

MARION COUNTY ASSOCIATION OF DEFENDERS

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June 4, 2024

Chair Jennifer Nash
Vice-Chair Mandiberg
Legislative Subcommittee Chair Adrian Smith
Members of the Commission

Jessica Kampfe, Executive Director

You have requested comments about the budge process. I urge the agency and the commission to present the true costs of funding public defense to the Legislature. Be blunt - you, the Legislature, told us to set caseloads and workloads, to set hourly rates for hourly paid attorneys, to ensure that compensation is commensurate to the service provided (which means attorneys who are doing similar work are similarly compensated), to end flat fee contracting. We have done that and this is what the result is.

We do not have enough attorneys willing to contract with us because of law pay and the expectation they will represent far more clients than they should. We also have not been paying them, and other people who work for the attorneys, in anything close to a timely manner.

Unless and until we start paying reasonable compensation and do so in a timely manner the system will continue to lose experienced lawyers and have problems attracting and retaining lawyers.

The cost is what the cost is. If the Legislature does not want to fund the cost then it needs to know the system will run out of money at some point and will shut down.

I do not know how you deal with the issue of continuing large numbers of unrepresented folks even though the Legislature gave you more money to use to cut down that number. I can only suggest that part of the problem is the agency's failure to pay people timely and allowing Public Defender Officer reduce their workloads to at least the ABA Workload standards.

Finally, to echo the words of Steve Wax when he was a member of the Public Defense Services Commission - make the money for the providers the top priority, not money for the agency itself.



Olcott Thompson
Executive Director



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June 10, 2024

PUBLIC COMMENT

Oregon Public Defense Commission Meeting June 13th, 2024.
Salem, Oregon

Chair Nash, members of the Commission and those with Oregon Public Defense.

When I start to write these comments I can only think that whatever I have to say here I've either spoke to before, have read someone else's submission or heard their pleas elsewhere.

It is frustrating to continually hear the same comments Public Defense: "we're aware of the issues and are working towards a solution." (I've got notes and recordings from Jan 2023 saying pretty much the same thing.) But I've been hearing the same comments way too long. If it were my business I would have been out of work a long time ago.

Why is it now necessary for attorneys or experts to take out lines of credit to cover expenses that are taking 50+ days to get reimbursed for? Not to mention 30+ days to get long form PAE requests for established cases. Can anyone give us a direct, transparent, answer why it takes someone at OPDC to review and approve an attorneys long form request for services in the proper and lawful assistance to their clients?

If the answer is the errors contained in the requests slows down the process, does OPDC offer any training to aid in the entries to this process. And it's not always the attorneys entering the data in the requests. Support staff do also and is there any training for those core persons?

Investigators and Mitigators are requested to seek records relating to our clients. That money has to be paid up front, then it takes up to 7 weeks to get that money back. But that's once they have acquired enough hours to even submit an invoice. And that's for one case. This is the kind of problem that makes it hard to recruit and retain qualified investigators. And they've been leaving the Oregon system to work in other areas of our profession or moving entirely out of state for higher paying positions.

Accounts Payable staff taking as long as it is right now to process invoices must be pulling out their hair. And we read "we're in the process of hiring new staff to help deal with this issue." And yet the timeline keeps getting longer while the fingers are pointed at

the providers regarding errors.

Public Defense thought it'd be a great idea to load up on attorneys, and fact investigators, to take care of the unrepresented persons in custody by throwing a large amount of money out there as an incentive to recruit some into the fold. It seems that has worked but loading up attorneys to care for those cases does nothing but cause underlying consequences of the need for more staffing, investigators and mitigators to assist in those cases. And some attorneys may not even know of the importance of those resources. The cart got put before the horse here.

And don't even get me started on the issue of the mitigator rate increase from last year that "just got overlooked." Much the same as investigators and mitigators have for way too long. But mitigators can't get the \$75/hr rate on the unrepresented cases.

The can got kicked down the road for investigators in September 2023, creating mistrust with OPDS, and I stopped taking standard rate cases. January 1st I stopped taking new cases period. That said, I have a number of murder cases I'm associated with that are well established. But I stopped doing work on one around the first of the year because I had 150+ hours committed to cases without a PAE. And then only hearing, and reading about, "we're aware of the issues and we're working on resolving them." Yet OPDC has no current outlet for paying anything regarding late fees other than a paltry .08% per annum for late invoice payments starting after 45 days. Very well protected un-incentivized system.

If any other entities took 45+ days to pay invoices they'd be out of business in short order and getting letters and court notices from collections. Might even lose their car, home..... Not to mention the \$550 fee every two years for a PI license and the yearly insurance to conduct business. But without the license you could not work to pay the collections. So maybe bankruptcy. But then you'd need to pay an attorney.

With the slow approval of long form PAE requests and the invoice payment issue, I did not receive ANY state funds between March 28th and February 7th. And some wonder why I've chosen to retire from state indigent cases.

It's been suggested that invoices be paid upon receipt by AP and then conduct the necessary audits. If money is due, bill the provider. But maybe OPDC is concerned they wouldn't get reimbursed in a timely manner.

Thank you for your time.

Bernard Brown

From: [Heather Busby](#)
To: [OPDS info](#)
Subject: Budget development feedback
Date: Tuesday, June 4, 2024 4:51:07 PM
Attachments: [image001.png](#)

Good afternoon! Thank you for soliciting provider feedback.

1. **Supervision & training:** We urge OPDC to ask the legislature for robust funding for supervision and training for all providers (including PCRCP) as it would be tremendously beneficial to recruitment and retention, particularly with preventing burnout among attorneys. A lack of robust supervision and support has detrimental effects on workplace culture. And in a profession with such a high rate of secondary trauma, stress, and difficulty, it can be disastrous. It's incredibly challenging, if not impossible, to provide attorneys with the level of support needed when we're forced to stretch very limited supervision dollars by having supervisors carry caseloads and in the case of YRJ, manage other programs outside of the defense contract.
2. **Investigator funding:** While we are grateful to have one in-house investigator included in our contract, for our office's size, it's not adequate. And finding outside contract investigation is often a barrier, particularly in waiver and felony cases. We need a second in-house investigator.
3. **Case Managers:** Under the PCRCP, we have experienced the difference that in-house case managers make not just for our clients – which is huge – but for our attorneys. There are numerous benefits to a holistic public defense practice that I know the agency is aware of and I will not reiterate here. We would love to see a strong push to bring the legislature along on this and a strong ask for more in-house case managers.
4. **PCRCP Expansion:** We have testified at multiple legislative hearings and held individual meetings with legislators about the benefits of the PCRCP. As we've taking cases in non-PCRCP counties, have seen firsthand the difference in practice. But if nothing else, it's about equity and access to justice. The PCRCP is an effective program for both clients and attorneys. It needs to be expanded statewide.

We're happy to elaborate on any of the above points. And, as always, are here to partner with the agency in advocating for funding.

Thank you!



Heather Busby (she/her)

Executive Director

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Schedule a meeting with me:

<https://calendly.com/yrjheatherb>

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June 10, 2024

Chair Jennifer Nash
Vice-Chair Mandiberg
Members of the Commission

I am Olcott Thompson, the Executive Director of the Marion County Association of Defenders (MCAD), the consortium in Marion County. We remain the largest public defense provider in the county. The following are my written comments for your June 13, 2024, commission meeting.

Some follow up

First, I want to follow up on a number of topics from your May meetings.

I did not completely understand the Contracted MAC Utilization slide presented by Ms. Kampfe before the May 8 commission meeting. That slide showed overall contracted MAC utilization in Marion County through the end of March, 2024, at 71%. I reported at the May 8 meeting that as of the end of March, the contracted MAC utilization by MCAD was about 85%. I was not sure what that slide represented before the meeting so I made not further comment. Based on Ms. Kampfe's comments about that side on May 8, if MCAD was at over 85% at the end of March that meant the other providers in Marion County, primarily the Public Defender of Marion County were significantly under 71%. How far under I do not know but clearly under and clearly far below MCAD's percentage.

Commissioner Buckley on May 23 brought up the question of student loan forgiveness as part of the overall compensation for attorneys paid on an hourly basis. Because hourly paid attorneys are not part of a Public Defender Office they cannot qualify for student loan forgiveness even if they do public defense full time. They are part of the private bar, not a not for profit defender office.

There was an error in what was reported about paying providers when there is a discrepancy in a bill. Contrary to what you were told, over the last year, I had a bill OPDS paid and one OPDC paid both of which were paid even though the discrepancy was well over \$10. The agency paid what it thought I should be paid, hundreds of dollars less than what I billed in both instances, without ever discussing the difference with me. I was just paid and from there I could appeal. While there may be a policy of discussion first if the amount to be paid is over \$10 less than what was billed, that policy is not always followed.

Payments to individual providers

The chart provided by the agency for this meeting does not explain why it is taking longer and longer to pay bills. In May, Mr. Amador admitted once the agency starts to process a bill unless there is an issue it should be ready to be paid in one to two days. If there is an issue it may take up to two weeks. So what accounts for the other time? I suggest it is because the agency does not consider paying the providers a priority so the bills just sit around for over a month before they are actually processed.

There is nothing that says why a bill that has none of the identified problems still takes over 50 days to be paid.

At the time of the commission's May 8 meeting my latest bill that had been paid was paid 50 days from the date of its submission. Now, my latest bill that was paid (on June 10) was paid 54 days after its submission. That is longer than the length of time to be paid at its worst when Mr. Singer was director, two years ago. Since then only two bills, of 33, have been paid at 30 days. None have been paid in fewer days. Only one other bill was paid in under 35 days. This year none of the 12 bills that have been paid have been paid at fewer than 41 days. The time between submission and payment just keeps getting longer and longer.

Individual providers, attorneys, investigators, interpreters, experts, etc., are small business owners. While not getting timely paid is a problem, not knowing when the next check will come is a bigger problem. Cash flow is the critical factor. If I know I will be paid 50 days after I submit my bill, while that is too long, it is better than not knowing when I will get paid. Knowing when I will get paid allows planning. Not knowing means having to keep lots of capital (cash) on hand, capital that could be put to better uses than just being held onto.

Last Friday I paid my employees using the float in my checking account. I was getting paid on Monday, 54 days after I billed, which meant I did not have to borrow to pay my employees. Because I do not know when I will get paid again I have stashed away three weeks of employee pay rather than paying other bills meaning I will have to pay more in the long run. I am not sure that is sufficient because while my last set of bills were submitted May 1, I do not know whether I will get paid in less than 54 days, doubtful, or. 55 days, 56 days, or more.

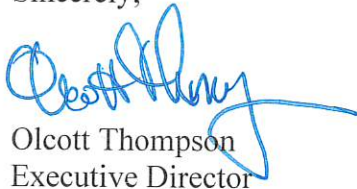
By mid-May, Marion County was having a severe shortage of available attorneys. The Public Defender of Marion County was taking few cases, the OPDS trial level office was just starting, the MCAD attorneys were full having taken almost all the cases they could, and OPDC would not fund additional attorneys in Marion County after having pulled the funding for four attorneys because the PD's Office had not replaced departing attorneys. The solution proposed by OPDC was that the MCAD attorneys accept appointments under the Temporary Hourly Increase Program. When I told OPDC that the MCAD attorneys who were not already using that program, all but 4 of 29 attorneys, refused to do so because of the administrative nightmares and the slow pay there was no response. This is why there are not more attorneys working on an hourly basis: there are too many administrative burdens and getting paid takes far too long. Just submitting a bill to OPDC takes about 30 minutes.

Pay going forward

The agency in its POP 102 request is going backwards with its payments for attorneys. With just one rate why do anything but lesser felonies and misdemeanors? The pay is the same, the stress is far less as are the long term consequences. Why do a Jessica's Law case with a 25 year minimum sentence that will take lots of expertise and work and is certain to produce a post conviction claim when a class c felony, maximum sentence of five years can be done for the same rate. Far less stress and highly unlikely ever a post conviction claim.

A single rate will not incentive anyone to handle serious cases. It will not incentive contractors to hire more qualified attorneys because contractors will not be able to offer anything beyond the same rate as lesser qualified attorneys especially when it appears hourly attorneys will be paid at a higher rate. That higher rate needs to be paid to contractors otherwise the agency is paying different rates for comparable services.

Sincerely,

A handwritten signature in blue ink, appearing to read "Olcott Thompson", with a long horizontal flourish extending to the right.

Olcott Thompson
Executive Director

VERI JURIS

June 1, 2024

Public Comment for:

Oregon Public Defense Commission (OPDC) meeting of June 13, 2024:

“It is an ludicrous civil rights (constituting hate and international human and war crimes) conspiracy (violating Nuremburg, etc.), on penalty of death, to declare that the (Eugene) Municipal *Criminal* (No-Record—Appealed De Novo) Court cannot secure me any second appointed counsel (depriving me of my right to see my dying beloved father—to be in Canada--pending the outcome of my cases)—when such appointments are paid for by the court—and the city has relinquished the issue of permitting Mosque Shoja’at (1365 Railroad Blvd., Eugene, OR 97401) to the United States Bureau of Land Management (BLM). I pray that you will remediate the situation for me (and Shia Islam).”

Ra



Cc Eugene Municipal Court
Eugene City Prosecutor



Dear Governor Kotek, Oregon Public Defense Commissioners, and Legislative Leaders:

I'm writing on behalf of Public Defenders of Oregon, the statewide association of nonprofit public defenders. Thank you for all you have done up to this point to address the crisis of unrepresented and underrepresented Oregonians and to ensure every Oregonian gets their 6th Amendment right to ethical legal representation. Like you, we are deeply frustrated that the number of unrepresented persons has not decreased in Oregon and is completely untenable.

I'm writing with a brief update and to clarify the record on inaccurate MAC numbers.

Betschart v Oregon:

With the Betschart v Oregon decision last Friday, we will remain strongly committed to taking on as many cases as ethically possible to reduce the number of individuals without representation. Our highest priority is to provide constitutional representation for every client to reduce the crisis in access to justice and improve public safety outcomes.

The Betschart case outlines the duties a public defender has to every client to ensure that they receive their 6th Amendment rights, and we are dedicated to diligently carrying out the duties outlined in the case and following ABA standards for every client while providing representation for as many people as possible in need.

As the largest recruiter and trainer of new public defenders, we are also redoubling our efforts at recruitment and retention to build the workforce needed to tackle the number of case filings we face now and the increase we will face in September when HB 4002 cases come online. We call on all available attorneys - and future attorneys - dedicated to constitutional representation to join us - to be trained, supervised, and supported by a nonprofit public defense office to do this important work.

General recruitment updates:

As many of you heard in Joint Senate and House Judiciary last week, the Washington State Bar adopted [new caseload guidelines](#) in March, to be implemented by July 2027. These caseload standards are less than half of Oregon's Maximum Attorney Caseloads (except for Homicides). Please see the attached chart. The Washington State Bar's 2-year process to pass these standards "was underscored and informed by a [landmark national study published last fall](#)" by the RAND Corporation, the National Center for State Courts (NCSC), the American Bar Association (ABA) Standing Committee on Legal Aid and Indigent Defense (ABA SCLAD), and Stephen F. Hanlon, Principal of Law Office of Lawyer Hanlon, which found that public defense attorneys with excessive caseloads cannot give appropriate time and attention to each client.



The Washington State Bar's passage of new, greatly reduced caseload standards posed an immediate risk to the recruitment of public defenders in Oregon, as nonprofits compete nationally with the State of Washington in recruitment.

In May, OPDC voted to align OPDC's 6-Year Plan for public defense with Washington and national best standards on caseloads, thankfully alleviating the immediate threat to recruitment. However, number of attorneys and support staff needed to align to these caseload standards by 2030 is significant. While OPDC works on exact numbers and potential associated costs, we are talking with recruits now to bring them into the profession, and they are closely tracking state support for training and manageable caseloads when deciding where to put their law degrees to use.

We are working to get you more concrete recruitment and retention data to better illuminate recruitment and retention trends and possible levers to secure the workforce needed to meet the crisis. We are also working on getting data to you on the number of cases - that would have been unrepresented - if not for the legislature's investment in increased MAC in the 2023 session.

Some local updates:

- **Deschutes County:** As many of you know, we lost 5 public defenders at Deschutes Public Defender, the nonprofit office. Four attorneys left public defense outright - two attorneys left to spend more time with family and two became District Attorneys (now with increased PERS benefits) - and one joined the consortia office, where they can take on private cases at increased hourly rates. Deschutes Public Defender has now filled three of the five positions, and they are flying multiple people out from across the country to try to fill the final two positions. Recruitment though, has been slow due to the high cost of living - especially housing - in the Bend area.
- **Coos Bay:** As of June 4 two of the nine attorneys practicing at SWOPDS have given notice and are leaving the public defender's office to form their own practice. The reasons cited for leaving were that they could selectively take cases, further limit their caseloads, and choose which courts to work in. They plan to continue to do indigent work on a higher hourly rate basis.
- **Multnomah County:** At MPD, we have one attorney vacancy on our adult criminal team. We have eight new attorneys starting in August, but they won't be licensed attorneys until early October. We hope that OPDC will add these new attorneys to our roster so that we are compensated for their work and can continue our efforts to reduce the unrepresented population. At MDI, we have received two criminal attorney resignations this spring. We have lined up two new attorneys to join us in late June and early July.
- **Washington County:** At MPD, we have four vacancies in our Washington County office. We have two vacancies in adult criminal and two in our juvenile team. We have



seven attorneys starting at the end of August, who won't be licensed until early October. MPD does not have currently licensed candidates to fill these vacancies before October.

Clarifying the record on MAC:

Some public safety stakeholders - including most recently the Clackamas County Consortia - continue to share outdated and inaccurate Maximum Attorney Caseload percentages attributed to the Oregon Judicial Department in 2023. To repeat, these numbers are NOT accurate. They do not reflect current caseloads and undercount current MAC at nonprofits in areas with high underrepresented populations. While there is great work being done to streamline data and information sharing between providers, OPDC, and OJD, the continued sharing of this outdated data is misleading and demoralizing because nonprofit public defenders don't see their work reflected. Please see the attached memo on the inaccuracies in Multnomah County numbers shared, as an example, for more information.

If you have any questions about the real-time caseloads of any nonprofit provider, please do not hesitate to reach out directly to PDO for more accurate information. Provider reporting to the agency takes a considerable amount of provider time, given the agency's current outdated reporting system, but we fully understand the importance of providing accurate information to inform policymaking.

We urge the agency, legislature, and Governor's office to continue to work toward an open caseload model, which would also provide transparency in current caseload information.

Factors at Play for MAC:

While the MAC information recently shared by Clackamas County Consortia is inaccurate, some nonprofit providers do indeed have a lower percentage of MAC than consortia offices. There are more important factors at play for the percentage of MAC than whether a provider is consortia/private bar or nonprofit:

- 1) Recruitment, training, and supervision: Nonprofits recruit, train, and supervise the vast majority of all new public defenders entering the field of public defense in the state. It takes attorney time to do recruitment, training, and supervision that would otherwise be spent providing representation. Proper training and supervision are incredibly important for ensuring ethical representation and retaining new attorneys after costly recruitment efforts. Non-profits often hire new attorneys who receive their license in October, which means they are part of the contract for the entire time. MAC attributes full-year caseloads to attorneys who do not work the full-year, and are brand new so they could not accept a whole full-year caseload regardless;



- 2) Turnover: Historically, nonprofits face lower retention rates because of burnout due to high caseloads (including an increasing number of addiction and mental health complexities, and an explosion of body camera footage to review) and the ability to be compensated more at DOJ, the OPDC trial division, civil law office, and often consortia offices, which do not pay for in-house investigation and can take on private cases at higher rates. Higher turnover, of course, leads to more time needed to recruit and train new attorneys. Further, when an attorney leaves a nonprofit office, their clients are absorbed by the attorneys who stay. This limits the number of new clients the remaining attorneys can accept until that attorney can be replaced.
- 3) Ratio of experienced attorneys: because of the two factors above, nonprofits - on average - have a lower ratio of experienced attorneys to brand new attorneys than consortia offices.
- 4) Type and complexity of cases. Experienced entities that contract for felony cases have lower MAC than entities that contract for more misdemeanors. Higher qualified attorneys can take on more felony cases. However, misdemeanor cases can still have higher levels of body camera footage and higher acuity of mental health or addiction needs. This can require attorneys to invest large amounts of time in cases ranked as less important and time-consuming though they are neither to the client. Even misdemeanor cases can impact a client's future access to housing and employment.

We support OPDC efforts to improve forecasting on how many contracted attorneys are needed to meet the need, including factoring in each attorney's need to fulfill national standards for ethical representation.

Next Steps:

While we work to take on as many cases as possible, we also stand ready to engage in more policy discussions around all possible levers to alleviate the unrepresented crisis, including: continuing to work to improve court efficiencies, like increasing global resolutions, defining discovery timelines, and increasing availability for in-custody client contact, as well as prioritization of DA charging to target public safety risk, or other areas of interest to leaders across the public safety system.

Thank you very much for your time, effort, and consideration.

Stacey K. Lowe

Public Defenders of Oregon

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

Number of cases an attorney should work on per year, per case type

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

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

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

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

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

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

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

Washington State Bar Association

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State Bar Adopts New Public Defense Standards

Defenders and a landmark national study confirm lower caseloads and more support staff are necessary to ensure citizens' constitutional right to an effective public defense in Washington's criminal courts

SEATTLE, WA [March 14, 2024] — The Washington State Bar Association's (WSBA) Board of Governors has adopted new *Standards for Indigent Defense Services* that update public-defense guidelines in three main areas: Caseload limits, support staff, and attorney qualifications.

"I am thankful to the public defenders, prosecutors, and members across the profession who provided extensive feedback on this proposal," said WSBA President Hunter Abell. "We all take seriously the constitutional obligation to provide adequate legal counsel to anyone facing a criminal charge. The Board's action represents the next key step in addressing this critical issue."

The WSBA's Council on Public Defense recommended and drafted the revised standards after more than two years of extensive study and dialogue with public-defense stakeholders across the state. Their work was underscored and informed by a landmark national study published last fall with research that suggests public defenders are working far too many cases as their cases continue to grow more complex.

"The passage of these revised standards is a watershed moment for public defense in Washington," said Jason Schwarz, chair of the Council on Public Defense. "These changes will provide public defenders with workable caseloads that allow them to effectively represent the accused. The standards reflect national professional norms after years of research and study. They are critical for upholding our Constitutional obligations to the accused and critical to assuring litigants have access to a fair trial."

By Washington statute, the WSBA's *Standards for Indigent Defense Services* are meant to serve as guidelines to cities and counties as they adopt their own standards for delivery of public defense services. Separately, the Washington Supreme Court maintains its own *Standards for Indigent Defense*, which are codified in Court rules that govern lawyer ethical and professional obligations. The Court indicated it is interested in updating its standards when, last September, it asked the Council on Public Defense to analyze the national study and make corresponding recommendations for Washington's criminal courts. With adoption of those recommendations, the WSBA is now asking the Court to do the same.

"We are extremely appreciative of the time and commitment of the members of the Council on Public Defense and the hundreds of colleagues who provided constructive feedback," Schwarz said. "We could not have done this without their significant investment of time and their huge swath of expertise from across the state."

The revised standards, at a high level, shift guidelines in three main areas: They reduce by roughly two-thirds the maximum caseloads for public defenders; move from a recommendation that public defenders have access to support staff to a requirement that defense agencies maintain specific ratios of investigators, mitigation specialists, and legal assistants; and provide a broader definition of experience for public defenders to qualify to take on specific types of cases.

"While the cost of providing effective counsel is significant, it is significant that the WSBA will no longer be looking to public defenders to bear the cost of justice," Schwarz said. "Implementing these standards will take time and cost, and we hope that all critical stakeholders will convene to resolve these larger concerns in the criminal legal system."

FAQS

Q. What is WSBA Council on Public Defense? The Council on Public Defense is an advisory council of the WSBA that brings together representatives of the bar, private and public criminal defense attorneys, current and former prosecutors, the bench, elected officials, and the public to address new and recurring challenges that impact the public defense system. The Council on Public Defense educates and informs policy makers on issues that need reform and provides concrete proposals that are enhanced by the comprehensive nature of the council's membership. [More information.](#)

Q. What is the timeline for implementation of the new standards? The Council on Public Defense has recommended a two-year phased implementation of the new standards beginning in July 2025 to give local governments time to plan. The Council on Public Defense will continue to collaborate with statewide organizations and legislative bodies to communicate with defenders and provide necessary trainings mentioned in the updated qualifications portions of the standards.

Q. Is this the first time the WSBA has adopted standards for public defense? No. The WSBA has long been involved in the adoption of public defense standards. The WSBA Board of Governors first adopted the Washington Defender Association Standards for Public Defense Services in 1984, and a revised version in January 1990. The Board adopted slight revisions to certain elements of the standards in May 2021. The caseload standards, however, have not substantially changed since they were first adopted in 1984, at levels first issued nationally in the early 1970s. Much has changed in public defense since the last major revision of the WSBA standards, as reflected in the recently released national study and research of the Council on Public Defense that led to the new standards.

Q. What is the authority of the *Standards for Indigent Defense*? The WSBA standards detail the minimum requirements for attorneys representing individual clients and for state and local administrators who “manage and oversee” public defense services. The Washington State legislature requires counties and cities to adopt standards for the delivery of public defense services, regardless of whether public defense services are provided by contract, assigned counsel, or a public defender agency or nonprofit office. In doing so, [RCW 10.101.030](#) provides that the WSBA Standards should serve as guidelines to cities and counties in adopting their standards. Compliance with these WSBA Standards ensures the consistent delivery of effective representation of individuals who face the loss of liberty or other protected rights.

The WSBA standards are consistent with, but more comprehensive than, the [Washington Supreme Court's *Standards for Indigent Defense*](#) that are included in the Washington State Court Rules. The Court's rules require attorney compliance in professional and ethical obligations, and all public defense attorneys must certify every quarter that they comply with the Court Rule Standards.

Q. What are the new standards compared to the previous standards? Background information about the Council on Public Defense's recommendations and a redlined version of the old versus new standards can be found in the [March Board of Governors meeting materials](#). The final version of the new standards will be posted [here on the WSBA website when ready](#).

Q. How is public defense funded in Washington state? In Washington, the administration of all public defense services for trial-level criminal and juvenile cases occurs at the local level. Each jurisdiction takes an individualized approach to structuring its public defense services. Some include robust, well-staffed public defense agencies, while others rely on contracts with a handful of private attorneys. In some locations the public defense oversight is handled by specialized attorneys with significant public defense experience, whereas in others the responsibility resides with local government administrators who manage other departments. The state's Office of Public Defense provides financial assistance for certain public defense programs and cases and provides a supportive role to local governments by offering technical assistance in the planning, administration, and evaluation of local public defense services. [More information.](#)

About the Washington State Bar Association

The WSBA operates under the delegated authority of the Washington Supreme Court to license the state's 40,000 lawyers and other legal professionals. In furtherance of its obligation to protect and serve the public, the WSBA both regulates lawyers and other legal professionals and serves its members as a professional association — all without public funding. The WSBA's mission is to serve the public and the members of the Bar, to ensure the integrity of the legal profession, and to champion justice. For more information, visit www.wsba.org.

MEMORADUM

To: Multnomah County Judicial Crisis Planning Group

From: Carl Macpherson, Executive Director, MPD

Re: Potentially false/misleading data contained in OJD slides and memo

Date: August 14, 2023

On August 1, 2023, at the Public Defense Crisis Plan meeting, OJD presented a PowerPoint presentation, which included information purporting to show public defense provider capacity in Multnomah County. The PowerPoint and the information on which it relied were not provided prior to the meeting. Nonetheless, during the meeting, MPD/MDI/OPDS provided context and facts that were not accounted for and contradicted some of the data presented. On August 2, 2023, the Court provided the slides, a document entitled Multnomah County Circuit Court SB 337 Unrepresented Crisis Plan Data Review, and a template for the state plan that must be submitted in August of 2023. Again, both the Slides and the "Plan Data Review" (hereinafter "Memo") contain inaccurate and misleading data. This memo addresses those issues and requests that OJD refrain from including this flawed data in any report forwarded to any entity in the State, including but not limited to the Legislature and CJC.

First, both the Slides and the Memo are not accurate regarding MAC per entity. For example, on page 10 of the Memo, OJD's table labeled "Attorney Contract MAC by Provider" states that MPD has 46 attorneys and 48 attorney MAC from 7/22-9/23. MPD requested a list of the MPD attorneys that OJD used for this calculation. After reviewing OJD's data, the following inaccuracies were revealed:

1. The list is missing 8 attorneys who worked part of the FY 23 contract period (7/1/22-6/30/23).
2. The missing 8 attorneys worked an average of 3.41 months per attorney. It is unclear if their "caseloads" are captured in the data. Of note, 5 of the 8 attorneys were minor felony qualified, 1 was major felony qualified, and 2 were misdemeanor qualified. 2 of the 8 still work at MPD: 1 misdemeanor and 1 minor felony qualified.
3. Of the 48 attorneys, 16 attorneys (33%) started part way through the contract. For those 16 attorneys, they worked an average of 7.85 months of the FY 2023 contract. Our understanding is that each of those attorneys have projections of 1.0 MAC attorneys in the data, which is inaccurate.
4. Of the 16 new attorneys, 15 of them are misdemeanor qualified only. Therefore, the data is attributing 300 cases per attorney even though they only worked on average 7.85 months.

5. Each of the 15 attorneys require foundational training, supplemental training, and must slowly build their caseloads over time. Simply put, it is not possible for a brand-new attorney to be assigned 300 cases in a year, let alone in 7.85 months. (*See also* Oregon State Bar Formal Opinion 2007-178, attached)
6. The data does not account for protected leave such as FMLA. At least 4 listed attorneys were on leave for a portion of the FY 2023 contract year during which they could not accept new appointments, and, other attorneys had to work on their assigned cases and/or a portion of their cases were reassigned to another attorney.
7. It is unclear how the data accounted for transferred cases when attorneys resign. For example, the Multnomah County adult criminal unit at MPD had 6 attorneys resign during FY 2023. Their cases were reassigned to other attorneys thereby increasing the newly assigned attorneys' caseloads.
8. 3 of the 48 attorneys are partially funded through grants, and not fully funded by OPDS. For the 3 attorneys, they are only funded for 1.1 MAC on the OPDS contracts. Again, it is unclear whether this was taken into account with calculating unused MAC. If it was not taken into account, then 1.9 MAC is being added to MPD's overall MAC, which is not accurate.

Second, MAC is an arbitrary and inaccurate measurement of attorney capacity and should not serve as the basis for OJD's analysis. As discussed at our last meeting, MAC fails to properly take into account the following:

1. MAC only applies to the contract year and does not account for open caseloads at the start of the new contract year.
2. MAC does not consider workloads, which ethically vary based on several factors including but not limited to the following:
 - a. experience level
 - b. ratio of in-custody to out-of-custody clients
 - c. jail access issues, which are pronounced in Multnomah County
 - d. varying levels of discovery on cases, i.e. some cases have 1000's of pages of discovery while some cases have limited discovery
 - e. trial rates/trial preparation
 - f. motions filed
 - g. experts utilized
 - h. extent of use of independent fact investigation, which is ethically required for

each and every case

- i. use of case management and social work services
- j. complexity and uniqueness of individual clients, particularly addressing issues related to substance abuse, mental health, houselessness, cognitive deficiency, and others

Third, MAC is the maximum assigned caseload in a contract year. The MAC number of 300 misdemeanors is not a requirement, it is a maximum number of cases that can be assigned to an attorney within a 12-month period of work. Contractually, MAC must be balanced by several factors including ethical obligations for attorneys partly captured in ORPC 1.7, 1.16, and OSB Formal Opinion 2007-178. Therefore, data based solely on strict interpretation of 1.0 MAC is inherently flawed and deficient because it fails to take into account all of the required contractual considerations including ethics.

Fourth, for the reasons stated above, the Slides and Memo are inaccurate as to the number of total attorneys in Multnomah County, the total number of MAC available, and the amount of MAC that is unused. This is compounded by projecting MAC calculations for 15 months based on 13 months or less of deficient data. To clarify, the data uses a date range of July 1, 2022 to September 30, 2023, which misses at least 2 months' worth of case assignments and artificially lowers the percentage of MAC compliance and unused MAC remaining since the reports were completed on or about August 1, 2023. To the extent this flawed data is utilized at all, it should be based on data from date ranges that have actually occurred. To do otherwise, unfairly inflates provider MAC deficiencies. While the report does include some of these caveats to the data, those caveats are buried in the text of the report and not reflected in the multiple graphs and charts.

Fifth, the data is not correct regarding the projected MAC deficiency for the unrepresented population. Both reports indicate that Multnomah County is deficient 2.08 MAC for minor felonies. This number is based on the roughly 350 unrepresented cases categorized as minor felonies. The data is using the contract MAC standard of 165 minor felonies per attorney per year, which notably violates national standards. Regardless, you cannot ethically assign two attorneys 165 minor felonies each on day 1 to eliminate your unrepresented population. Even if you could, those attorneys could not take another case for the next 364 days, which would result in more unrepresented minor felony cases as the year continues because there remains an overall deficiency of attorneys. Utilizing a graph purportedly indicating that we are only 2 minor felony qualified attorneys short of alleviating the minor felony unrepresented population in Multnomah County is simply inaccurate.

MPD is very concerned about the content of the Slides and Memo. Specifically, both reports utilize flawed data and data that requires significant explanation and context, which is missing in the reports and requires the reader to invest the time to fully understand the

content with external information. The graphs and tables displayed in the slides and report fail to sufficiently highlight the deficiencies in the data, thereby potentially misleading the audience regarding the true state of public defense in Multnomah County.

To: OPDC, Public Comment
From: Dana Brandon
Senior PCRP Case Manager Administrator (independent contractor)

I have been a member of the Oregon public defense community for over 25 years. I have contracted, in my current role, with OPDC since 2014. As the Senior Case Manager Administrator, I recruit and provide training, oversight, and technical support to all PCRP Case Managers as well as some case managers who are accessed through PAE payment system. I believe case managers integration in defense teams has led to juvenile attorney retention along with improved outcomes for parents and children involved in Oregon's child welfare and juvenile justice systems.

Given the workforce shortage and the findings from the Moss Adams report I understand the critical need we have in Oregon to expand the use of social workers and case managers in criminal defense practice. I participated in the workgroup for these roles, and I am hopeful to be included in the process of refining performance standards and developing models for practice in public defense offices and under a panel attorney model. Knowledge about how these roles function, what training should look like and the essential need for technical support and oversight should be considered as holistic legal representation grows in Oregon.

As OPDC considers POP requests and budgetary needs, I am hopeful the agency will invest in the infrastructure that is needed to successfully expand these roles. **Training, Technical Support and Oversight** are necessary components that cannot be overlooked, they are essential if we want to maintain the integrity of these Core Staff roles, keep consistent practice, and continue to adopt best practice standards.

Public defense work is hard, in all our various roles. Case managers are brought on in the more complex cases supporting clients with extensive trauma histories and substance abuse and mental health needs. They visit clients in homeless camps, meet with clients who are actively using and in crisis. Many of them carry Narcan due to the risk of fentanyl exposure. It is challenging work; compassion fatigue and burnout are real. To support and retain these providers, specialized training, technical support, and oversight are critical.

The unrepresented crisis has taken the focus of the agency and commission for many months and rightfully so. However, there is incredible work being done in our PCRP jurisdictions and I hope to see OPDC build upon our PCRP model recognizing the administrative functions that are needed to build successful defense teams which can lead to improved satisfaction and outcomes for our clients.

I look forward to continuing this work and lending my expertise as this resource becomes increasingly available to all public defense providers.

Thank you,

Dana Brandon, MSW
brandonsocialwork@gmail.com

Laura Rittall Investigations Inc.
P.O. Box 398
Toledo, OR 97391
503-473-2954

**LAURA RITTALL
INVESTIGATIONS
INC.**

Date: June 11th, 2024

Attn. OPDC

Re: Payment times

Greetings Commissioners,

I am writing today to add to the chorus of people who are explaining how the crisis of slow payment times is NOT getting better. I wanted to share that I have recently heard both a lawyer and an expert consultant talking about having to take out home equity and small business loans to cover for the lack of timely payment. We are subsidizing the state and paying interest to do it.

I know that personally speaking, trying to manage my own business without timely payment is taking a toll. It's a stressor I don't need when I am trying to provide excellent services to my clients. When I get a bill for records and/or have to travel to see a witness, the first thing that comes to mind, is that to do my job I may have to go into debt. 7 weeks for reimbursement is too long. If you can't pay the bills by 45 days, you should automatically apply late fee compensation- it will help defray our interest costs, while we struggle to cover for you.

The recent statement about "unforeseen issues" contributing to the problem is frustrating. Be clear about the problems and transparent with us. I implore OPDC to find a way to deal with emergency management, for staffing and/or whatever the issue is this time. We have been asking for years, since all the excuses began.

Thank you for hearing my concerns.

Laura Rittall



Tuesday, June 11, 2024

Oregon Public Defense Commission
1320 Capitol St NE,
Suite 200
Salem, OR 97301

Defense Investigators of Oregon
In Solidarity with the International Workers of the World

Re: Slow pay times, funding delays, and low rates

Dear Commission Members,

We are writing to you as the Defense Investigators of Oregon, a group of defense investigators that work with attorneys in criminal defense cases. We are concerned about the slow pay times, funding delays, and low wages that we have been experiencing from the agency.

As of June 10th, 2024, our invoices have been paid 57 days after submission, on average. This is a significant increase from the previous year, when we received payments within 30 days. Moreover, we have been waiting for 30 days or more for the approval of funding for our investigations, which hampers our ability to conduct timely and thorough investigations.

These delays have a negative impact on our work and on the rights of our clients. As defense investigators, we rely on timely payments to cover our expenses and sustain our businesses. We often have to pay upfront for travel, records, and other costs that are essential for our investigations. When we do not receive payments on time, we face financial hardship and stress, which affects our quality of work and our availability for new cases.

This is not an isolated case, but a common scenario that we face as investigators. We often have to wait for weeks to receive funding approval for our cases, which hampers our ability to conduct thorough and timely investigations. We then have to work under stressful and unrealistic conditions to finish our work before the trial dates, which are often set without regard for our availability or workload. We then have to wait for another period of weeks or months to receive payment for our services, which affects our cash flow and financial stability.

In addition to the personal and financial toll that these delays take on us as individual investigators, they also have a detrimental effect on our entire caseload and the quality of our services. When we have to wait for funding approval and payment, we are unable to allocate our time and resources efficiently and effectively to the cases that need our attention. We have to prioritize the cases that are closer to trial or have more urgent needs, while postponing or neglecting the cases that are less pressing or more complex. This creates a backlog of cases that require investigation, and a risk of missing important deadlines or opportunities for finding exculpatory evidence.

Furthermore, when we are carrying balances for travel expenses or for routine records requests and other such expenses, we are limited in our ability to pursue new leads or conduct additional investigations. We often have to choose between paying for the expenses that we have already incurred, or investing in the expenses that we need to make for our current or future cases. This puts us in a difficult position, where we have to compromise our standards and ethics, or jeopardize our relationships and reputation with our

clients, attorneys, and courts. We often have to turn down new cases or referrals, or decline to work on certain types of cases, because we cannot afford to take on more expenses or risks.

These effects are not only harmful to us as investigators, but also to our clients, who rely on us to provide them with thorough and competent investigations. Our clients are often facing serious charges and consequences, and they deserve to have a fair and effective representation of their interests and rights. When we are unable to conduct investigations in a timely and comprehensive manner, we are depriving our clients of the opportunity to present a strong and credible defense, and exposing them to the possibility of wrongful convictions or unjust sentences. We are also undermining the credibility and integrity of the criminal justice system, which depends on the quality and reliability of the investigations that we provide.

In addition to these challenges, we also face the problem of inadequate and inconsistent compensation for our work. The current rate of \$55 per hour that we receive is insufficient to cover our overhead costs, such as office rent, equipment, insurance, taxes, and staff salaries. This rate is insufficient to cover the rising costs of living and doing business. Moreover, this rate does not reflect the level of expertise, experience, and education that we have as professional investigators, nor the complexity and diversity of the cases that we handle. We are often underpaid and undervalued for the work that we do, and we have no opportunity to negotiate or increase our rates.

The current funding approval and payment delays only make things worse for us. Not only do we have to wait for months or even years to receive payment for our work, but we have to follow strict and rigid guidelines and policies that limit our scope and methods of investigation. We have no guarantee that our requests will be approved, or that we will be paid in full or on time. We have no recourse or appeal when our requests are denied or reduced. We have to bear the burden and risk of financing our own investigations, without any assurance or security that we will be reimbursed or compensated. We urge you to adopt a rate increase of \$75 per hour as outlined in the payment study you are reviewing as soon as possible, by any method possible. Although this may not be enough for some investigators to recover immediately from their respective financial predicaments or resolve the delays funding or payment, it will help bring some much needed relief to most of us.

This puts many of us at risk for financial insolvency. Many of my colleagues have expressed that they are having to resort to loans from friends and family to make ends meet. Other colleagues have expressed that despite the many hours worked, payment delays are causing issues with paying bills, credit cards, car payments, insurance, personal expenses and even mortgage payments or rent.

As payment delays approach the 60-day mark, this forces us to create budgets that span four months. We need to pay off bills and balances that we have incurred for our cases from the previous two months and then budget for the next two-month delay.

We want to make it clear that this situation is unsustainable and unacceptable for us as professionals. We cannot continue to provide quality investigative services to our clients if we do not receive adequate and timely compensation and support. We are already struggling to keep up with the increasing caseload and the decreasing resources, and we cannot afford to work under these conditions any longer.

If this situation does not improve, we will be forced to take measures to protect ourselves and our clients. We will have to write letters to the attorneys explaining why we are unable to complete or start investigations for their cases, due to the lack of funding or payment. We will have to document every instance of delay and denial that we encounter, and how it affects our ability to conduct effective investigations. We will have to inform the courts and the commission of these problems, and request

extensions or continuances when necessary. We will have to work closely with the attorneys who represent our clients and encourage them to file complaints or motions when appropriate.

Furthermore, the lack of action from the agency to improve payment times and higher wages has already resulted in the loss of talent. There is currently a shortage of defense investigators and those of us who remain are forced to rethink our role in Oregon's Public Defense System. The financial pressure has already pushed some investigators to seek licensing and work outside of Oregon or has caused defense investigators to seek other career options. To make matters worse, the current financial structure makes it nearly impossible to acquire new talent as new investigators must now have at least 6 months of living and operating expenses to enter the field.

We hope that it will not come to this point, but we are prepared to do so if we have to. We believe that these letters will serve as evidence of the systemic failures and violations that our clients face, and that they will help them if they lose their trials and seek post-conviction relief. We also hope that these letters will raise awareness and accountability among the stakeholders, and that they will motivate them to take action and address these issues. We are not asking for anything unreasonable or extravagant, but for what we deserve and need to do our jobs properly.

More importantly, these delays affect the constitutional rights of our clients, who are entitled to effective assistance of counsel and speedy trial. When we have to wait for funding approval, we cannot start or continue our investigations, which delays the discovery process and the resolution of the cases. This also puts pressure on the attorneys, who have to make strategic decisions without having all the relevant information. This undermines the fairness and integrity of the criminal justice system, and the trust that our clients have in us.

We urge you to address these issues as soon as possible by pushing for a rate increase to \$75 per hour as the base rate for all investigative work as soon as possible, and to ensure that we receive timely payments and funding approvals for our work. We appreciate the commission's support and recognition of our role as defense investigators, and we hope to continue our collaboration in providing quality representation to our clients.

Sincerely,

Defense Investigators of Oregon

A handwritten signature in blue ink, appearing to read "Jaime Perez". The signature is fluid and cursive, with the first name "Jaime" being more prominent than the last name "Perez".

Jaime Perez

Secretary for the Defense Investigators of Oregon