hiring/recruitment session it is more and more difficult and has required an increase in pay before we get applicants. I can't do that again so next time I might not be able to fill the vacancies, I certainly won't be able to do it within the 60-day window.

I would also like to remind OPDC that public defenders save the state money as well, by creating better resolutions in our work with prosecutors for clients that can keep them at their jobs, in their homes and with their families as opposed to in prison or jail for non-violent offenses. This means they remain employed and participating members of our communities, paying taxes and rent or mortgages while continuing to raise their children as opposed to having lost their jobs, housing and in many cases their children, and then relying upon taxpayer dollars to provide care for their families.

Thank you for your time and consideration.

Stacey K. Lowe
OSB #043485
Lawyer/Director
Pronouns: she/her
Southwestern Oregon Public Defender Services
465 Elrod Ave. Suite 201
Coos Bay, OR 97420

President, Stacey Lowe,
Coos County

Secretary, Joel Wirtz,
Deschutes County

Treasurer, Clint Oborn,
Jackson & Josephine
Counties

Members

Carl Macpherson,
Multnomah &
Washington Counties

Kati Dunn, Baker,
Malheur, Grant, Union,
Wallowa, & Harney
Counties



180 E. 11th Eugene, Oregon 97401

info@publicdefendersoforegon.org

Eugene Thompson, Douglas
County

Caitlin Plummer, Lane
County

Justin Morton, Umatilla
County

Stacey Reding, Multnomah
County

Shannon Wilson, Marion
County

Heather Busby,
Multnomah County

Richard Balsley, Hood
River & Wasco Counties

February 18, 2025

Oregon Public Defense Commission

Via Email Only

Re: 2025-27 contracts

Dear Chair Nash, and Members of the Commission:

Public Defenders of Oregon, a nonprofit 501(c)4, was founded to advocate for nonprofit public defender offices across Oregon. We organized in response to the overwhelming and urgent need to provide sound and sustainable public defense practices, to build and retain a strong public defense workforce, and to center the needs of all people deserving effective and ethical representation.

On February 13, 2025, a quorum of the Commission met for a Workgroup to discuss contracting for 2025-27. During that meeting, the Commission considered three possible proposals regarding contracts to be discussed at future meetings: (1) MAC model; (2) MAC with additional policies; and (3) retrofit the National Public Defense Workload Study (NPDWS), which OPDC adopted in the spring of 2024. The Commission seemed in favor of continuing MAC with additional policies. Continuation of MAC violates the prior decision to adopt the

President, Stacey Lowe,
Coos County

Secretary, Joel Wirtz,
Deschutes County

Treasurer, Clint Oborn,
Jackson & Josephine
Counties

Members

Carl Macpherson,
Multnomah &
Washington Counties

Kati Dunn, Baker,
Malheur, Grant, Union,
Wallowa, & Harney
Counties



180 E. 11th Eugene, Oregon 97401

info@publicdefendersoforegon.org

Eugene Thompson, Douglas
County

Caitlin Plummer, Lane
County

Justin Morton, Umatilla
County

Stacey Reding, Multnomah
County

Shannon Wilson, Marion
County

Heather Busby,
Multnomah County

Richard Balsley, Hood
River & Wasco Counties

NPDWS and is in contravention of the Oregon statute regarding OPDC policies and procedures¹. We reiterate the need for a statewide workload plan as outlined in our attached letter.

We agree with several points that commissioners made at the workgroup meeting:

- Providers should be either FTE or hourly, but not both, which is consistent with the Sixth Amendment Center and the statute.
- Workload/caseload must consider the experience-level of the attorney: 300 misdemeanor cases per year per attorney is too many for new attorneys. Additionally, 165 minor felony cases and 138 A/B felonies is also too high. This consideration is consistent with OSB Formal Op. 2007-178.
- Providers who are less than full-time should have to keep time on their contract cases even if they are not billing hourly.
- The State Trial Division cannot have a different caseload/workload standard than the other providers.
- We need to add more full-time attorneys (and support staff) to counties that are under contracted.

We also want to address several topics that were discussed or are relevant to any discussion on contracting:

¹ On May 7, 2024, we wrote a letter to OPDC outlining the need for a statewide workload plan, not MAC, which is attached.

President, Stacey Lowe,
Coos County

Secretary, Joel Wirtz,
Deschutes County

Treasurer, Clint Oborn,
Jackson & Josephine
Counties

Members

Carl Macpherson,
Multnomah &
Washington Counties

Kati Dunn, Baker,
Malheur, Grant, Union,
Wallowa, & Harney
Counties



180 E. 11th Eugene, Oregon 97401

info@publicdefendersoforegon.org

Eugene Thompson, Douglas
County

Caitlin Plummer, Lane
County

Justin Morton, Umatilla
County

Stacey Reding, Multnomah
County

Shannon Wilson, Marion
County

Heather Busby,
Multnomah County

Richard Balsley, Hood
River & Wasco Counties

- OPDC should not base contract reimbursement solely on the years of experience of an attorney. Reimbursement should depend on the type of cases an attorney is actually providing representation on rather than their qualification level and their willingness to take cases at that level.
- Contracts should provide full funding for in-house investigators². In the 2023-25 contracts, OPDC did not fully fund investigation as our offices receive \$75,000 annually for each on staff full-time investigator even though our total cost per investigator is over \$100,000.
- Contracts must account for the time actually spent working on individual cases. For example, the current contract has a maximum of 300 misdemeanor cases, which equates to roughly 5.25 hours per case (using the OPDC-adopted 1578 annual work hours). A significant percentage of our cases require more hours of work than accounted for in the current contract. The contract should have set guidelines for additional credit for cases that exceed the contemplated amount of time: i.e., having a trial in a misdemeanor case means that the actual time spent in

² At the PDSC meeting on November 22, 2021, the Commission heard public comment and considered the need to fund training, supervision, investigation, and administration at public defender offices. The Commission approved a motion, 5-1, to give OPDS further direction to consider including this funding in the contracts starting July of 2022. In the Summer of 2022, the PDSC agreed to fund training, supervision, and fully fund investigation at public defender offices. These services and funding are critical to our mission of recruiting and retaining quality people, and, ensuring that we provide quality representation for all of our clients.

President, Stacey Lowe,
Coos County

Secretary, Joel Wirtz,
Deschutes County

Treasurer, Clint Oborn,
Jackson & Josephine
Counties

Members

Carl Macpherson,
Multnomah &
Washington Counties

Kati Dunn, Baker,
Malheur, Grant, Union,
Wallowa, & Harney
Counties



180 E. 11th Eugene, Oregon 97401

info@publicdefendersoforegon.org

Eugene Thompson, Douglas
County

Caitlin Plummer, Lane
County

Justin Morton, Umatilla
County

Stacey Reding, Multnomah
County

Shannon Wilson, Marion
County

Heather Busby,
Multnomah County

Richard Balsley, Hood
River & Wasco Counties

preparation and in trial will greatly exceed 5.25 hours. If actual time spent is not accounted for, then the contract creates a disincentive to litigate a case.

- Contracts must account for actual time spent on cases regardless of whether there is a bench warrant, or the case is transferred to another attorney. In the case of a bench warrant, the attorney and team most often have spent several hours working on the case prior to the issuance of the bench warrant. The attorney should not lose “credit” for those hours nor for the hours that they continue to work on that case going forward. Regarding transfer cases, if the first attorney worked 10 hours they should get credit for those hours. Similarly, the new attorney will also have to work to get up to speed on the case and continue representation of the client: they should also receive credit for the hours they are spending on the case.
- Co-counsel should receive credit for the time they spend working on a case. First, OPDC attorney qualifications currently require attorneys to co-counsel cases before they can increase their qualification level. Co-counsel should not be treated as providing pro-bono services: they are spending hours, and sometimes significant number of hours, representing the client. Often, there is a co-counsel because of the volume of work involved, which makes the case require more than one attorney. The contract should account for co-counsel time and not punish attorneys who are either required by OPDC to co-counsel a case or are required to do so due to the volume of work or the opportunity to receive training and supervision.
- Contracts should prioritize full-time providers and must reduce the disparities that exist with both the State Trial Division and hourly program regarding workload and compensation.

President, Stacey Lowe,
Coos County

Secretary, Joel Wirtz,
Deschutes County

Treasurer, Clint Oborn,
Jackson & Josephine
Counties

Members

Carl Macpherson,
Multnomah &
Washington Counties

Kati Dunn, Baker,
Malheur, Grant, Union,
Wallowa, & Harney
Counties



180 E. 11th Eugene, Oregon 97401

info@publicdefendersoforegon.org

Eugene Thompson, Douglas
County

Caitlin Plummer, Lane
County

Justin Morton, Umatilla
County

Stacey Reding, Multnomah
County

Shannon Wilson, Marion
County

Heather Busby,
Multnomah County

Richard Balsley, Hood
River & Wasco Counties

- Contracts should continue to fund training and supervision at non-profits. This is critical to ensure effective representation for clients. It is also critical for recruitment and retention as non-profits are the main source of new attorneys for our system.
- Contracts for providers must have at least an inflationary increase. For many of us, our medical premiums increased by more than 10% in 2025. We also know that OPDC employees received 6% COLA increases in 2025. The contract should account for the increased cost of operating our offices and increased salaries for our dedicated and hard-working staff.

As stated in our attached letter of May of 2024, we urge OPDC to adopt a statewide workload plan that centers effective and ethical representation for all clients by all providers. We urge OPDC to account for workload variations by county/jurisdiction. We further urge OPDC to adhere to national and local standards, which necessitates the elimination of MAC.

We look forward to continuing to work together to improve our system and representation of all public defense clients in Oregon. Thank you for your consideration.

Sincerely,

Stacey Lowe, President of Public Defenders of Oregon

President

Stacey Lowe,
Coos County

Secretary

Joel Wirtz,
Deschutes County

Treasurer

Brook Reinhard,
Lane County

Public Defenders of Oregon

180 E. 11th Eugene, Oregon 97401
info@publicdefendersoforegon.org

Members

Carl Macpherson, Multnomah &
Washington Counties

Shannon Wilson, Marion County

Kati Dunn, Baker, Malheur, Grant,
& Harney Counties

Erik Swallow, Douglas County

Stacey Redding, Multnomah
County

Justin Mortin, Umatilla County

Clint Oborn, Jackson & Josephine
Counties

May 7, 2024

Oregon Public Defense Commission

Via Email Only

Re: Effective Representation and Workload Standards

Dear Chair Nash, and Members of the Commission:

Public Defenders of Oregon, a nonprofit 501(c)4, was founded to advocate for nonprofit public defender offices across Oregon. We organized in response to the overwhelming and urgent need to provide sound and sustainable public defense practices, to build and retain a strong public defense workforce, and to center the needs of all people deserving effective and ethical representation.

We greatly appreciate the work that OPDC has done during these very challenging times. Access to justice is a critical issue, particularly now, and we see the work and energy the Commission is expending. The public defense delivery model has been problematic for decades and cannot be fixed overnight. Progress will require the collective efforts of all of us. Adopting a statewide workload plan based on national best practices like the National Public Defense Workload Study is a critical step that needs to be taken now to safeguard 6th Amendment rights to effective counsel and to retain and recruit the workforce needed to address the unrepresented crisis in Oregon..

Background for Statewide Workload Plan

The adoption of a statewide workload plan is long overdue. On June 11, 2021, HB 2003 (2021) became law in Oregon. HB 2003 requires OPDC to adopt policies to improve public defense, namely “policies for contracting public defense providers not employed by” OPDC. Specifically, OPDC must adopt policies to “ensure compensation, resources and caseloads are in accordance with national and regional best practices.” ORS 151.216 (1)(c)(A). The Commission must also adopt policies that “promote policies for public defense provider compensation and resources that are comparable to prosecution compensation and resources.”

ORS 151.216(1)(c)(B). Additionally, the Commission was required to “adopt a statewide workload plan...” with caseloads that adhered to national and regional standards. ORS 151.216(1)(f). Over the past 35 months, we have not complied with these provisions.

In February of 2022, the ABA Oregon Project Report further illuminated how deficient we are as a system indicating that we have 31% of the lawyers we need to adequately represent the clients who qualify for public defense services. The Oregon Project Report has been largely ignored, as evidenced by several members of the criminal legal system calling for public defenders to take on even more clients. No one wants there to be unrepresented people in our State; however, it is disturbing to see the response from many is to ignore national standards and ethical obligations while advocating for overloaded public defenders to simply take on more clients and cases. This is a call for processing of indigent people, not providing constitutionally adequate representation for them. Our State, and all branches of government, have failed indigent people who are charged with crimes, juvenile delinquency and dependency, PCR, civil commitment and other matters contracted through OPDS.

On July 13, 2023, SB 337 (2023) became law in Oregon. The Bill maintained many of the policy requirements from HB 2003 (2021), but also added policies and standard making authority. One added policy requires the OPDC to “develop, adopt and oversee the implementation, enforcement and modification of policies, procedures, minimum standards and guidelines to ensure that public defense providers are providing effective assistance of counsel consistently to all eligible persons in this state as required by statute and the Oregon and United States Constitutions.” ORS 151.216(1)(j) (emphasis added). Further, when “establishing the minimum policies, procedures, standards and guidelines... the commission shall adhere to the following principles”:

“(b) The workload of appointed counsel must be controlled to permit effective representation. Economic disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel must be avoided. The commission may develop workload controls to enhance appointed counsel’s ability to provide effective representation.” ORS 151.216(2)(b) (emphasis added)

Requested Considerations for Workload Plan

As you make decisions about a statewide workload plan, we ask you to center all clients right to effective and ethical representation. For decades, we have not done so as a state. The contractual implementation and use of MAC has led to confusion, and sometimes weaponization, of it from other components of the criminal legal system. For decades, Oregon engaged in unconstitutional and unethical practice of paying per case, thereby providing an economic incentive to take on more clients than a provider could ethically represent. The legacy of this foundational flaw still exists today. . The use of MAC leads other persons to believe that the providers have contractually obligated themselves to exceed the ABA Oregon Project results and 2023 PD Workload Standards. This is incorrect. The contracts also require providers to balance the MAC, which is a ceiling not a floor, against our ethical obligations. The MAC

caseloads violate national standards, and thereby, violate Oregon statutory law requiring effective assistance for every client in need of public defense services. Finally, a few providers are routinely exceeding MAC numbers by taking higher paying hourly cases through the THIP program, which should draw concerns about directly contradicting the 2019 Sixth Amendment Center report on Oregon's public defense system and the ethical violations that were documented within it. Essentially, economic incentives still compromise representation. OPDC's workload plan should end this practice.

In creating a statewide workload plan, OPDC should adhere to the Oregon State Bar Opinion 2007-178 (attached). The following factors should be considered:

- Experience level and ability of the attorney
- Complexity and uniqueness of each client, particularly addressing issues related to substance abuse, mental health, houselessness, cognitive deficiency, and instability
- Client communication (national studies indicate 1/3 of attorney time should be spent communicating with clients and close relatives/confidants)
- Case complexity
- Availability or lack of support services
- Nonrepresentational duties

We also request that you consider the following factors that impact our representation of clients and appropriate workloads:

- Total number of open and active cases instead of how many cases are assigned during an arbitrary calendar year of a contract
- Number of clients in-custody and location (jail access issues are significant in Oregon)
 - o Visiting in-custody clients is both ethically required and necessary, and time consuming
 - o Travel time and wait time must be considered and will vary by county
 - o We are seeing in-custody clients being held in other counties (for example, Washington County juvenile delinquent clients are often housed in Multnomah and Yamhill counties, with indications that they may expand to Marion County and the Oregon Coast)
 - o Several jurisdictions have limited visiting hours (during court hours) for attorneys, which require evening and weekend jail visits
 - o Access, or lack thereof, to video and phone contact
 - o Availability of discovery tablets for clients to independently review discovery
- Volume of discovery, including police reports, body camera footage, scientific evidence, cellphone or computer extractions, social media documentation etc.
 - o Body camera footage can range from one hour to over ten hours per case. All of the footage must be reviewed by the attorney, the client (unless they choose not to do so), and the investigator. This significant volume of work is not currently being considered by and properly accounted for by all components of the criminal legal system.

- Use of investigative and expert resources
 - o OPDC should also ensure that all providers are utilizing investigative and expert resources
- Use of case manager services, which varies by availability and needs of the client
- Mitigation and plea negotiation
- Court preparation and court time
- Legal research, motions, release and preventive detention hearings
- Frequency and utilization of omnibus hearings
- Trial schedule and trial preparation (a large percentage of cases are dismissed the day of trial or days before the scheduled trial requiring all the preparation to be completed regardless of outcome)
- Frequency and hours/days/weeks spent in trial
- Vacation or leave time

Eliminate MAC and Instead Reference National and Local Standards

The 2023-25 contracts are in conflict with Oregon law and national standards. The contracts highlight four bullet points that form “the underlying bases for the Contract.” A portion of bullet point #3, includes the following language:

“Contractor agrees to provide, and the PDSC agrees to pay for, competent, zealous legal representation to its clients as required by this contract, the Oregon Rules of Professional Conduct, Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and Oregon and federal judicial opinions regarding the right to counsel.”

On September 12, 2023, the National Public Defense Workload Study (hereinafter “2023 PD Workload Standards”) was released, which is the first such national report since the NAC standards (1973) that are generally acknowledged to be outdated and arbitrary. The 2023 PD Standards are the result of a collaboration of the RAND Corporation, the National Center for State Courts, the ABA’s Standing Committee on Legal Aid and Indigent Defendants, and lawyer Stephen F. Hanlon. The majority of MAC caseload numbers in the proposed contracts exceed the 2022 Oregon Project caseload projections and the 2023 PD Workload Standards. Additionally, the MAC numbers in the current contracts exceed the recent decision on caseload maximums by the Washington State Bar Association (WSBA). (Please see attached caseload chart)

On August 8, 2023, the ABA updated the Ten Principles of a Public Defense Delivery System from 2002. Principle 3, entitled “Control of Workloads,” states:

“The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations. Workload standards should ensure compliance with recognized practice and ethical standards and should be derived

from a reliable data-based methodology. **Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded.** If workloads become excessive, Public Defense Providers are obliged to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to accept additional appointments, and if necessary, seeking to withdraw from current cases.” (emphasis added)

Final Considerations

We urge OPDC to adopt a statewide workload plan that centers effective and ethical representation for all clients by all providers. We urge OPDC to account for workload variations by county/jurisdiction. We further urge OPDC to adhere to national and local standards, which necessitates the elimination of MAC.

We look forward to continuing to work together to improve our system and representation of all public defense clients in Oregon. Thank you for your consideration.

Sincerely,

Stacey Lowe

Stacey Lowe, President of Public Defenders of Oregon

Annual Maximum Caseload Table: 2022 Oregon Project v. 2023 ABA National Study v. MAC v. WA

Number of cases an attorney should work on per year, per case type				
Case Type	2022 ABA Oregon Project	2023 RAND National Study	OPDC MAC	WA State Bar Max (by 2027)
Low-level misdemeanor	93	151	300	
Average misdemeanor	70	93	300	120
Complex misdemeanor	56	63	300	
Low-level felony	52	59	165	47
Mid-level felony	44	36	138	47
High-level felony	14	21	45	
Serious sex assault cases	4	12	6	
Homicide	4	8	6	7
Probation violations	250	154	825	

The table shows that OPDC annual contractual MAC caseloads greatly exceed state, national, and WA caseload models and studies except for serious sexual assault cases and homicide.

MAC is a "maximum caseload and workload limit," not a requirement.

Per the contract, "Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients."

The State needs to move to a "statewide workload plan" to ensure ethical and effective representation, which has been required in Oregon since 2021. ORS 151.216(1)(f).

"The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations." ABA revised Ten Principles of a Public Defense Delivery System, Principle 3: Control of Workloads (August 2023)

The Washington State Bar has adopted new annual caseload maximums for public defenders. The cap will begin in 2025 and be fully implemented by 2027. The caps are: 120 misdemeanors per year; 47 felonies per year; and 7 homicide cases per year.

FORMAL OPINION NO 2007-178

Competence and Diligence: Excessive Workloads of Indigent Defense Providers

Facts:

Lawyer *A* is employed by a public defender firm (“the firm”), where Lawyer *A* represents indigent clients accused of criminal offenses. Lawyer *B* is the direct supervisor of Lawyer *A*. Lawyer *C* is the executive director of the firm. A board of directors, which includes some lawyers, oversees the business of the firm. Lawyer *C*’s responsibilities include negotiating and entering into the firm’s contracts with a state agency pursuant to which the firm agrees to represent a certain number of clients annually.

Lawyer *D* is a partner in a small firm that is part of a consortium of firms that contract with the state to accept court appointments to represent indigent defendants. Lawyer *E*, also a member of the consortium, negotiates the contract between the consortium and the state and also administers the contract for the consortium. A board of directors, which includes some lawyers, oversees the business of the consortium.

Lawyer *F* is a sole practitioner who is paid by the state on an hourly basis to accept court appointments to represent indigent defendants.

Lawyers *A*, *D*, and *F* each believe that they have an excessively large caseload of court-appointed clients.

Questions:

1. What are the ethical obligations of Lawyers *A*, *D*, and *F* with respect to representation of their court-appointed clients?
2. What are the ethical obligations of lawyers who supervise other lawyers who may have excessive caseloads?

Conclusions:

See discussion.

Discussion:

On May 13, 2006, the American Bar Association (ABA) adopted Formal Ethics Opinion 06-441, entitled “Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Case-loads Interfere with Competent and Diligent Representation,”¹ which includes a comprehensive discussion of the questions presented in this opinion. Because the ABA opinion relies, with one notable exception addressed below, on the Model Rules of Professional Conduct (RPCs) that are identical or very similar to the Oregon RPCs, the ABA opinion offers useful guidance for Oregon lawyers. For that reason, the opinion is quoted often and at length herein.

Under Oregon RPCs

- 1.1,²
- 1.2(a),³

¹ The opinion may be ordered from the ABA at <www.abanet.org/cpr/pubs/ethicopinions.html>.

² Oregon RPC 1.1, entitled “Competence,” provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.”

³ Oregon RPC 1.2, entitled “Scope of Representation and Allocation of Authority between Client and Lawyer,” provides in section (a):

Subject to paragraphs (b) and (c), a lawyer shall abide by a client’s decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client’s decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client’s decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

- 1.3,⁴ and
- 1.4,⁵

all lawyers are required to provide each client with competent and diligent representation, keep each client reasonably informed about the status of his or her case, explain each matter to the extent necessary to permit the client to make informed decisions regarding the representation, and abide by the decisions that the client is entitled to make. As ABA Formal Ethics Opinion No 06-441 observes, the rules “provide no exception for lawyers who represent indigent persons charged with crimes.” For each client, a lawyer is required to, among other things, “keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; and communicate effectively on behalf of and with clients,” among other responsibilities. ABA Formal Ethics Op No 06-441. A lawyer who is unable to perform these duties may not undertake or continue with representation of a client. Oregon RPC 1.16(a).⁶

A caseload is “excessive” and is prohibited if the lawyer is unable to at least meet the basic obligations outlined above. The ABA opinion

⁴ Oregon RPC 1.3, entitled “Diligence,” provides: “A lawyer shall not neglect a legal matter entrusted to the lawyer.” Cf. ABA Model RPC 1.3, which requires that “[a] lawyer shall act with reasonable diligence and promptness in representing a client.”

⁵ Oregon RPC 1.4, entitled “Communication,” provides: “(a) A lawyer shall keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.” ABA Model RPC 1.4(a) also requires a lawyer to promptly inform the client of any decision or circumstance requiring the client’s informed consent, consult with the client about the means to achieve the client’s objectives, and consult with the client about any relevant limitation on the lawyer’s conduct if the lawyer knows the client expects assistance not permitted by the rules of professional conduct or other law.

⁶ Oregon RPC 1.16(a) provides in part that “a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: . . . the representation will result in violation of the Rules of Professional Conduct or other law[.]”

notes that various jurisdictions have suggested or adopted numerical caseload standards for public defense providers, and Oregon has also approved a “guide” to maximum caseloads.⁷

But the ABA opinion correctly observes that the determining factor is not the number of cases a lawyer may be asked to handle but whether the workload is excessive. Although the number of cases may be a major determinant of workload, other factors include “case complexity, the availability of support services, the lawyer’s experience and ability, and the lawyer’s nonrepresentational duties.” Thus, if Lawyers *A*, *D*, and *F* believe that their workload prevents them from fulfilling their ethical obligations to each client, then their workload “must be controlled so that each matter may be handled competently.” ABA Model RPC 1.3 cmt [2].⁸

How a lawyer controls his or her workload will depend on the environment in which that lawyer works, keeping in mind that a lawyer’s primary obligation is to existing clients. Thus, Lawyer *A*, who works at a public defender firm, should seek supervisor approval from Lawyer *B* for

⁷ Oregon State Bar, *Indigent Defense Task Force Report: Principles and Standards for Counsel in Criminal, Delinquency, Dependency and Civil Commitment Cases* (1996) (available at <www.osbar.org/surveys_research/performancestandard/index.html>).

⁸ ABA Formal Ethics Opinion No 06-441 refers to Principle 5 of the ABA’s *Ten Principles of a Public Defense Delivery System* (2002), which requires: “Defense counsel’s workload is controlled to permit the rendering of quality representation.” Similarly, the *Qualification Standards for Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense*, adopted by the Oregon Public Defense Services Commission on February 6, 2006, provides that “[n]either defender organizations nor assigned counsel shall accept workloads that, by reason of their size or complexity, interfere with rendering competent and adequate representation or lead to the breach of professional obligations.” (Available at <www.oregon.gov/OPDS/CBS/pages/qualificationstandards.aspx>.) Furthermore, language from the model contracts signed by public defense providers in Oregon requires that providers meet the minimum professional standards of the Oregon State Bar and the American Bar Association, and that each provider maintain “an appropriate and reasonable number of attorneys and support staff to perform its contract obligations.” (Available at <www.oregon.gov/OPDS/CBS/pages/modelcontractterms.aspx>.)

a variety of remedial measures, which might include transfer of nonrepresentational duties to others within the office, declining appointment on new cases, transferring current cases, and filing motions with the court to withdraw from enough cases to achieve a manageable workload. If a supervisor fails to approve appropriate relief, then Lawyer *A* should “continue up the chain of command within the office,” ultimately appealing to the executive director, Lawyer *C*. If satisfactory relief is still not received, Lawyer *A* “must take further action,” suggesting appeals to the firm’s board of directors and the filing, without firm approval, of motions to withdraw. Lawyer *A* might also seek assistance from the state agency that administers the firm’s contract, and the Public Defense Services Commission, which approves the contract.

Lawyer *D* must take similar steps to control her workload, first requesting that Lawyer *E*, the administrator of the consortium, withhold the assignment of new cases, and/or approve the transfer of cases to another lawyer within the consortium, as long as another lawyer will be able to provide ethical representation. If Lawyer *E* does not provide appropriate assistance, then Lawyer *D* might appeal to the governing body for the consortium. Ultimately, Lawyer *D* may also move to withdraw from a sufficient number of cases to achieve a manageable workload.

The actions that Lawyer *F*, the sole practitioner, might take include declining new appointments until that lawyer’s workload is reduced to a level that permits accepting new cases, and/or filing motions to withdraw from a sufficient number of cases to achieve a manageable workload.

Supervisory lawyers, including a firm director or manager, may violate ethical responsibilities when subordinate lawyers have excessive workloads. The ABA opinion describes two ways such violations may occur. First, under ABA Model RPC 5.1(a) firm managers “shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.” Second, in subsection (b), the Model Rule requires that a lawyer with supervisory authority over another lawyer “shall make reasonable efforts to ensure that the other lawyer conforms to the Rules of Professional Conduct.” The Oregon RPCs have no

counterpart to Model RPC 5.1(a) or (b). However, Oregon RPC 5.1(a) and (b), like ABA Model RPC 5.1(c), make a lawyer responsible for the misconduct of another lawyer if “the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved,” or, in the specific case of supervisory lawyers, that lawyer “knows of conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.”⁹

If supervisory Lawyer *B* or executive director Lawyer *C* know that Lawyer *A* or other subordinate lawyers have workloads that prevent them from providing competent representation to each client, they are responsible for the misconduct of the subordinate lawyer if they fail to take effective remedial actions. The ABA opinion acknowledges, however, that a supervisory lawyer’s assessment of whether a subordinate lawyer’s workload is excessive is “a difficult judgment.” As a result, “[w]hen a public defender consults her supervisor and the supervisor makes a conscientious effort to deal with workload issues, the supervisor’s resolution ordinarily will constitute a ‘reasonable resolution of an arguable question of professional duty’ as discussed in [ABA Model] Rule 5.2(b).” When the resolution is “reasonable” on an issue that is “arguable,” under either ABA Model RPC 5.2(b) or Oregon RPC 5.2(b), a subordinate lawyer may be excused from misconduct if that lawyer acts at the direction of a supervisory lawyer. However, Oregon RPC 5.2(b)

⁹ Oregon RPC 5.1, entitled “Responsibilities of Partners, Managers, and Supervisory Lawyers,” provides:

A lawyer shall be responsible for another lawyer’s violation of these Rules of Professional Conduct if:

(a) the lawyer orders or, with knowledge of the specific conduct, ratifies the conduct involved; or

(b) the lawyer is a partner or has comparable managerial authority in the law firm in which the other lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at a time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

does not protect the supervisory lawyer, whose remedial action will still be tested against a “reasonableness” standard.”¹⁰

How these rules apply to Lawyer *E*, who administers the work of a consortium, depends on the structure of the consortium and the relationship between Lawyer *D* and Lawyer *E*. For example, if Lawyer *D* may not decline new appointments to indigent clients or may not file motions to withdraw from current-client cases without the prior approval of Lawyer *E*, then Lawyer *E* may have established herself as a de facto supervisory lawyer and incurred potential responsibility under Oregon RPC 5.1.¹¹

As noted, the ABA opinion does not address the ethical responsibilities of lawyers involved in the process of contracting for the provision of public defense services. For the reasons discussed above, Lawyer *C*, who heads a public defender office, and Lawyer *E*, who negotiates the contract for a consortium, may be responsible for the misconduct of other lawyers if they contract for caseloads knowing that they do not have adequate lawyer and other support staff to provide competent representation to each client. Likewise, managers who knowingly “induce” other lawyers to violate the RPCs by knowingly contracting for excessive caseloads may violate Oregon RPC 8.4(a)(1), which makes it “professional misconduct for a lawyer to . . . violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.”

Lawyers representing indigent clients must refuse to accept a workload that prevents them from meeting their ethical obligation to each

¹⁰ Oregon RPC 1.0(k) defines *reasonable* as the conduct of a “reasonably prudent and competent lawyer.”

¹¹ Oregon RPC 1.0(d), in defining a *law firm*, recognizes that even in the absence of a firm agreement or association, lawyers may organize themselves or work together in such a manner to create “indicia sufficient to establish a de facto [sic] law firm among the lawyers involved.” Furthermore, Comment 2 to ABA Model RPC 1.0 observes that if lawyers “present themselves to the public in a way that suggests that they are a firm or conduct themselves as a firm, they should be regarded as a firm for the purposes of the Rules” (emphasis added).

client. Lawyers who work in public defense organizations should seek the assistance of supervisors and managers in achieving manageable workloads. When those supervisors and managers have knowledge of excessive workloads among firm lawyers, they must make reasonable efforts to remedy the problem.

Approved by Board of Governors, September 2007.

COMMENT: For additional information on this general topic and other related subjects, see *The Ethical Oregon Lawyer* § 7.2 to § 7.2-8 (competence), § 7.3 (diligence), § 7.5-1 (abiding by client's decision; scope of representation), § 7.4 (client communication) (OSB Legal Pubs 2015); and *Restatement (Third) of the Law Governing Lawyers* §§ 11–12 (2000) (supplemented periodically).

Jordon A. Huppert

From: Alena Haines
Sent: Tuesday, February 25, 2025 4:36 PM
To: Matt Washchuk
Subject: RE: Contract policy feedback session Thursday 4:00 PM

Follow Up Flag: Follow up
Flag Status: Completed

I am glad to hear Thursday is looking like a possibility.

Thank you for trudging through the changes with us. There was an immense amount of work mandated in HB 337 and I don't think there's any illusion that we have figured it all out. We are working diligently to implement the system delivery changes and could be better about communicating that with providers.

As far as things stand currently, we expect to issue PCRCP contracts for the 25-27 contract cycle with the funding set forth in the Governor's budget for the Parent Child Representation program (page 97-98 of [2025-27 gb.pdf](#)). SB 337 allows OPDC to contract with all entity types during the 25-27 cycle. The shift to the executive branch at the beginning of this year has affected procurement processes for OPDC public defense attorney contracts as we are subject to different procurement rules than we have been previously. OPDC cannot issue new contracts for public defense services without a Department of Justice legal sufficiency review and Department of Administration procurement process. 25-27 contracts are actively undergoing the legal sufficiency review and we are anticipating that work to be completed no later than mid-April. It is unclear what the application procedure will be to apply for new contracts but as soon as that is determined OPDC will disseminate that information.

I feel like I have a lot of incomplete answers for you at this point in time but I hope this is some semblance of help in the interim.

Kindly,

Alena Haines (*she/her*)
Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(971) 701-5967
www.oregon.gov/opdc

Effective January 1, 2024, our name has changed to Oregon Public Defense Commission

From: Matt Washchuk <matt@rileywashchuk.com>
Sent: Tuesday, February 25, 2025 2:56 PM
To: Alena Haines <Alena.Haines@opdc.state.or.us>
Subject: Re: Contract policy feedback session Thursday 4:00 PM

Thanks for the quick reply. At this point, I believe I will be available for the meeting.

Just to clarify your response to me, does this mean OPDC plans to issue PCRCP contracts for the 25-27 contracts? And will the agency plan to issue those to both non-profits and private contractors? As of the end of February, regardless of how many FTE the agency might award us, our firm has no idea what kind of juvenile contract we could apply for, nor whether we will be permitted to apply as a firm, as opposed to individuals.

It makes plenty of sense to me that OPDC needs to spend meaningful time on adult criminal contracts, given the unrepresented crisis, but since the statutory changes went into effect in 2023, we have waiting to understand how we could continue to contract with OPDC for juvenile cases, and I still don't know that information. If you know we will be able to apply for a PCRCP contract, having that information today would be very helpful.

Thank you,

--

Matt Washchuk

From: Alena Haines <Alena.Haines@opdc.state.or.us>
Date: Tuesday, February 25, 2025 at 2:07 PM
To: Matt Washchuk <matt@rileywashchuk.com>
Subject: RE: Contract policy feedback session Thursday 4:00 PM

Good afternoon, Matt,

Our understanding is that the majority of the policy being discussed on Thursday will be focused on MAC and therefore relevant to criminal and non-PCRCP juvenile contracts. We did intentionally include all contractors as the vacancy and enforcement of contract term policies would be applicable to all 25-27 contracts including PCRCP.

I do think it is critical that we have engagement with stakeholders to discuss juvenile contracts and regret that we don't have information or direction to share on that front.

Do you think you will be able to join us on Thursday? You bring valued insight and a solid voice to juvenile law practice and we would be grateful for your time and feedback. My understanding is that the draft policies are slated to be shared with providers in advance of the scheduled feedback session. We are aware, given the short notice, that folks may not be able to join and we are currently working out a process for providers to share feedback on the policies through written means. Please stay tuned.

Thank you,

Alena Haines (*she/her*)
Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(971) 701-5967
www.oregon.gov/opdc

Effective January 1, 2024, our name has changed to Oregon Public Defense Commission

From: Matt Washchuk <matt@rileywashchuk.com>
Sent: Tuesday, February 25, 2025 11:55 AM
To: Alena Haines <Alena.Haines@opdc.state.or.us>
Subject: Re: Contract policy feedback session Thursday 4:00 PM

Is this meeting only discussing adult criminal caseloads? There hasn't been any discussion of juvenile caseloads at the last several OPDC commission meetings. Is there a plan to have a stakeholders meeting to discuss juvenile contracts?

Thank you,

--

Jordon A. Huppert

From: Megan A. Doak
Sent: Thursday, February 27, 2025 5:07 PM
To: Brandon Kammer
Cc: Resource Counsel
Subject: RE: Materials for 4 p.m. Draft Policy Meeting

Hi Brandon,

Yes, my understanding is that it would apply since habeas cases fall under criminal guidelines.

Thanks!

Megan Doak
Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(503) 871-3039
www.oregon.gov/OPDS/

From: Brandon Kammer <bm@kammerlawfirm.com>
Sent: Thursday, February 27, 2025 5:05 PM
To: Megan A. Doak <Megan.A.Doak@opdc.state.or.us>
Subject: Re: Materials for 4 p.m. Draft Policy Meeting

Hey Megan,

Do the attorney withdraw policies apply to habeas? It says only criminal but I'm not sure if that's how the habeas cases are classified.

Thanks,

Brandon

On Thu, Feb 27, 2025 at 10:09 AM Megan A. Doak <Megan.A.Doak@opdc.state.or.us> wrote:

Greetings all,

Thank you for attending this afternoon's meeting regarding OPDC's proposed policies for the 2025-2027 contract cycle. We are attaching the current drafts of the policies for your review. As a part of this process these policies will go through several more rounds of editing before they are scheduled for a vote by the OPDC Commission at their meeting in April. You are welcome to ask questions or provide comments at the meeting this afternoon or in

Jordon A. Huppert

From: Carl Macpherson <cmacpherson@mpdlaw.com>
Sent: Saturday, February 22, 2025 12:22 PM
To: K.O. Berger; Jordon A. Huppert
Cc: Grant Hartley
Subject: OPDC contract policy meeting on 2/27
Attachments: Feb 18 2025 letter to OPDC.pdf

Good morning K.O. and Jordon,

My understanding is that you will be involved in the contract policy process that OPDC announced yesterday. Unfortunately, I will be on vacation on 2/27 and cannot attend. I am disappointed that the agency did not provide more advance notice for contractors on such important provisions that affect our contracts.

I have attached the letter that PDO sent to the individual commissioners this week in response to the 2/13 workgroup meeting. We were not able to meet the 48+ hour deadline to have it be submitted as public testimony. The letter does cover some of the proposed policies contained in yesterday's announcement from OPDC.

In addition, I would ask you to consider the following points. I acknowledge that moving to the NPDWS numbers in the new contracts is unlikely due to the unrepresented crisis etc., but we need to make progress in that direction particularly if WA Supreme Court adopts the WSBA proposal. So, with the caveat that OPDC will likely keep MAC (or a variation of it) for 2025-27:

- MAC for 1st year attorneys needs to be lower: 150 misdemeanors maximum with an increasing percentage over the year
- MAC for C Felonies needs to be lower: 125 (which is still too high as many of the cases are complicated/time-consuming DV cases)
- MAC for A/B Felonies needs to be lower: 100 (again, which is still too high...)
- PV's need to be lower: maybe 400?

I acknowledge that workload/caseload could vary by jurisdiction and attorney (experience level of attorney and access to support staff; body cam or not; quality diversion/earned dismissal programs or not; volume of discovery; custody rates/access to client issues; time to disposition; trial rates; use of experts and investigators; motion practice; reasonable plea offers or not etc.). We truly need an open workload model in combination with maximum assigned cases per year to account for jurisdictional differences.

One of my main issues is with the partial weighting concept for early/late withdrawals and co-counsels. OPDC adopted 1578 hours, therefore, this is the contractual expected number of hours an attorney would spend on each case:

- Misdemeanor (300) = 5.25
- C Fel (165) = 9.56
- A/B Fel (138) = 11.43

- BM11 (45) = 35.07
- Murder/JLaw (6) = 263
- Civil Commitment (230) = 6.86
- PV (825) = 1.91
- Juv Del, non-PCRP (132) = 11.95
- Juv Dep, non-PCRP (69) = 22.87

As just one example, I am confident that for the overwhelming majority of misdemeanors our attorneys work more than 5.25 hours. Based on talking with a few of our misdemeanor attorneys, they indicate that the minimum number of hours for a case is roughly 10 hours (body cam, review discovery, client meetings, research, court appearance etc.) up to 40+ hours for a case that goes to trial. Any partial credit category cases should be determined based on estimated number of hours spent on the case: i.e., if you spent 5.25 hours or more on a misd, you get full credit regardless, which applies for both co-counsel and if there is more than one attorney on the case. Similarly, ECC needs to remain in the contracts: it is one way we can receive fair credit for the time we are spending on cases and to document that time since we are not paid hourly.

I hope this is helpful and I look forward to further discussion when I return from vacation on 3/5. Thank you for all of your hard work during these difficult times. I truly appreciate you both.

Carl

Jordon A. Huppert

From: Joel Wirtz <joel@despd.org>
Sent: Thursday, February 27, 2025 3:35 PM
To: Adelina Hernandez; Jordon A. Huppert
Subject: FW: Feedback: Partial Weighting for Second Attorney, Same Provider BAD IDEA
Importance: High

Jordan and Adelina,

The email for Feedback bounced my e-mail back to me. Can you forward this to appropriate person taking feedback on the policy.

Joel A. Wirtz

Joel A. Wirtz, J.D.
Executive Director
Pronouns: he/him/his
(541) 389-7723
Direct: (541) 323-8422
joel@despd.org

From: Joel Wirtz
Sent: Thursday, February 27, 2025 3:30 PM
To: Resource.Counsel@opdc.state.or.us
Subject: Feedback: Partial Weighting for Second Attorney, Same Provider BAD IDEA
Importance: High

To Whom it May Concern:

This e-mail is to provide feedback on the proposed policy for partial waiting for 2nd and subsequent attorneys:

This proposed policy is apparently predicated on a false narrative that a subsequent attorney benefits enormously from work completed by the prior attorney. That has not been our experience here at Deschutes Defenders. I have been a public defender since 2003 and have been Co-Executive or Executive Director since 2020. In that time, we have had a number of attorneys leave our office. We have reassigned the departing attorneys' cases to other attorneys. We have also had a number of clients who have requested new attorneys. We have granted their request and moved the case to another attorney. In all cases, the new attorney had to do nearly all the same tasks that the first attorney had to do. They had to review police reports, body cams, medical reports, etc. in order to meet their ethical obligations as being the attorney of record. The only time saving that occurs is coordination of experts or initial investigation. That is a very small portion of the overall time they spend working a case. They have to spend as much, and often more time to develop a client-attorney relationship as clients are often upset when the case is reassigned.

A very small subset of cases are nearly resolved just prior to the prior attorney's departure. That issue can be addressed by only partial weighting a case that gets reassigned and closed within 30 days.

The proposal de-incentives working hard for the client to maintain their constitutional rights. The proposal is thus antithetical to the 6th Amendment.

Finally, It will be an administrative burden to courts and the agency as firms will scramble to withdraw their entire team from cases as the agency is ignoring the impending hardwork needed by the second attorney. This is a policy that will kill our efforts at retention. The policy penalizes the attorneys who are loyal to public defense.

Kindly,

Joel A. Wirtz

Joel A. Wirtz, J.D.
Executive Director

Pronouns: he/him/his
(541) 389-7723
Direct: (541) 323-8422
joel@despd.org



215 NW Greenwood, Suite 200
Bend, OR 97703

This email, and any attachments hereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email, and any attachments thereto, is strictly prohibited. If you have received this email in error, please immediately notify me at (541) 389-7723 and permanently delete the original and any copy of any email and any printout hereof.

Jordon A. Huppert

From: Megan A. Doak
Sent: Thursday, February 27, 2025 11:10 AM
To: Eve Costello
Cc: Resource Counsel
Subject: RE: Materials for 4 p.m. Draft Policy Meeting

Resending with the correct email for resource counsel.

Thanks!

Megan Doak
Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(503) 871-3039
www.oregon.gov/OPDS/

From: Megan A. Doak
Sent: Thursday, February 27, 2025 11:09 AM
To: Eve Costello <evcostellolaw@gmail.com>
Cc: Resource.Counsel@opdc.state.or.us.
Subject: RE: Materials for 4 p.m. Draft Policy Meeting

Hi Eve,

Thanks for the feedback. We already have partial weighing in the contract for withdrawal cases. Is it far to assume you are okay with the current partial weighting rules but not the ones in the draft policy?

I've copied the resource counsel email on this response so they can add your feedback to the others we receive.

Megan Doak
Program Analyst 4, Trial Support & Development
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
Salem, Oregon 97301
(503) 871-3039
www.oregon.gov/OPDS/

From: Eve Costello <evcostellolaw@gmail.com>
Sent: Thursday, February 27, 2025 10:52 AM

To: Megan A. Doak <Megan.A.Doak@opdc.state.or.us>

Subject: Re: Materials for 4 p.m. Draft Policy Meeting

Dear Megan,

The policy regarding weighting encourages attorneys to waive their clients right to a trial within 60 days, which I am pretty sure is unethical if they can be prepared.

The second attorney on a case had nothing to do with the failure of the other attorney to complete it. Further, the second attorney on a case is ethically required to restart from the beginning and treat that client with the same degree of attention and representation as any other client (this policy is point black F*** ridiculous).

If this kind of baby sitting continues I will be quickly retiring from this line of practice as soon as practicable.

I know this is not you but WTF?

Thanks for all you do!

Eve

On Thu, Feb 27, 2025 at 10:41 AM Megan A. Doak <Megan.A.Doak@opdc.state.or.us> wrote:

Greetings all,

Thank you for attending this afternoon's meeting regarding OPDC's proposed policies for the 2025-2027 contract cycle. We are attaching the current drafts of the policies for your review. As a part of this process these policies will go through several more rounds of editing before they are scheduled for a vote by the OPDC Commission at their meeting in April. You are welcome to ask questions or provide comments at the meeting this afternoon or in writing by email to Resource.Counsel@opdc.state.or.us. Please submit any feedback by March 6th, 2025 at 5:00 p.m.

Draft Policies Attached for Review:

- Reduced Caseload Program for First Year Attorneys
- Reduced Caseload Program for First Year Attorneys PCR
- Co-Counsel
- Partial Weighting for Early Withdrawal from Cases
- Partial Weighting for Second and Subsequent Attorneys
- Attorney Warrant Removal
- Vacancy Funding
- Draft Contract Compliance

Jordon A. Huppert

From: Olcott Thompson <o.thompson@mcadlaw.com>
Sent: Thursday, March 6, 2025 3:11 PM
To: Resource Counsel
Subject: OPDC proposed policies for the 2025-2027 contract cycle

[Some people who received this message don't often get email from o.thompson@mcadlaw.com. Learn why this is important at <https://aka.ms/LearnAboutSenderIdentification>]

While I can believe the insanity in these proposals, the proposals themselves are insane. Overall, OPDC is proposing we get less credit for the work we are already doing. This is not only insane but offensive. The private bar through consortia are already working as hard as we can and getting flack from all sides for not working even harder. These proposals will only increase the pressure that the private bar is not working enough and will force out more private bar members.

I do not know who drafted these proposals but they clearly have absolutely no idea what attorneys do and what our ethical requirements are. The comment regarding what happens with conflict withdrawals says it all: the majority of new attorneys after a conflict withdrawal are in the same firm. Anyone who knows anything about attorney ethics know that is absolutely wrong. If an attorney in a firm has a conflict the whole firm has a conflict. No conflict replacement attorney is from the same firm as the prior attorney.

As I stated when these proposals were presented why is OPDC trying to tinker with a system that does not work and is unconstitutional. OPDC is paying private bar providers an unconstitutional flat fee for whatever number and type of cases each attorney handles. While the number and type of cases I handle may be (and probably is) different that the number and type of cases another attorney handles, the attorneys are still being paid a flat fee for those cases resulting in a conflict of interest between the attorney (close cases as soon as possible) and the client (fight as much as I want). You have heard this from the Sixth Amendment Center and multiple attorneys yet you still are working with an unconstitutional system and one, even if it was constitutional, does not work. Your incentive is to take as few cases as possible and close them as fast as possible.

The Legislature is not telling OPDC to pay the private bar the way OPDC pays. The Legislature has given OPDC a pot of money to spend in an appropriate way to make sure people get constitutionally appropriate representation. The Legislature has not said you must do this by paying attorneys any particular way except it has outlawed flat fees, the system you continue to use.

There is, of course, a constitutional way to pay the private bar which also removes the payment problems your proposed policies are trying to "fix." Pay the private bar hourly for the work the attorneys actually do. If a lawyer withdraws and a new lawyer is appointed OPDC does not need to worry about what percentage to pay the attorneys. It just pays for the work the attorneys actually did.

The same if there is co counsel. OPDC pays for what each attorney actually did. It is highly unlikely the attorneys will be duplicating each other's work. We do not operate that way. If the attorneys are duplicating work it is appropriate, upon review, to not pay for the duplicate work. Ultimately, again, OPDC is just paying for the work attorneys did representing a client.

Stop trying to "fix" a system that is unfixable. Pay the private bar whether they are directly paid by OPDC or through consortia on an hourly basis for the work the attorneys actually do. It makes sense for budgeting purposes to limit the

number of hours per year for an FTE attorney. With consortia there needs to be a reconciliation at least every six months but that was done for years with the case credit system.

Constitutionally paying the private bar is not hard and it solves all the how do we determine how much work an attorney did on a case when the attorney is being paid a flat fee. Oregon has been told for over 30 years the only way to constitutionally pay appointed counsel is to pay hourly. It is far past time to be doing anything else.

Olcott Thompson

--

Olcott Thompson
Exec Director
MCAD



Youth, Rights & Justice Feedback to OPDC on Policy Proposals

March 6, 2025

Proposals #1 & #2: Reduced caseload for Attorneys in 1st Year of Practice

YRJ supports the policy of reduced caseload in first year of juvenile practice. We believe that this should apply to brand new attorneys, attorneys moving to Oregon, and attorneys who are new to the area of practice. We support having supervisors given discretion to slowly ramp up caseload over the first year to meet the 1st year caseload limit.

Proposal #3: Co-Counsel

It is important that this policy allow additional case count for attorneys working under supervision on a case as they gain experience and/or move up in qualifications. Felony juvenile sex cases should be required to also have a co-counsel based on complexity and possible lifetime registration consequences.

Proposal #6: Warrant Removal Policy

It seems problematic to allow the Court to decide when the attorney/client relationship should terminate due to a warrant. The Court may not be aware, nor should they be aware, when we are having contact with a client with a warrant. The current policy that requires an attorney to withdraw after 180 days of client on warrant status (and no contact with client) is sufficient. This policy would not create any substantial change in attorney capacity to take on new cases.

Proposal #7: Vacancy Funding Policy

We caution OPDC not to create a policy that creates a situation where providers would be in violation of law. This policy must be amended to address protected leave under state and federal law. If an attorney is out for this amount of time as part of protected leave, this is not a vacancy and should not be considered as such.

Further, 60 days is insufficient time to recruit and hire attorneys and staff, especially if we are trying to recruit the highest caliber attorneys to our field. We recommend amending to provide at least 90 days of continued funding.

Proposal #8: Contract Compliance/Enforcement

Once again, we oppose any policies that create conditions where providers could be in violation of state and federal law. Any proposed policy must allow contractors to follow state and federal law around protected leave.

If we are meeting our contract numbers as an office as an office, we should be able to move cases around while an attorney is out on leave and not fall out of compliance with our contract. Providers need to have flexibility to meet client needs and manage caseloads. A two-month time frame does not allow for an attorney to meet their ethical obligations to clients by thoughtfully preparing for leave and allow for a reasonable ramp-up upon return.

Further, changing the policy to two consecutive months is too small of a data set and could trigger unnecessary OPDC meetings/compliance plans. We often go through waves of case pick-ups and then a few lighter months. The 6-month timeframe in the current contract is sufficient and will result in more thoughtful and data driven decisions.

Finally, this policy is too harsh and will lead to further burnout and more attorneys leaving. If the goal is to make inroads in the attorney shortage, creating punitive policies is not the right move. This will lead to further dissatisfaction, more burnout, and more attorneys leaving public defense. Policies that penalize providers for taking care of their health, their families, and to take meaningful breaks so they can continue this work long-term are short-sighted, cruel, and are likely to exacerbate, rather than relieve, problems.

Jordon A. Huppert

From: Carl Macpherson <cmacpherson@mpdlaw.com>
Sent: Thursday, March 6, 2025 5:06 PM
To: Resource Counsel
Subject: OPDC proposed policy/contract provisions
Attachments: Feb 18 2025 letter to OPDC.pdf

Good afternoon,

My understanding is that OPDC is seeking feedback on possible policy/contract changes by 5 p.m. today. Due to my schedule, I have been unable to attend the meeting nor review all of the policies. I am disappointed that the agency did not provide more advance notice for contractors on such important provisions that affect our contracts.

I have attached the letter that PDO sent to the individual commissioners in response to the 2/13 workgroup meeting. We were not able to meet the 48+ hour deadline to have it be submitted as public testimony. The letter does cover some of the proposed policies contained in the announcement from OPDC.

In addition, I would ask you to consider the following points. I acknowledge that moving to the NPDWS numbers in the new contracts is unlikely due to the unrepresented crisis etc., but we need to make progress in that direction particularly if WA Supreme Court adopts the WSBA proposal. So, with the caveat that OPDC will likely keep MAC (or a variation of it) for 2025-27:

- MAC for 1st year attorneys needs to be lower: 150 misdemeanors maximum with an increasing percentage over the year
- MAC for C Felonies needs to be lower: 125 (which is still too high as many of the cases are complicated/time-consuming DV cases)
- MAC for A/B Felonies needs to be lower: 100 (again, which is still too high...)
- PV's need to be lower: maybe 400?

I acknowledge that workload/caseload could vary by jurisdiction and attorney (experience level of attorney and access to support staff; body cam or not; quality diversion/earned dismissal programs or not; volume of discovery; custody rates/access to client issues; time to disposition; trial rates; use of experts and investigators; motion practice; reasonable plea offers or not etc.). We truly need an open workload model in combination with maximum assigned cases per year to account for jurisdictional differences.

One of my main issues is with the partial weighting concept for early/late withdrawals and co-counsels. OPDC adopted 1578 hours, therefore, this is the contractual expected number of hours an attorney would spend on each case:

- Misdemeanor (300) = 5.25
- C Fel (165) = 9.56
- A/B Fel (138) = 11.43
- BM11 (45) = 35.07

- Murder/JLaw (6) = 263
- Civil Commitment (230) = 6.86
- PV (825) = 1.91
- Juv Del, non-PCRP (132) = 11.95
- Juv Dep, non-PCRP (69) = 22.87

As just one example, I am confident that for the overwhelming majority of misdemeanors our attorneys work more than 5.25 hours. Based on talking with a few of our misdemeanor attorneys, they indicate that the minimum number of hours for a case is roughly 10 hours (body cam, review discovery, client meetings, research, court appearance etc.) up to 40+ hours for a case that goes to trial. Any partial credit category cases should be determined based on estimated number of hours spent on the case: i.e., if you spent 5.25 hours or more on a misd, you get full credit regardless, which applies for both co-counsel and if there is more than one attorney on the case. Similarly, ECC needs to remain in the contracts: it is one way we can receive fair credit for the time we are spending on cases and to document that time since we are not paid hourly.

I hope this is helpful and I look forward to further discussion as the contracting process moves forward.

Carl

Jordon A. Huppert

From: Brandon Kammer <bmk@kammerlawfirm.com>
Sent: Tuesday, March 11, 2025 2:31 PM
To: Resource Counsel
Subject: Input on Proposed Policy Changes

To whom it may concern,

My name is Brandon Kammer, and I represent clients with medical habeas corpus claims. I am writing to provide input on the proposed contract policy changes, specifically those regarding partial weighting for early withdrawal and partial weighting for subsequent attorney representation. While I have not seen the proposed language for changing these policies, my understanding is a change would be made to award partial credit for case work if a withdrawal occurs regardless of how long someone has worked on a case and partial credit given to any subsequent attorney taking on a case from an attorney who has withdrawn. I believe these proposed changes may have a dramatic impact on habeas cases and on attorney coverage for those cases.

The impact of these changes on habeas cases will likely be felt in the following ways: (1) attorneys will have to remain in cases where they suffer client harassment and/or threats of violence or face increased caseloads; and (2) contract attorneys may decline high risk cases that could end in withdrawal or cases where an attorney has previously withdrawn leaving clients waiting longer for representation and pushing more cases to the THIP program.

As a medical habeas attorney, many of my clients suffer from severe behavioral health issues. It is not uncommon for these clients to become agitated, angry or even threatening throughout the habeas process. Sometimes, regardless of the representation, an attorney-client relationship breaks down and withdrawal is appropriate. For example, I was recently threatened with physical violence and death by a client. If the proposed policy changes are implemented, attorneys will be faced with a choice – stay in a potentially abusive/violent representation to get full credit for work done or withdraw and face a higher caseload. This choice is simply untenable and not appropriate for attorneys working in public defense.

This leads to the second issue, contracted attorneys will likely decline cases that do not count as full credit; thus, additional cases will flow to the THIP program exacerbating an already difficult situation while lengthening client wait times and draining more resources.

Thank you for your time and consideration of this very important issue.

Brandon Kammer

--

Brandon Kammer

Kammer Law Firm, LLC

205 Oak St, Ste 5

Hood River, OR 97031

Phone: (971) 800-0599

Email: bm@kammerlawfirm.com

Website: www.kammerlawfirm.com

E-MAIL CONFIDENTIALITY NOTICE: The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

PLEASE TAKE NOTE THAT OUR ADDRESS HAS RECENTLY CHANGED TO 205 OAK ST, STE 5, HOOD RIVER, OR 97031.

Jordon A. Huppert

From: Jessica Kampfe
Sent: Tuesday, March 11, 2025 4:33 PM
To: Resource Counsel
Subject: FW: XXCRXXXX - 0 Credit Cases

From: Stacey Lowe <slowe@swopds.org>
Sent: Tuesday, March 11, 2025 4:16 PM
To: Joel Wirtz <joel@despd.org>; Jessica Kampfe <Jessica.Kampfe@opdc.state.or.us>
Subject: Re: XXCRXXXX - 0 Credit Cases

Thank you Joel. Well said! I completely agree, and it is fantastic to see suggestions that can actually help our clients if only we were able to utilize the opportunity. I would suggest SPPE applicants as well. I will also add that in fast paced counties like Coos this is more the rule than the exception.

Stacey K. Lowe
OSB #043485
Lawyer/Director
Pronouns: she/her
Southwestern Oregon Public Defender Services
465 Elrod Ave. Suite 201
Coos Bay, OR 97420
Office 541-267-2472
Cell 541-808-5389
Fax 541-267-6853

CONFIDENTIALITY NOTICE

This email, including any attachments, may contain information that is confidential and is for the use of the intended recipient only. Any review, reliance, forwarding, or distribution by others without express permission is strictly prohibited. If you are not the intended recipient, please contact the sender and delete all copies of the email and any attachments.

From: Joel Wirtz <joel@despd.org>
Sent: Tuesday, March 11, 2025 3:57:52 PM
To: Jessica Kampfe
Subject: FW: XXCRXXXX - 0 Credit Cases

Hi Jessica,

I wish you the deepest positive energy during the legislative session.

It is unclear to me who on your staff is currently working on contract language, so I am sharing this with you in the hopes it gets to the right person.

Below is just a quick reminder of why state policy level affects retention, the key to keeping the unrepresented crisis at bay. This is a mid-level public defender that views their work to ensure someone can be back home to their family, at their job in the morning and not unlawfully sitting in a jail cell as unseen by those in Salem (the view when the dashboard does not credit the individual or organization for the work that was done). These small resentments are a factor in mid-level defenders leaving public defense.

A quick reminder to us all to make sure our language in public and in the contract reflects the value we see in the public defenders willing to take the M11 cases and teach the next generation. We need judges, legislators, and prosecutors to be reminded that the dashboard does not reflect the totality of the effort and commitment to our clients, community and the constitution.

Finally, I cannot help myself but encourage the state agency to project a contract where all providers have contract guaranteed money to hire 3L's in the fall/winter for work following graduation. With current law school numbers, we need to be hiring before we have openings or we are on the losing side of the unrepresented crisis. I feel this is more cost effective than the unsustainable hourly rate.

Deepest Gratitude,

Joel A. Wirtz

Joel A. Wirtz, J.D.
Executive Director, Deschutes Defenders

Pronouns: he/him/his
(541) 389-7723
Direct: (541) 323-8422
joel@despd.org

215 NW Greenwood, Suite 200
Bend, OR 97703

This email, and any attachments hereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this email, you are hereby notified that any dissemination, distribution or copying of this email, and any attachments thereto, is strictly prohibited. If you have received this email in error, please immediately notify me at (541) 389-7723 and permanently delete the original and any copy of any email and any printout hereof.

From: [mid-level public defender]
Sent: Tuesday, March 11, 2025 2:08 PM
To: Joel Wirtz <joel@despd.org>
Subject: XXCRxxxx - 0 Credit Cases

Just wanted to give this one to you because I know this issue or similar issue was in the legislature. We picked up this PV and the DA dismissed the same day. However, I still needed to follow up with the DA, who needed to follow up with the jail, because it was a number of hours before [defendant] was released after court and it wasn't clear why. Ultimately it required emails between me and the prosecutor after hours.

Nothing on this case that needs to be done, just wanted to share the example of cases where we have the case for one day but do work on them anyway.

[mid-level public defender]

Jordon A. Huppert

From: Irma Solis <Irma.Solis@ojd.state.or.us>
Sent: Wednesday, March 12, 2025 10:14 AM
To: Resource Counsel; Kristi Kelly
Subject: FW: OPDC Draft Contract Policies—Feedback Requested by March 12
Attachments: Draft Attorney Warrant Removal Policy.pdf; Draft Co-Counsel Policy.pdf; Draft Contract Compliance Policy.pdf; Draft Partial Weighting for Early Withdraw From Cases Policy.pdf; Draft Partial Weighting for Second and Subsequent Attorneys Policy.pdf; Draft Reduced Caseload Program for First Year Attorneys PCR Policy.pdf; Draft Reduced Caseload Program for First Year Attorneys Policy.pdf; Draft Vacancy Funding Policy.pdf

Good morning,

Thank you for providing drafts. I have only one question below:

- **Draft Co-Counsel Policy:** On page 2, section one it reads “Counsel need not seek permission from OPDC prior to a second attorney seeking appointment from the court.”. Then on page 3 in the last paragraph it reads “Once OPDC has approved co-counsel for a case, lead counsel or co-counsel will need to file a motion for and order to appoint co-counsel within the appropriate court.”
 - o I want to make sure I understand what is intended as it seems a little contradicting at first glance. The process *should* be that counsel seeking co-counsel should first apply for OPDC approval for co-counsel in the manner designated by OPDC. Once approved by OPDC *then* either counsel or co-counsel should file a motion for and order to appoint co-counsel with the appropriate court. Is counsel to provide within their motion that they have been approved for co-counsel by OPDC on XXX date?

Thank you,

Irma Solís

Trial Court Administrator
6th Judicial District
Umatilla/Morrow County Circuit Court
Business Phone: (541) 278-0341, Ext. **3224** (NEW extension!)
Business Cell: (541) 303-3513

NOTICE: This communication may contain privileged, confidential, or other information except from disclosure under applicable law. If you received it in error, please advise me and immediately delete or destroy the communication and any attachments without further reviewing, copying, or disclosing the contents. Thank you

From: OSCAmemos <oscamemos@ojd.state.or.us>
Sent: Tuesday, March 11, 2025 8:55 AM
To: SCA ESD PJs <SCA.ESD.PJs@ojd.state.or.us>; SCA ESD TCAs, COA, SC, Tax Admin <SCA.ESD.TCAs.COA.SC.Tax.Admin@ojd.state.or.us>
Cc: Crystal J. Reeves <Crystal.J.Reeves@ojd.state.or.us>
Subject: OPDC Draft Contract Policies—Feedback Requested by March 12

Please see the email below from OPDC Executive Director Jessica Kampfe. OPDC is asking that you forward the attached policies to judges and court staff who may be interested in

providing feedback. They are requesting feedback be submitted to Resource.Counsel@opdc.state.or.us by Wednesday, March 12, 2025.

We understand this is a short response time, therefore, if judges or staff are unable to submit feedback by the Wednesday deadline they can send their feedback to [Crystal Reeves](#) instead. Crystal will compile the feedback and forward it on to OPDC.

Thank you!

Honorable Judges, OJD staff, and District Attorneys,

Thank you to all of you who have participated in local workgroups to address Oregon's unrepresented persons crisis. As part of those workgroups OPDC received feedback requesting that we change aspects of our public defense contract terms. The majority of trial level public defense in Oregon is delivered by contracted public defenders so contract changes have the potential to make a large-scale impact on public defense delivery in Oregon. OPDC endeavors to implement updates to 2025-27 contracts based on the attached draft policies and the feedback we receive. OPDC would like to include your insight in our process so that we deliver public defense in a way that works within our public safety system.

Please send your feedback to Resource.Counsel@opdc.state.or.us by **March 12, 2025**.

Thank you in advance for taking the time to review and provide thoughtful comments that can be used to make public defense more efficient and effective.

Sincerely,

Jessica Kampfe



Jordon A. Huppert

From: Patrick Block <patrick@patrickblocklaw.com>
Sent: Wednesday, March 12, 2025 3:02 PM
To: Resource Counsel
Subject: Input on Policy Changes

Some people who received this message don't often get email from patrick@patrickblocklaw.com. [Learn why this is important](#)

To Whom it May Concern,

My name is Patrick Block, and I represent clients with various habeas corpus claims, primarily medical claims. I am writing to provide input on the proposed contract policy changes relating to partial weighting for early withdraw and partial weighting for subsequent attorney representation. Without having seen the proposed language for changing these particular policies, if the change is to only given partial credit to an attorney who withdraws from a case at any time, such a change is unworkable. The current practice of giving partial credit to an attorney that has had a case for less than 90 days has been a fair and workable policy. Only giving partial credit if an attorney withdraws no matter how long the attorney has worked on a case, would discourage attorneys from continuing on cases with difficult clients, which there are many, who may create a need to withdraw, leaving them without counsel.

Providing partial credit for subsequent attorney representation would even create more problems. Those cases tend to be more complex and involve clients that have mental health or behavioral problems and take more work. I have had several cases in which I was the subsequent attorney that have taken well over a year for me to resolve. Such a change would create a huge disincentive for an attorney to take any case that another attorney withdraws from resulting in lack of representation or significant delay in representation for the client.

These policies should stay as they currently are.

Thank you for your consideration of these comments.

Patrick
Patrick L. Block (he/him)
The Law Offices of Patrick L. Block, P.C.
Mailing Address: PO Box 2190, Gresham, OR 97030
*Office Address: 101 SW Main Street, Suite 910, Portland, OR 97204**
Tel: 503-491-4900; Fax: 503-491-4933
patrick@patrickblocklaw.com

***PLEASE NOTE OUR NEW OFFICE ADDRESS**

E-MAIL CONFIDENTIALITY NOTICE: The contents of this e-mail message and any attachments are intended solely for the addressee(s) and may contain confidential and/or legally privileged information. If you are not the intended recipient of this message or if this message has been addressed to you in error, please immediately alert the sender by reply e-mail and then delete this message and any attachments. If you are not the intended recipient, you are notified that any use, dissemination, distribution, copying, or storage of this message or any attachment is strictly prohibited.

Jordon A. Huppert

From: Judith H. Matarazzo <Judith.H.Matarazzo@ojd.state.or.us>
Sent: Thursday, March 13, 2025 8:42 AM
To: Barbara B. Marcille; Resource Counsel
Cc: Michael A. Greenlick
Subject: RE: Feedback on OPDC Draft Policies

Some people who received this message don't often get email from judith.h.matarazzo@ojd.state.or.us. [Learn why this is important](#)

Nicely done, Thank you for doing this and I suspect they will be surprised to get any feedback with the lack of notice they provided.

From: Barbara B. Marcille <Barbara.B.MARCILLE@ojd.state.or.us>
Sent: Wednesday, March 12, 2025 5:54 PM
To: Resource.Counsel@opdc.state.or.us
Cc: Crystal J. Reeves <Crystal.J.Reeves@ojd.state.or.us>; Michael A. Greenlick <Michael.A.GREENLICK@ojd.state.or.us>; Judith H. Matarazzo <Judith.H.Matarazzo@ojd.state.or.us>
Subject: Feedback on OPDC Draft Policies

Good evening. We appreciate the opportunity to provide feedback on OPDC's draft contract policies.

The Multnomah County Circuit Court provided suggestions for improvement to the OPDC contract structure in 2023 in our SB337 Crisis Plan. Those suggestions have not been implemented, and we still believe those are important changes that ought to be considered. The draft policies provided yesterday do not address the need for more objective criteria to define ethical limitations for public defense providers nor the need for more refined reporting and tracking of active workload that we identified in our Crisis Plan. Please refer to the documentation we submitted in September 2023 for more detail on our suggestions for these areas.

The Multnomah Circuit Court does not support the draft policy for the Reduced Caseload Program for First Year Attorneys. We do not believe the greatly restricted limit on open caseload for all qualifying first year public defenders is necessary. In Multnomah County, the public defenders have dedicated supervisors and case managers for support, and how long it takes for an individual attorney to feel prepared and trained is subjective. We believe many attorneys in their first year as public defenders are capable of providing ethical representation for more than 55 open cases in a year. Building that limitation into public defense contracts will be more harmful than helpful. Also important to keep in mind is that many of the attorneys qualified to take misdemeanors in Multnomah County are those first year defense attorneys. If a large portion of the misdemeanor public defense attorneys in Multnomah County are limited to such a small number of open cases, the defense crisis will get worse here.

The Multnomah Circuit Court also has concerns about the draft policy on Partial Weighting for Early Withdrawal from Cases. The provision crediting defenders for 50% of the caseweight if they withdraw from the case within 15 days for misdemeanors could lead to overcompensation in many circumstances, and possibly even purposeful manipulation, as 50% of the representation on those cases in Multnomah County does not take place in the first 15 days of being assigned to the case. Due to the volume of cases in Multnomah County and the high number of conflicts that result, there are many cases which must be reassigned, and with this policy there is no incentive to alert the court to conflicts as quickly as possible. We recommend a provision connecting the amount of caseweight credit to the point at which the conflict should have been identified and reducing the amount of caseweight credit provided for representation that is terminated within the first few weeks after case assignment.

In the draft Contract Compliance Policy, there should be a requirement for independent tracking or oversight of workload for public defenders by OPDC, and/or a requirement for more detailed reporting by providers. The number of assigned cases alone does not adequately reflect an attorney's workload. Additional factors should be reported and considered, such as custody status and number of cases for the same defendant. Ethical limitations should be based on objective standards that are audited. There are insufficient accountability measures in this policy.

In the draft Attorney Warrant Removal Policy, we do not understand the requirement for the state to attest to attempts to serve the warrant prior to the date of removal. This is not practical in our jurisdiction.

Please let us know if you have questions.

Barb Marcille

Barbara B. Marcille
Trial Court Administrator, Multnomah Circuit Court
4th Judicial District, Oregon Judicial Department
1200 SW 1st Avenue, 7th Floor
Portland, OR 97204
Main: 971-274-0500
Direct: 971-274-0501
Cell: 971-271-0371



Oregon District Attorneys Association, Inc.

2025 Board Officers & Directors

John Wentworth, President
Kelsie McDaniel, Vice President
Joshua Eastman, Director
Kevin Barton, Director

Paige Clarkson, Director
Aaron Felton, Director
David Goldthorpe, Director

Steve Gunnels, Director
Kari Hathorn, Director
Dan Primus, Director

March 12, 2025

TO: Jessica Kampf
Executive Director, OPDC

FR: Bryan Brock
Executive Director, OR District Attorneys Association

RE: Comments on Draft Policy proposals (Number 404)

On behalf of the District Attorneys Association, I want to thank you for seeking feedback on your proposed policy changes regarding your contacts with indigent defense providers. The struggle Oregon is currently experiencing to provide competent defense attorneys to those that qualify is a problem we want to help solve. We share the common goal of fixing a situation that prevents the judicial system from functioning and that has an impact on us all.

With that in mind we have reviewed the seven policy changes you invited us to review, and make the following comments and suggestions for your consideration:

1. PARTIAL WEIGHTING FOR EARLY WITHDRAW FROM CASES

We agree that it's important to take account of the fact that withdrawing from a case before completion should be weighed differently than those cases in which an attorney is able to complete all the necessary work. This is a step in the right direction. We suggest that it does not go far enough to account for the actual work performed. The average time it takes a defense attorney to pick up discovery is over 7 days, so we know that on average very little of the work is done in the first 7 days. We recognize that when defendants are in custody this timeline can be shorter and that there can be some work

before discovery is received but on average 24 hours is not long enough. We suggest a longer period of closer to 5 days.

Assigning 50% should be reserved for those cases in which on average the attorney has put in 50% of the work. Recognizing that sometimes an attorney will do more will balance out those times in which they do less. Also, you need to consider the fact that an attorney who inherits a case may benefit from some of the work done by the prior attorney. Our suggestion here is to assign 50% after 5 days but prior to the average time to close a misdemeanor or felony. Using the data from OJDs dashboard, 86% of all misdemeanors are resolved within 180 days and felonies within 365 days.

We suggest striking a balance so that it evens out over the year. We suggest the following table for partial weighting, recognizing that these numbers may need to be revisited after further study but with the goal of balancing the workload:

	No credit	50% credit	75% credit	90% credit
Misdemeanors	0-5 days	6-60 days	61-180 days	After 180 days
Felonies	0-5 days	6-90 days	91-365 days	After 365 days

2. ATTORNEY WARRANT REMOVAL POLICY

We also agree that shortening the current practice of removing an attorney after 180 days to 90 days is an improvement. However, relying upon the court to order the withdrawal seems unnecessary. Unlike situations where an attorney moves to withdraw for ethical reasons and files a motion, this policy requires the court to initiate the process which adds to the court's workload. Also, requiring the prosecutor to file an affidavit adds more work on thousands of cases in warrant status, but ultimately unnecessary. Withdraw for purposes of case weighting due to failure to appear should be commenced without the need for a court order.

Lastly, practice has shown that when a defendant fails to appear, they either get back into the system right away or it's well over 30 days. Oregon cannot afford to keep an attorney on "hold" 90 days for individuals who fail to appear on their case. Our recommendation is to shorten the current policy of 180 days down to 30 days and that for simplicity and expediency the MAC reduction occurs without waiting for a court order.

3. CO-COUNSEL POLICY

This policy does not address how the case would be weighed for the purpose of calculating the MAC when Co-counsel is assigned. We assume that means each attorney would receive full credit. If so, this fails to account for the fact that the workload will be divided up between the attorneys and thus reduce individual workloads. Some sort of credit sharing needs to be utilized when there are multiple attorneys on a case, and we suggest something between 50 to 75% depending upon how many attorneys are assigned.

4. PARTIAL WEIGHTING FOR SECOND AND SUBSEQUENT ATTORNEYS

Our only comment here is that the reference to the client's failure to appear after 90 days should be changed to be consistent with the changes suggested for the warrant removal policy of 30 days.

5. CONTRACT COMPLIANCE POLICY

All attempts at enforcing contract compliance should be encouraged and we support these efforts.

6. REDUCED CASELOAD PROGRAM FOR FIRST YEAR ATTORNEYS' POLICY

We agree new attorneys can lack the capacity that more experienced attorneys have. Allowing for a reduced MAC caseload for new attorneys makes sense. However, when onboarding new Deputy D.A.s, the practice has been to start with low level misdemeanors and build up a caseload of misdemeanors only. Onboarding new defense attorneys in a similar fashion would be better practice than limiting new attorneys to 180 misdemeanor equivalent cases.

7. VACANCY FUNDING POLICY

ODAA agrees that requiring contractors to return funds when attorney positions are not filled so that funds can go to those who are able to hire. We need to try to balance the overhead expenses that non-profit defenders have against paying for something you are not getting. One of the advantages of having many attorneys in an office is the ability to spread out the caseload when someone vacates a position. Funding 50% for up to two months of vacancy should strike a fair balance to allow the providers time to fill the position and we think this a good policy.



Jay A. McAlpin
Presiding Judge
Telephone: (541) 682-4240

Lane County Circuit Court
125 E. 8th Avenue
Eugene, OR 97401

March 13, 2025

Jessica Kampfe, Director
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
By email only: Resource.Counsel@opdc.state.or.us

Director Kampfe,

Thank you for the opportunity to weigh in on OPDC's 2025-2027 contracts with public defense providers. We are concerned that some proposed provisions of the new contracts will have unanticipated negative consequences in our district. And, while they may be vital provisions in some districts, they are not necessary-and potentially harmful-here.

As you know, Lane County has escaped the worst of Oregon's public defense crisis. Lane County has been able to manage and maintain a relatively low number of unrepresented persons due to four main factors: (1) timely investment by the legislature allowing local providers to replace retiring defenders, (2) public defense providers that effectively and responsibly manage their caseloads to prioritize representation, (3) a District Attorney's office that is experiencing an on-going employment crisis, and (4) a court case management system that is simple and effective.

In combination, the legislature's investment in local public defense, our public defense providers' track record of managing their caseloads to maximize representation and the DA's employment crisis result in Lane County's public defense data, although accurate, potentially being misleading. Specifically, in Lane County, whether defense providers are within 15% of the monthly prorated MAC is impacted more by the DA's employment crisis than any factor within the providers' control.

Public Defender Services of Lane County and the Lane County Defense Consortium have translated the legislature's fiscal investment in local public defense into an increase in the number of public defense attorneys in our community. For example, in 2016, PDSLCL had 18 attorneys (up from 15 attorneys in 2013.) Currently, the office has 28 public defenders. This is exactly what the legislature believed their investment in public defense would accomplish. Consequently, our local providers retain attorneys at a better rate than other providers around Oregon. The combination of an adequate number of providers who remain in their positions results in a more stable number of available providers. On the other hand, our District Attorney's Office has been going through a sustained employment crisis. When I left the Lane County District Attorney's Office in 2009, the office was considered "understaffed" at 33 total prosecutors. Currently, the DA's office has at least five fewer attorneys prosecuting a wider selection of cases with at least two attorneys exclusively assigned to specialty dockets. As a consequence of their employment crisis, any change in personnel in the DA's office results directly in either a reduction or increase in the number of cases filed. These fluctuations may be temporary like the 40% reduction in case filings from the month of October, 2024 and November 2024, or more long-term, like the roughly 31% increase in filings overall across 2024.

The contract compliance policy and vacancy funding policy (policy 404,) may be vital in other parts of the state but should have enough flexibility to reflect that some public defense providers, like those in Lane County, have manageable numbers of unrepresented persons. Lane County's public defense providers' historic commitment to prioritizing representation is an important factor in ensuring that those communities are not facing an unmanageable crisis and should be recognized. It would be unjust if those providers are "punished" when they fail to meet benchmarks because the local district attorney is going through a period of staffing instability or some other factor beyond the providers' control. Reacting to temporary shifts in filing numbers may result in Lane County having an insufficient number of providers when the District Attorney is able to secure additional staffing.

Another aspect of Lane County's unique situation is the degree of cooperation and collaboration that occurs between our public defense office and our consortium. It is a benefit to me, in the managing of our criminal case resolution process, to be able to rely on the two providers covering for each other when either approaches capacity or when an ethical or personal

conflict arises between client and attorney. The two partial weighting provisions on withdrawals may create a disincentive for this type of intra-provider (or even inter-provider) support. I am concerned that the policy does not reflect (1) to meet ethical obligations, subsequent attorneys often are required to re-do work done by the prior attorney, and (2) that clients who have multiple attorneys are, in my experience, often more difficult and require extra effort to advise and represent. Generally, I believe attorneys should be paid for their reasonable work and incentivized to take on difficult clients rather than leave them unrepresented.

In addition to how some general contract terms may negatively impact Lane County's specific situation, I also object to any language in OPDC contracts to may be interpreted to limit the courts' discretion to effectively manage the work of the court. Particularly, I find the limitations on the court's ability to remove an attorney from a case on warrant status to be an inappropriate expansion of ORS 135.050(6) by placing obligations on the court and the District Attorney's Office which are not otherwise required by statute. Determining whether a client has relocated to another jurisdiction, is in custody or is involved in in-patient treatment is primarily the responsibility of the defense attorney. The proposed policy shifts that responsibility to the courts and prosecutors. A simpler process would be that attorney appointments end after 90 days on warrant status unless the attorney has made a request to remain on the case. This limits the work of all parties, allows defense providers to focus on the specific cases where maintaining representation is important and allows the courts to manage the courts' work without interference from OPDC.

Finally, I want to commend you for considering a reduced caseload program for first year attorneys. The ability of new attorneys to spend extra time learning their craft is a vital part of attorney development. From a judicial perspective, when new attorneys, whether public defenders or prosecutors, have the time to read and implement rules, statutes and case law, talk to colleagues and judges about their performance and then implement lessons that they've learned, they make better attorneys in the long term. In our community, Public Defender Services of Lane County is the primary source of public defender training. Many attorneys choose to stay with PDSLCL, but many move on to the Consortium, private practice or the bench. Each brings the skills learned at PDSLCL into their new roles and continue to benefit our community.

Through good planning and responsible management, Lane County has been able to maintain a low number of unrepresented persons. I appreciate the difficulty in crafting contracts that address multiple unique situations across the state. I ask that you consider not applying contract terms that give “teeth” to OPDC contracts to those providers that have successfully managed their workload. My concern is that these unnecessary terms may leave our local community worse off.

Sincerely,

A handwritten signature in blue ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Jay A. McAlpin

ODCA

Attn: OPDC Director, Jessica Kampfe
CC: Lisa Taylor, Constantin Severe
Re: Proposed "Modified MAC" contract changes

3/14/2025

Director Kampfe,

Thanks for your service. We are grateful to you and others who helped to develop a Governor's Recommended Budget (GRB) that includes a cost of living adjustment for the contract workforce.

I am writing on behalf of our association, which represents 25 firms and more than 200 attorneys in public defense, to ask that you consider a few comments and proposed amendments to the upcoming "modified MAC contract" and the contract compliance policy you presented at the most recent House Judiciary meeting and other places, including a recent commission work session.

With respect to the contract compliance policy, our association agrees with the proposed steps for compliance. However, we have concerns that the proposed remedies only include penalties but not rewards for performance under the contract. Here are quotes with proposed revisions to the policies indicated by slide 29: Contract compliance:

If a contractor's caseload varies by more than 15% above or below MAC for six consecutive months, OPDC may adjust the number of FTE unless an exception applies.

Corrective action including withholding 1-5% of funds [\[or increasing compensation on a pro rata basis\]](#), [\[increasing or\]](#) reducing FTE, reducing qualification, requiring additional mentoring/oversight, and termination of the contract.

The current unrepresented crisis stems from having too few attorneys to meet the current caseload in several places. The most straightforward solution is to allow attorneys who have additional ethical capacity to take more cases, and to compensate those attorneys for that extra work.

We make the following comments and suggestions about the proposed contract revisions.

Many of the provisions in the proposed contract amendments are an effective pay cut for public defense firms. Less money and time to recruit new attorneys and imposed performance standards on the lower end of the contract without incentives on the upper end.

- **Agency Recommendation: Partial weighting for early withdrawal/warrant changes.**

ODCA response: The current weighting makes more sense relative to the actual timelines and work of attorneys on cases than the proposed changes. It's unclear whether the proposed changes will result in significant cost savings. However, they introduce new uncertainties. For example, concerns were raised that assigning multiple new weights may result in accounting errors. OPDC staff has testified to the commission that a major source of slow pay for PAE and hourly accounts is related to reconciliations due to differing rate structures. We would not like to see similar uncertainty introduced into annual contracts. There is ODCA support for reducing the warrant removal to 90 days.

- **Agency Recommendation: Reduce caseload to 150 MAC for all first-year attorneys.**

ODCA response: There is support for this, but it is an expensive fix. Each new attorney would cost double that of an existing attorney. If funds are scarce, please consider a shorter duration (6 months) for this MAC modification and retain more for a cost of living increase for the current workforce.

- **Agency Recommendation: Co-counsel required for murder, Jessica Law, life sentences, and Juvenile waiver. Co-counsel in other instances must be approved by OPDC and could be appropriate based on severity of charges, novel issues, attorney development, mentorship, and local counsel.**

ODCA response: This proposed change reflects an expansion and improvement in the current scope of practice, which we understand currently only requires co-counsel for Murder 1 cases.

Our association agrees that expanding the use of co-counsel to more case types is a best practice. Our members support the practice. However, we have received feedback from providers in varied parts of the state, both urban and rural, that although this is an important tool for improving representation and training new attorneys, this expansion will be difficult or impossible in some parts of the state and for some case types at the current level of available staffing.

Consideration should be given to how this policy will affect the state's ability to assign attorneys in Betschart cases and how it may result in further adverse action against the state for failing to timely assign counsel in other case types involving defendants who will be incarcerated while awaiting trial.

Agency Recommendation: 0.5 MAC for second attorney or reassignment of attorney to a case.

ODCA response: With regard to reassignment, we would like to confirm that in the proposed rule, a consortium is an entity, and that therefore a case assigned to a new firm would still receive full caseload. This would track with testimony given at the provider meeting. To the extent that this policy also relates to a second attorney being assigned to a case, the proposed policy is counterproductive for attorney training, as firms use a second attorneys to train up attorneys to new levels of qualification.

- **Agency Recommendation: Vacancy Funding: Half compensation for 60 days.** We support full compensation for 60 days and firms should have 120 days to fill a vacancy position.

Other Contract Suggestions:

- Firms with attorneys that go up to 15% over the contract are not compensated for that additional work. We ask the commission or legislators to amend the contract to **compensate attorneys on a pro rata basis when they take additional caseload.**
- **Require OPDC to include a cost of living adjustment** tied to union negotiated rates or other commonly used metrics in all contracts going forward. The state should keep up with inflation on an annual basis for this workforce.
- **Ensure adequacy of process for disbursement of “extraordinary case circumstance” funds.** Some providers note that it is difficult to get funds for this purpose in practice. Contractors should have clear assurance they can receive additional compensation for complicated cases that require more time than the normal assumptions allow.
- **Facilitate “load balancing” across adult and juvenile contracts for providers with both contract types.**

Thank you for your consideration. Please feel free to reach out if you would like to discuss these or other matters. My cellphone is 503.437.2833.

Best regards,

Sal Peralta
Executive Director
Oregon Defense Consortia Association



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

March 17, 2025

Jessica Kampfe
Executive Director
Oregon Public Defense Commission
198 Commercial Street SE, Suite 205
By email only: Resource.Counsel@opdc.state.or.us

Director Kampfe,

Please find below additional feedback from courts regarding OPDC's proposed contract policies. Thank you for soliciting feedback from courts who may be impacted by the changes. While courts appreciate the opportunity to review these proposed policies, several courts have expressed that the three-day timeframe to review eight policies spanning 18 pages of content was too short to provide thoughtful feedback.

1. Attorney Warrant Removal Policy:

- This is not an OPDC policy, but a directive telling judges how to exercise their discretion, which is inappropriate and unacceptable. Some of the ways in which an attorney can be removed in the policy are reasonable, some are not.
- The policy does not re-weight the case until the warrant has been pending for 90 days, a departure from 30 days in the past. Attorneys should withdraw at 30 days after a warrant is issued without court action or the courts should be allowed to remove the attorney at that point.
- This policy is overly labor intensive for court staff and oversteps OPDC's authority to set processes for the court. The Chief Justice can order courts to remove attorneys at a date certain after an issuance of a warrant. OPDC can set policy on what contractors do or what the agency does.

2. Partial Weighting for Second and Subsequent Attorney Policy:



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

- This policy is problematic. Essentially, if a case is assigned to attorney B after attorney A within the same firm is “otherwise unavailable to continue,” attorney B gets 100% credit and attorney A gets 50% credit. So, one client is represented by the same firm and the firm is getting 150% credit. There is no definition of “is otherwise unavailable to continue.” Cases get reassigned all the time within a firm for scheduling conflicts, vacations, etc. It is not unusual for a case to be reassigned within a firm multiple times, which means a firm is getting more than 100% credit for one client/case. In our jurisdiction we appoint the firm, the firm should only get 100% credit for one case regardless how many times they reassign internally.
- If the case stays within one firm, it should not have any additional weight if reassigned. The firm is the firm and assignments float within a firm relatively fluidly. This policy has a substantial possibility of being abused and does not help resolve case issues. Attorney transfers in the same organization should get a credit. This policy has a similar issue as the Attorney Warrant Removal Policy regarding the timing of when a case is reweighted.

3. Co-counsel Policy

- Co-counsel should not be limited to “one level of qualification” below. There are cases where having a lesser experienced attorney will help the representation and improve the qualifications of the co-counsel attorney. Lead counsel should be able to exercise their professional judgment to create the team they think will best suit their case considering the conditions outlined in section 2 (c), (d), and (e).

4. Reduced Caseload Program – PCRP Policy

- Attorneys who are new to public defense should have significant mentorship and training. However, artificial limitations on caseloads is not effective in helping to resolve juvenile dependency qualifications. Further, the policy states that if a first-year attorney gains a certain level of expertise they lose the protection of the RCP, thus creating an incentive for an attorney not to seek increased levels of competency and qualifications. At 1.0 the attorneys may not take other case types often to the detriment of rural communities where the defenders are the only attorneys available locally.

5. Reduced Caseload Program – Trial Level Policy



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

- The general notion that “new attorneys cannot handle a full caseload due to lack of experience and knowledge” is inaccurate. There are qualification standards, and all first-year attorneys can handle a full misdemeanor/PV caseload. In fact, it is the only way they are going to learn to improve their efficiency and effectiveness. I reject the premise for this policy.

6. Case Weighting Policy:

- Withdrawal upon receipt of discovery is a much better rule than 24 hours. Any attorney can hold a case for 24 hours. The rule should be that upon review of discovery, if a conflict is found the attorney should get a 25% case weight, once a case is past the first trial readiness/entry of plea 50% credit, and after 180 days 75% credit. If a case is open for over 365 days, there is likely a problem with case resolution and timeliness to disposition. Further, arbitrary days are not conducive to case resolution and build in further delay. The entire policy should be reconsidered.

7. Contract Compliance Policy:

- The phrase “unless doing so would violate the OSB Rules of Professional Conduct or the contract management provisions” confuses a contractual obligation with an ethical obligation. OPDC appears to be telling attorneys what they can ethically handle while not having the authority to do so. Telling attorneys what they can or cannot do ethically is within the purview of the Oregon State Bar, not OPDC. When OPDC contracts with an attorney at 0.95, they are not monitoring the work the attorney is doing outside of the contract.

Further, the enforcement mechanism fails to consider rural practices. An attorney may be at 0.7 for three months than at 1.2 for three months. The caseloads are not consistent in rural counties and come and go with no particular regularity. The notion that an office of two attorneys is going to be punished for not taking cases that do not exist is intolerable because it is only a matter of time till the caseload will exceed capacity for a while. That excessive capacity will be balanced out later in down times. Recruitment of contractors to smaller communities will be severely hampered by this



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

rule unless there is a carve out for judicial districts with less than 30,000 people (the judiciary should have one judge for every 15,000 people).

Additional feedback:

- The likely impact of OPDC's policy recommendations will be to further limit the availability of counsel to indigent criminal defendants, youth in delinquency proceedings, and families in dependency cases, an impact to be acutely and disproportionately felt in rural Eastern Oregon.

Thank you,

Crystal Reeves
Criminal Law Analyst