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**Oregon
 Public
 Defense
 Commission**

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Executive Director:

Jessica Kampfe

Oregon Public Defense Commission

*Meeting will occur virtually.
 Wednesday, March 26, 2025
 9:00 AM – approx. 11:30 AM PST
 Via Zoom**

Administrative Announcement

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

AGENDA

Approx. Time	Item	Lead(s)
9:00-9:05	Welcome	Vice Chair Mandiberg
9:05-9:20	Public Comment	
9:20-9:30	Update: Unrepresented Persons in Oregon Courts	Jessica Kampfe Madeline Ferrando
9:30-9:40	Action Item: Audit Committee Member Confirmation	Scott Martin
9:40-10:20	Update: Proposed Policy Contract Changes	Jessica Kampfe
10:20-10:30	Briefing: Local Court Spotlight: Washington County	Presiding Judge Rebecca Guptill
10:30-11:30	Briefing: Public Records Training	Todd Albert
11:30am (Approximately)	***Adjourn***	

**To join the Zoom meeting, click this link <https://zoom.us/j/98493458064>. 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: **April 16, 2025, 9am – 1pm, in-person at Jackson County and via Zoom.** Meeting dates, times, locations, and agenda items are subject to change by the Commission; future meetings dates are posted at: <https://www.oregon.gov/opdc/commission/Pages/meetings.aspx>



Oregon Judicial Department

Unrepresented Crisis – February 2025

Key Insights

[Unrepresented Trends](#)

The total number of unrepresented persons and unrepresented cases continues to increase, reaching a new high on February 1, 2025, with 4,371 unrepresented persons and 4,809 unrepresented cases ([Figure 1](#) and [Figure 2](#)). Since March 1, 2024, the number of unrepresented cases has increased by 60% and the number of unrepresented persons has increased by 58%. The number of unrepresented persons with multiple unrepresented cases has been increasing since November 2024. Daily updates are available on the [Unrepresented Dashboard](#) on the OJD website.

[Cases Entering and Exiting Unrepresented Status](#)

More than 400 cases entered unrepresented status than exited that status in January, adding to the unrepresented case total.

[Unrepresented – Out-of-Custody](#)

The average number of days a person with an out-of-custody felony case is unrepresented continues to increase, reaching an average of 113 days in January 2025. That number remains higher than the average number of days an out-of-custody misdemeanor case is unrepresented, which has remained relatively stable ([Figure 4](#)).

[Unrepresented – In-Custody](#)

The average number of days a person who is in custody and is unrepresented on any case has decreased since November 2024 to 21 days in January 2024, but is 50% higher than in February 2024 ([Figure 5](#)).

[Criminal Case Filings](#)

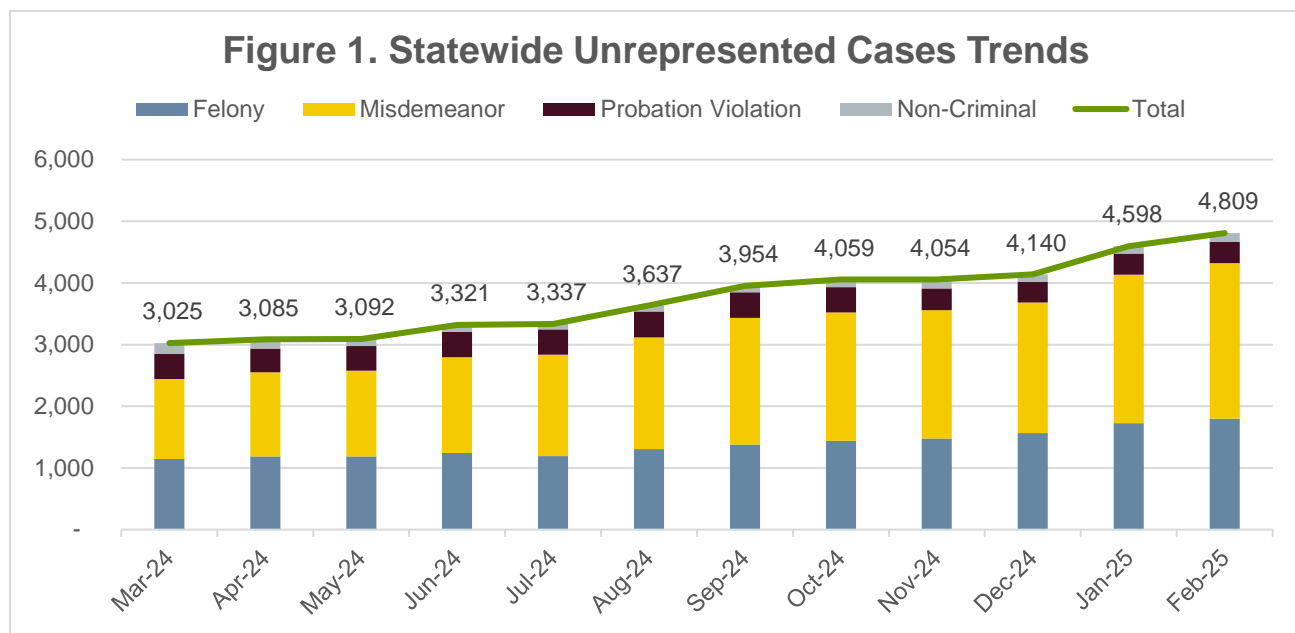
Criminal case filings have generally increased over the past twelve months, with a new monthly high in January 2025 of 6,104 cases ([Figure 6](#)).

[Unrepresented by County](#)

Multnomah, Jackson, Marion, Washington, Douglas, Klamath, and Coos counties have the highest number of unrepresented persons in Oregon ([Figure 7](#)). Klamath County recently lost a single contract attorney, causing a 160% increase in unrepresented persons between January and February 2025 and putting them as the county with the 6th highest number of unrepresented persons.

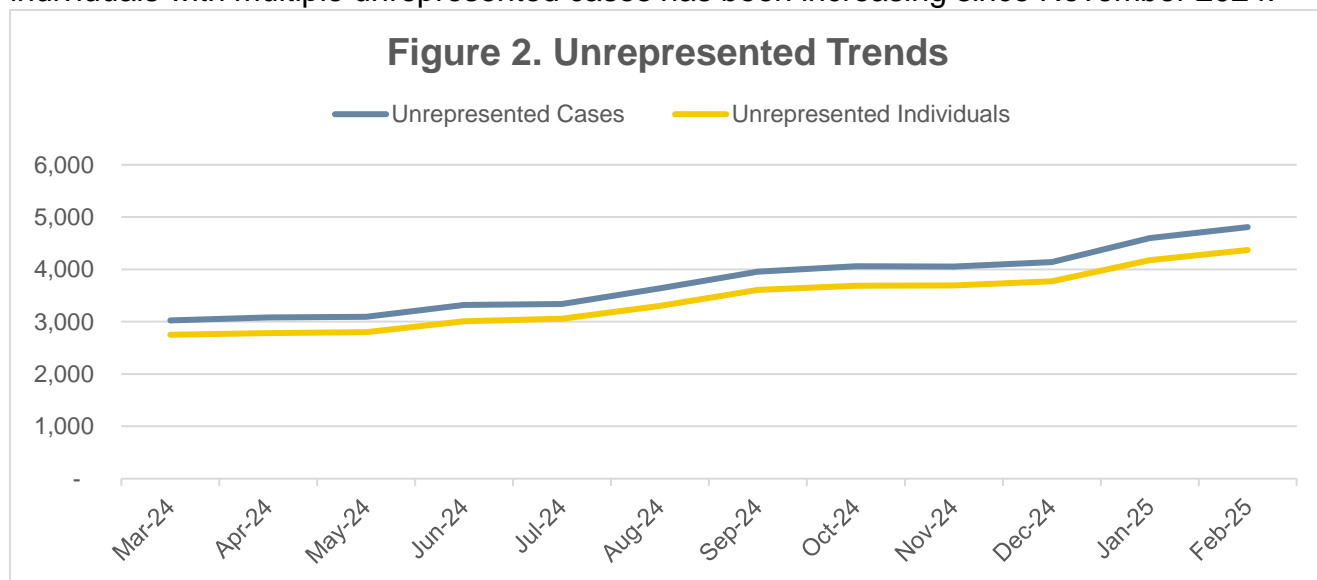
Unrepresented Trends

Figure 1 shows the number of unrepresented cases by case type. **Another new high was reached on February 1, 2025, with 4,809 unrepresented cases, a 60% increase since March 2024.** The number of unrepresented misdemeanor cases has increased each month since March 2024 and the number of unrepresented felony cases has increased each month since July 2024.



Source: OJD Odyssey Data (eCourt).

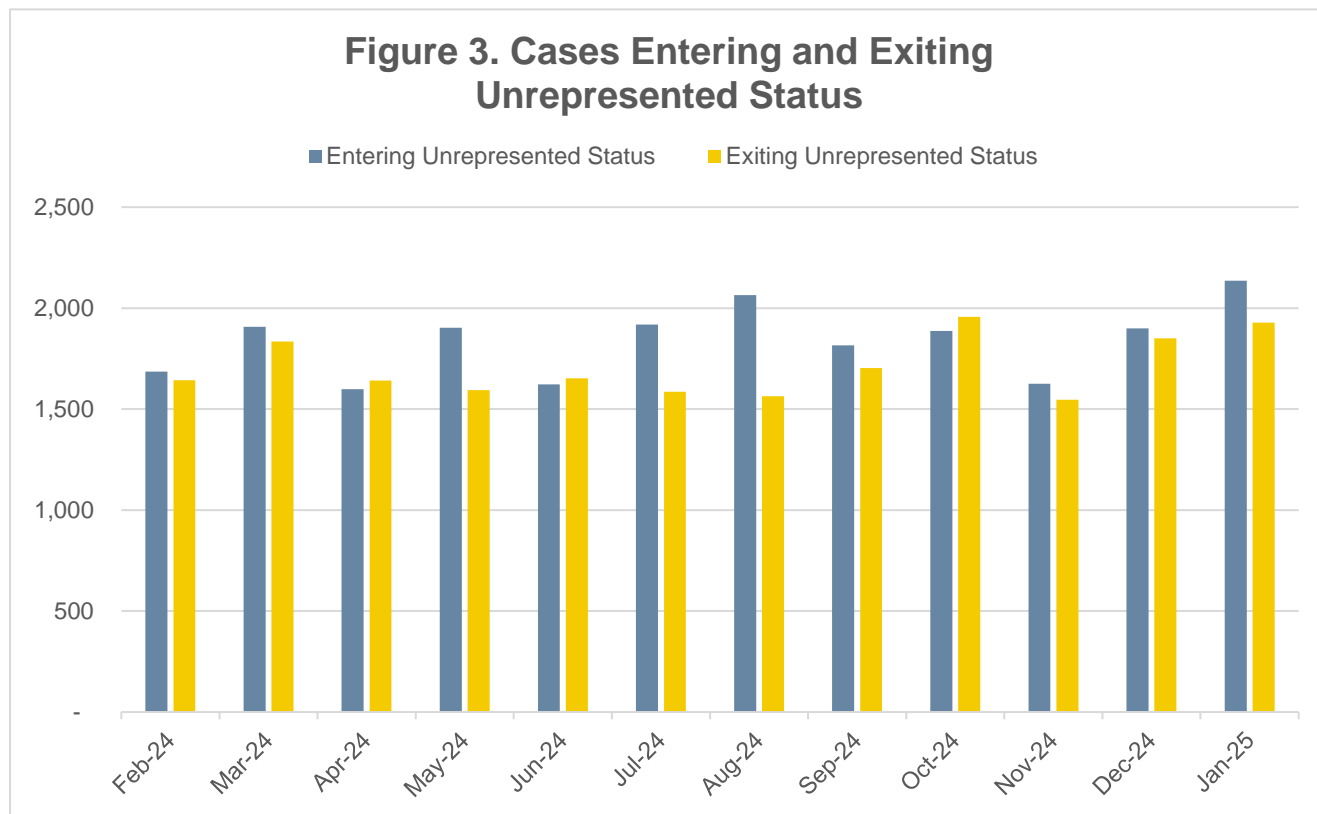
Figure 2 shows the number of unrepresented cases and unrepresented individuals. **On February 1, 2025, a new record high of 4,371 unrepresented individuals was set, a 59% increase from March 2024.** When there are more unrepresented cases than unrepresented individuals it means there are individuals with multiple unrepresented cases. The number of individuals with multiple unrepresented cases has been increasing since November 2024.



Source: OJD Odyssey Data (eCourt).

Cases Entering and Exiting Unrepresented Status

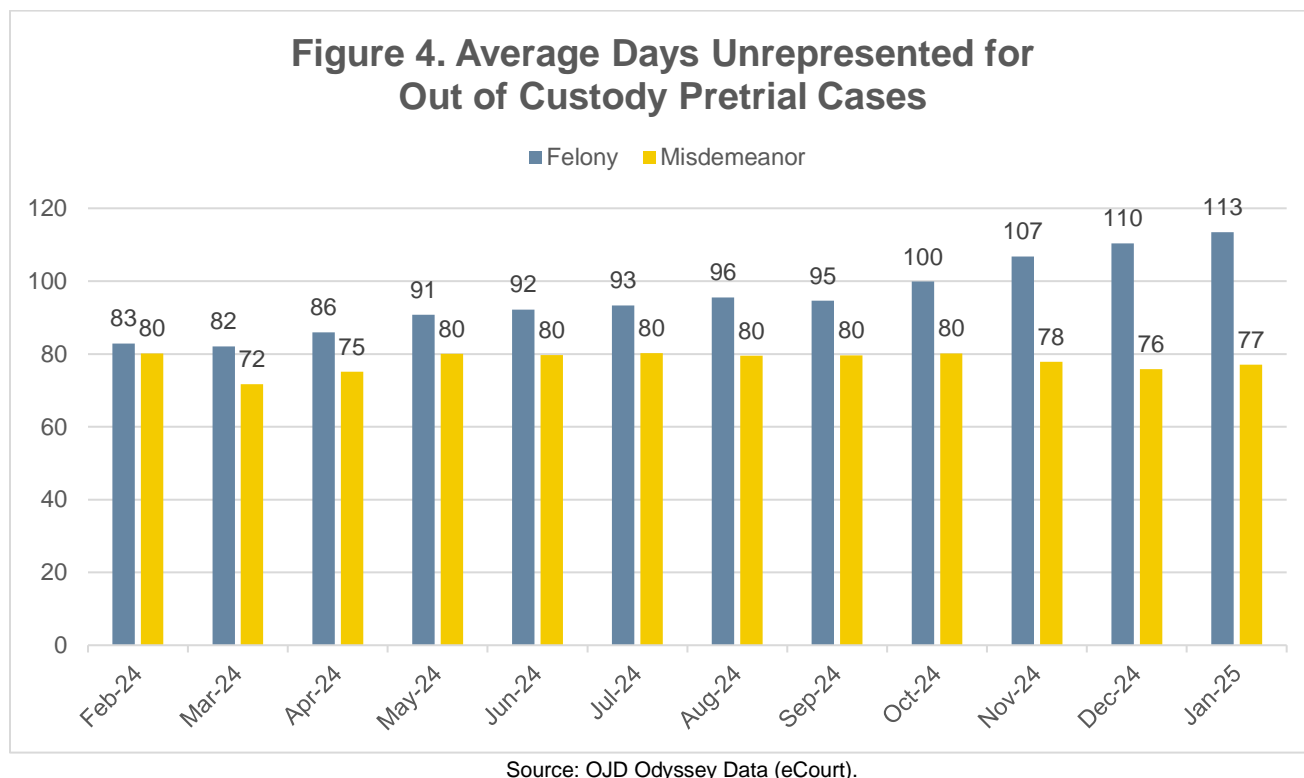
Figure 3 shows the number of cases entering and exiting the unrepresented list each month. When more cases enter the unrepresented list than exit, it means the unrepresented list is increasing. Between September and December 2024, the difference between the number of cases entering and exiting the unrepresented list was less than 100. In January 2025, though, 438 more cases entered the unrepresented list than exited. The number of cases exiting unrepresented status decreased by 154 between December 2024 and January 2025.



Source: OJD Odyssey Data (eCourt).

Unrepresented – Out-of-Custody

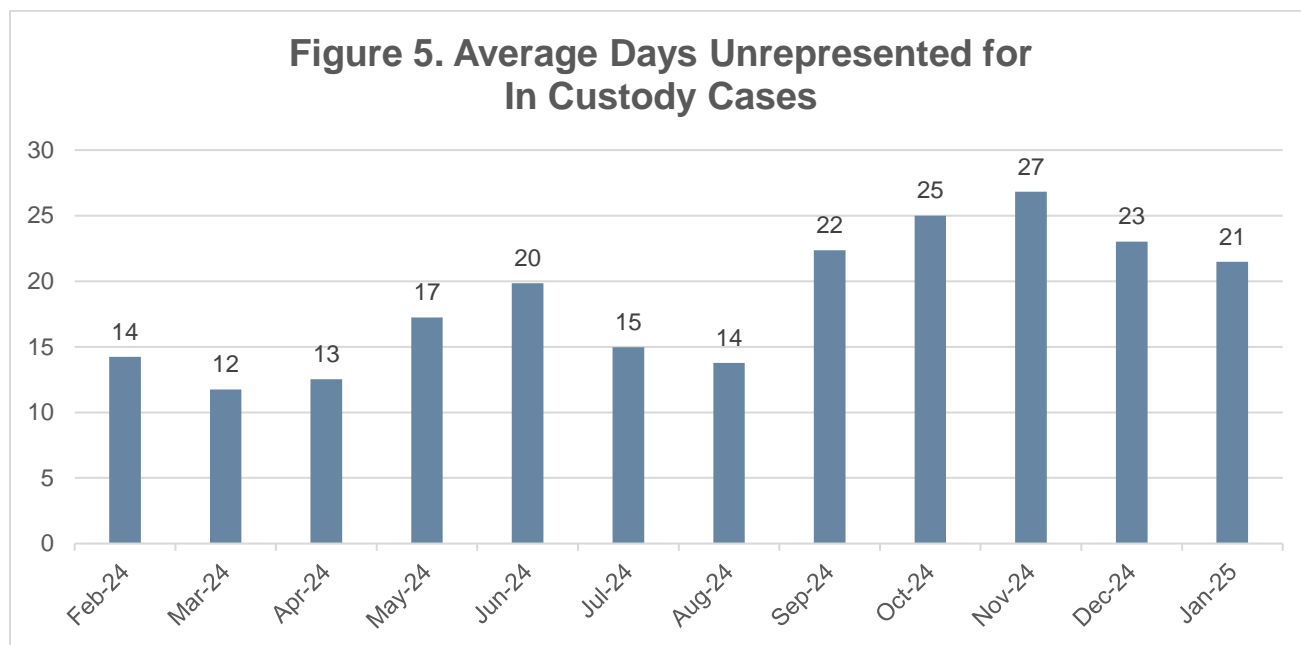
Figure 4 shows monthly changes in the average number of days an out-of-custody felony or misdemeanor case is unrepresented. The average number of days an out-of-custody felony case is unrepresented has continued to increase since September 2024 and reached an average of 113 days in January 2025.



Unrepresented – In-Custody

Figure 5 shows trends in the average number of days a person is both in custody and is unrepresented in any case. This chart primarily consists of people who are in custody and are unrepresented either on that in-custody case, another in-custody case, or an out-of-custody case. Because of the variety of circumstances in which being represented and unrepresented in different cases can occur while a person is in custody, this creates complexity in ensuring a person has appointed counsel on all their pending cases. If a person is being held in custody for reasons other than the unrepresented case, they may not be prioritized for appointment of counsel by OPDC because they will remain in custody for other reasons.

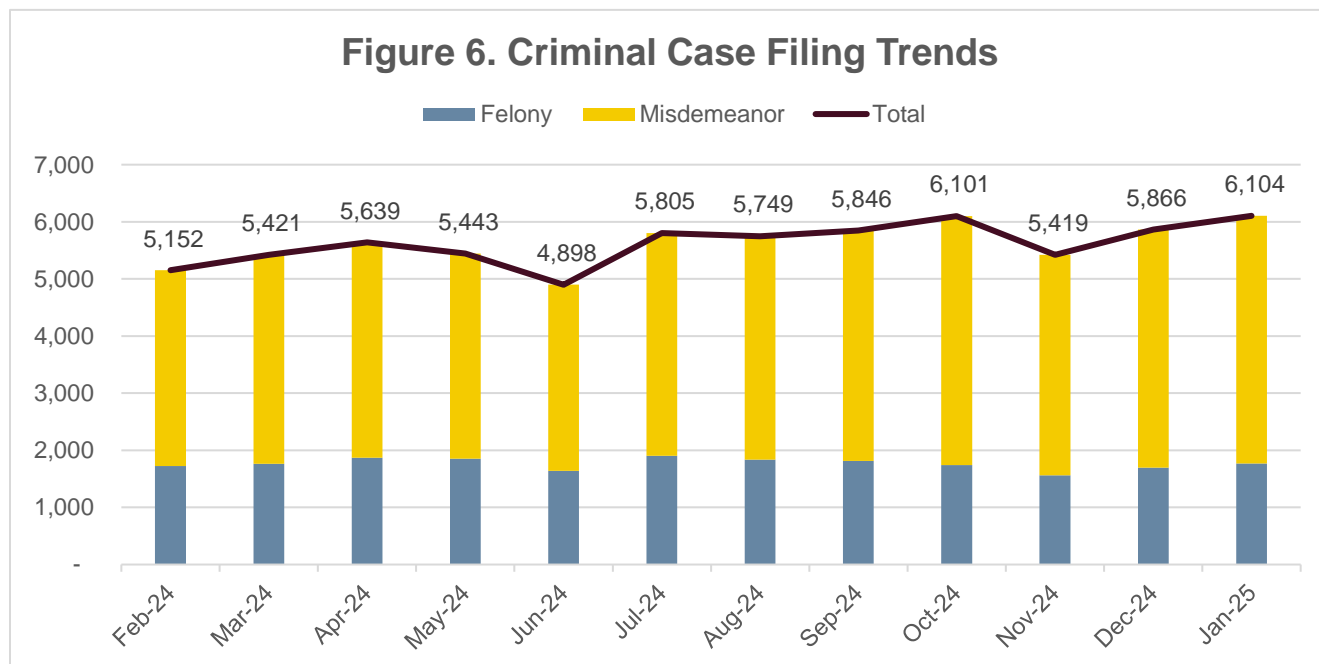
The average number of days a person is in custody and unrepresented on a case has been decreasing recently, from an average of 27 days in November 2024 to an average of 21 days in January 2025.



Source: OJD Odyssey Data (eCourt).

Criminal Case Filings

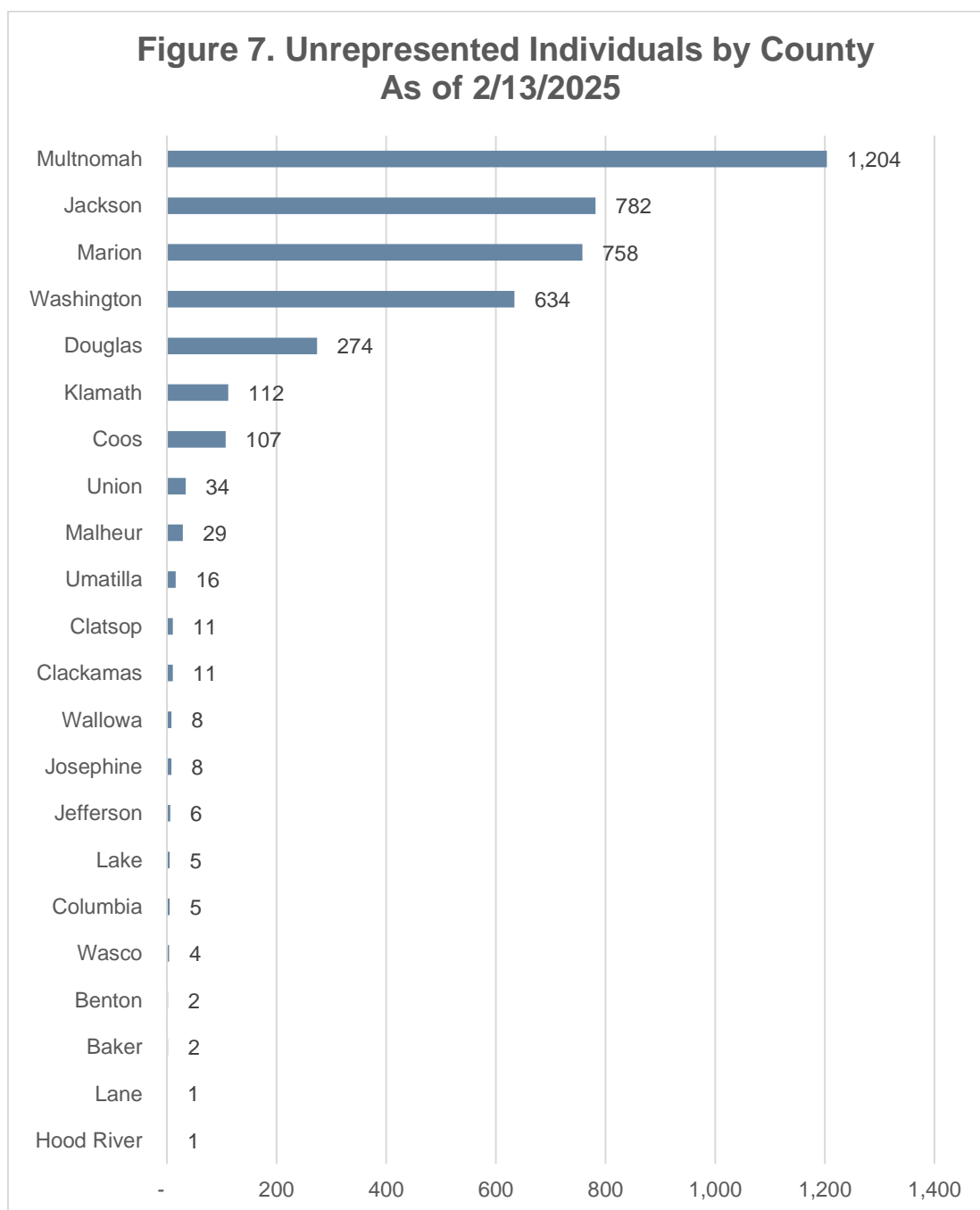
Figure 6 shows the number of criminal cases filed each month. Criminal case filings slowed in June and November 2024, both felony and misdemeanor case filings have increased. In January 2025, there were 6,104 criminal cases filed, an 18% increase since February 2024.



Source: OJD Odyssey Data (eCourt).

Unrepresented by County

Figure 7 shows the number of unrepresented individuals by county as of February 13, 2025. Multnomah, Jackson, Marion, Washington, Douglas, Klamath, and Coos counties have the highest number of represented persons in Oregon. The largest increases were in Multnomah, Washington, and Klamath counties. An attorney who contracts directly with OPDC left Klamath County recently, jumping the number of unrepresented individuals from 43 on January 14, 2025 to 112 on February 13, 2025 -- a 160% increase. Klamath County is unique because it is the only judicial district that does not have a consortium or non-profit public defense office. All public defense attorneys who work there contract directly with OPDC.



Source: OJD Odyssey Data (eCourt).



Date: March 26, 2025

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

Cc: Jessica Kampfe, Executive Director

From: Scott Martin, Chief Audit Executive

Re: 2025 Internal Audit Committee Appointments and Reappointments

Nature of Presentation: Action Item

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

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

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

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

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

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

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

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

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

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

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

Fiscal Impact: None.

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



Date: March 26, 2025

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

Cc: Jessica Kampfe, OPDC Director

From: Jessica Kampfe, OPDC Director
Trial Support & Development

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

Nature of Presentation: Briefing

Background:

Oregon Public Defense Commission (OPDC) Trial Support & Development is developing seven new policies with the goal of adjusting the way that case weight was calculated under the Maximum Attorney Caseload (MAC) model in lieu of switching to a workload model during the 25- 27 Contract Cycle. To start the process of drafting the new policies, OPDC Trial Support & Development solicited stakeholder feedback from contract administrators (or their designees) through a two-hour virtual meeting and were given the option to provide written feedback to the agency by 3/6/2025. Following the stakeholder engagement, the policy drafts were solicited to the Oregon Judicial Department (OJD) and the Oregon District Attorney's Association (ODAA) for their feedback. The feedback received from the virtual meeting was collected and is summarized below by the proposed policy. All written feedback received by OPDC as of 3/17/2025, and all changes from the original drafts are included in this memo.

Reduced Caseload Program (RCP)

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

Provider Feedback

- Stakeholders debated the appropriateness of lowering the maximum caseload for lawyers who are in the first year of employment within the first year of licensure by the Oregon State Bar (OSB) to 180 cases under the RCP program. Many contract administrators felt a maximum caseload of 180 cases was still too high. A 150-case limit was suggested as the more appropriate number, drawing on national standards and the Oregon Report.
- Strong support was voiced for also reducing caseloads for new attorneys coming from out-of-state jurisdictions. A suggested 90-day adjustment period with a lower maximum caseload would accommodate the steep learning curve for Oregon-specific laws and practices.
- Questions arose about the eligibility criteria for RCP, particularly for attorneys transitioning into new roles. Clarifications were requested on whether the "first year" qualification applied to the year of bar licensure or the first year of active practice.
- Stakeholders sought clarity on how RCP interacts with co-counsel requirements, emphasizing that existing policies should support rather than hinder RCP attorneys.
- Concerns were expressed over the evolving definition of MAC (maximum attorney caseload), with some attendees worried that it resembles a "pay-per-case" system, potentially undermining its intended purpose.

Other Stakeholder Feedback

- Lane County Circuit Court: Commends OPDC for considering this program because the ability of new attorney to spend extra time learning their craft is a vital part of attorney development.
- Multnomah Circuit Court: Does not support, but referenced 55 cases a year, which is proposed PCRCP first year workload, not

proposed RCP for misdemeanors. Believes that having supervisors and other support staff mitigates the burden and that because the ability level is subjective this limitation is arbitrary.

- ODAA: agree new attorneys can lack the capacity that more experienced attorneys have; suggest limiting new attorneys to a misdemeanor caseload and building up from there.

Changes from Draft

- Increased case cap to 200 from 180 to more closely reflect current first year attorney average MAC utilization and address concerns from OJD about the impact of reduced caseloads on the number of unrepresented persons.
 - The number of cases for first year participants in the PCR program was not changed as the percentage was already rounded up to get to the proposed 55 cases.
 - It should be noted that the proposed caseloads are still above the National Standards for misdemeanor cases presented in the RAND Report and adopted by this commission.
- Added clarification that the policy does not apply to clinic students and SPPE participants. The caseloads for those programs are contained in other policies.

OPDC Data Analysis

- Implementation will require OPDC to create a method of tracking attorneys in the program.
- An analysis of attorneys with bar numbers issued in 2024 who started as misdemeanor attorneys (attorney level I) shows a utilization rate of 84.73% of MAC. 11 of those attorneys have a utilization rate over 100% and if those attorneys are removed average utilization rate of 75%.

Co-Counsel Requirements

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

Provider Feedback

- Opinions were split over making co-counsel mandatory for all degrees of murder and Jessica's Law (JLAW). While some argued that it was necessary to ensure competent representation for high-stakes cases, others worried about the resource constraints and the scarcity of qualified attorneys to accept those cases.
- Several attendees suggested engaging the Oregon Supreme Court (or Oregon Courts in general) to standardize co-counsel appointments, thereby reducing friction with local courts. Specific concerns were raised about judges' reluctance to appoint co-counsel due to perceived impacts on MAC.
- Stakeholders highlighted the need for clear guidelines on reporting co-counsel involvement, particularly for juvenile and PCR (Parent Child Representation Program) contracts.
- There were also questions concerning the method that OPDC would set for applying for co-counsel. Would it continue to be via email, or would there be a standardized form?

Other Stakeholder Feedback

- Judicial Stakeholders: no feedback provided.
- ODAA: suggests addressing shared case weighting as part of this policy.

Changes from Draft

- Added language to reflect how the policy functions with attorneys under supervision.
- Removed murder in the second degree, JLAW, and second and third strike life sentence cases from mandatory co-counsel category and created a presumptive co-counsel category for those cases. This was in response to concerns from all stakeholders regarding the availability of attorneys to serve as lead and co-counsel.
- Added language to clarify when OPDC approval is needed prior to filing with the court for appointment.
- OPDC's internal process to streamline these requests is ongoing.

OPDC Data Analysis

- Implementation of this policy will require OPDC to redesign the process for requesting and approving co-counsel and

will require retraining on reporting co-counsel cases.

- Currently there are 797 cases reported as using co-counsel, however a large portion of these cases are likely a result of attorneys under supervision.

Early Withdrawal

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

Provider Feedback

- Substantial concerns were raised about the punitive nature of partial credit policies for attorneys who withdraw late in a case, whether due to conflicts or client dismissal. Many argued that attorneys often perform significant work before withdrawing and should not be penalized.
- Participants noted that the policy disproportionately impacts contracted attorneys and does not impact hourly attorneys, leading to potential attrition and burnout. There was also concern that this would drive attorneys from contracts to hourly, raising the overall cost of the system without benefit to the agency.
- Additional commentary emphasized that withdrawal policies must account for unique challenges, such as judges removing attorneys from cases to address MAC limits or warrant-related issues.
- It was suggested that OPDC switch to a system of hourly reporting and open workloads rather than try to patch the MAC system.

Other Stakeholder Feedback

- Lane County Circuit Court: Expressed concerns that the partial weighting systems would create disincentives for intra-provider and inter-provider collaboration and do not reflect attorneys' ethical obligations to their clients.
- Multnomah Circuit Court: believe 50% case weight for withdrawal within 75 days for misdemeanors could lead to

overcompensation.

- ODAA: Believes no work is done until attorneys pick up discovery, so thinks the O credit window should be larger. Overall recommended alternative time periods that require longer amounts of time on a case before credit is earned.

Changes from Draft

- Added definition for case closure and shifted case closure situations to the body of the policy.
- Reduced the interaction with the warrant policy to shift the requirements away from the court and over to attorney reporting.

OPDC Data Analysis

- Implementation of this policy is technically possible within OPDC's current data structure with the possible exception of full weighting if the case is returned to the original attorney.
- If this policy were applied to our current caseload data, it would increase capacity by 3%.

Credit for Subsequent Attorneys Policy

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

Provider Feedback

- The 50% credit policy for subsequent attorneys drew extensive criticism. Participants argued that these cases often require even more effort from subsequent attorneys, particularly when dealing with challenging clients or rebuilding a case from scratch.
- It was pointed out that attorneys who step into a case need to rebuild the case from scratch, do the same work that the prior attorney did, and build trust with the client.
- Concerns were voiced over the fairness and practicality of partial weighting, as it complicates the calculation of an attorney's overall caseload and adds uncertainty to

workload management.

- It was suggested that the policy be amended to credit the time spent on the case or the actual work performed on the case.
- It was noted that attorneys have an ethical duty to their clients to review the entire case regardless of how many prior attorneys have had the same case.

Other Stakeholder Feedback

- Lane County Circuit Court: Expressed concerns that the partial weighting systems would create disincentives for intra-provider and inter-provider collaboration and do not reflect attorneys' ethical obligations to their clients.
- ODAA: Suggests aligning time periods with Warrant removal policy.

Changes from Draft

- None

OPDC Data Analysis

- Implementation of this policy would require new logic in OPDC's system to identify cases being reassigned within the same firm within consortia (OPDC is currently able to track reassignments within non-profits) and to exclude murder and JLAW cases and may require changes to OPDC's reporting guidelines.
- Work is currently underway to determine the impact on capacity from implementation of this policy.

Warrant Cases

- **Policy 404.200.04.003 Attorney Warrant Removal Policy _ Working Draft**
 - **To be submitted with supplemental materials**

Provider Feedback

- Mixed feedback was received on this policy, which removes attorneys from cases after warrants have been outstanding for greater than 90 days. While some

appreciated the potential to free up MAC, others argued that it unfairly penalizes attorneys who continue supporting clients even in warrant status.

- There were also questions about how much attorney work time this policy would free up. Providers projected that it would be very little.
- Suggestions included allowing attorneys to attest to continued case involvement to keep the full weight of the case and recommending alternative policy language to prevent judicial overreach.
- Other suggestions included adding language to the policy to clarify what happens if the client returns on the warrant and the original attorney is unavailable.

Other Stakeholder Feedback

- Lane County Circuit Court: Believes this policy inappropriately puts onus on Court and DA, not defense attorney, to determine whereabouts of client and limits judicial discretion.
- Multnomah Circuit Court: Indicates that the requirement that the state attest to service attempts is unworkable in this jurisdiction.
- ODAA: Suggests a reduction to 30 days and notes that "Withdraw[al] for purposes of case weighting due to failure to appear should be commenced without the need for a court order."

Changes from Draft

- Added a caveat to the policy to address when the original attorney is no longer under the same contract when the defendant returns on the warrant.
- Additional changes to be addressed in supplemental materials.

OPDC Data Analysis

- There are a total of 2090 cases reported to OPDC by contractors as having bench warrants issued between July

2023 and December 2024.

- According to data from OJD, between 2018 and 2022 78.08% of warrants

Vacancies

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

Provider Feedback

- Attendees highlighted recruitment challenges in rural areas, citing the 60-day vacancy-filling deadline as unrealistic. Urban practitioners echoed those concerns as well. There were also concerns about administrators hiring low quality candidates to avoid losing funding.
- Calls for greater flexibility included accommodating hiring cycles (e.g., hiring 3Ls to start as a group after the bar exam) and addressing systemic issues like housing shortages in rural communities.
- Concerns were raised about OPDC directly recruiting from local public defenders and nonprofits, exacerbating staffing shortages and increasing the difficulty of recruiting in those offices. These concerns were further sharpened by the reduction in the length of time the contractor had to fill that vacancy.
- Administrators were concerned about the interaction between this policy and the requirement that they comply with Family Medical Leave Act (FMLA) and Oregon Family Leave Act (OFLA).

Other Stakeholder Feedback

- Lane County Circuit Court: Believes local providers need to retain flexibility to hire to account for unpredictable fluctuation in case filings.
- ODAA: Supportive of the proposed policy

Changes from Draft

- Added an additional 30 days of position authority for attorney

vacancies after the expiration of the 60 days' temporary funding, provided Contractor is diligently recruiting.

- Added definitions of diligent recruiting

Notes

- In light of provider feedback, OPDC intends to address the process and eligibility for hiring incoming "classes" of new attorneys in a future policy.

Contract Compliance

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

Provider Feedback

- Concerns were raised that using a compliance policy to penalize attorneys who take fewer than their full MAC worth of cases turns the MAC model into an unconstitutional pay-per-case model. There was further concern that this opened the agency to litigation.
- Stakeholders stressed the need for longer compliance windows (e.g., six months) to reflect fluctuations in caseloads and workloads and questioned the methods OPDC would use to give notice of violations.
- Concern was raised over the lack of OPDC staff to manage and enforce this policy, specifically the lack of experienced attorneys to judge violations.
- Suggestions included refining enforcement mechanisms to ensure fairness, particularly for attorneys on protected leave or vacation.

Other Stakeholder Feedback

- Lane County Circuit Court: Has concerns that the policy lacks flexibility, and thinks providers should not be "punished" when case filings fluctuate and for other factors outside of their control
- Multnomah Circuit Court: Believes this is insufficient accountability, there should be greater tracking, more detailed reporting, and more objective standards.

- ODAA: Supportive of this policy.

Changes from Draft

- Added clarification that OPDC is accounting for the overall contract MAC utilization and not the prorated MAC.

Overarching Concerns

Provider Feedback

- The policies as a whole were perceived as punitive, demoralizing, and risked worsening workforce retention and the stability of the public defense system.
- Stakeholders questioned OPDC's capacity to oversee these policies effectively given reported staffing shortages.
- Concern was shown over the pace at which these policies were developed and the length of time that courts and DAs were being given to provide feedback compared with the amount of time defense providers were given to provide feedback.
- Transparency regarding input from judges, district attorneys, and other stakeholders was requested.
- One major concern of all of the partial weighting policies were that they were a step backwards from paying attorneys for their time rather than the unconstitutional pay-per-case model.

Agency Recommendation:

The agency requests support from the Commission as we continue to engage with stakeholders while developing the seven policies to implement as the agency Modifies MAC in lieu of adopting a workload model for the 25-27 Contract Cycle.

Fiscal Impact:

Unknown. To be determined by April 2025 Commission meeting.

Agency Proposed Motion:

None

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

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

AUTHORITY: ORS 151.216

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

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

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

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

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

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

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

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

To qualify for RCP:

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

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

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

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

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

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

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

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

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

AUTHORITY: ORS 151.216

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

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

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

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

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

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

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

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

To qualify for RCP:

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

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

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

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

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

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

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

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

AUTHORITY: ORS 151.216

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

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

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

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

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

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

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

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

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

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

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

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

3. **All other cases**

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

- a. Severity of charges. Cases where the charges are particularly severe or where the penalty for conviction is high are inherently more difficult than less severe cases and may require additional attorney resources.
- b. Complicated or novel issues of law or fact. Cases with these issues require additional investments of time from attorneys to research and develop arguments and may require a second attorney to collaborate on generating defenses, creating motions, or working with the client.

- c. The need for attorneys to gain experience. To be able to competently handle more serious case types, newer attorneys can work with more seasoned attorneys as co-counsel. OPDC qualification guidelines require that an attorney have co-counsel experience to qualify for certain advanced case types and the opportunity to advance in the career of public defense is important to the retention of dedicated attorneys. Cases where an attorney needs experience may be considered for additional attorneys regardless of the presence of other factors in this policy. Attorneys requesting an additional counsel under this section may be required to provide a supervision plans to OPDC. If the contractor is receiving supervision funding the supervision plan provided under that policy may be sufficient.
- d. The need for mentorship attorneys. There are times when an attorney is in need of mentorship from a more experienced attorney regardless of the case type or complexity. Such mentorship may be a result of the attorney's conduct, a complaint regarding their work, or at the direction of OPDC.
- e. Local Counsel. OPDC may approve the assignment of a second attorney when lead counsel takes a case outside of their home jurisdiction.
- f. Other. OPDC retains discretion to appoint second or subsequent attorneys as required to assure constitutional representation on all cases.

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

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

To apply for associate counsel:

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

Unless otherwise agreed to by the attorneys and OPDC, all attorneys for a client should share a funding model and not mix between contract and attorneys under the Assigned Counsel Program. Once OPDC has approved co-counsel for a case or if the case requires mandatory co-counsel, lead counsel or co-counsel need to file a motion for and order to appoint co-counsel with the appropriate court. The court retains final

discretion on the appointment of co-counsel. Co-counsel must be appointed by the court to receive funding from OPDC. Attorneys supervising attorneys under supervision need not be appointed co-counsel in a case provided they are following their supervision agreement with OPDC. Associate/research counsel need not be appointed to receive funding.

DRAFT

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

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

AUTHORITY: ORS 151.216

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

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

Attorney Removal: When an attorney is removed from a case under OPDC's Attorney Warrant Removal Policy 90 days after a bench warrant issued.

POLICY:

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

2) Case Weighting when Contractor Closes the Case Prior to Conclusion: Case weighting in the OPDC contracts is based on an attorney completing all necessary tasks for a criminal client's case prior to the case's closing. These tasks include, but are not limited to, review of discovery, investigation of each charge, court appearances, necessary client communication, and ultimate resolution of the case. Withdrawal prior to the completion of those events will result in partial weighting of that case by OPDC. Partial weighting for cases will be according to the following:

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

If an attorney closes a case because a client has had a warrant issued for more than 90 days, the date of withdrawal for the purpose of calculating the length of time an attorney was appointed to the case is the date that the warrant was issued. If the same attorney is later reappointed to the same case, they will receive the balance of the weight for that case.

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

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

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

AUTHORITY: ORS 151.216

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

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

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

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

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

DRAFT



Date: March 26, 2025

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

Cc: Jessica Kampfe, OPDC Director

From: Jessica Kampfe, OPDC Director
Trial Support & Development

Re: Vacancy Policy Revision

Nature of Presentation: Briefing

Background:

On October 24, 2023, the Commission approved the Vacancy Funding Policy. Since that time the Trial Support and Development (TS&D) team has reviewed the existing policy, received internal and external feedback along with feedback from the Commission Workgroup. The changes reflected in the policy before the Commission today are due to the feedback.

The following sections of the policy have been changed:

- Changed OPDS to OPDC throughout
- Updated Division, Section, and policy number to align with agency Oregon Budget Information Tracking System (ORBITS) structure
- Changed “Lawyer” to “Attorney” to be consistent with other proposed policies
- **New!** Definitions: Added definition of Full Time Equivalent (FTE)
- **New!** Definitions: Added definition of Diligent Recruiting Efforts
- Updated introductory sentence to Policy section for clarity
- Removed language from prior policy that extended overhead payments beyond 60 days for certain entity types; new policy is only overhead and applies to all entity types.

- **New!** Added language explaining that attorney vacancies will be funded at 50% for 60 days but will retain position authority for a total of 90 days.
- **New!** Added language explaining that non-attorney vacancies will receive no funding and that necessary funding could be obtained via pre-authorized expense request if necessary. Position authority retained for 60 days.

Agency Recommendation:

The agency recommends the Commission review the proposed policy changes and provide feedback, with the final policy approval at the April 2025 Commission meeting.

Fiscal Impact:

The agency anticipates fiscal savings due to the reduction of exiting attorney's monthly FTE compensation for 60 days and beyond if position remains unfilled.

Agency Proposed Motion:

None

Policy Name: Vacancy Funding	Number: 404.070.003 404.200.04.010
Division: Administrative Services Division Compliance, Audit, & Performance	Effective Date:
Responsible Section: Trial Division Trial Support & Development	
Approved by: Oregon Public Defense Commission	Approval Date:

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

AUTHORITY: ORS 151.216; ORS 151.219

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

Vacancy: When an attorney, investigator, case manager, or paralegal discontinues providing representational services under a contract with OPD **CS** for **P**ublic **D**efense **S**ervices.

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

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

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

POLICY: The Public Defense Services Contract provides that compensation authorized by the contract may be withheld "[w]hen Contractor has a vacancy that has not been filled for 60 days." **Sixty (60) days of partial funding will be provided for Attorney Vacancies.** The purpose in providing 60 days of continued partial funding for an attorney vacancy is to allow the contractor flexibility and support when an attorney leaves a contract while the contractor works to replace the previous attorney. In order to receive partial funding for a vacancy, Contractor must intend to, and be actively working toward, filling the vacant position.

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

At its discretion, OPDS will provide an additional 60 days of funding for **overhead only**. To be eligible for the additional 60 days of overhead funding, 90% of the entity's caseload must be court appointed cases and 90% of the vacated position's caseload must have been court appointed cases.

Funding for overhead only shall not exceed 60 days and shall only apply to the following entities:

- **Non-profit public defender offices;**
- **Law firms, with more than one member, that contract directly with the agency;**
and
- **Law firms within consortia that have more than one member taking public defense cases;**

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

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

Contractor intends to replace the departed employee, Contractor will retain the right to fill the position for up to 60 days after the previous employee's last of employment.

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

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

AUTHORITY: ORS 151.216

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

DEFINITIONS FOR PURPOSES OF THIS POLICY:

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

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

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

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

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

Enforcement

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

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

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