

**Members:**

Susan Mandiberg, Chair  
Robert Harris  
Paul Lipscomb

**Interim Executive Director:**

Ken Sanchagrin

## Oregon Public Defense Commission Governance Subcommittee Meeting

*Meeting will occur virtually  
Thursday, May 1, 2025  
9:00am to 10:30am 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.*

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## AGENDA

Approx. Time	Item	Lead(s)
9:00-9:05	Welcome	Chair Mandiberg
9:05-10:30	Discussion: Audit Committee Charter	Chair Mandiberg
10:30	**Adjourn**	

*\*To join the Zoom meeting, click this link: <https://zoom.us/j/97420121361>. This meeting is accessible to persons with disabilities or with additional language service needs. Our Zoom virtual meeting platform is also equipped with Closed Captioning capabilities in various languages, which agency staff can assist you with setting up ahead of meetings. Requests for interpreters for the hearing impaired, for other accommodations for persons with disabilities, or for additional interpreter services should be made to [info@opdc.state.or.us](mailto:info@opdc.state.or.us).*

*Please make requests as far in advance as possible, and at least 48 hours in advance of the meeting, to allow us to best meet your needs.*

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

## OPDC AUDIT COMMITTEE CHARTER

### [Draft for May 1 Governance Committee Meeting]

This charter defines the authority, responsibility, and structure of the Audit Committee (Committee), a “Special Committee” of the Oregon Public Defense Commission (Agency or Commission). The commission is the governing body of the Oregon Public Defense Commission (OPDC) an agency by the same name. This charter will refer to the agency as “OPDC” or “Agency” and its governing commission as the “Commission”. As required by Oregon Administrative Rule (OAR), this charter includes the Committee’s “mandate, authority, and functional reporting relationship to include~~ing~~ the roles and responsibilities of the audit committee and its members.”<sup>1</sup> As used in this charter, “audit committee,” “chief audit executive,” “internal audit function,” “professional auditing standards,” “risk,” “risk assessment,” “audit plan,” and “independence” have the meanings given those terms in OAR 125-700-0015.

As required by OAR, this charter also “formally define[s] the internal audit function’s purpose, authority, responsibility, and the professional auditing standards the function will follow.”<sup>2</sup>

As used in this charter, “audit committee,” “chief audit executive,” “internal audit function,” “professional auditing standards,” “risk,” “risk assessment,” “audit plan,” and “independence” have the meanings given those terms in OAR 125-700-0010.

#### A. Authority and Purpose of the Committee

1. “Each agency having an internal audit function shall establish and maintain an audit committee<sup>3</sup>.”
2. “The primary purpose of the Committee is to enhance the quality and independence of the audit function, thereby promoting the integrity of the internal and external audit processes<sup>4</sup>.”

#### B. Reporting Responsibilities

1. Regularly report to the commission about committee activities.
2. Confirm annually that all responsibilities outlined in this charter have been carried out.

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<sup>1</sup> OAR 125-700-0135(5)(a).

<sup>2</sup> OAR 125-700-0135(3).

<sup>3</sup> OAR 125-700-0135(5), first sentence.

<sup>4</sup> OAR 125-700-0135(5), second sentence. Note: On January 1, 2025, OPDC became will become part of the Executive Branch to which Oregon Administrative Rules apply.

3. Provide an open avenue of communication between internal audit, the external auditors, and the Commission.

C. Duties

1. The Committee shall ensure the integrity and effectiveness of the Agency's internal audit function and provide guidance to the Chief Audit Executive to ensure enhance the quality and independence of internal and external audits.
2. The Committee shall perform the adhere to minimum committee governance requirements as outlined in OAR 125-700-0135(5)(a) through (d).
3. The Committee and its members shall perform the following duties:
  - a. Ensure the quality and independence of the internal audit function.
  - b. Provide input to the Chief Audit Executive on risk assessments, which forms the basis of the internal audit plan.
  - c. Provide input to the Chief Audit Executive on the creation or modification of the internal audit plan, which establishes audit priorities, goals and objectives, and a three-year auditing work schedule.
  - d. Review and approve the audit plan.
  - e. Inform the Commission Chairperson and the Executive Director in writing of any concerns regarding the job description of an internal auditor.
  - f. Inform the Executive Director Commission Chairperson in writing if the Chief Audit Executive provides written notification that the Internal Audit resources are inadequate to accomplish the objectives of the internal audit function. of a scope or resource limitation placed on the internal audit function.
  - g. Advocate to agency management for sufficient budget resources to ensure an adequate level of internal audit staffing, and to provide both continuing professional education for staff and periodic external peer reviews as required by professional auditing standards.
  - h. Ensure follow-up of internal audit report findings and recommendations to determine whether proper corrective action has been completed or if Agency management has explicitly assumed the risk of not taking the recommended corrective action.

- i. Inform ~~the Executive Director and Agency management~~, the Chief Audit Executive, and Commission (as appropriate) if, in the judgement of the Committee, ~~Agency management~~ is assuming an unreasonable level of risk.
- j. Identify the level of audit resources that will provide the Committee and the Commission ~~with~~ the desired amount and scope of information on which to make reliable risk-based decisions.
- k. Review internal and external audit findings ~~and~~ recommendations, ~~in combination~~ with auditees' proposed mitigations, ~~in order to~~ advise the Chief Audit Executive of any concerns.
- l. Understand the scope of internal and external auditors' reviews of internal control over financial and performance reporting, and obtain reports on significant findings and recommendations, together with ~~Agency management's~~ responses.
- m. Monitor the quality of the ~~internal audit~~ function and report ~~to the Commission and Executive Director, at least annually, any improvement actions recommended by the Audit Committee to the Chief Audit Executive. regarding actions to improve the function.~~
- n. Participate in the performance appraisal of the Chief Audit Executive.
- o. Provide input on any Commission request for audits to be performed by the Secretary of State Audits Division or other independent consultants.
- p. Ensure periodic external peer reviews of ~~the internal audit~~ function (external Quality Assurance Reviews) required by ~~OAR~~ and ~~professional auditing standards~~.
- q. Receive external peer review reports and direct any applicable changes and improvements recommended therein.
- r. Review with ~~Agency management~~, and the Secretary of State Audit's Division financial auditors, the results of the Audits Division's annual financial statement audit, including any difficulties encountered.
- s. Maintain confidentiality of communications and deliberations.
- t. Be informed by ~~Agency management~~ of the appointment or dismissal of the Chief Audit Executive before such actions become effective. Objections, if any, of such actions will be made part of the committee minutes and forwarded to ~~Agency management~~ and the Commission.

4. The Committee and its members shall perform the following duties at least annually:
  - a. ~~Obtain from the Chief Audit Executive a statement of Code of Ethics compliance and disclosures of actual or perceived conflicts of interest.~~
  - b. Obtain from the Chief Audit Executive annually a report on compliance with **professional auditing** standards and any challenges in meeting these **standards**.
  - c. Receive and review the **internal audit** annual report prepared for the Oregon Department of Administrative Services.
  - d. Report to the Commission on Committee activities.
5. The Committee and its members shall perform the following duties periodically:
  - a. Every two years review and assess the adequacy of the Committee charter and report any concerns to the Commission. **This review and assessment must include the evaluation of any periodic assessment by the Chief Audit Executive that has been communicated to the Committee under OAR 125-700-0140(5) or external assessment report provided to the Committee under OAR 125-700-0145(2) that has been received by the Committee since the Committee's most recent review and assessment of the Committee charter.**
  - b. Periodically review significant exam findings by regulatory agencies, as well as audit findings and investigations of misconduct and fraud, to stay current on regulatory trends and relevant auditing matters.
  - c. Confirm annually, via Committee meeting minutes, that all responsibilities outlined in this charter have been carried out.

#### D. Composition

1. The Committee is composed of between seven and nine voting **members**, a majority of whom shall be "external members." not be employees of the Agency or **members** of the Commission.
2. The Committee shall include the following voting members:
  - a. At least one Commission member, **who shall be** appointed by the Commission Chairperson.
  - b. The Agency's Executive Director, or designee.

- c. The Agency's Budget and Finance Manager, or designee.
  - d. Between four and six additional members appointed by the Chairperson of the Committee, in consultation with the Executive Director, the Chief Audit Executive, and other Committee members, and ratified by the Commission. ~~Between four and six external members who are not employed by the Agency and who do not serve as a member of the Commission. The external members shall be appointed by the Chairperson of the Committee, in consultation with the Agency's Executive Director or designee, the Chief Audit Executive, and the other Committee Members. The appointment of a member appointed under this paragraph must be ratified by the Commission in order for the member to serve on the Committee.~~
- 3. The Chief Audit Executive serves as a non-voting member of the Committee.
- 4. Committee Chairperson
  - a. Qualification: The Chairperson of the Committee shall be an external member ~~who was appointed to the Committee under subsection (2)(d) of this section, and shall~~ not be an employee of the Agency or member of the Commission
  - b. The Chairperson of the Committee ~~shall be selected from~~ current Committee members. Qualified Members ~~may volunteer to serve as Chairperson of the Committee or may~~ accept nomination to serve as Chairperson of the Committee from other members.
  - c. ~~The Chairperson is elected by the affirmative vote of a majority of committee members present and voting members of the Committee.~~
  - d. The term of office as Chairperson is two years, with no term limits. ~~The Chairperson's term of office begins immediately after the Chairperson is elected in the manner provided in paragraph (c) of this subsection and continues for the duration of their term as an external member.~~
- 5. Terms of Office
  - a. Agency members and the Commission member serving on the Committee may serve for as long as they hold their positions ~~described in section 2(a) to (c) of this section.~~
  - b. ~~Except for a person serving as Chairperson, External members appointed under section 2(d) of this section are appointed to two-year terms, but~~ may serve consecutive two-year terms ~~without limitation~~ with Committee approval, subject to ratification by the Commission.

E. Appointment of Committee Members

1. Candidates for the Committee may be nominated by any **current voting member of the Committee**. **Nominations** should reflect the Committee's need for a variety of perspectives.
2. The Committee Chairperson shall carry out the following duties regarding appointment of committee members:
  - a. Monitor turnover and take steps to bring in new Committee Members at least every four years.
  - b. Work with the Agency's Executive Director or designee and the Chief Audit Executive to identify and initially screen candidates.
  - c. Consult with the Committee members and the Executive Director to select new appointees.
  - d. Appoint new members, subject to ratification by the Commission at their next meeting opportunity.
  - e. **Work with Agency management to schedule meetings and set the agenda.**
3. **Committee Members shall strive to select Committee Members who reflect a diversity of perspectives, backgrounds, interests and experiences, including but not limited to: varying geographic locations (including a diversity of urban and rural locations) and varying socio-economic, educational, and cultural backgrounds.** Failure to achieve or maintain any particular precise composition shall not prohibit the Committee from meeting or conducting activities.
4. Conflicts of Interest
  - a. It is the responsibility of a Committee member to disclose **the general nature of any** conflict of interest, whether **potential** or actual **conflict**, to the Committee. **Such disclosure must be made at the meeting where the issue is being discussed and on the record.**
  - b. **A voting member of the Committee member may abstain from voting only if the member has an actual or potential conflict of interest in the issue being voted on.**

F. Removal of Committee Members

1. Committee Members must attend, virtually or in person, no fewer than 3 of 4 quarterly Committee meetings in a rolling 12-month period, unless excused by the Committee Chairperson.

2. External **members** who fail to attend more than one quarterly meeting within a rolling 12-month period, unless excused by the Chair**person**, may be removed from membership by the committee Chair**person**.
3. Any member of the Audit Committee may be removed by a majority vote of the Audit Committee subject to ratification by the Commission. Pending the ratification of removal by the Commission, the removed Audit Committee member shall not participate in Audit Committee debate or decisions unless the Audit Committee Chair determines otherwise and for good cause shown.
4. **Committee members** considering resignation should notify the Committee Chair**person** sufficiently in advance such that a replacement can be brought on in time for the subsequent quarterly meeting.

#### G. Meetings, Agendas, Minutes

1. Meeting schedule, quorum, and member duties
  - a. The Committee meets quarterly, with additional meetings held as necessary. Meetings are usually about two hours per session.
  - b. ~~Committee meetings are subject to Oregon's Public Meetings Law.~~
  - c. Because of the amount of material typically covered during meetings, it is important that **Committee members** attend regularly, be punctual and come prepared, having reviewed the meeting materials.
  - d. A quorum is necessary to hold **any** meeting **or** conduct **any** business. A quorum is a majority of voting **committee** members.
  - e. **Voting:** Committee action requires **the affirmative vote of a meeting at which a quorum is present and an affirmative vote of at least a majority of the voting Committee members present and voting, which must include** the affirmative vote of at least one external member.
2. Agendas
  - a. Standing agenda items include
    - i. Review and approval of the minutes for the prior meeting.
    - ii. Roundtable time that allows Committee **members** to bring forward any audit-related issues.
    - iii. A report on the state of Agency operations and finances from Agency management.



- b. The Chief Audit Executive shall invite Audit Committee members to submit agenda items two weeks prior to the meeting and will provide a final agenda and meeting materials one week before the meeting. ~~will coordinate development of the remainder of the agenda by polling Committee members at least one week prior to the quarterly meeting and at least five days prior to any supplemental meeting. The Chief Audit Executive and Committee Chairperson will finalize the agenda.~~
- c. The Committee may invite guests, such as Secretary of State Audit Division managers, other Agency managers, or stakeholders, to present topics that promote Committee effectiveness.
- d. At least once yearly, agenda items shall include:
  - i. A meeting between external Committee members and the Chief Audit Executive in the absence of the Commission member and Agency management.
  - ii. Time for the Committee to meet in the absence of the Chief Audit Executive.
  - iii. An opportunity for financial and performance audit managers from the Secretary of State's Audit Division to attend a Committee meeting, during which time shall be set aside for meeting with external Committee members absent the Commission member, Agency management, and the Chief Audit Executive.
- e. The Chief Audit Executive will distribute the meeting agenda and meeting-related material to Committee Members at least five working days before the next scheduled meeting.
- f. A master file containing meeting agendas, minutes, and meeting materials shall be maintained by Agency management.

### 3. Staffing for Meetings

- a. Agency management will provide support staff to attend Committee meetings and prepare written minutes.
- b. The support staff will provide an electronic draft of the minutes to the Chairperson and Chief Audit Executive for review and revision, as necessary, within seven days following the meeting.

## CONSIDERATIONS FOR MAY 1 MEETING

### Discussion guidelines

Although we do not have input from a General Counsel, it would be helpful to guide our discussion of the Audit Committee Charter by the statutory and regulatory provisions that the Department of Justice will apply. I have tried to anticipate how an Department of Justice lawyer would apply those provisions, as set out below. This is not legal advice, rather more like an academic exercise. If you disagree with this interpretation, we can discuss the alternatives.

To prepare for the meeting, I suggest going through parts B and C of the current draft and seeing which, if any, provisions might be seen as imposing on the Audit Committee:

- a. A duty to gather and/or report only facts
- b. A duty that involves making decisions on policy or administration
- c. A duty to make recommendations on policy or administration

I suspect that if any duties fall under (b) or (c), the OJD will tell us that Audit Committee meetings must adhere to public meeting laws.

### Statutory and regulatory context – possible interpretation

1. The Audit Committee is a “governing body.”<sup>i</sup>
2. The Audit Committee has “meetings.”<sup>ii</sup>
3. In general, the meetings of a governing body must be open to the public.<sup>iii</sup>
  - a. The public meeting laws definitely *apply* if
    - i. The Audit Committee is a “decision-making body,” *i.e.* can make decisions or for itself or the OPDC (either the Commission or the agency) on policy or administration.<sup>iv</sup>
    - ii. The Audit Committee is an “advisory body,” *i.e.*, has “authority to make recommendations to [the OPDC Commission or agency] on policy or administration.”<sup>v</sup>
    - iii. Its meetings are “held for the purpose of either presenting information to the governing body to prepare the governing body for a regular or special meeting, or to allow the governing body to engage in preliminary discussions or deliberations.”<sup>vi</sup>
  - b. However, the public meeting laws *do not apply* if the audit committee:
    - i. Is a “fact gathering body” with “only the authority to gather and provide factual information” to the OPDC, and “no authority to make decisions or recommendations.”<sup>vii</sup>

OR

- ii. The communications “between or among members . . . are . . . [p]urely factual or educational in nature and . . . convey no deliberation or decision on any matter that might reasonably come before [the OPDC Commission or agency]” and are “[n]ot related to any matter that, at any time, could reasonably be foreseen to come before [the OPDC Commission or agency] for deliberation or decision.”<sup>viii</sup>
- c. Purely factual or educational in nature, conveying no deliberation or decision on a matter that might reasonably come before it or the OPDC, OR
- d. Are not related to any matter that, at any time, could come before OPDC for deliberation and decision.

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<sup>i</sup> A “governing body” consists of “the members of any public body which consists of two or more members, with for or the authority to make decisions or recommendations to a public body on policy or administration.” ORS 192.610(5).

A “public body” is “the state, any regional council, county, city or district, or any municipal or public corporation, or any board, department, commission, council, bureau, committee or subcommittee or advisory group or any other agency thereof.” ORS 192.610(6) (emphasis supplied).

<sup>ii</sup> A “meeting” is “the convening of a governing body of a public body for which a quorum is required in order to make a decision or to deliberate toward a decision on any matter.” ORS 192.610(7).

<sup>iii</sup> ORS 192.630(1). *See also*, ORS 162.630(2) (“a quorum of a governing body may not meet in private for the purpose of deciding on or deliberating toward a decision on any matter [with some statutory exceptions that do not seem relevant]”).

<sup>iv</sup> OAR 199-050-0010(1)(a). This is because the Audit Committee and the OPDC (both Commission and agency) are all arguably “public bodies” under the definition set out in endnote 1.

<sup>v</sup> OAR 199-050-0010(2)(b).

<sup>vi</sup> OAR 199-050-0015(2)(c).

<sup>vii</sup> OAR 199-050-0010(2)(a).

<sup>viii</sup> OAR 199-050-0015(3)(c)(A) and (B).