

Members:

Robert Harris, Chair
Susan Mandiberg, Vice Chair
Stephanie Engelsman
Alton Harvey, Jr.
Leslie Kay
Philippe Knab
Tom Lininger
Paul Lipscomb

**Nonvoting Members:**

Rep. Paul Evans
Haley Olson
Caitlin Plummer
Sen. Floyd Prozanski

Interim Executive Director:

Kenneth Sanchagrin

Oregon Public Defense Commission

Meeting will occur virtually via Zoom.*

Wednesday, January 21, 2026

Pre-Meeting Commission Work Session 9:30 AM – 10:00 AM PST

Commission Meeting 10:00 AM – approx. 2:00 PM PST

Administrative Announcement

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

AGENDA

Approx. Time	Item/Leads
9:30-10:00	<p>OPDC Pre-Meeting Commission Work Session</p> <p>Topic:</p> <ul style="list-style-type: none">• Data 101 Presentation<ul style="list-style-type: none">◦ Lead: Maddy Ferrando (30 Min.) <p><i>All members of the public are invited to join the Oregon Public Defense Commission for an ongoing Commission work session series, set to take place prior to convening official Commission meetings.</i></p> <p><i>These work sessions will provide Commissioners, new and experienced, with a foundational understanding of important issues and policy areas, including potential challenges, opportunities, and complexities.</i></p> <p><i>Commission work sessions may or may not lead to future decision-making, but they will always be valuable and educational for all Commissioners and public who attend. Work sessions will be available to join virtually via the public Zoom link listed below the agenda.</i></p> <p>Note: Agenda items not addressed or completed during this work session will be carried over to the next scheduled workgroup meeting, unless otherwise directed by the Chair.</p>

Approx. Time	Item	Lead(s)
10:00-10:05	Welcome – Call to Order <ul style="list-style-type: none"> Introduction to Commissioner Leslie Kay 	Chair Harris
10:05-10:20	Public Comment	
10:20-10:30	Update: Unrepresented Persons in Oregon Courts: Attorney Shortage	Ken Sanchagrin Maddy Ferrando
10:30-10:45	Update: Director's Update <ul style="list-style-type: none"> Financial Case Management System (FCMS) Budget Update Accounts Payable Dashboard 	Ken Sanchagrin
10:45-11:05	**Break**	
11:05-11:10	Action Item: New Key Performance Measures (KPMs)	Kim Freeman
11:10-11:20	Action Item: <ul style="list-style-type: none"> Civil Commitment Standards Psychiatric Security Review Board (PSRB) Attorney Standards 	Steve Arnett
11:20-11:25	Possible Action Item: Commission Key Performance Measures (KPMs)	Vice Chair Mandiberg
11:25-11:30	Briefing: Agency Terminology Memo	Jennifer Bell
11:30-11:45	Briefing: <ul style="list-style-type: none"> Habeas Performance Standards Post-Conviction Relief Attorney Performance Standards 	Steve Arnett
11:45-12:00	Update: Legislative	Lisa Taylor
12:00-12:10	Update/Discussion: OPDC Capacity Report	Ken Sanchagrin
12:10-12:25	Briefing: Upcoming Commission Action Items	Ken Sanchagrin
2:00pm (Approximately)	**Adjourn**	

*To join the Zoom meeting, click this link: <https://zoom.us/j/98315683490>. This meeting is accessible to persons with disabilities or with additional language service needs. Our Zoom virtual meeting platform is also equipped with Closed Captioning capabilities in various languages, which agency staff can assist you with setting up ahead of meetings.

Requests for interpreters for the hearing impaired, for other accommodations for persons with disabilities, or for additional interpreter services should be made to info@opdc.state.or.us. Please make requests as far in advance as possible, and at least 48 hours in advance of the meeting, to allow us to best meet your needs.

Listed times are an estimate, and the Chair may take agenda items out of order and/or adjust times for agenda items as needed.

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

Next meeting: **February 18, 2026, 9am – 2pm via Zoom.** Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opdc/commission/Pages/meetings.aspx>.



Date: January 21, 2026

To: Rob Harris, Chair of OPDC
OPDC Commissioners

Cc: Kenneth Sanchagrin, Executive Director

From: Maddy Ferrando, Senior Research Analyst
Charity Morris, Senior Research Analyst

Re: Data 101

Background:

The Data and Research Team is beginning a Data 101 series during the commission work session to provide an overview of OPDC data, gather feedback, and take questions from the commission. The goal of Data 101 is to provide information on the data OPDC collects from different program areas, core projects, and limitations of the data. The Data and Research Team hopes to inform the commission members of the types of data that is available to assist them and the agency in making data informed decisions. Based on feedback from the initial Data 101 session the Data and Research Team aims to provide further detail on topics of interest to the commission at future sessions.

Agency Proposed Motion: N/A.

Agency Recommendation: N/A.

Fiscal Impact: N/A.

Unrepresented Numbers

Statewide, there are 2,559 unrepresented individuals as of December 31, 2025, including adults and juveniles in and out of custody, post-disposition, and non-criminal cases. This is a decrease of 181, or 6.6%, since November.

Category	12/31/24	11/30/25	12/31/25
Out-of-Custody	3,143	2,275	2,167
In-Custody	190	148	158
Probation Viol.	332	218	181
Non-Criminal	113	99	53
Total	3,778	2,740	2,559

Out-of-custody individuals **decreased by 108, or 4.7%**, and in-custody individuals **increased by 10, or 6.7%**, in December compared to November.

Year over year, the number of unrepresented individuals has fallen by 32.3%.

Caseload Capacity

2025-27 provider contracts started on October 1, 2025. Case counts and MAC utilization for contractors have reset as of that date. As the Oregon Trial Division is not on a contract cycle, its data is reported for the 25-27 biennium. OPDC's real-time OTD data is current as of December 31, while contractors' data is current as of November 30.

Provider Type	Total Cases	Monthly Cases	MAC Utilization
Contractors¹	14,491	6,838	94.1%
Consortia	6,446	2,922	97.0%
Non-Profits	5,629	2,862	88.2%
Individuals/Firms	2,416	1,054	101.9%
OPDC Trial Div²	1,050	206	91.8%
Northwest	245	43	103.3%
Central Valley	295	34	72.7%
Southern	510	129	94.1%

¹ OPDC Criminal Contract Data, November 2025

² Oregon Trial Division, MAC excludes Chiefs, and attorney moving from Coos back to Marion, July 2025-December 2025

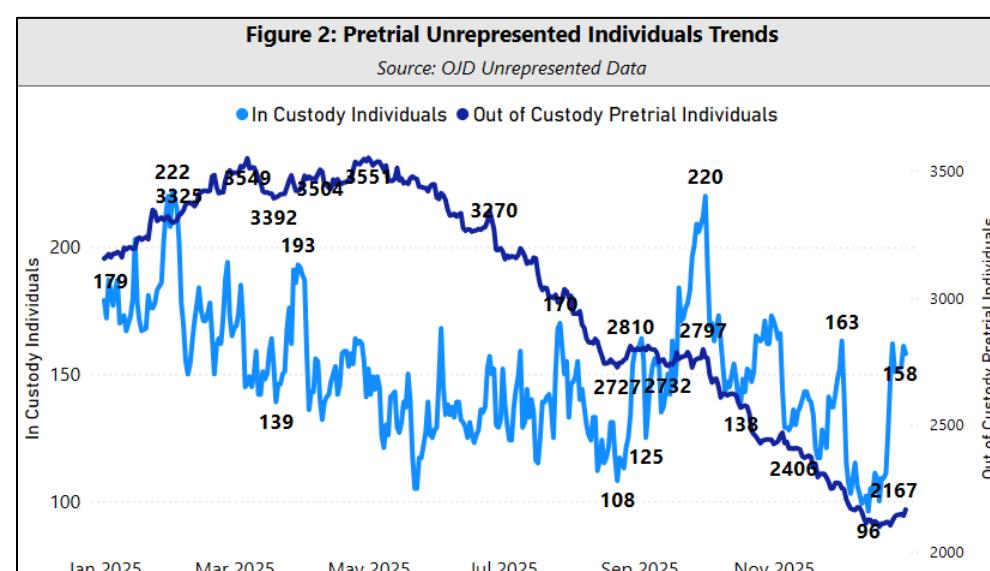
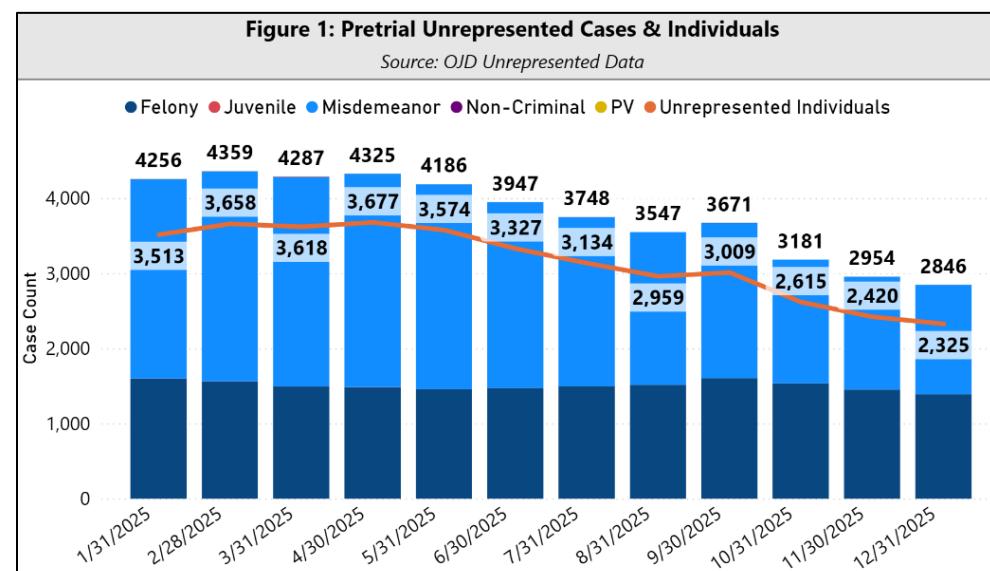
Case Assignments

OPDC assignment coordinators identified counsel for 554 cases, including 145 cases subject to Betschart, in December. Below are case assignments made by OPDC staff for unrepresented cases in December 2025.

Provider	November	December	Total	Since 7/1/25
Contractor	93	115		689
Hourly	375	395		3,433
OTD	44	45		363
Total	511	554		4,456

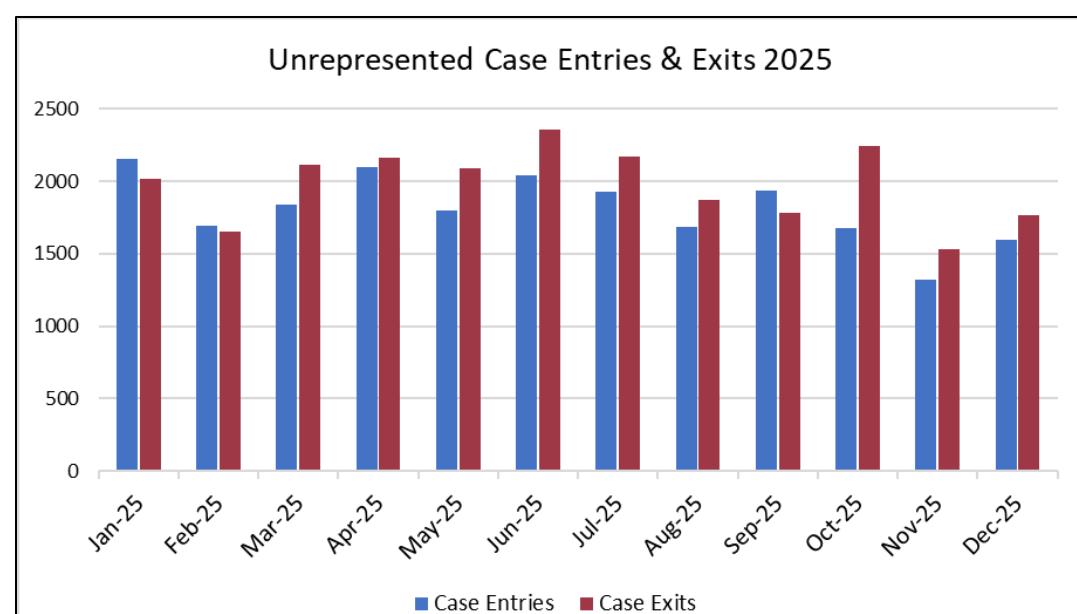
Unrepresented Trends

Figure 1 shows all non-warrant unrepresented cases and individuals over the past 12 months, broken into case categories. **Figure 2** shows the trend line for both in-custody and out-of-custody pretrial individuals over the past 12 months.



Entries and Exits

In the past 12 months 21,785 cases entered unrepresented status and 23,764 cases exited unrepresented status. Cases can enter and exit unrepresented status multiple times. There have been more exits than entries in 9 of the past 12 months.



COOS

For the past three months, Coos County's unrepresented numbers have remained at or close to zero. Therefore, this will be the last month that OPDC reports on Coos County separately.

Unrepresented Numbers

In-custody individuals remained at zero and out-of-custody pretrial individuals decreased by one in December.

Category	12/30/24	11/30/25	12/31/25
Out-of-Custody	107	2	1
In-Custody	4	0	0
Probation Viol.	6	1	1
Non-Criminal	1	1	0
Total	118	4	2

Providers

The 2025-2027 contracts added a new consortium to Coos County. In November, contractors took 144 cases and were at 115.9% MAC utilization.

Provider Type	MAC Utilization
Consortia	100.8%
Non-Profits	131.0%
All	115.9%

Oregon Trial Division

Since July 1, 2025, the OTD has taken 71 cases in Coos County. The OTD attorney currently located in Coos County will be returning to Marion County in January and no longer taking new cases in Coos.

Case Assignments

Below are unrepresented case assignments made by OPDC assignment coordinators in December.

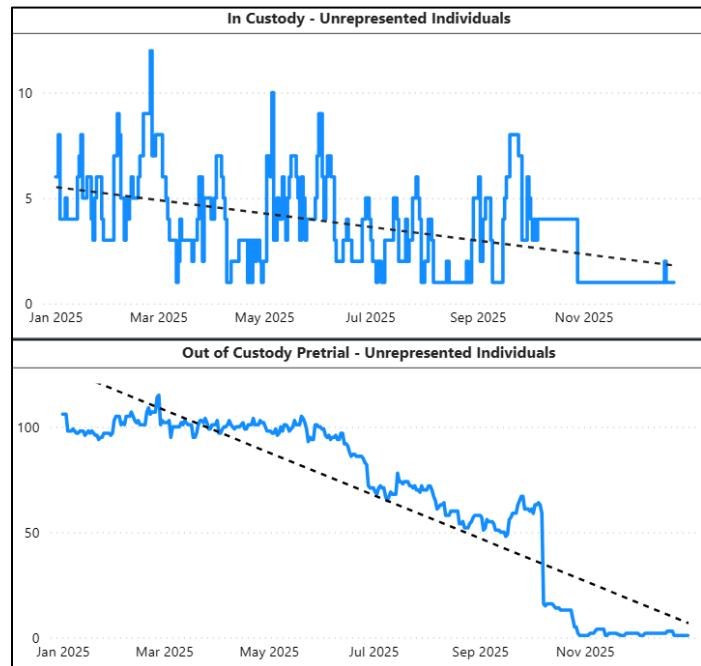
Provider Type	November	December	Total Since 7/1/25
Contractor	5	1	14
Hourly	8	3	101
OTD	0	0	49
Total	12	4	158

Unrepresented Report

December 2025

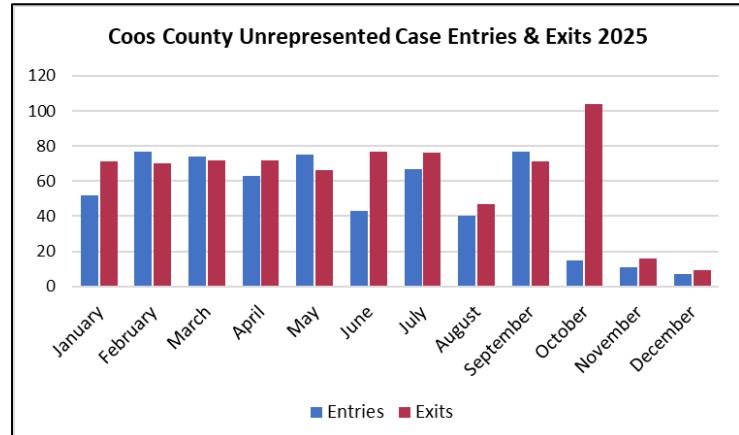
Unrepresented Trend Lines

The total number of unrepresented individuals has remained near zero for the past three months.



Entries and Exits

In the past 12 months in Coos County, 601 cases entered unrepresented status and 751 cases exited unrepresented status. The county has seen more exits than entries in 8 of the past 12 months.



DOUGLAS

Unrepresented Report

December 2025

Unrepresented Numbers

Out-of-custody pretrial individuals decreased by 31 individuals, or 16%, during December, while in-custody decreased by one individual, or 8%.

Category	12/31/24	11/30/25	12/31/25
Out-of Custody	265	196	165
In-Custody	14	13	12
Probation Viol.	7	10	12
Non-Criminal	4	3	1
Total	290	222	190

Providers

Providers took 145 cases in November and are currently at 94.2% MAC utilization.

Provider Type	MAC Utilization
Consortia	95.2%
Non-Profits	100.5%
Other	76.2%
All	94.2%

Oregon Trial Division

Since July 1, 2025, the OTD has taken 27 cases in Douglas County.

Region	November	December	Total Since 7/1/25
Central	0	0	3
Southern	0	1	24
Total	0	1	27

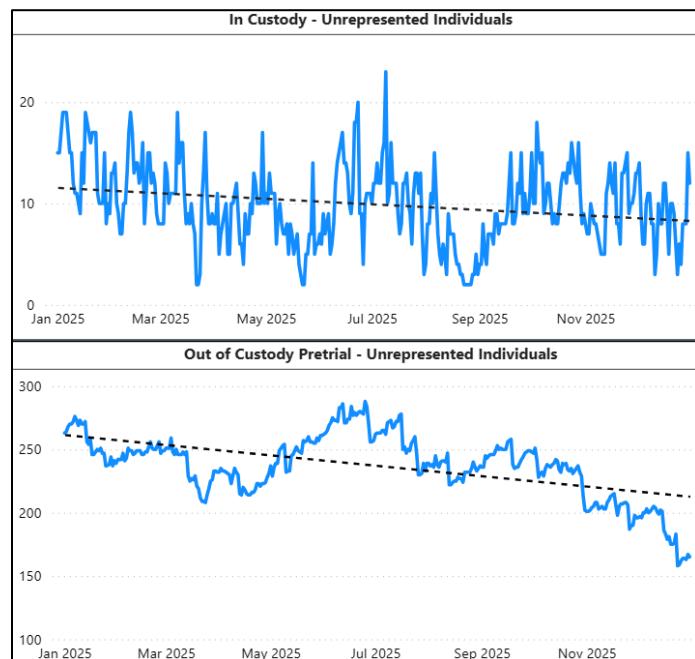
Case Assignments

In December, OPDC assignment coordinators identified counsel for 75 cases, including 37 cases subject to *Betschart*. Below are unrepresented case assignments made by OPDC assignment coordinators in December.

Provider Type	November	December	Total Since 7/1/25
Contractor	27	51	214
Hourly	37	25	267
OTD	0	0	20
Total	64	75	496

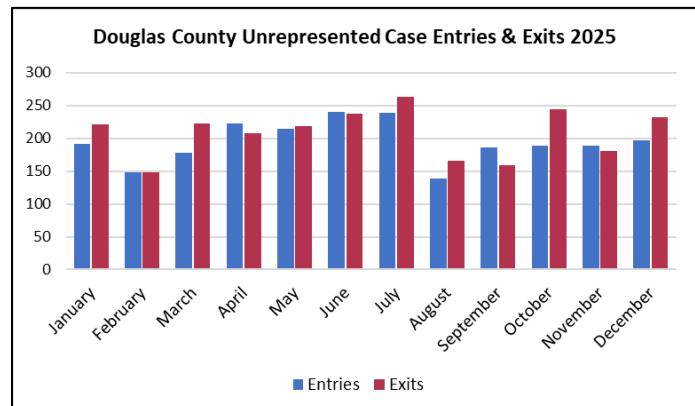
Unrepresented Trend Lines

The total number of unrepresented individuals is down 34% compared to December 31, 2024.



Entries and Exits

In the past 12 months in Douglas County, 2,333 cases entered unrepresented status and 2,505 cases exited unrepresented status. The county has seen more exits than entries in 7 of the past 12 months.



JACKSON

Unrepresented Report

December 2025

Unrepresented Numbers

In-custody individuals increased by 21 and out-of-custody pretrial individuals decreased by 31, or 10%, during December.

Category	12/31/25	11/30/25	12/31/25
Out-of-Custody	611	324	293
In-Custody	40	16	37
Probation Viol.	66	54	58
Non-Criminal	21	30	14
Total	738	424	402

Providers

Jackson County has five attorneys participating in the Enhanced MAC Program with the 2025-2027 contracts.

Contractors took 308 cases in November and are at 103.8% MAC utilization.

Provider Type	MAC Utilization
Consortia	107.4%
Non-Profits	99.7%
Other	83.3%
All	103.8%

Oregon Trial Division

Since July 1, 2025, the OTD has taken 471 cases in Jackson County.

Region	November	December	Total Since 7/1/25
Southern	40	119	471
Total	40	119	471

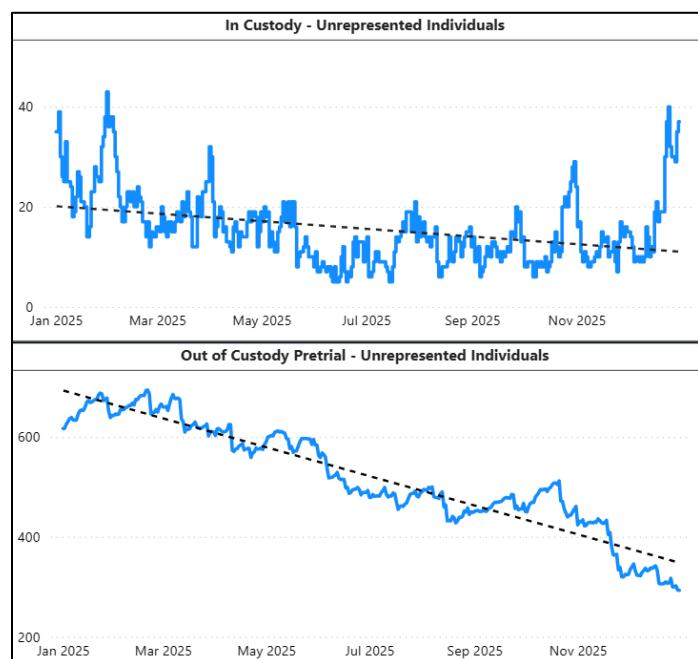
Case Assignments

In December, OPDC assignment coordinators identified counsel for 86 cases, including 18 cases subject to *Betschart*. Below are unrepresented case assignments made by OPDC.

Provider Type	November	December	Total Since 7/1/25
Contractor	12	8	85
Hourly	20	65	137
OTD	2	13	73
Total	34	86	291

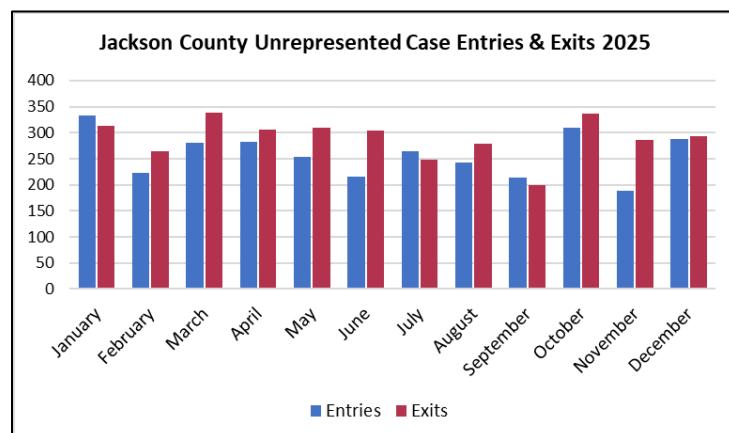
Unrepresented Trend Lines

The total number of unrepresented individuals is down 46% compared to December 30, 2024. The recent increase to in custody unrepresented individuals in December reversed in early January 2026 and has fallen to 13 in custody unrepresented individuals as of the release date of this report.



Entries and Exits

In the past 12 months in Jackson County, 3,095 cases entered unrepresented status and 3,481 cases exited unrepresented status. The county has seen more exits than entries in 9 of the past 12 months.



Unrepresented Numbers

In-custody individuals decreased by 2 and out-of-custody pretrial individuals decreased by 31, or 23%, during December.

Category	12/31/24	11/30/25	12/31/25
Out-of-Custody	583	132	101
In-Custody	15	7	5
Probation Viol.	174	69	62
Non-Criminal	12	10	6
Total	784	218	174

Providers

Contractors took 384 cases in November. In December, OPDC entered into a contract with Public Defender of Marion County.

Provider	MAC
Type	Utilization
Consortia	98.5%
Non-Profits	5.8%
All	60.7%

Oregon Trial Division

Since July 1, 2025, the OTD has taken 178 cases in Marion County.

Region	November	December	Total Since 7/1/25
Northwest	0	0	2
Central	22	32	176
Total	22	32	178

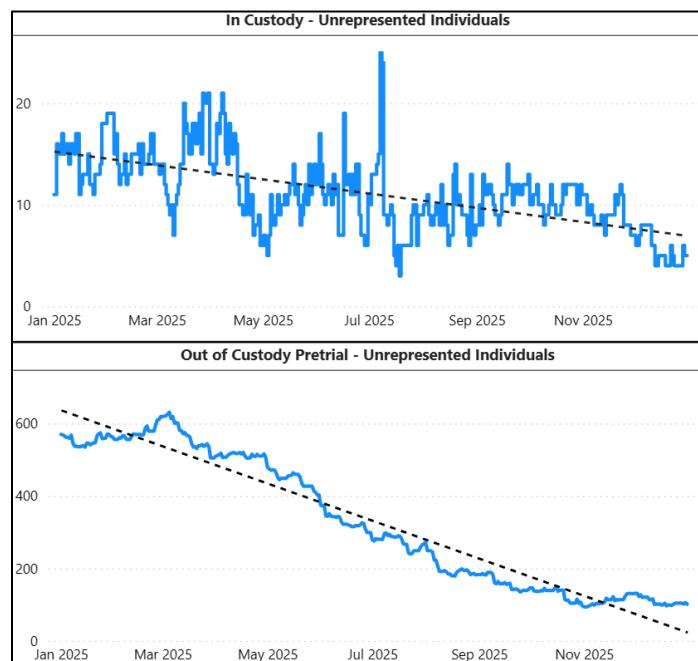
Case Assignments

In December, OPDC assignment coordinators identified counsel for 34 cases, including 3 cases subject to *Betschart*. Below are unrepresented case assignments made by OPDC assignment coordinators in December.

Provider	November	December	Total Since 7/1/25
Type			
Contractor	2	12	59
Hourly	23	22	265
OTD	0	0	57
Total	25	34	379

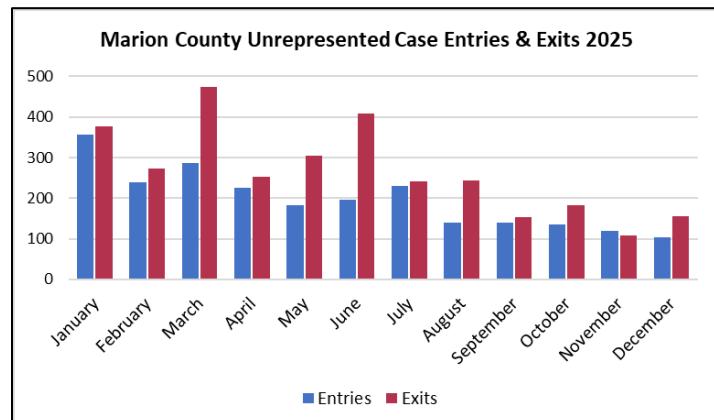
Unrepresented Trend Lines

The total number of unrepresented individuals is down 78% compared to December 30, 2024.



Entries and Exits

In the past 12 months in Marion County 2,356 cases entered unrepresented status and 3,172 cases exited unrepresented status. The County has seen more exits than entries in 11 of the past 12 months.



MULTNOMAH

Unrepresented Report

December 2025

Unrepresented Numbers

In-custody individuals decreased by 5 individuals, or 9% and in-custody pretrial individuals decreased by 26, or 2%, during December.

Category	12/31/24	11/30/25	12/31/25
Out-of-Custody	966	1,119	1,093
In-Custody	63	58	53
Probation Viol.	18	28	5
Non-Criminal	6	7	5
Total	1,053	1,212	1,156

Providers

Multnomah County has three attorneys participating in the Enhanced MAC Program with the 2025 – 2027 contracts. Contractors took 1,300 cases in November and are at 99.0% MAC utilization.

Provider Type	MAC Utilization
Consortia	78.5%
Non-Profits	104.2%
All	99.0%

Oregon Trial Division

Since July 1, 2025, the OTD has taken 189 cases in Multnomah County.

Region	November	December	Total Since 7/1/25
Northwest	33	31	189
Total	33	31	189

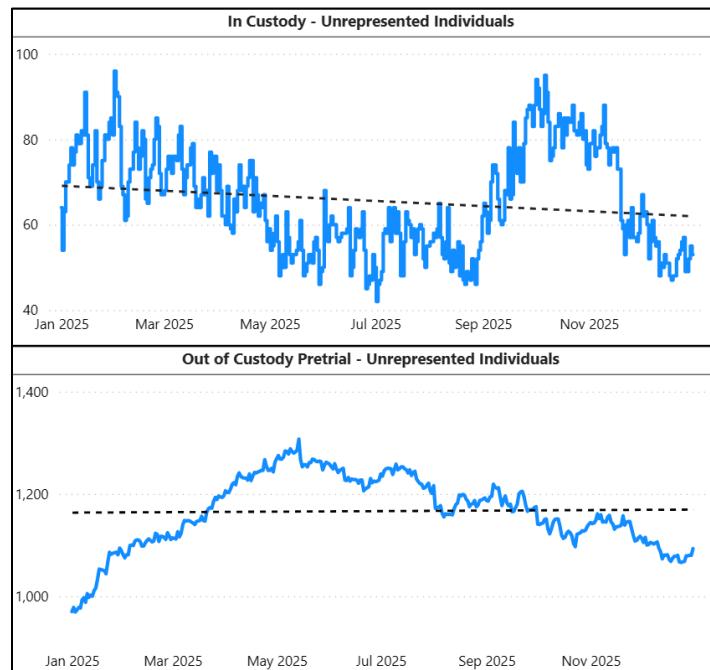
Case Assignments

In December, OPDC assignment coordinators identified counsel for 106 cases, including 47 cases subject to *Betschart*. Below are unrepresented case assignments made by OPDC assignment coordinators in December.

Provider Type	November	December	Total Since 7/1/25
Contractor	12	4	47
Hourly	74	88	543
OTD	25	14	73
Total	111	106	657

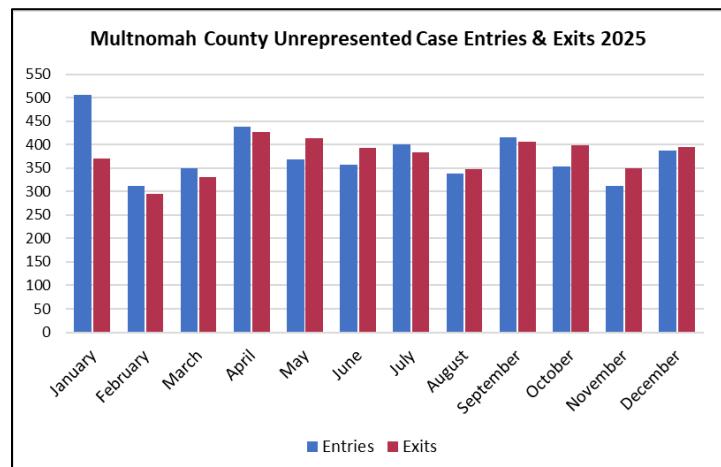
Unrepresented Trend Lines

The total number of unrepresented individuals is 10% higher than December 30, 2024.



Entries and Exits

In the past 12 months in Multnomah County 4,539 cases entered unrepresented status and 4,506 cases exited unrepresented status. The county has seen more exits than entries in 6 of the past 12 months.



WASHINGTON

Unrepresented Report

December 2025

Unrepresented Numbers

In-custody individuals increased by 6, and out-of-custody pretrial individuals increased by 44, or 12%, during December.

Category	12/31/24	11/30/25	12/31/25
Out-of-Custody	458	368	412
In-Custody	19	13	19
Probation Viol.	43	41	35
Non-Criminal	8	1	0
Total	528	423	466

Providers

Washington County has four attorneys participating in the Enhanced MAC Program with the 2025-27 contracts.

In the first month of reporting, contractors took 1,093 cases and are at 101.2% MAC utilization.

Provider Type	MAC Utilization
Consortia	124.3%
Non-Profits	92.1%
Other	108.8%
All	101.2%

Oregon Trial Division

Since July 1, 2025, the OTD has taken 49 cases in Washington County.

Region	November	December	Total Since 7/1/25
Northwest	6	13	47
Central	1	1	2
Total	7	14	49

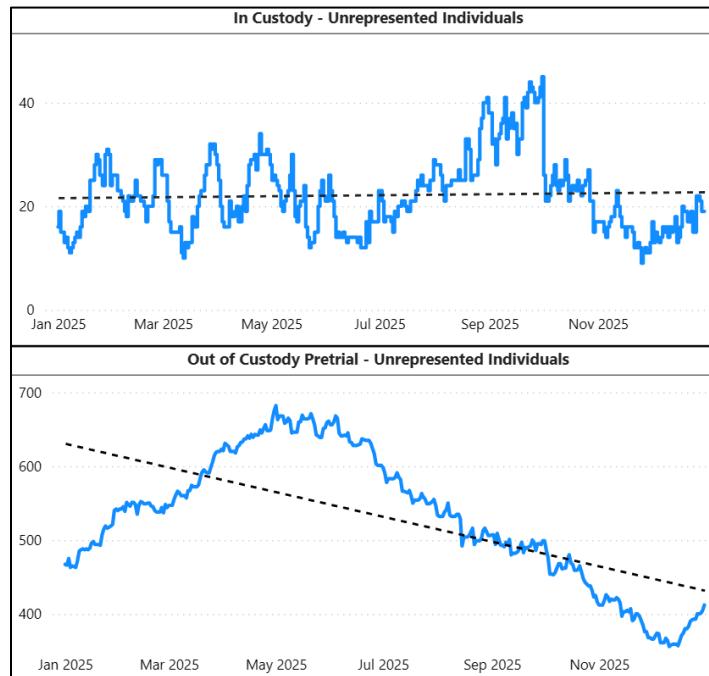
Case Assignments

In December, OPDC assignment coordinators identified counsel for 108 cases, including 22 cases subject to *Betschart*. Below are unrepresented case assignments made by OPDC assignment coordinators in December.

Provider Type	November	December	Total Since 7/1/25
Contractor	8	8	78
Hourly	122	87	586
OTD	4	13	40
Total	134	108	702

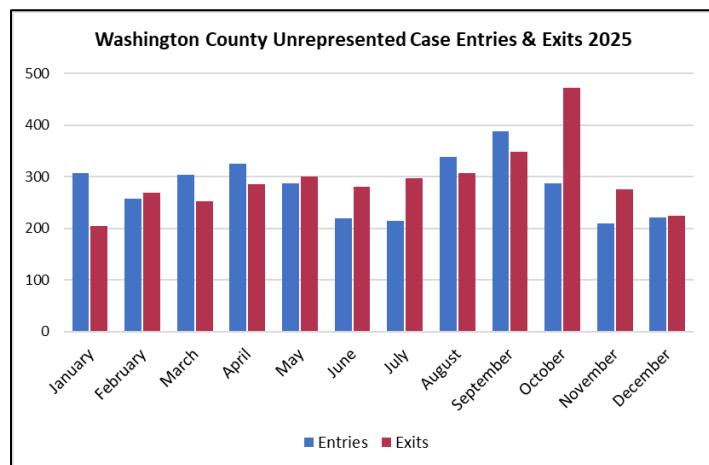
Unrepresented Trend Lines

The total number of unrepresented individuals is down 12% compared to December 30, 2024.



Entries and Exits

In the past 12 months in Washington County, 3,360 cases entered unrepresented status and 3,518 cases exited unrepresented status. The county has seen more exits than entries in 7 of the past 12 months.



Month Ending November 2025								
Appropriation	Funding Purpose	Original Budget Total Appropriation	Unscheduled Appropriation	Available Appropriation	November 2025 Expenditures	Planned Expenditures	Unused Appropriation	
General Funds								
Executive Division	Main Appn	\$ 3,356,449		\$ 3,356,449	\$ 629,175	\$ 2,884,006	\$ (156,732)	
Compliance, Audit, and Performance Division	Main Appn	\$ 8,645,518		\$ 8,645,518	\$ 1,584,776	\$ 9,051,953	\$ (1,991,211)	
Appellate Division	Main Appn	\$ 28,826,029		\$ 28,826,029	\$ 6,085,062	\$ 25,688,704	\$ (2,947,737)	
Adult Trial Division	Main Appn	\$ 329,576,667	\$ (16,500,000)	\$ 313,076,667	\$ 58,717,393	\$ 265,510,058	\$ (11,150,784)	
Adult Trial Division	Civil Commitment	\$ 1,111,456		\$ 1,111,456	\$ -	\$ -	\$ 1,111,456	
Juvenile Trial Division	Main Appn	\$ 45,417,129	\$ (2,300,000)	\$ 43,117,129	\$ 9,895,711	\$ 37,799,527	\$ (4,578,109)	
Prauthorized Expenses Division	Standard-Main Appn	\$ 94,115,182		\$ 94,115,182	\$ 17,302,892	\$ 74,630,159	\$ 3,219,488	
Prauthorized Expenses Division	THIP	\$ 7,307,131		\$ 7,307,131	\$ 4,780,188	\$ 2,526,943	\$ -	
Court Mandated Expenses Division	Standard-Main Appn	\$ 52,272,158		\$ 52,272,158	\$ 9,104,921	\$ 35,558,041	\$ 9,707,457	
Court Mandated Expenses Division	THIP	\$ 11,121,931		\$ 11,121,931	\$ 9,521,585	\$ 4,795,582	\$ (3,195,236)	
Trial Representation Division	Main Appn	\$ 18,090,808	\$ (1,000,000)	\$ 17,090,808	\$ 3,543,138	\$ 16,562,988	\$ (3,015,318)	
Parent Child Representation Program	Main Appn	\$ 46,737,940	\$ (2,300,000)	\$ 44,437,940	\$ 10,652,548	\$ 34,665,235	\$ (879,843)	
Administrative Services Division	Main Appn	\$ 23,771,498		\$ 23,771,498	\$ 6,245,116	\$ 21,985,307	\$ (4,458,925)	
Administrative Services Division	FCMS	\$ 693,866		\$ 693,866	\$ -	\$ -	\$ 693,866	
Special Programs, Contracts and Distributions Division	Guardianship	\$ 1,627,594		\$ 1,627,594	\$ 207,287	\$ 1,420,307	\$ -	
Special Programs, Contracts and Distributions Division	County Discovery	\$ 6,348,960		\$ 6,348,960	\$ 1,023,162	\$ 5,325,798	\$ -	
Special Programs, Contracts and Distributions Division	Law School Program	\$ 3,437,460		\$ 3,437,460	\$ 502,119	\$ 2,935,341	\$ -	
Debt Service	Capital Debt Service	\$ 2,392,223		\$ 2,392,223	\$ -	\$ 2,392,223	\$ -	
Total General Funds		\$ 684,849,999	\$ (22,100,000)	\$ 662,749,999	\$ 139,795,073	\$ 543,732,172	\$ (17,641,629)	
Other Funds								
Juvenile Trial Division	Title IV-E	\$ 7,393,486	\$ -	\$ 7,393,486	\$ 921,683	\$ 6,471,803	\$ -	
Prauthorized Expenses Division	Title IV-E	\$ 1,037,357	\$ -	\$ 1,037,357	\$ -	\$ 1,037,357	\$ -	
Court Mandated Expenses Division	ACP	\$ 4,449,677	\$ -	\$ 4,449,677	\$ 310,652	\$ 4,139,040	\$ (15)	
Court Mandated Expenses Division	Title IV-E	\$ 2,098,261	\$ -	\$ 2,098,261	\$ -	\$ 2,098,261	\$ -	
Parent Child Representation Program	Title IV-E	\$ 11,684,477	\$ -	\$ 11,684,477	\$ 1,128,896	\$ 10,555,581	\$ -	
Administrative Services Division	FCMS	\$ 13,769,781	\$ -	\$ 13,769,781	\$ -	\$ 13,769,781	\$ -	
Administrative Services Division	FCMS	\$ 145,219	\$ -	\$ 145,219	\$ -	\$ 145,219	\$ -	
Total Other Funds		\$ 40,578,258	\$ -	\$ 40,578,258	\$ 2,361,231	\$ 38,217,042	\$ (15)	
Total All Funds		\$ 725,428,257	\$ (22,100,000)	\$ 703,328,257	\$ 142,156,304	\$ 581,949,214	\$ (17,641,644)	



Date: **January 21, 2026**

To: **Rob Harris, Chair, OPDC**
Susan Mandiberg, Vice Chair, OPDC
OPDC Commissioners

Cc: **Ken Sanchagrin, Executive Director**

From: **Steve Arnett, Trial Support & Development Manager**

Re: **Civil Commitment and Psychiatric Security Review Board Attorney Performance Standards**

Nature of Presentation: Action Item

Background:

ORS 151.216, as amended by Senate Bill 337 (2023), sets out the duties of the Oregon Public Defense Commission. Subsection (1)(j) of that statute requires that OPDC:

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.

Trial Support & Development (TS&D) has presented, and the commission has approved, in order to fulfill the legislative mandate. The PSRB and Civil Commitment standards followed the same process as previously approved standards. TS&D convened provider workgroups which included attorneys who were currently practicing public defense work and provided valuable assistance to OPDC's Resource Counsel in drafting the standards. After the standards were drafted OPDC publicly noticed these standards and requested broader provider community feedback.

Both the Civil Commitment and the Psychiatric Security Review Board (PSRB) workgroups drew extensively from the experience of their members and the other

performance standards the agency has developed. As with The standards have two components: black letter expectations and commentary. The black letter expectations set the baseline expectations for the practice area. Commentary supplements the black letter standards with the understanding that not all commentary will be applicable or even advisable in all cases.

The civil commitment and PSRB standards were presented for review at the December 5th, 2025, meeting. Following that meeting the standards were available on the OPDC website for public comment and presented for comments at a Commission Workgroup on January 8th, 2026. The agency made non-substantive changes to both standards following commission feedback. Those changes are highlighted in yellow in the documents presented with this memo.

Purpose:

OPDC intends to use the proposed performance standards to improve attorney practice throughout the state, assess the validity of complaints made against providers, and ensure clients are receiving effective representation.

Agency Recommendation:

- The Agency recommends the Commission approve the Civil Commitment Standards.
- The Agency recommends the Commission approve the Psychiatric Security Review Board (PSRB) Performance Standards.

Fiscal Impact:

No immediate impacts. Full implementation of these standards will likely require investments in OPDC infrastructure and staff, to implement training programs and other supports contemplated by these standards. Such investments were not part of the agency's requested budget for 2025-27, and the agency will address in future legislative sessions.

Agency Proposed Motion:

- The Agency proposes that Commission move to approve the Civil Commitment Performance Standards.
- The Agency proposes that the Commission move to approve the Psychiatric Security Review Board (PSRB) Performance Standards.



Civil Commitment Attorney Performance Standards With Commentary

November 2025

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Standards for Representation in Civil Commitment Cases

INTRODUCTION:

Oregon Revised Statute 151.216(j) mandates that the Oregon Public Defense Commission (OPDC) “[d]evelop, 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. The policies, procedures, standards, and guidelines described in this paragraph apply to employees of the commission and to any person or entity that contracts with the commission to provide public defense services in this state.”

The following standards were developed by OPDC staff with input from a civil commitment provider workgroup. Per OPDC policy, these standards will be reviewed and revised one, two, and five years from adoption. OPDC welcomes ongoing provider input regarding the content and efficacy of these standards.

Each standard sets a baseline for practice of appointed defense work and is followed by commentary that supplements the baseline standards. OPDC recognizes that in any given case, some standards and commentary might be inapplicable or even mutually exclusive.

Commentary is particularly challenging as there are many times when the commentary is impractical or even against a client's best interest or desire. OPDC acknowledges that to practice law, exceptions to these baseline rules and their commentary must apply. The commentary provides additional considerations for counsel performing public defense. There are times when items listed in the commentary may be useful or helpful during representation. They are not meant to establish baseline minimum performance standards.

OPDC is grateful to Oregon Public Defense Commission Civil Commitment Standards Workgroup for the extensive work OPDC drew upon in the development process.

STANDARD 1.1: THE ROLE OF CIVIL COMMITMENT COUNSEL

The lawyer for a client in a civil commitment case should provide quality and zealous representation at all stages of the case, advocating at all times for the client's expressed interests according to Oregon Rules of Professional Conduct 1.14. If a client cannot express their own interests the lawyer should act to preserve all of their client's rights.

Commentary:

1. A lawyer is bound by the client's definition of his or her best interests and should not substitute the lawyer's judgment for that of the client regarding the objectives of the representation except as permitted by ORCP 1.14.
2. A lawyer should provide candid advice to the client regarding the probable success and consequences of pursuing a particular position in the case and give the client the information necessary to make informed decisions. A lawyer should consult with the client regarding the assertion or waiver of any of their client's rights or positions.
3. Lawyers in civil commitment cases should be prepared to navigate the healthcare systems that their clients are in and should be aware of the differences between advocacy in a health care setting and advocacy in a court setting. Lawyers should be familiar with the legal or administrative staff in those hospital systems and should be prepared to communicate with them to resolve barriers to access or information within the healthcare system.
4. A lawyer should exercise reasonable professional judgment regarding technical and tactical decisions and consult with the client on strategy to achieve the client's objectives.

STANDARD 1.2: EDUCATION, TRAINING, AND EXPERIENCE OF CIVIL COMMITMENT COUNSEL

- A. **A lawyer must be familiar with applicable statutes, caselaw, local court practices, and local alternatives to commitment. A lawyer must be aware of the timelines, required notices, methods of obtaining needed information to litigate a civil commitment. A lawyer**

should be aware of collateral consequences that may impact a client as a result of civil commitments. A lawyer has a continuing obligation to stay abreast of changes and developments in the law and with changing best practices for providing quality representation in civil commitment cases.

B. Prior to handling a civil commitment matter, a lawyer must have sufficient experience or training to provide quality representation. Prior to accepting appointment in a civil commitment case, a lawyer must be certified for civil commitments by OPDC.

Commentary:

1. To remain proficient in the law, court rules, and practice applicable to civil commitment cases, a lawyer should regularly monitor the decisions of Oregon and pertinent Federal appellate courts related to civil commitment cases. Lawyers should also monitor bills before the Oregon State Legislature which may impact civil commitment practices.
2. Lawyers should have knowledge of mental health disorders, their presentations, and the mental health treatment systems available to clients. Lawyers should also understand the likely ramifications of various mental health disorders on the client's ability to successfully defend a civil commitment allegation.
3. Lawyers should have knowledge of intellectual disabilities, their presentations, and the available treatments for them. Lawyers should also understand the likely ramifications of various intellectual disabilities on the client's ability to successfully defend a civil commitment allegation.
4. A lawyer should be informed of the practices of the specific judge before whom a client they are representing is appearing.
5. Lawyers should maintain a professional network of other lawyers who routinely practice civil commitment law and should consult with that network as needed. Lawyers should be knowledgeable of how to consult with appellate counsel who routinely handle civil commitment appeals. Lawyers should subscribe to professional listservs, consult available online resources, and attend continuing legal education programs relating to

the practice of civil commitment law as available.

6. A lawyer practicing civil commitment law should become familiar with the collateral consequences of commitments such as loss of firearm rights, non-expungable, professional licensure, possible ramifications to housing, financial costs of commitment if on private insurance, possible ramifications on parenting, etc. and should stay up to date on any changes to those consequences or ways for clients to minimize their exposure to them.
7. A lawyer providing representation in civil commitment cases should be familiar with key agencies and services typically involved in those cases such as, the district attorney's office, office of county counsel, hospital staff, county behavioral health entities, private treatment facilities, and programs, along with other services and programs available as dispositional alternatives to commitment and detention.

STANDARD 1.3: OBLIGATIONS OF CIVIL COMMITMENT COUNSEL REGARDING WORKLOAD

Before seeking appointment to act as counsel or accepting appointment, a lawyer has an obligation to ensure that they have sufficient time, resources, knowledge, and experience to offer quality representation to a client in a civil commitment without hampering their representation of the lawyer's existing clients.

Commentary:

1. A lawyer should have access to sufficient support services and resources to allow for quality representation. This includes investigation.
2. A lawyer should evaluate their ability to appear in court with clients when deciding whether to accept an appointment in a case. A lawyer must appear personally for all critical stages of the case.
3. When possible, lawyers should appear in person or in the same manner as their clients. Lawyers should be aware of the options for a client's appearance.

STANDARD 2.1: CLIENT COMMUNICATION

A lawyer must meet with their client within 24 hours of their appointment and attempt to conduct an in-person interview with the client and should thereafter establish a procedure to maintain regular contact with the client in order to explain the allegations and process of commitment proceedings, address the ongoing needs of the client, obtain necessary information from the client, consult with the client about decisions necessary for the representation, conduct a conflict check at the time of appointment, and respond to requests from the client for information or assistance concerning the case. The lawyer shall promptly respond to reasonable requests for information from the client.

Commentary:

1. For clients that are detained outside of the lawyer's primary county, the lawyer should consider having counsel in the county where the client is detained appointed.
2. A lawyer with a client detained outside of the lawyer's primary county may seek the assistance of an attorney based in the county where the client is detained to conduct the initial interview with their client and satisfy the 24-hour requirement in this standard.
3. Lawyers should know the process for appointments in counties in which they practice and should consider ways to expedite the appointments to new clients.
4. Lawyers should maintain contact with their clients throughout any diversion period to continue to accomplish the purposes of this Standard.
5. A lawyer should use clear, developmentally appropriate language, and should use an interpreter as required. **Lawyers should assure that any written communication is translated where required or appropriate.** A lawyer should elicit the client's point of view and encourage the client's participation in their own defense to the fullest extent possible.
6. Prior to all meetings, the lawyer should:

- a. Be familiar with the elements of civil commitment;
- b. Obtain copies of any relevant documents that are available including any initiating document, recommendations and reports made by agencies concerning commitment, and law enforcement reports that might be available;
- c. Be familiar with the legal procedure the client will encounter and be prepared to discuss the process with the client.

STANDARD 3.1: INVESTIGATION

A lawyer has a duty to conduct an independent review of the case, regardless of the client's admissions or statements to the lawyer of facts which might justify commitment. Where appropriate, the lawyer should engage in a full investigation, which should be conducted as promptly as possible and should include all information, research, and discovery necessary to assess the strengths and weaknesses of the case, to prepare the case for hearing, and to best advise the client. A lawyer has a duty to be familiar with the process to request funding for an investigator from OPDC if they do not have access to an in-house investigator, and whenever possible should avoid taking on investigations themselves that could cause them to be a witness in the case. The lawyer should not knowingly use illegal means to obtain evidence or instruct others to do so.

Commentary:

1. A lawyer should attempt to interview all potential witnesses in a case including the investigator for the state, the state's psychiatrist, client's family, and other outside professionals who have worked with the client, as well as any law enforcement officers involved. Lawyers should obtain all pertinent information in the possession of the prosecution, juvenile authorities, or law enforcement. The lawyer should pursue formal and informal discovery with authorities as described in Standard 4.
2. A lawyer should obtain prior criminal offense, juvenile records, and prior commitment records of the client as well as where available their school, mental health, medical, drug and alcohol treatment records.
3. On or around the third day of the case lawyers should contact the hospital and state's investigator to confirm the hospital's understanding of the basis for the client's continued hold.

4. A lawyer should always consider whether to reduce investigation to writing and should instruct their investigators to only do so after consultation with the lawyer.
5. A lawyer may not intentionally destroy evidence in a case and must comply with all statutes governing discovery to the prosecution.

STANDARD 4: DISCOVERY

A lawyer has the duty to pursue formal and informal discovery as soon as possible following appointment and continue to pursue opportunities for discovery throughout the case. A lawyer has a duty to be aware of all possible sources of formal discovery including the State and the hospital. Lawyers should prioritize available sources of discovery and pursue discovery from sources as the case timing allows. Lawyers must be aware of and abide by time and notice restrictions to obtain necessary information. A lawyer must be familiar with the Oregon Rules of Civil Procedure, all applicable statutes, and other rules and case law governing discovery. Lawyers must be aware of and seek medical records from the detaining hospital.

Commentary:

1. Lawyers should consider seeking appointment orders which include a court's order to the hospital requiring they provide patient records to the lawyer.
2. A lawyer should demand discovery from both the State and the detaining hospital. Discovery should include, but is not limited to, the following:
 - a. Client's medical records;
 - b. Witness lists along with witness contact information;
 - c. Police reports, if any;
 - d. Any exhibits they intend to offer at hearing.
3. Lawyers should be familiar with the process of obtaining the investigation report from the county civil commitment investigator and should obtain those reports as soon as possible.
4. A lawyer should be familiar with and observe the applicable statutes, rules and case law governing the obligation of the defense to provide discovery. A lawyer should file

motions for protective orders or otherwise resist discovery where a basis exists to shield information in the possession of the defense from disclosure.

5. Lawyers should not rely on discovery to provide all information in the case and should not assume that the State is compliant with discovery obligations unless the lawyer has verified the compliance.

STANDARD 5: EXPLORATION OF DIVERSION

A lawyer has the duty to explore with the client the possibility, advisability, and consequences of entering into a diversion agreement when the option exists in their case. A lawyer has the duty to be familiar with the laws, local practices, and consequences concerning diversion agreements.

Commentary:

1. A lawyer should explain to the client the procedural options available to the client, the benefits, and consequences of considering a diversion and discuss with the client any rights or timelines that may be impacted by diversion.
2. A lawyer should continue to take steps necessary to preserve the client's rights and advance the client's defenses regardless of the presence of a diversion offer.
3. A lawyer whose client is in diversion should remain available to clients during the period of their diversion if the client has questions or requests legal advice regarding their diversion.

STANDARD 6.1: HEARING PREPARATION

A civil commitment hearing is a complex event that requires preparation, knowledge of applicable law and procedure, and skill. A defense lawyer must be prepared on the law and facts related to their client's case, prepared to challenge the State's case, present a defense case, and adapt to the changing nature of a civil commitment hearing. To fully prepare for a hearing a lawyer should develop, in consultation with the client and members of the defense team, an overall defense strategy for the conduct of the hearing.

Commentary:

1. Lawyers are expected to be fully prepared for all aspects of a civil commitment hearing within the allotted statutory timeframe.
2. Prior to the hearing, a lawyer should consult with their client in order to understand the client's goals related to the hearing such as whether or not to attend the full hearing, whether that attendance will be in person or via virtual means, whether to have someone attend the hearing for support, whether to testify or make a statement at the hearing. Lawyers should advocate for their client's goals.
3. Lawyers should review all available documents to identify potential issues in the State's case. Lawyers should plan their own presentation to address those issues in their client's favor.
4. A lawyer must, in advance of hearing, secure the attendance of necessary witnesses including through the use of subpoenas as needed, and develop outlines or plans for opening, closing, anticipated cross examinations, and direct examinations.
5. A lawyer should ordinarily have the following materials available for use at trial:
 - a. Copies of all relevant documents filed in the case;
 - b. Relevant documents prepared by investigators and examiners;
 - c. An outline or draft of opening statement;
 - d. Cross-examination plans for all possible state witnesses;
 - e. Copies of any documents needed to impeach the State's witnesses;
 - f. Direct examination plans for all prospective defense witnesses;
 - g. Copies of defense subpoenas and blank subpoenas to be used as needed during the hearing;
 - h. Copies of client's medical records relevant to the proceeding;
 - i. A list of all exhibits and the witnesses through whom they will be introduced;
 - j. Evidence codes or compilations of evidence codes, relevant statutes, copies of relevant case law, and copies of learned treatises that are relevant to the hearing; and
 - k. An outline or draft of closing argument.
6. The lawyer should analyze potential State evidence for admissibility problems and develop strategies for challenging admissibility of evidence. The lawyer should be prepared to address objections to defense evidence or testimony.

7. The lawyer should consider requesting that witnesses be excluded from the trial.
8. A lawyer should plan with the client the most convenient system for conferring privately throughout the trial. Where necessary, a lawyer should seek a court order to have the client available for conferences. A lawyer should, where necessary, secure the services of a competent interpreter/translator for the client during all trial proceedings.
9. Lawyers should begin planning for the client's potential release as soon as practicable after appointment. Preparation should include working with the client to secure suitable housing, clothing, services, mental health care, and access to medications. Lawyers should consider contacting the client's friends and relatives if available.

STANDARD 6.2: PRE-HEARING MOTIONS

A lawyer should be prepared to file motions in advance of hearing challenging the procedural issues related to their client's case. A lawyer must be knowledgeable of all motion and notice deadlines that may apply to their case. Lawyers should continue to develop motions throughout the hearing. Lawyers may not miss filing deadlines.

Commentary:

1. The decision to file a particular pretrial motion or notice should be made by the lawyer after thorough investigation, discussion with their client, and after considering the applicable law in light of the circumstances of the case.
2. Among the issues the lawyer should consider addressing in pretrial motions are:
 - a. Motions to dismiss;
 - b. Motions related to the location of the hearing;
 - c. Motions related to judicial affidavits;
 - d. Motions related to the manner in which client appears and may be heard during the hearing;
 - e. Motions related to communication with the clients;
 - f. Motions related to the manner in which witnesses appear;
 - g. Motions related to the form and content of the examination of their client.

STANDARD 6.2: HEARING

Lawyers must be prepared at the civil commitment hearing to represent the client's interests, to cross examine State's witnesses as required to advance the client's goals, and to present any defense witnesses necessary to advocate for the client's stated goals. Civil commitment

hearings are inherently prone to quick changes, and the lawyer needs to be prepared to shift tactics as needed throughout the hearing. During the hearing, lawyers should be mindful to preserve any issues that may be the subject of an appeal. The lawyer should be prepared to deliver compelling reasons that the court should find in favor of the client.

Commentary:

1. Lawyers should consider keeping blank copies of subpoenas on hand during hearings in case a witness needs to be subpoenaed during the proceedings.
2. Lawyers should consult with their clients, to the fullest extent possible, to explain any changes that occur during the hearing which may impact the client's position.
3. Lawyers should consider requesting a recess after the state's case concludes or as needed throughout the hearing to assure that the client is able to understand the proceedings to the fullest extent possible and to make any decisions that they are entitled to make during the hearing.
4. Throughout the hearing, a lawyer should endeavor to establish a proper record for appellate review. As part of this effort, a lawyer should request, whenever necessary, that all trial proceedings be recorded.
5. Lawyers should review the judgment for errors and file necessary motions to correct those errors.

STANDARD 7.1: OBLIGATIONS OF COUNSEL FOLLOWING DISPOSITION

Following the conclusion of the case a lawyer must advise their client about the possibilities of appellate relief and, at the behest of the client, file the necessary paperwork to begin an appeal or to transfer the case to an appellate lawyer who will then perfect the appeal.

Commentary:

1. The lawyer's duty to communicate with client, explain the proceedings, and answer their client's questions continues for reasonable amount of time post-disposition.
2. When a client pursues an appeal, a lawyer should cooperate in providing information to the appellate lawyer concerning the proceedings in the trial court.
3. Lawyers who represent indigent clients should be knowledgeable about the process of requesting an appellate attorney for civil commitment appeals.



Psychiatric Security Review Board Attorney Performance Standards With Commentary

November 2025

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Standards for Representation in Psychiatric Security **Review Board Cases**

INTRODUCTION:

Oregon Revised Statute 151.216(j) mandates that the Oregon Public Defense Commission (OPDC) “[d]evelop, 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. The policies, procedures, standards, and guidelines described in this paragraph apply to employees of the commission and to any person or entity that contracts with the commission to provide public defense services in this state.”

The following standards were developed by OPDC staff with input from a psychiatric security review board (PSRB) provider workgroup. Per OPDC policy, these standards will be reviewed and revised one, two, and five years from adoption. OPDC welcomes ongoing provider input regarding the content and efficacy of these standards.

Each standard sets a baseline for practice of appointed case work and is followed by commentary that supplements the baseline standards. OPDC recognizes that in any given case, some standards and commentary might be inapplicable or even mutually exclusive.

Commentary is particularly challenging as there are many times when the commentary is impractical or even against a client's best interest or desire. OPDC acknowledges that to practice law, exceptions to these baseline rules and their commentary must apply. The commentary provides additional considerations for counsel performing public defense. There are times when items listed in the commentary may be useful or helpful during representation. They are not meant to establish baseline minimum performance standards.

OPDC is grateful to Oregon Public Defense Commission Psychiatric Security Review Board (PSRB) Workgroup for the extensive work OPDC drew upon in the development process.

STANDARD 1.1: THE ROLE OF PSRB COUNSEL

The lawyer for a client in a Psychiatric Security Review Board (PSRB) case should provide quality and zealous representation at all stages of the case. A lawyer should ensure that each client receives competent, conflict-free representation in which the lawyer keeps the client informed about the representation and promptly responds to reasonable requests for information. The lawyer shall be familiar with applicable statutes, caselaw, and Board practices, and should stay aware of changes and developments in the law.

Throughout the representation, the lawyer must determine whether the client has sufficient capacity to understand and form a lawyer-client relationship and whether the client is capable of making reasoned judgments and engaging in meaningful communication.

For clients with full decision-making capacity, the lawyer must maintain a normal lawyer-client relationship with the client, including taking direction from the client on matters normally within the client's control.

For clients with diminished capacity, the lawyer must maintain a normal lawyer-client relationship as far as reasonably possible and take direction from the client as the client's capacity develops. Clients may be competent to make some decisions and not others.

Lawyers must advocate at all times for the client's expressed interests. If a client cannot express their own interests the lawyer should act to preserve all the rights of their client.

Commentary:

1. A lawyer is bound by the client's definition of his or her best interests and should not substitute the lawyer's judgment for that of the client regarding the objectives of the representation except as permitted by the Oregon Rules of Professional Conduct 1.14.
2. A lawyer should provide candid advice to the client regarding the probable success and consequences of pursuing a particular position in the case and give the client the information necessary to make informed decisions to the extent the client is capable. A lawyer should consult with the client regarding the assertion or waiver of any right or position of the client.
3. Lawyers should endeavor to build trust with their clients and, where possible, to offer them comfort and understanding during their commitment.
4. Lawyers should assist the client in planning for the client's potential release as soon as

practicable after case assignment. Preparation should include working with the client to secure suitable housing, clothing, services, mental health care, and access to medications. Lawyers should consider contacting the client's friends and relatives if available.

5. A lawyer should exercise reasonable professional judgment regarding technical and tactical decisions and consult with the client on the strategy to achieve the client's objectives.

STANDARD 1.2: EDUCATION, TRAINING, AND EXPERIENCE OF PSRB COUNSEL

- A. **A lawyer must be familiar with the applicable substantive, procedural, and administrative law (OAR Chapter 859) governing appearances before the Board. A lawyer has a continuing obligation to stay abreast of changes and developments in the law and with changing best practices for providing quality representation in PSRB cases.**
- B. **Prior to handling a PSRB matter, a lawyer must have sufficient experience or training to provide quality representation. Prior to accepting assignment in a PSRB case, a lawyer must be certified for PSRB cases by OPDC.**

Commentary:

1. To remain proficient in the law, court rules and practice applicable to PSRB cases, a lawyer should regularly monitor the decisions of Oregon and pertinent Federal appellate courts and the work of the Oregon State Legislature. Lawyers should be particularly aware of decisions and bills that impact the Oregon State Hospital.
2. Lawyers should be knowledgeable about the State Hospital system, the resources available to clients in the system, and the constitutional rights that clients have while in the system. Lawyers should monitor the system for any changes that will impact their clients.
3. A lawyer should be familiar with key agencies, people, and services typically involved in PSRB cases such as the Attorney General's Office, the Oregon State Hospital, hospital staff, county behavioral health entity, private treatment facilities, and programs, along with other services and programs available as dispositional alternatives to commitment and detention.
4. Lawyers should have knowledge of mental health disorders, their presentations, and the state mental health treatment system. Lawyers should be aware of county mental

health options in counties where their clients may be placed.

5. Lawyers should be knowledgeable of HIPPA rules and how they impact the lawyer's practice before the Board.
6. Lawyers should know the members of the PSRB and their backgrounds. Lawyers should be mindful that the primary purpose of the Board is public safety and that there will be times when the lawyer's primary role of advocating for their clients will be at odds with the Board's role.

STANDARD 1.3: OBLIGATIONS OF PSRB COUNSEL REGARDING WORKLOAD

Before seeking assignment to act as counsel or accepting assignment, a lawyer has an obligation to ensure that they have sufficient time, resources, knowledge, and experience to offer quality representation to a client in a PSRB case without hampering the representation of the lawyer's existing clients.

Commentary:

1. A lawyer should have access to sufficient support services and resources to allow for quality representation. This includes investigation according to Standard 3.
2. A lawyer should evaluate their ability to appear with clients when deciding whether to accept an assignment to a case. A lawyer must appear personally for all critical stages of the case.
3. When possible, lawyers should appear in person or in the same manner as their clients. Lawyers should be aware of the options for a client's remote appearance.

STANDARD 2: CLIENT COMMUNICATION

A lawyer must contact their client within 7 days of their assignment to the case. During that contact lawyers should attempt to conduct an interview with the client if possible and should thereafter establish a procedure to maintain regular contact with the client in order to explain the process of Board hearings, address the ongoing needs of the client, obtain necessary information from the client, consult with the client about decisions necessary for the representation that clients are competent to make, and respond to requests from the client for information or assistance concerning the case.

Commentary:

1. Lawyers should maintain contact with their clients throughout their commitment to PSRB jurisdiction.
2. A lawyer should use clear, developmentally appropriate language, and should use an interpreter as required. **Lawyers should assure that any written communication is translated where required or appropriate.** A lawyer should elicit the client's point of view and encourage the client's participation in their own case to the fullest extent possible.
3. Lawyers should be prepared to discuss the timeline of commitment to PSRB jurisdiction at their initial meeting, including ways that timeline may be reduced or extended.
4. Lawyers should be prepared to discuss collateral issues of commitment to the PSRB with the client, including:
 - a. Immigration consequences;
 - b. Restriction of the client's rights as a result of commitment;
 - c. Impact of commitment on other ongoing court cases;
 - d. Issues involving the client's family or contact with family members that may be restricted by the trial court judgment.
5. Prior to all meetings, the lawyer should:
 - a. Be familiar with the requirements of PSRB jurisdiction;
 - b. Obtain copies of any relevant documents that are available including any initiating document, hospital medical records if available, recommendations and reports made by agencies concerning commitment, and law enforcement reports applicable to the commitment order;
 - c. Discuss the client's case with the treating psychiatrist to get a sense of the doctor's intentions in the case;
 - d. Prepare releases of information for client to sign to allow the lawyer to seek records on the client's behalf;
 - e. Be familiar with the legal procedure the client will encounter and be prepared to discuss the process with the client;
 - f. Be familiar with the types of detention that a client may be subject to, the allowable length of the detention, and the process for changing the client's placement.
6. Although there is no right to counsel in a risk review panel, a lawyer should discuss

panels with client and provide client with advice on how to achieve the client's desired outcome.

STANDARD 3: INVESTIGATION

A lawyer has a duty to conduct an independent review of the case, regardless of the client's admissions or statements to the lawyer. Where appropriate, the lawyer should engage in a full investigation, which should be conducted as promptly as possible and should include all information, research, and discovery necessary to assess the strengths and weaknesses of the case, to prepare the case for hearing, and to best advise the client. The lawyer should not knowingly use illegal means to obtain evidence or instruct others to do so.

Commentary:

1. A lawyer should attempt to interview all potential witnesses in a case including the client's treatment team, client's family, and other outside professionals who have worked with the client. Lawyers should obtain all pertinent information in the possession of the State or the Oregon State Hospital. The lawyer should pursue formal and informal discovery with authorities as described in Standard 4.
2. A lawyer should review all medical records related to the client and to the client's treatment and be familiar with the types of treatment that the client is undergoing.
3. A lawyer should be familiar with any court cases involving the client which may impact commitment, placement, or which the client's PSRB case may impact.
4. A lawyer should be familiar with the process for requesting indigent defense funding from the Oregon Public Defense Commission including the process for appeals of the Commission's decisions as needed for constitutional representation.
5. A lawyer should always consider whether to reduce investigation to writing.
6. A lawyer may not intentionally destroy evidence in a case and must comply with all statutes governing discovery to the State.

STANDARD 4: DISCOVERY

A lawyer has the duty to pursue formal and informal discovery as soon as possible following assignment to a PSRB case and continue to pursue opportunities for discovery throughout the case. A lawyer has a duty to be aware of all possible sources of formal discovery including the State and the hospital and to pursue discovery from each source. A lawyer must be familiar with the Oregon Rules of Civil Procedure, all applicable OARs, and other law and case law governing discovery as well as those making sanctions available for discovery violations.

Commentary:

1. A lawyer's discovery review should include, but is not limited to, the following:
 - a. Examinations of the client by the State Hospital;
 - b. Police reports for the incident underlying commitment to the PSRB;
 - c. Any pertinent filings from the underlying case;
 - d. Other psychiatric examinations of the client;
 - e. The client's current treatment plan;
 - f. Any records of the client's previous treatment.
2. Lawyers should be prepared to file protective orders as needed to secure discovery.
3. A lawyer should file motions seeking to preserve evidence where it is at risk of being destroyed or altered.
4. A lawyer should be familiar with and observe the applicable statutes, rules, and case law governing the obligation of the defense to provide discovery. A lawyer request protective orders or otherwise resist discovery where a basis exists to shield information in the possession of the defense from disclosure.
5. Lawyers should not rely on discovery to provide all information in the case and should not assume that parties are compliant with discovery obligations unless the lawyer has verified the compliance.

STANDARD 5.1: HEARING PREPARATION

A hearing before the PSRB is a complex event that requires preparation, knowledge of applicable law and procedure, and skill. A defense lawyer must be prepared to present to the board a compelling case which will advance the client's goals. Lawyers should be prepared to address issues of law and fact but must also be prepared to address the practical issues that

the Board may raise. In order fully prepare a lawyer should develop, in consultation with the client and members of the defense team, an overall defense strategy for the hearing.

Commentary:

1. A lawyer should, in advance of any hearing, secure the attendance of necessary witnesses including using subpoenas if necessary and available.
2. In advance of the hearing lawyers should plan for each stage of the hearing, prepare drafts of questions for likely witnesses, as well as for arguments to the Board.
3. Lawyers should be mindful that members of the PSRB are not always legally trained and may not respond the same way a judge would to legal arguments. Lawyers should tailor their arguments accordingly.
4. A lawyer should ordinarily have the following materials available for use at any hearing:
 - a. Relevant documents prepared by the client's doctors or evaluators;
 - b. Outlines of questions for all witnesses;
 - c. Copies of defense subpoenas, if any;
 - d. A list of all exhibits and the witnesses through whom they will be introduced;
 - e. Originals and copies of all documentary exhibits;
 - f. Copies of all relevant OARs and case law;
 - g. Evidence codes or compilations of evidence codes, relevant statutes, copies of relevant case law, and copies of learned treatises that are relevant to the hearing; and
 - h. Outline or draft of closing argument.
5. A lawyer should be fully informed as to the law and procedural rules relating to all stages of the hearing process and be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the hearing. The lawyer should develop strategies for challenging evidence that is not favorable to their client's position.
6. A lawyer should plan with the client the most convenient system for conferring privately throughout hearings. Where necessary, a lawyer should seek an order to have the client available for conferences. A lawyer should, where necessary, secure the services of a competent interpreter for the client during all proceedings.

STANDARD 5.2: PRE-HEARING MOTIONS

A lawyer should research, prepare, file, and argue appropriate pre-hearing motions whenever there is a reason to believe that they would benefit their client. A lawyer must be knowledgeable of all motion and notice deadlines that may apply to their case. Lawyers may not miss filing deadlines.

Commentary:

1. The decision to file a particular pre-hearing motion or notice should be made by the lawyer after thorough investigation, discussion with their client, and after considering the applicable law in light of the circumstances of the case.
2. Lawyers should consider filing motions in order to preserve issues for appellate review and to preserve future litigation which might benefit their client.
3. Among the issues the lawyer should consider prior to filing pre-hearing motions are:
 - a. The impact the motion will have on the evidence available at hearings before the Board.
 - b. The possibility that the motion will delay or expedite the client's next hearing or stated goals.

STANDARD 5.3: INITIAL HEARING

A lawyer should begin preparing for the initial hearing at the time of assignment. Lawyers should examine all reports available from trial counsel, OSH, and any community resources, and should meet with their client well in advance of the hearing to advise the client, explain the hearing process, and begin crafting a strategy for the initial hearing.

Commentary:

1. Lawyers should work to help the client understand the process of being at OSH, their treatment paths, and what to expect during their initial hearing.
2. Lawyers should understand the time limits imposed by the PSRB for questioning and should adhere to those limits.
3. Lawyers should anticipate the DOJ calling the client's treating doctor from OSH or, if client is in community placement, their case manager. Lawyers should be prepared to cross examine all DOJ witnesses to advance their client's case.

4. Lawyers should review DOJ's proposed exhibits as soon as they are provided prior to the hearing.
5. Lawyers should work with their client to help the client decide if they want to testify at the initial hearing.
6. Lawyers should be prepared to deliver a compelling summation during closing arguments which provides the Board with reasons to find in their client's favor.
7. Throughout the hearing, a lawyer should endeavor to establish a proper record for appellate review. As part of this effort, a lawyer should request, whenever necessary, that all hearing proceedings be recorded.
8. Lawyers should review the written decision of the Board for errors and file necessary motions to correct those errors.

STANDARD 5.4: REPRESENTATION AFTER THE INITIAL HEARING

Lawyers are obligated to continue representation of their client beyond the initial hearing and until the client is discharged by the PSRB. This representation includes being available to answer questions from the client, advising clients about all aspects of their commitment to the PSRB as well as representation at any placement review hearings before the Board. Lawyers should continue to advocate for the client's goals throughout their representation.

Commentary:

1. Lawyers should continue to keep apprised of their client's treatment and progress with that treatment. This may require ongoing review of records generated by the client's treatment team's monthly meetings.
2. Lawyers should be prepared to file ongoing requests for records as needed.
3. The treatment team will have the greatest impact on the Board's decision regarding the client's placement. As such, lawyers should endeavor to understand and inform the team's views and opinions of their client.

4. Lawyers should advise the client on their ability to demand a review hearing and the advisability of calling a review hearing. Lawyers should demand a review hearing if the client requests one and a review hearing is legally allowed.
5. Lawyers should be prepared to advocate for client's wishes if there is a request for a change in the client's placement that does not align with the client's wishes.

STANDARD 5.5: REVIEW HEARINGS

Lawyers must be prepared to represent their client's interests at any review hearings. If the client's discharge is at issue, lawyers should be prepared to litigate the issue and advocate for the client's desired outcome regarding discharge.

Commentary:

1. OSH can request a hearing at any time, so lawyers need to continually review and update the client's case to be prepared for a review hearing on potentially short notice in addition to preparing for regular periodic review hearings.
2. Discharge can be at issue in any review hearings and a lawyer should be prepared to argue about discharge at any review hearing.
3. Lawyers should review all records in advance of any review hearing.

STANDARD 6.1: OBLIGATIONS OF COUNSEL REGARDING APPEALS

If at any point a lawyer determines that an appeal of a decision of the Board would be in the client's best interest and is legally permissible the lawyer should take the necessary steps to perfect the appeal.

Commentary:

1. When a client pursues an appeal and another lawyer is handling the appeal, the PSRB lawyer should cooperate in providing information to the appellate lawyer concerning the proceedings below.
2. Lawyers who represent indigent clients should be knowledgeable about the process of requesting an appellate attorney from OPDC for appeals of Board Decisions.



Date: **January 21, 2026**

To: **Robert Harris, Chair, OPDC**
Susan Mandiberg, Vice Chair, OPDC
OPDC Commissioners

Cc: **Ken Sanchagrin, Executive Director**

From: **Steve Arnett, Trial Support & Development Manager**

Re: **Draft *Habeas* and Post-Conviction Relief Attorney Performance Standards**

Nature of Presentation: Briefing

Background:

ORS 151.216, as amended by Senate Bill 337 (2023), sets out the duties of the Oregon Public Defense Commission (OPDC). Subsection (1)(j) of that statute requires that OPDC:

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.

To fulfill the legislative mandate, OPDC drafted public defense specific performance standards across all OPDC funded practice areas. The Trial Support and Development (TS&D) Division convened provider workgroups to assist in drafting the performance standards. TS&D workgroups included attorneys who were currently practicing public defense work and provided valuable assistance to OPDC's Resource Counsel in drafting the standards.

OPDC has introduced the practice area standards to this Commission over previous months. The Commission has previously reviewed and adopted standards for practice in criminal cases, dependency cases, and delinquency cases. The

commission is currently considering standards in civil commitment and Psychiatric Security Review Board cases. The Workgroups drew from the experience of their members, the other standards developed by the agency, and standards from other states. The draft standards have two components: black letter expectations and commentary. The black letter expectations set the baseline expectations for civil commitment practice. Commentary supplements the black letter standards with the understanding that not all commentary will be applicable or even advisable in all cases.

Purpose:

OPDC intends to use the proposed performance standards to improve attorney practice throughout the state, assess the validity of complaints made against providers, and ensure clients are receiving effective representation.

Agency Recommendation:

The Agency recommends the Commission accept the briefings on the following items:

- *Habeas Corpus* performance standards.
- Post-Conviction Relief standards.

Ongoing Revisions:

TS&D is briefing the Commission concurrently with posting the standards for broader feedback from the provider community. Provider comment will close on February 6th, 2026. After TS&D incorporates the feedback, the standards will be brought back before the Commission at their meeting on February 18th for approval.

Fiscal Impact:

No immediate impacts. Full implementation of these standards will likely require investments in OPDC infrastructure and staff, to implement training programs and other supports contemplated by these standards. Such investments were not part of the agency's requested budget for 2025-27, and the agency will address in future legislative sessions.

Agency Proposed Motion:

The agency proposes the commission accept this briefing.



Habeas Performance Standards With Commentary

January 2026

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INTRODUCTION

Oregon Revised Statute 151.216(1)(j) mandates that the Oregon Public Defense Commission (OPDC) “[d]evelop, 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. The policies, procedures, standards, and guidelines described in this paragraph apply to employees of the commission and to any person or entity that contracts with the commission to provide public defense services in this state.”

The following standards were developed by OPDC staff with input from a *habeas* provider workgroup. Per OPDC policy, these standards will be reviewed and revised one, two, and five years from adoption. OPDC welcomes ongoing provider input regarding the content and efficacy of these standards.

Each standard sets a baseline for practice of appointed defense work and is followed by commentary that supplements the baseline standards. OPDC recognizes that in any given case, some standards and commentary might be inapplicable or even mutually exclusive.

Commentary is particularly challenging as there are many times when the commentary is impractical or even against a client's best interest or desire. OPDC acknowledges that to practice law, exceptions to these baseline rules and their commentary must apply. The commentary provides additional considerations for counsel performing public defense. There are times when items listed in the commentary may be useful or helpful during representation. They are not meant to establish baseline minimum performance standards.

OPDC is grateful to Oregon Public Defense Commission *Habeas* Standards Workgroup for the extensive work OPDC drew upon in the development process.

Standard 1.1 Role of Lawyer in *Habeas* Cases

The lawyer for a Plaintiff in a *habeas* case should provide quality and zealous representation at all stages of the case, advocating at all times for the client's expressed interests. The lawyer should be familiar with applicable statutes, caselaw, and local court practices, and should stay aware of changes and developments in the law. The lawyer shall abide by the Oregon Rules of Professional Conduct and applicable rules of court. The lawyer should understand difference between Postconviction Relief (PCR), Extradition, Direct Appeal, *habeas* (authority for confinement), and *habeas* (conditions of confinement).

Commentary:

1. *Habeas* lawyers must be aware of other available remedies to assure that they are exhausted prior to seeking *habeas*.
2. In abiding by the Oregon Rules of Professional Conduct, a lawyer should ensure that each client receives competent, conflict-free representation in which the lawyer keeps the client informed about the representation and promptly responds to reasonable requests for information.
3. A lawyer is bound by the client's definition of his or her best interests and should not substitute the lawyer's judgment for that of the client regarding the objectives of the representation.
4. A lawyer should provide candid advice to the client regarding the probable success and consequences of pursuing a particular position in the case and give the client the information necessary to make informed decisions. A lawyer should consult with the client regarding the assertion or waiver of any right or position of the client.
5. A lawyer should exercise reasonable professional judgment regarding technical and tactical decisions and consult with the client on the strategy to achieve the client's objectives.
6. A lawyer should exercise reasonable professional judgment regarding the need for expert witnesses in the case, be familiar with and able to

work with experts as defined in Standard 3.2 and should immediately and continually assess the need for experts starting at appointment.

7. A lawyer assigned to actively assist a pro se plaintiff should be fully prepared about the matter. The lawyer should be prepared to advise the plaintiff and the court if a full representation role should be transferred to the lawyer at some point during the proceedings.

STANDARD 1.2 EDUCATION TRAINING AND EXPERIENCE OF HABEAS COUNSEL

- A. A lawyer must be familiar with the statutes, the applicable substantive and procedural law, and its application in the jurisdiction where counsel provides representation. A lawyer has a continuing obligation to stay abreast of changes and developments in the law and with changing best practices for providing quality representation in *habeas* cases.**
- B. Prior to handling a *habeas* matter, a lawyer must have sufficient experience or training to provide quality representation. Prior to accepting appointment in a *habeas* case, a lawyer must be certified for that case type by OPDC.**

Commentary:

1. A lawyer should remain proficient in the law, court rules and practice applicable to *habeas* cases and, regularly monitor the decisions of Oregon Appellate Courts.
2. Lawyers should maintain membership in state and national organizations that focus on educating and training lawyers in *habeas* law. Lawyers should subscribe to professional listservs, if available, consult online resources, and attend continuing legal education programs relating to the practice of *habeas* law. A lawyer practicing *habeas* law should complete an average of at least 10 hours of continuing legal education training in civil procedure, civil rights, prisoner's rights, or related area each year. Lawyers practicing authority to confine *habeas* cases may supplement this requirement with criminal law CLEs specific to sentencing or extradition.

3. Before undertaking representation in a *habeas* case, a less experienced lawyer should obtain training in the relevant areas of practice and should consult with others in the field, including nonlawyers. Less experienced lawyers should observe or serve as co-counsel with more experienced lawyers prior to accepting lead counsel responsibility for *habeas* cases. More experienced lawyers should mentor less experienced lawyers.
4. A lawyer providing representation in *habeas* cases should be familiar with key agencies and services typically involved in those cases or should know how to familiarize themselves as needed for their cases, such as the Oregon Department of Corrections, the Oregon Youth Authority, local juvenile departments, local community corrections programs, and private medical or treatment facilities and programs.
5. A lawyer should stay informed of the practices of the specific judge before whom a client they are representing is appearing.
6. Lawyers representing youth in *habeas* cases must be educated on and understand the additional trauma that youth in the prison system go through and must be prepared to provide resources to their clients to help them cope with that trauma.

STANDARD 1.3 OBLIGATIONS OF HABEAS COUNSEL REGARDING WORKLOAD

Before seeking appointment to act as counsel or accepting appointment, a lawyer has an obligation to ensure that they have sufficient time, resources, knowledge, and experience to offer quality representation to a Plaintiff in a *habeas* matter without hampering their representation of existing clients. Lawyers should be cognizant of ORS 34.362, that petitions claiming deprivation of a constitutional right require “immediate judicial attention”, when evaluating their ability to accept representation in a case. If, after accepting representation, the lawyer is unable to offer quality representation in the case, the lawyer must move to withdraw.

Commentary:

1. A lawyer should have access to sufficient support services and resources to allow for quality representation, including investigation resources (see Standard 3.1).
2. A lawyer should evaluate their ability to appear in court with clients when deciding whether to accept an appointment in a case. Lawyers should not overly rely on other lawyers to cover their appearances. A lawyer must appear personally for all critical stages of the case.
3. When possible, lawyers should appear in person or in the same manner as their clients.

STANDARD 2.1 OBLIGATIONS OF HABEAS COUNSEL AT APPOINTMENT

Lawyers are frequently appointed to *habeas* cases after the initial filings. As such, a lawyer must be familiar with the laws regarding amending petitions, the timelines for proceeding with a *habeas* case, and the available immediate remedies that can be sought. Lawyers should immediately begin gathering information needed for the Plaintiff's Replication. See Standard 5.1.

Commentary:

1. Initial petitions must contain a need for immediate judicial scrutiny and a lack of any other adequate and timely remedy. Lawyers should seek to amend pleadings/file the plaintiff's replication (see Standard 5.1).
2. Lawyers should be prepared to assist prospective clients with application for counsel as needed in the furtherance of justice.
3. A lawyer should promptly conduct client conflict checks and notify the appointing body of the need for substitution of counsel if it arises.
4. A lawyer should be familiar with the local practices including case docketing and processing, expected case events, the dates for

upcoming court appearances, and the ability to expedite the proceedings under ORS 34.362.

5. As soon as practicable after appointment the lawyer should arrange to have client sign releases to get needed information early in the case such as medical information in conditions of confinement cases.
 - a. For authority for confinement cases the lawyer should seek the following information:
 - i. The underlying criminal judgment;
 - ii. The Oregon Department of Corrections' (ODOC) sentencing calculations;
 - iii. Transcripts from the sentencing hearing.
 - b. For extradition cases the lawyer should seek the following information:
 - i. The Demand from the demanding state;
 - ii. The Governor's Warrant;
 - iii. Transcripts from the extradition hearing.
6. A lawyer should be prepared to preserve the client's rights and demand due process. A lawyer should make clear that the plaintiff reserves the following rights in the present matter and any other matter:
 - a. Statutory right to request counsel with the court's discretion whether to make appointment;
 - b. Right to decision on the motion to appoint counsel;
 - c. Right to an expedited evidentiary hearing/trial.
7. Within one day of appointment the lawyer should file motions to disqualify judges as needed. There are varied practices regarding what constitutes a substantive pleadings and lawyers need to act immediately to disqualify any judge they believe cannot act fairly and impartially at trial or hearing in the case.

STANDARD 2.2 CLIENT CONTACT AND COMMUNICATION

A lawyer should always use clear communications, in developmentally appropriate language, and using an interpreter, as needed. A lawyer must conduct a client interview as soon as practicable after appointment but

no longer than seven days after appointment. Thereafter, a lawyer must establish a procedure to maintain regular contact with the client in order to explain the nature of the proceedings, meet the ongoing needs of the client, obtain necessary information from the client, consult with the client about decisions affecting the course of the litigation, conduct a conflict check, and respond to requests from the client for information or assistance concerning the case.

Commentary:

1. A lawyer should provide a clear explanation of the role of both the client and the lawyer and demonstrate appropriate commitment to the client's expressed interests in the outcome of the proceedings. A lawyer should elicit the client's point of view and encourage the client's full participation in the litigation of the case.
2. Client communication should be in a private setting that allows for a confidential conversation. If a client requests in person contact, counsel should make reasonable efforts to accommodate that request. Counsel should meet in person as needed to prepare the client for testimony/trial.
3. At the initial meeting, the lawyer should review the initial petition filed by the client and be prepared to discuss the necessary elements of *habeas*, the procedure the client will be facing in subsequent court appearances, possible remedies if the client prevails, and should inquire if the client has any immediate needs regarding securing evidence or obtaining interim relief.
4. At the initial meeting the lawyer should discuss the need for releases of information (ROI) and assure the client signs and returns them.
5. A lawyer must advise the client of the consequences of prevailing on the *habeas* as well as the consequences of not prevailing.
6. A lawyer should use any contact with the client as an opportunity to gather timely information relevant to preparation of the case. Such information may include, but is not limited to:
 - a. The facts surrounding the client's petition or case;

- b. Any possible witnesses who should be located;
 - c. Any evidence that should be preserved, specifically including video recordings that might be overwritten;
 - d. Where appropriate, evidence of the client's competence.
- 7. During an initial interview with the client, a lawyer should.
 - a. Obtain information concerning the following as applicable to the type of case:
 - i. The client's history within the institution including how long they have been incarcerated at a particular institution, family history of health conditions including mental health conditions, client's disciplinary history;
 - ii. The client's history of service in the military, if any;
 - iii. The client's current and historical physical and mental health concerns;
 - iv. Where to locate necessary records;
 - v. Prior incarcerations, current place of incarceration, and place of incarceration at the time of filing;
 - vi. The client's immediate medical needs, if any;
 - vii. The client's expected release date, length of time in custody, eligibility for early release;
 - viii. Contact information for clients, their family, or other resources where the client can be contacted in the event they are released from custody.
 - ix. The names of individuals, or other sources, that counsel can contact to verify the information provided by the client or who could provide other background information and the client's permission to contact these individuals;
 - x. For extradition cases, the lawyer should consider asking their client for information regarding:
 - A. Challenges to identity;
 - B. Challenges to fugitive status;
 - C. The client's presence or lack thereof in the demanding state at the time of the alleged incident.
 - b. Provide to the client information and advice including but not limited to:
 - i. An explanation of the lawyer-client privilege and instructions not

to talk to anyone about the facts of the case without first consulting with the lawyer;

- ii. A warning to keep confidential communication between themselves and the lawyer/lawyer's staff. Everything they say may become part of their case;
- iii. The petition and any potential ramifications of its filing;
- iv. The ability to amend the initial petition;
- v. A general procedural overview of the progression of the case, where possible;
- vi. That communication with people other than the lawyer's team is not privileged and may be monitored;
- vii. That all calls and video visits not using the attorney phone are recorded and not confidential and emails are never confidential;
- viii. That the client should make and keep written records of communication with the institution through filing kites regarding:
 - A. Sentence calculations in authority for confinement cases;
 - B. In conditions of confinement cases, any condition relevant to the case -such as medical care requested, received, or denied, air quality, access to services, etc.- encountered while incarcerated.

8. Frequency and Manner of Client Contact

- a. Following their initial contact with the client, lawyers should speak with their clients no less than once per month to obtain information and update the clients on the status of their case.
 - i. All calls should use the attorney line;
 - ii. If feasible, at least once during the pendency of the case the lawyer should meet the client in person;
 - iii. Lawyers should meet with their client in person as needed throughout the case;
 - iv. Letters are not a substitute for client contact.
- b. Lawyers should continue having contact with their clients as required throughout the case and following the cases' resolution according to Standards 8.2, 9.1, and 9.2.

STANDARD 2.3 WORKING WITH CLIENTS WHO HAVE DIMINISHED CAPACITY

A lawyer must be able to recognize the symptoms of clients with diminished capacity and should follow the Oregon Rules of Professional Conduct, Rule 1.14, when representing those clients. Lawyers should act to preserve all their client's rights and should seek expert assistance as needed. In extreme cases lawyers should consider seeking the appointment of a Guardian Ad Litem or Conservator as needed to fully protect the client's rights. Lawyers representing clients with diminished capacity should continue to seek the lawful objectives of their client and not substitute their judgment for that of their client.

Commentary:

1. A lawyer should assess whether the client's level of functioning limits his or her ability to communicate effectively with counsel, as well as his or her ability to have a factual and rational understanding of the proceedings.
2. In deciding whether to request a competency determination, a lawyer must consider, among other things:
 - a. Their obligations, under Oregon Rule of Professional Conduct 1.14, to maintain a normal attorney-client relationship, to the extent possible, with a client with diminished capacity; and
 - b. The likely consequences of a finding of incompetence and whether there are other ways to resolve the case, such as dismissal upon obtaining services for the client or referral to other agencies.
3. If the lawyer decides to proceed with a competency hearing, he or she should secure the services of a qualified expert.
4. A lawyer should continue to evaluate a client's fitness throughout the case and should take appropriate action if a client's mental health deteriorates.

STANDARD 3.1 INVESTIGATION

A lawyer has the duty to conduct an independent review of the case, regardless of the client's admissions or statements to the lawyer. Where appropriate, the lawyer should engage in a full investigation, which

should be conducted as promptly as possible and should include all information, research, and discovery necessary to assess the strengths and weaknesses of the case, to prepare the case for hearing, and to best advise the client as to the possible outcomes of the case. A lawyer has a duty to be familiar with the process to request funding for an investigator from OPDC if they do not have access to an in-house investigator. The lawyer should not knowingly use illegal means to obtain evidence or instruct others to do so.

Commentary:

1. Retain investigator as soon as possible after appointment in conditions of confinement cases. In authority to confine and extradition cases a lawyer should retain an investigator as soon as possible if the lawyer determines an investigator is needed.
2. A lawyer should obtain copies of the petition, order to show cause, defendant's response, and writ and should examine them to determine the specific issues that the client raised and the elements of each.
3. A lawyer should conduct an in-depth interview with the client as described in Standard 2.2.
4. A lawyer should carefully review all documents received as part of their investigation or discovery and should assess their value to the client. Lawyers should create a system for organizing or cataloging documents and note taking at the beginning of their case to facilitate document review throughout the case.
5. A lawyer should consider whether to interview potential witnesses, whether adverse, neutral, or favorable, and when new evidence is revealed during witness interviews, the lawyer should locate and assess its value to the client. Witness interviews should be conducted by an investigator or in the presence of a third person who will be available, if necessary, to testify as a plaintiff's witness at the trial. When speaking

with third parties, the lawyer has a duty to comply with the Oregon Rules of Professional Conduct, including Rule 3.4 (Fairness to Opposing Party and Counsel), 4.1 (Truthfulness in Statements to Others), 4.2 (Communication with Person Represented by Counsel), and 4.3 (Dealing with Unrepresented Persons).

6. A lawyer should obtain all relevant prior records of the client and witnesses, including criminal, juvenile, disciplinary, education, mental health, medical, and drug and alcohol use or treatment, where appropriate.
7. A lawyer should always consider whether to reduce investigation to writing and should instruct their investigators to only do so after consultation with the lawyer.
8. A lawyer may not intentionally destroy evidence in a case and must comply with all statutes governing discovery to the defense.

STANDARD 3.2 EXPERTS

A lawyer should immediately and continually evaluate the need for experts in the case and should obtain any necessary expert for either consultation or testimony or both. A lawyer must be aware of available types of experts that may be needed to properly litigate their case. A lawyer has a duty to be familiar with the process to request funding for experts from OPDC.

Commentary:

1. Experts will be used more often in conditions of confinement cases and practitioners should utilize experts in most of their conditions of confinement cases. Lawyers in authority for confinement and extradition cases may not need to employ experts, but practitioners in those cases should be aware of the rules for experts.
2. Lawyers should not overly rely on their own knowledge of a given subject and should use experts to offer consultation on viability of claims as early

in the case as possible and to offer testimony as needed to prove their case.

3. Lawyers should consider using engagement letters for any expert used on their case which clearly outline the lawyer's expectations of the expert, privilege rules, and an understanding of the expert's duty of confidentiality.
4. A lawyer should be aware of the appeals process in the event that OPDC denies funding the lawyer believes is reasonably required for the case.
5. A lawyer should be aware of how to seek needed experts if the lawyer does not have one readily available. A lawyer should be familiar with the process of obtaining lists of experts in a given field from OPDC.
6. Lawyers should independently evaluate the quality of an expert prior to engagement and should consider any evidence that would be available to the defense to impeach that expert. Lawyers should review this evaluation regularly, even with often used experts.
7. A lawyer should understand the difference between an expert used to advise the Plaintiff's team and an expert used to testify and how to assure that an advisory expert does not unintentionally shift to a testimonial expert requiring disclosure to the defense.
8. A lawyer may choose whether to disclose the identity of experts pre-trial and should, prior to disclosure, consider whether maintaining the expert's anonymity is advantageous. Lawyers may use anonymous declarations where appropriate to maintain anonymity of experts. See *Stevens v. Czerniak*, 336 OR 392, 403-404 (2004).
9. A lawyer should adequately prepare all trial experts for testimony, including likely questions on cross-examination.

STANDARD 4.1 DISCOVERY

A lawyer has the duty to pursue formal and informal discovery in a prompt fashion upon appointment and to continue to pursue opportunities for discovery throughout the case. A lawyer must be familiar with all applicable statutes, rules, and case law governing discovery including those concerning the processes for filing motions to compel discovery or to preserve evidence, as well as those making sanctions available when the defense has engaged in discovery violations.

Commentary:

1. Lawyers should assure that the Defendant has been served with the petition or order to show cause prior to filing discovery demands in accordance with Oregon Rules of Civil Procedure (ORCP) 43(B)(1).
2. A lawyer should make a prompt and comprehensive demand for discovery pursuant to applicable rules and constitutional provisions as soon as possible following appointment. The lawyer should continually seek all information to which the client is entitled. Requests should specify the timeframe and type of records sought.

In Conditions of Confinement cases discovery should include, but is not limited to, the following:

- a. All ODOC documents regarding the client's medical and mental health care while under the jurisdiction of the ODOC;
- b. All ODOC documents regarding discipline and/or complaints while under the jurisdiction of ODOC;
- c. All kynes or grievances from the client to the ODOC and responses to client's kynes.
- d. Names and addresses of defense witnesses.
- e. Prison Rape Elimination Act (PREA) records or records related to PREA requests including Special Investigation Unit (SIU) files.
- f. Client's DOC400 file (the plaintiff's electronic prison record from DOC)

3. The lawyer should follow up on all discovery or requests for production regularly to assure that they have all the needed information.
4. Lawyers should follow all scheduling orders issued by the court and should consider actively proposing favorable timelines for discovery.

5. A lawyer should be familiar with and observe the applicable statutes, rules and case law governing the obligation of the plaintiff to provide discovery. A lawyer should file motions for protective orders or otherwise resist discovery where a basis exists to shield information in the possession of the plaintiff from disclosure.
6. A lawyer should be familiar with the applicable remedies for defense failing to provide discovery and should pursue the applicable remedies in their cases. A lawyer should file motions to compel in order to secure defendant's compliance with the discovery rules and motions to exclude if the defense fails to provide discovery according to their obligation.
7. A lawyer should take appropriate actions seeking to preserve evidence where it is at risk of being destroyed or altered.
8. Lawyers should not rely on discovery to provide all information in the case and should not assume that defense lawyers are compliant with discovery obligations unless the lawyer has verified the compliance.

STANDARD 4.2 THEORY OF THE CLAIMS FOR RELIEF

A lawyer should develop and continually reassess a theory of the client's claims for relief that advances the client's goals and encompasses the realities of the client's situation.

Commentary:

1. A lawyer should use the theory of the claims for relief when evaluating strategic choices throughout the course of the representation.
2. A lawyer should be able to concisely explain the theory of the claims for relief to a lay person.
3. A lawyer should allow the theory of the claims for relief to focus the investigation and trial or hearing preparation, seeking out and developing facts and evidence that the theory makes material.

4. A lawyer should expect the claims to change as the case progresses and the plaintiff's team receives new information. Lawyers should remain flexible enough to modify or abandon claims or theories if they no longer serve the client.

STANDARD 5.1 PLAINTIFF'S REPLICATION

To draft the replication a lawyer should review the plaintiff's initial *pro se* filing. Once the lawyer has thoroughly interviewed the plaintiff, had sufficient discovery, and had sufficient time for experts to review the claims in the *pro se* filings, the lawyer should file a Replication that clearly gives notice of the client's claims for relief.

Commentary:

1. Claims for relief may change after the Replication is filed. If the claims change the lawyer should promptly seek to amend the Replication.
2. Lawyers should adhere to all court timelines for filing the Replication and should not miss filing deadlines.
3. Lawyers should be aware of the preferences of the court and the applicable laws for the citation of law in the Replication and should comply with those standards.

STANDARD 5.2 PRE-HEARING MOTIONS

A lawyer should research, prepare, file, and argue appropriate pretrial motions whenever there is reason to believe they would benefit their client. A lawyer must be knowledgeable of all motion deadlines that may apply to their case. Lawyers may not miss filing deadlines.

Commentary:

1. A lawyer should respond to Defendant's Motion to Dismiss within the statutory timeframe. In *habeas* cases, motions to dismiss are the equivalent to motions for summary judgment, though the standards are different in some ways. Lawyers should know the rules of summary judgment as well as the rules for responding to motions to dismiss. Lawyers should demonstrate facts in controversy necessary to win a motion to dismiss.

2. The decision to file a particular pretrial motion should be made by the lawyer after thorough investigation, discussion with their client, and considering the applicable law in light of the circumstances of the case.
3. Among the issues the lawyer should consider addressing in pretrial motions are:
 - a. Motions for Summary Judgment;
 - b. The removal of a judicial officer from the case through requests for recusal or the filing of an affidavit of prejudice if filed within 24 hours of the judicial officer receiving the case;
 - c. The discovery obligations of both the plaintiff and the defense, including:
 - i. Motions for protective orders;
 - ii. Motions to compel discovery;
 - iii. Motions to exclude for violation of discovery rules;
 - iv. Motions for access to records of other Adults in Custody which may be requested for 'Attorney Eye's Only' Protective Order to access unredacted records.
 - d. Requests for, and challenges to denial of, funding for access to reasonable and necessary resources and experts;
 - e. The plaintiff's right to an expedited hearing;
 - f. The right to a continuance in order to adequately prepare and present the plaintiff's case or to respond to defense motions;
 - g. Motion for extension of time for pleadings
 - h. Matters of trial evidence that may be appropriately litigated by means of a pretrial motion in limine, including:
 - i. The relevance of evidence that is expected to be presented by or objected to by the defense;
 - ii. The admissibility of particular witnesses, including experts, lawyers may also litigate this issue during trial; and
 - iii. The use of reputation or other character evidence;
4. Before deciding not to file a motion or to withdraw a motion already filed, a lawyer should consult with their client and carefully consider all facts in the case, applicable law, case strategy, and other relevant information.

STANDARD 5.3 OBLIGATION TO RENEW MOTIONS

During trial or subsequent proceedings, a lawyer should be prepared to raise any issue which is appropriately raised pretrial but could not have been so raised because the facts supporting the motion were unknown or not reasonably available. Counsel should also be prepared to renew a pretrial motion if new supporting information is disclosed in later proceedings.

Commentary:

None

STANDARD 6.1 EXPLORATION OF SETTLEMENT

A lawyer has the duty to explore with the client the possibility, advisability, and consequences of reaching a negotiated disposition of the client's case. A lawyer has the duty to be familiar with the laws, local practices, and consequences concerning dispositions without trial. A lawyer cannot accept any negotiated settlement without the client's express authorization.

Commentary:

1. A lawyer should explain to the client the strengths and weaknesses of the defense's case, the timeframes for addressing the client's claims through settlement and through trial, the benefits and consequences of considering a non-trial disposition, any investigation which has been or could be conducted, and discuss with the client any options that may be available to the client and the rights the client gives up by pursuing a non-trial disposition.
2. A lawyer should assist the client in weighing whether there are strategic advantages to be gained by settlement or continuing to trial including the impact of settlements on future claims for damages.
3. With the consent of the client, a lawyer should explore with the defense available options to resolve the case without trial. Throughout negotiation, a lawyer must zealously advocate for the expressed interests of the client, including advocating for some benefit for the client in exchange for settlement.

4. A lawyer must keep the client fully informed of continued negotiations and convey to the client any offers made by the defendant. The lawyer must attempt to ensure that the client has adequate time to consider the settlement. A lawyer should advise clients about their opinion of any settlement offers but may not substitute their judgment for that of their client.
5. A lawyer should continue to take steps necessary to preserve the client's rights and advance the client's case even while engaging in settlement negotiations.
6. Before conducting negotiations, a lawyer should be familiar with:
 - a. The types, advantages, disadvantages, enforceability and applicable procedures and requirements of available settlements;
 - b. Whether agreements between the client and the defendant would be binding on the court, the parties, or other interested people or organizations; and
 - c. The practices and policies of the particular defending authorities and judge that may affect the content and likely results of any negotiated settlement.
7. A lawyer should identify negotiation goals with the following in mind:
 - a. Concessions that the client might offer to the defense, including an agreement;
 - b. Benefits to the client from making an agreement with the defense.
8. A lawyer has the duty to inform the client of the full content of any tentative negotiated settlement or non-trial disposition, and to explain to the client the advantages, disadvantages, and potential consequences of the settlement or disposition.
9. A lawyer should not recommend that the client enter a settlement unless an appropriate investigation and evaluation of the case has taken place, including an analysis of controlling law and the evidence likely to be introduced if the case were to go forward.

STANDARD 6.2 ENTRY OF SETTLEMENT

The decision to enter into a settlement agreement rests solely with the client. A lawyer must not unduly influence the decision to enter a settlement and must ensure that when a client enters a settlement they do so voluntarily. Counsel must ensure the client has an intelligent understanding of the terms, conditions, and consequences of the settlement, including what rights the clients will forfeit.

Commentary:

1. A lawyer has the duty to be familiar with local detention practices as well as statewide detention practices such as time served calculations, work release, alternatives to incarceration, etc.
2. A lawyer has the duty to explain to the client the process that the client will go through to enter a settlement and the role that the client will play in the process. The lawyer should explain to the client that the court may in some cases reject the settlement.

STANDARD 7.1 GENERAL TRIAL PREPARATION

- A. A trial is a complex event requiring preparation, knowledge of applicable law and procedure, and skill. A plaintiff's lawyer must be prepared on the law and facts and competently plan the litigation of the client's case.**
- B. A lawyer should develop, in consultation with the client and members of the litigation team, an overall strategy for the conduct of the trial.**
- C. A lawyer must, in advance of trial, subpoena necessary witnesses, and develop outlines or plans for opening, closing, and anticipated direct and cross examinations.**
- D. A lawyer should file a trial memorandum outlining the plaintiff's case including the expected witness testimony and arguments in their favor. Trial memorandums need not disclose the testimony of experts unless doing so would be advantageous. If lawyers chose not to disclose their experts pre-trial, they should be prepared to cite *Stevens vs. Czerniak*, 336 OR 392, 403-404 (2004). Lawyers should file trial memorandums in a timely manner according to the court's scheduling order.**

Commentary:

1. A lawyer should consider how much time the case will require for trial and make scheduling requests accordingly.
2. A lawyer should be aware of the court's available time for hearings and that if a longer than average hearing duration is requested it may delay the hearing.
3. A lawyer should assure that any witnesses provide declarations to the lawyer far enough in advance of trial.
4. A lawyer should ordinarily have the following materials available for use at trial:
 - a. Copies of all relevant documents filed in the case;
 - b. Relevant documents prepared by investigators;
 - c. Outline or draft of opening statement;
 - d. Direct examination plans for all prospective plaintiff's witnesses;
 - e. Cross-examination plans for all possible defense witnesses;
 - f. Copies of plaintiff's subpoenas;

- g. Prior statements of all witnesses (e.g., transcripts, reports, etc.);
- h. Reports from experts;
- i. The CVs of any experts expected to testify at trial;
- j. Training and other available records for any professional witnesses who are expected to testify;
- k. A list of all exhibits and the witnesses through whom they will be introduced;
- l. Originals and copies of all documentary exhibits;
- m. Proposed bench instructions with supporting authority;
- n. Copies of all relevant statutes and cases;
- o. Evidence codes and relevant statutes and/or compilations of evidence rules most likely to be relevant to the case;
- p. Outline or draft of closing argument; and
- q. Trial memoranda outlining any complex legal issues or factual problems the court may need to decide during the trial.

5. Lawyers should have these documents prepared for use in a digital format and should be prepared to use the share screen function of a virtual hearing as needed for presentation of evidence.
6. A lawyer should be fully informed as to the rules of evidence, the law relating to all stages of the trial process and be familiar with legal and evidentiary issues that can reasonably be anticipated to arise in the trial. The lawyer should analyze potential defense evidence for admissibility problems and develop strategies for challenging evidence. The lawyer should be prepared to address objections to plaintiff's evidence or testimony. The lawyer should consider requesting that non-expert witnesses be excluded from the trial.
7. A lawyer should decide if it is beneficial to secure an advance ruling on issues likely to arise at trial and, where appropriate, the lawyer should prepare motions and memoranda for such advance rulings in accordance with Standard 5.2.
8. If the ability of the lawyer to provide live witness testimony is challenged the lawyer should file motions to allow live testimony, cross examination, and rebuttal testimony according to the applicable statutes allowing such.

9. A lawyer should consider the advantages and disadvantages of entering pre-trial stipulations concerning evidence. Lawyers should only enter stipulations to evidence in circumstances where there are clear benefits to the client.
10. Throughout the trial process, a lawyer should endeavor to establish a proper record for appellate review. As part of this effort, a lawyer should request, whenever necessary, that all trial proceedings be recorded.
11. A lawyer should plan with the client the most convenient system for conferring privately throughout the trial. Where necessary, a lawyer should seek a court order to have the client available for conferences. A lawyer should, where necessary, secure the services of a competent interpreter/translator for the client during all trial proceedings.
12. As soon as practicable after appointment, a lawyer should consider whether the assistance of a co-counsel, associate counsel, or second chair would be beneficial to the client and, if so, attempt to obtain approval for the same as soon as possible.

STANDARD 7.2 OPENING STATEMENTS

An opening statement is a lawyer's first opportunity to present their case. The lawyer should be prepared to present a coherent statement of the plaintiff's theory based on evidence likely to be admitted at trial.

Commentary:

1. A lawyer's objective in making an opening statement should include the following:
 - a. Provide an overview of the plaintiff's case, emphasizing the plaintiff's theme and theory of the case;
 - b. Identify the weaknesses of the defense's case;
 - c. Discuss the plaintiff's burden of proof and how it is met;
 - d. Summarize the testimony of witnesses and the role of each witness in relationship to the entire case;
 - e. Describe the exhibits which will be introduced and the role of each exhibit in relationship to the entire case;

- f. State the ultimate inferences which the lawyer wishes the court to draw; and
 - g. Humanize the client.
2. A lawyer should listen attentively during the defense's opening statement to note potential promises made by the defense that could be used in summation.
3. A lawyer should give an opening statement unless not doing so would allow more time for the presentation of the case, the issues were well briefed in the trial memorandum, and the judge read the trial memorandum.

STANDARD 7.3 PRESENTING THE PLAINTIFF'S CASE

A lawyer should present evidence at trial which will advance the theory of the case that best serves the interest of the client, meets the requirements of proof for the claim, satisfies the plaintiff's burden of proof, and is convincing to the trier of fact.

Commentary:

1. A lawyer should be aware of the elements required to prove their claims and of the burden of production.
2. A lawyer should develop, in consultation with the client and plaintiff's team, an overall strategy for the case.
3. In preparing for presentation of a plaintiff's case, a lawyer should:
 - a. Develop a plan for direct examination of each potential plaintiff's witness and assure each witness's attendance by subpoena;
 - b. Determine the implications that the order of witnesses may have on the case; and
 - c. Consider the best use and order of expert witnesses.
4. A lawyer should offer expert testimony through live presentation of the expert witness and should not rely on written declarations to the exclusion of live testimony.

5. A lawyer should carefully advise their client on whether to offer testimony in their own case. The decision to testify rests with the client. Clients may rely on a declaration in proving their case.
6. A lawyer should prepare all witnesses for direct and possible cross-examination. Where appropriate, a lawyer should also advise witnesses of suitable courtroom dress and demeanor.
7. In developing and presenting the plaintiff's case, a lawyer should consider the potential cross examination topics of the defense lawyer.
8. A lawyer should conduct redirect examination as appropriate.

STANDARD 7.4 CONFRONTING THE RESPONDENT'S CASE

The lawyer should rely on the theme and theory of the case to direct the confrontation of the respondent's case. Whether it is refuting, discrediting, or diminishing the respondent's case, the theme and theory should determine the lawyer's course of trial.

Commentary:

1. In preparing for cross-examination, a lawyer should be familiar with the applicable law and procedures concerning cross-examination and impeachment of witnesses. A lawyer should be prepared to question witnesses regarding prior statements which they may have made or adopted, documents subject to disclosure, and to develop further material for impeachment beyond what was found during pre-trial investigation.
2. As needed, but particularly in conditions of confinement cases, lawyers should review the licensing for medical staff or other witnesses with professional licenses. Lawyers should review previous publications of witnesses and request all disciplinary actions involving the witnesses

from their licensing boards. Some licensing information may only be available if specifically requested from the licensing board.

3. Lawyers should fully question Defense witnesses qualifications to act as experts and the truth of the declaration or affidavit prepared on their behalf by defendant's counsel.
4. Lawyers should thoroughly prepare for cross examination of all the defense's witnesses, in preparation for cross examination lawyers should consider:
 - a. The need for factual development;
 - b. The need to meet the plaintiff's burden;
 - c. The need to discredit the defense witnesses.
5. In preparing for cross-examination, a lawyer should:
 - a. Consider the need to integrate cross-examination, the theory of the plaintiff, and closing argument into questions for cross examination;
 - b. Anticipate those witnesses the defense might call in its case-in-chief or in rebuttal;
 - c. Consider whether cross-examination of each individual witness is likely to generate helpful information;
 - d. Consider an impeachment plan for any witnesses who may be impeachable including needed exhibits or transcripts;
 - e. Be alert to inconsistencies in a witness' testimony;
 - f. Be alert to variations in witness testimony;
 - g. Review all prior statements of the witnesses and any prior relevant testimony of the prospective witnesses;
 - h. If available, review investigation reports of interviews, depositions, and other information developed about the witnesses;
 - i. Review relevant statutes, procedural manuals, and regulations for possible use in cross-examining professional witnesses;
 - j. Be alert to issues relating to witness credibility, including bias and motive for testifying;
 - k. Be prepared with all necessary impeachment documents, including having properly certified and authenticated documents in accordance with evidentiary rules;
 - l. Be mindful of ways that certain topics could "open the door" to information that might otherwise be excluded;
 - m. Avoid asking questions that do not advance a plaintiff's theory, that allow the witness to provide unhelpful explanations, or questions that the lawyer does not know the answer to.

- n. Whenever possible, ask closed ended leading questions.
- o. Lawyers should seek out other sources of information on cross examination as needed to fully prepare.

6. A lawyer should be aware of the applicable law concerning admission of expert testimony and raise appropriate objections.
7. Before beginning cross-examination, a lawyer should ascertain whether the discovery rules have been complied with. If not, the lawyer should request, at a minimum, adequate time to review these documents before commencing cross-examination.

STANDARD 7.5 CLOSING ARGUMENTS

A lawyer should be prepared to deliver a closing summation that presents the trier of fact with compelling reasons to render a judgment for the client. Lawyers should also use their closing arguments to assure that the court does not consider irrelevant or immaterial information harmful to the client in determining the case's outcome.

Commentary:

1. A lawyer should be familiar with the substantive limits on both plaintiff's and defense's summation.
2. Lawyers should be prepared to file supplemental briefing or a closing memorandum if it would benefit the client and the court permits.
3. Counsel should provide remedies sought under Standard 8.1 in their closing arguments.
4. A lawyer should prepare the outlines of the closing argument prior to the trial and refine the argument throughout trial by reviewing the proceedings to determine what aspects can be used in support of plaintiff's summation and, where appropriate, should consider:
 - a. Highlighting witness testimony that supports plaintiff's theory of the case.
 - b. Highlighting weaknesses in the defendant's case;
 - c. Demonstrating how favorable inferences may be drawn from the evidence; and

- d. Incorporating into the argument:
 - i. Helpful testimony from direct and cross-examinations;
 - ii. The standards of review for *habeas*; and
 - iii. Responses to anticipated defense arguments.
- 5. Whenever the defense lawyer exceeds the scope of permissible argument, the lawyer should object, request a mistrial, or seek cautionary instructions unless tactical considerations suggest otherwise.

STANDARD 8.1 OBLIGATION OF HABEAS COUNSEL CONCERNING DISPOSITION

A lawyer must work with the client and plaintiff's team to develop a theory of disposition or disposition plan that is consistent with the client's desired outcome. The lawyer must present this plan in court and zealously advocate on behalf of the client for such an outcome. Lawyers should review the accuracy of any judgments of the court and move the court to correct any errors.

Commentary:

None

STANDARD 8.2 ONGOING COMPLIANCE MONITORING

A lawyer must stay in regular contact with the client following successful disposition of the case in order to monitor defendant's compliance with the judgment. Lawyers must be prepared to resume litigation in the event of breaches. A lawyer's monitoring should continue as long as there is cause.

Commentary:

- 1. If defendant is non-compliant lawyers should prepare and file a motion for finding of non-compliance or contempt and should request remedies or sanctions including plaintiff's release.
- 2. Lawyers may request attorney fees when the defendant is non-compliant.

3. Lawyers should be familiar with post release remedies that their clients may have. This is an emerging field of law, See *White v. Reyes*, 335 Or App 124 (2024). See also *Fox v. Peters*, District Court of Oregon Case No 6:16-cv-01602-MC, 2016 WL 4265736. (D. Or. Aug. 11, 2016).

STANDARD 9.1 PRESERVATION OF ISSUES FOR APPELLATE REVIEW

A lawyer should be familiar with the requirements for preserving issues for appellate review.

Commentary:

1. A lawyer should know the requirements for preserving issues for review on appeal and other options to challenge lower court rulings.
2. A lawyer should review with the client those issues that have been preserved for appellate review and the prospects for a successful appeal.

STANDARD 9.2 UNDERTAKING AN APPEAL

A lawyer must be knowledgeable about the various types of appellate relief and their application to the client's case and should impart that information to the client. Throughout the trial proceedings, but especially upon disposition not favorable to the client, a lawyer should discuss with the client the various forms of appellate review and how they might benefit the client. Notices of appeals must be filed within 30 days of the date of the final judgment. Lawyers may not miss appellate deadlines. When requested by the client, a lawyer should ensure that a notice of appeal is filed, and that the client receives information about obtaining appellate counsel.

Commentary:

1. Lawyers are responsible for knowing the procedure for securing appellate counsel through OPDC. Lawyers may refer a case for appeal prior to the judgment being issued.

2. If the client chooses to pursue an appeal, a lawyer should take appropriate steps to preserve the client's rights, including requesting reconsideration, moving for a new trial, moving for a judgment notwithstanding the verdict, and referring the case to an appellate lawyer through OPDC. Lawyers are responsible for knowing the impact of each of these actions on the timeline for filing the appeal and should work with appellate counsel to assure that no deadlines are missed.
3. When the client pursues an appeal, a lawyer should cooperate in providing information to the appellate lawyer concerning the proceedings in the trial court. A trial lawyer must provide the appellate lawyer with all records from the trial case, the court's final judgment and any other relevant or requested information.
4. If the defendant appeals a judgement granting relief, lawyers should be prepared to cooperate with appellate counsel in litigating defense requests to stay the judgment pending appeal.



Post-Conviction Relief Attorney Performance Standards with Commentary

January 2026

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INTRODUCTION

Oregon Revised Statute 151.216(1)(j) mandates that the Oregon Public Defense Commission (OPDC) “[d]evelop, 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. The policies, procedures, standards, and guidelines described in this paragraph apply to employees of the commission and to any person or entity that contracts with the commission to provide public defense services in this state.”

The following standards were developed by OPDC staff with input from a post-conviction relief (PCR) provider workgroup. Per OPDC policy, these standards will be reviewed and revised one, two, and five years from adoption. OPDC welcomes ongoing provider input regarding the content and efficacy of these standards.

This iteration of the Standards was drawn heavily from the existing Oregon State Bar Post-conviction Relief Performance Standards. OPDC has adopted those standards to make them specific to public defense PCR casework and has added language that reflects evolving standards of practice. Each standard sets a baseline for practice of appointed post-conviction work and is followed by best practices that supplement the baseline standards. Best practices are aspirational. OPDC recognizes that in any given case, some standards might be inapplicable or even mutually exclusive; OPDC acknowledges that to practice law, exceptions to these baseline rules must apply in certain situations.

OPDC is grateful to the prior work of the Oregon State Bar and to the Oregon Public Defense Commission PCR Standards Workgroup for the extensive work OPDC drew upon in the development process.

Standard 1.1 – General Expectations of Post-Conviction Counsel

Counsel should not undertake representation in a post-conviction relief proceeding unless counsel fully understands the requirements of a collateral challenge to a criminal conviction, and how that differs from a record-based direct appeal of a criminal conviction.

Commentary:

1. Counsel should treat a post-conviction relief proceeding as both the first and last meaningful opportunity to present evidence not contained in the trial record on a variety of constitutional violations that may have taken place in the underlying criminal case, including but not limited to: claims involving the competence of the defendant; police and prosecutorial misconduct; judicial misconduct; faulty eyewitness evidence; unreliable informant testimony; coerced confessions; flawed forensic methods; juror misconduct; juror qualifications; ineffective and inadequate assistance of trial and appellate counsel; and whether a plea of guilty is entered knowingly, intelligently, and voluntarily.
2. Counsel should understand that while a client's innocence may or may not itself constitute a cognizable claim for state post-conviction relief, its relevance to the case is important. See *Perkins v. Fhuere*, 374 Or 575 (2025). Claims of innocence are typically intertwined with other recognized bases for post-conviction relief. For example, a meritorious "*Brady* claim" is typically based on suppression of evidence pointing to innocence. Similarly, a claim of inadequate or ineffective assistance of counsel may be predicated on trial counsel's failure to investigate sources of important evidence that support the client's assertion of innocence. Accordingly, post-conviction counsel should be prepared to carefully evaluate the need to investigate evidence of innocence that can support a claim for post-conviction relief.
3. Counsel should not have represented the petitioner during the underlying criminal case or direct appeal except in extraordinary circumstances, since the post-conviction proceeding may be the only opportunity to raise claims of ineffective or inadequate assistance of trial and appellate counsel. Trial or appellate counsel who seek to represent their clients in post-conviction relief proceedings should do so with caution and must abide by the conflict of interest provisions of Oregon Rule of Professional Conduct 1.7 and consult OSB Formal Ethics Op. No. 2005-160.

4. A lawyer should have adequate time and resources to provide competent representation to every client.
 - a. A lawyer should not accept caseloads that by reason of size and/or complexity interfere with the provision of competent representation.
 - b. A lawyer should have access to support services and other resources necessary to provide competent representation.
5. Counsel should understand the difference between seeking relief pursuant to a post-conviction relief petition and a petition for DNA testing pursuant to ORS 138.690.
6. Counsel should ensure at the outset of appointment that post-conviction is ripe and that the matter is not still on appeal. If a *pro se* petition was filed while the matter was still on direct appeal, counsel should take appropriate measures to ensure that a timely post-conviction petition is properly filed.
7. Counsel should understand, prior to undertaking representation of any client in post-conviction relief proceedings, that ordinarily any meritorious claim not contained in a first original or amended petition will likely be waived or otherwise unavailable as a ground for relief in a second petition for post-conviction relief, or in subsequent federal habeas corpus litigation. Any lack of diligence, mistake, or other omissions by counsel will ordinarily be borne by the client. Those claims and other pleadings to be signed by counsel must comply with Oregon Rules of Civil Procedure (ORCP) 17 C, requiring a factual basis and support in existing law or in a non-frivolous argument for the extension, modification, or reversal of existing law or the establishment of new law.

Standard 1.2 – Client Communication

A lawyer should meet with their client within 30 days of appointment. A notice of appointment and releases of information should be sent to the client within 14 days of appointment. Contact must be maintained throughout the representation, including before and after filing of the amended petition and to ensure the client can file a motion pursuant to *Church v. Gladden*, if desired.

Commentary:

1. If a client requests in person contact, counsel should make reasonable efforts to accommodate that request. In person meetings should take place as needed to prepare the client for any testimony or trial preparation.
2. The lawyer should keep the client informed about the progress of investigation, the development of post-conviction claims, litigation timelines and deadlines, and consult with the client concerning amendments and challenges to the pleadings, discovery, pretrial hearings, and other preparations for trial. This should include providing a clear explanation of the claims included in the amended petition. If the lawyer decides, based on ORCP 17 C or other strategic reasons, not to include a claim that client has requested be included, the lawyer should provide a full explanation to the client.
3. The lawyer should advise the client concerning the consequences of prevailing on a petition for post-conviction relief, including the likelihood—in cases where petitioner has previously entered a plea of guilty pursuant to a plea agreement with the state—that the petitioner would face conviction on additional charges and/or a lengthier period of incarceration upon a new trial. Lawyers should make sure their client is aware of the remedies and claims available in post-conviction proceedings.
4. Counsel should mail client a copy of the trial memorandum and reply memorandum no later than the date they are filed.
5. Counsel should contact client to discuss the trial memorandum prior to trial and, if available, review with the client defendant's trial memorandum and any reply to the trial memorandum.
6. Counsel should ensure client is aware of the trial date and the client's right to attend the trial.

Standard 2 – Obligations of Defense Counsel regarding *Church v. Gladden* Motions

A lawyer must send client a copy of the filed amended petitions and include with it information on how to raise issues under *Church v. Gladden*, 244 Or. 308 (1966). The lawyer must be aware of Uniform Trial Court Rules and Supplementary Local Rules regarding the time limitations on filing *Church* motions to properly advise their client.

Commentary:

1. The lawyer should advise the client in writing how to raise a *Church* motion, the format in which the motion should be filed, relevant timelines and deadlines, and the remedies sought.
2. Counsel must not reveal confidences or take an adversarial position in response to *Church* motions. See *Lopez v. Nooth*, 287 Or App 731 (2017).

Standard 3 – Independent Investigation

A lawyer who undertakes to represent a petitioner in a post-conviction proceeding should independently review and investigate the trial proceedings. The review should begin with review of the complete file of trial and appellate counsel and the prosecution file. The lawyer should read the official trial record, obtain all discovery material from the trial lawyer, and meet with the client to explore all aspects of representation and the trial proceedings, including whether an appropriate investigation was conducted pursuant to the OPDC Criminal Performance Standard 3.1.

Commentary:

1. Lawyers should be familiar with the ORCP and should use subpoena power, depositions, requests for production of documents, and requests for admission.
2. Lawyers should be familiar with the Uniform Trial Court Rules for post-conviction, including but not limited to witness disclosure timelines.
3. Lawyers should be familiar with the victim's rights provisions of the Post-Conviction Statute.
 - a. Lawyers or their investigators cannot approach a victim without providing a clear explanation, preferably in writing, regarding victim's rights;

- b. Lawyers must obtain court approval to subpoena victims. See ORS 138.627.
- 3. Lawyers should obtain the services of qualified investigators and mitigators.
- 4. In most cases, lawyers should obtain:
 - a. The trial attorney file, regardless of the age of the file;
 - b. The district attorney file;
 - c. Any law enforcement files;
 - d. CARES reports and other child reporting agency files;
 - e. The appellate attorney file (if applicable);
 - f. The trial court file and transcript;
 - g. The appellate court file and transcripts (if applicable);
 - h. Client medical records, if applicable;
 - i. Any Oregon Department of Corrections file, if applicable;
 - j. Records from any relevant jail facility in which client was held, including medical files and visitation logs;
 - k. Any Oregon Public Defense Commission file; and
 - l. Files related to a co-defendant or government informant (including district attorney and United States Attorney files).
- 5. The lawyer should speak with trial counsel and appellate counsel and their investigators regarding issues in the trial that may not be apparent from the face of the record.
- 6. The lawyer should be familiar with protective orders regarding the use of any records obtained in post-conviction in future prosecutions as well as protective orders related to any necessary child abuse, mental health, or other statutorily required protective orders.
- 7. Counsel should seek expert witnesses where necessary for the investigation, preparation, and presentation of the case, and be familiar with the process to obtain expert funding from OPDC.

Standard 4 – Asserting Legal Claims

Counsel should be familiar with all legal claims potentially available in post-conviction relief proceedings and assert claims permitted by the facts and circumstances of a petitioner's case to protect the client's rights against later contentions that the claims have been waived, defaulted, not exhausted, or otherwise forfeited.

Commentary:

1. A properly pleaded amended petition must generally be filed within 120 days from the date of appointment unless the Court has authorized additional time.
 - a. The lawyer should be aware of any timelines for filing and amending petitions set forth in the Uniform Trial Court Rules, Supplemental Local Rules, and the ORCP.
 - b. The amended petition should raise all claims supported by the discovery obtained at the time of filing. If later discovery supports additional claims, counsel should seek to further amend the petition to include those claims.
 - c. The lawyer should review the original *pro se* petition to ensure that the client's interests are preserved.
2. A lawyer should plead alternative theories to claims so that all avenues of relief are possible (e.g., ineffective assistance of counsel regarding a specific action can, at times, also be pleaded as failing to properly execute the trial strategy).
3. A lawyer should plead any evidence necessary to support the legal claim made. See *Horn v. Hill*, 180 Or App 139, 138-49 (2002) ("Where evidence omitted from a criminal trial is not produced in a post-conviction proceeding . . . its omission cannot be prejudicial").
4. A lawyer should plead any relevant exceptions to any procedural bars that might be raised by the defendant, including successiveness, timeliness, or that claims could have been raised on appeal. See *North v. Cupp*, 254 Or 451 (1969) (setting forth exceptions to the trial preservation rule).
5. A lawyer should request to amend the formal petition when the need for new claims or amended claims arises—even if this is during trial—and should make every effort to amend rather than concede error in omitting

the claims in the formal petition. See *Ogle v. Nooth* 365 Or 771 (2019); ORCP 23 B.

6. Petitions should request whatever remedies are proper and just. See ORS 138.520.
7. A lawyer should not argue the law in the petition. See ORS 138.580.

Standard 5.1 – Litigating Claims

Before and during the trial on the petition for post-conviction relief, a lawyer should develop a factual basis through the presentation of evidence to establish the claims asserted in the petition. A lawyer must be sufficiently familiar with the procedural rules of post-conviction to properly file witness disclosures, exhibits, objections, and trial memoranda.

Commentary:

1. Lawyers must disclose witnesses pursuant to ORS 138.615 and be aware of and comply with the specific disclosure requirements regarding expert witnesses. Witness disclosures must be made no later than 60 days before trial unless otherwise ordered by the court. UTCR 24.060.
2. Lawyers should be familiar with the case law regarding the use of experts in post-conviction. Experts testifying regarding ineffective assistance of counsel must have been experts at the time of the original trial, available at the time of the original trial, and must indicate they would have testified substantially similarly at the time of the original trial as they would in the post-conviction proceedings. See *Hale v. Belleque*, 255 Or App 653, 681, 298 P3d 596 (2013) (To satisfy a petitioner's burden of proof on a claim that trial counsel was constitutionally inadequate in failing to call a witness to testify, the petitioner must show that (1) the witness would have been available to testify, (2) would have appeared at the time of trial, and (3) would have provided testimony likely to have changed the result of the trial.)
3. If a claim involves the failure to call a witness (expert or lay), lawyers must present evidence, either through declarations or live testimony, of how that witness would have testified at the time of trial and that they were available to testify at the time of trial. See *New v. Armenakis*, 156 Or App

24, 29 (1998) ("Without an affidavit from Gable, there is no evidence about what Gable would have testified to, had he been called as a witness.).

4. Lawyers should file exhibits in compliance with UTCR 24.040.
5. A lawyer must file a comprehensive trial memorandum. Trial memoranda should include but are not limited to:
 - a. Assertions regarding the facts and arguments regarding the law as to each claim set forth in the petition. Claims not supported in the trial memorandum will likely be dismissed as abandoned.
 - b. Any additional elements set forth in any scheduling order from the court.
6. A lawyer should file a response to the defendant's trial memorandum. This memorandum should include but is not a limited to:
 - a. A rebuttal of the defendant's arguments;
 - b. A response to the defendant's objections;
 - c. Objections to defendant's exhibits, unless otherwise specified by the trial court.

Standard 5.2 – Client's Presence at Trial

Counsel may not waive client's right to attend trial unless waiver is authorized under ORS 138.620 and approved by the client.

Commentary:

Counsel should object to any attempt to limit client to solely telephonic appearance unless client directs otherwise. Counsel should be aware of ORS 138.622 and ensure availability of a method of confidential communication during hearing. See also ORCP 58 E.

Standard 5.3 – Obligations During Trial

Counsel must subpoena all necessary witnesses—including those necessary to cure hearsay objections—to trial and be prepared to present and argue all active claims. Counsel should offer all necessary exhibits into the record.

Commentary:

Oregon Public Defense Commission – Post-conviction Relief Performance Standards

1. Counsel should be prepared to argue new claims or alternative claims if testimony at trial supports them. Counsel should note such claims for the court and request to amend petition to reflect any changes.
2. Counsel should be prepared to argue against defendant's possible responses to any petitioner's trial memorandum.
3. At trial, Counsel should re-assert all relief requested.
4. A lawyer should be aware of the elements required to prove their claims and of the burden of production.
5. In preparing for cross-examination, a lawyer should be familiar with the applicable law and procedures concerning cross-examination and impeachment of witnesses. A lawyer should be prepared to question witnesses regarding prior statements which they may have made or adopted, documents subject to disclosure, and to develop further material for impeachment beyond what was found during pre-trial investigation.
6. Counsel should be prepared to file supplemental briefing or a closing memorandum if it would benefit the client and the court permits.
7. Counsel should be familiar with and utilize, where necessary, ORCP 39 I (Perpetuation of testimony after commencement of action), ORCP 38 B(3), and UTCR 5.130 for use in locations that have not adopted the Uniform Interstate Depositions and Discovery Act.

Standard 6 – Obligations of Counsel After Trial

Counsel must ensure that the court has addressed each claim for relief in its judgment. Immediately following the issuance of a judgment, counsel should send a copy of the judgment to the client. If there are adverse rulings, counsel should notify appellate counsel and ensure that a notice of appeal is filed if the client would like to appeal. Following a favorable judgment, counsel must file a certified copy of judgment with the trial court for the underlying conviction and serve a certified copy on the district attorney of the county of the original conviction and sentence. See ORS 138.640.

Commentary:

1. After trial, if the court has not issued a judgment within 60 days the attorney should call the court's attention to the matter, in writing pursuant to UTCR 2.030.
2. If the court provides an opportunity for objections to a judgment prior to publication, counsel should object where appropriate.
3. Following the issuance of a judgment, counsel should send the client a closing letter explaining, among other things, file retention, appellate rights, and any rights to federal collateral review.
4. Lawyers are responsible for knowing the procedure for securing appellate counsel through OPDC.
5. Following a favorable judgment (in full or in part), counsel should file a supplemental judgment seeking the return of any filing fees and costs assessed and for prevailing party fees. ORS 138.550(1); ORS 20.190(1)(b)(B).

Oregon Public Defense Commission

**Financial & Case
Management System
Update**

January 21, 2026

Kenneth Sanchagrin, Interim Executive Director
kenneth.sanchagrin@opdc.state.or.us

David Martin, CIO, FCMS



FCMS January 2026

Agenda



CONTRACT AWARD
STATUS



SCHEDULE



ACCOMPLISHMENTS



UPCOMING
MILESTONES



BUDGET



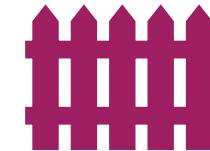
Q&A

Implementation Planning Phase Approval & Procurement Status



Procurement:

Leadership elected to award a contract and to enter into Phase 3 (Contract Negotiations and Execution). OPDC received a protest in response to public notice of its Intent to Award a Contract. OPDC's Chief Procurement Officer, with concurrence of the Dept of Justice, drafted and served the protesting proposer with a Notice of Final Disposition denying the award protest. The proposer has an *option* to seek judicial review through the date OPDC and the apparent successful proposer execute a contract.



Implementation Planning:

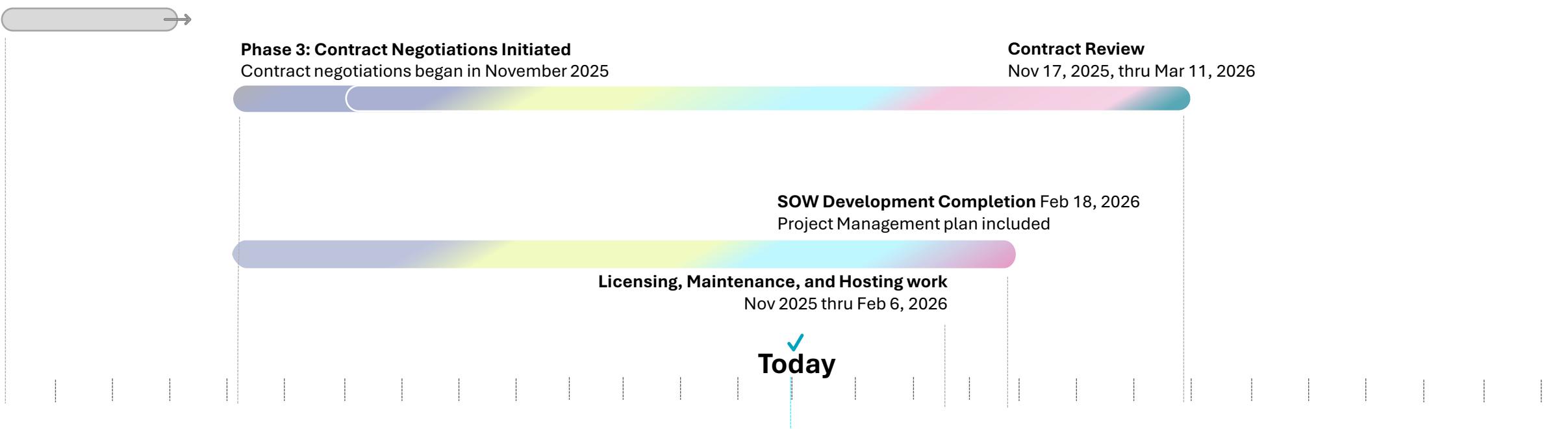
Completed Trial Division Gap Analysis on "orphan" requirements and identified an estimated 7 diagrams that need to be created along with the respective User Stories / Use Cases and association to the RTM. Continued SIPOC documentation of Data and Reporting – estimated 30% at the end of December 2025. Scope, Schedule, Budget, Project Management Plan alignment occurring with contractor by beginning of March.

Procurement Schedule

Phase 2: Potential for Judicial Review of Contract Award Protest Disposition

Protesting proposer has the *option* to seek judicial review until the contract is approved by the Office of the Attorney General and executed by OPDC.

Began October 2025.



Accomplishments



Completed Trial Division Gap Analysis on "orphan" requirements and identified an estimated 7 diagrams that need to be created along with the respective User Stories / Use Cases and association to the RTM. Continued SIPOC documentation (a format which identifies the Source, Input method, Output method, and Consumers) of Data and Reporting – estimated work effort of 30% complete at the end of December 2025.



Procurement Phase 3: Leadership elected to award a contract based on the remaining proposal and to enter into Phase 3 (Contract Negotiations and Execution). The proposer whose proposal was rejected protested that decision. OPDC's Chief Procurement Officer, with concurrence of the Dept of Justice, drafted and served the protesting proposer with a Notice of Final Disposition denying the protest. OPDC has entered into contract negotiations with the apparent successful proposer.



Change Management: Presented initial training needs mapping to internal leaders. Continued to develop the change champion program and reviewed updated process maps with external change champions. Continuing outreach to possible internal change champions and working to finalize that list. Met vendor to begin alignment on change management approach.



Upcoming Milestones

01

FCMS 4th round draft of SOW and FCMS Project Management Plan (pre-SOW development) complete.

02

Round 4 drafting of Contract.

03

Implementation Planning document revision continues for Scope, Schedule, Budget Alignment. Training Strategy being developed.

04

Documentation of Data and Reporting along with Compliance Process Flow Diagrams through January 2026.

Budget

Current funding is being covered by ASD General Fund until the Bond sale in late spring 2026.

Preparing for future Cost Estimate Review in Contract Negotiations.

Thank you

