



Oregon

Oregon Public Defense Commission

198 Commercial St. SE, Suite 205

Salem, Oregon 97301-3489

Telephone: (503) 378-2478

Fax: (503) 378-4463

www.oregon.gov/opdc

2/5/2025

The Honorable Anthony Broadman, Co-Chair
The Honorable Paul Evans, Co-Chair
Joint Committee on Ways and Means
Subcommittee on Public Safety
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Re: Responses to Committee Questions on February 3, 2025

Dear Co-Chair Broadman and Co-Chair Evans:

Thank you for inviting the Oregon Public Defense Commission to present on the unrepresented crisis. Below are our responses to questions asked by committee members. Please reach out should you have further questions.

1. Representative Grayber asked why felonies remain unrepresented longer than misdemeanors when there are more misdemeanors on this list overall.

This question was asked of the Oregon Judicial Department, but we agree that we are in a better position to answer it. Misdemeanors provide a more predictive and standard workload and tend to resolve more quickly and predictably than felonies.

It is also due to the lack of felony-qualified attorneys compared to misdemeanor attorneys. As the chart below shows, midlevel and high felony attorneys—including Measure 11 and Murder—are leaving contracts and being replaced by newer misdemeanor and low felony-qualified attorneys.

Criminal Contract Retention by Attorney Qualification Level			
Qualification	New Attys	Departed Attys	Net Attys
⊕ Attorney 1	69	19	50
⊕ Attorney 2	44	38	6
⊕ Attorney 3	30	46	-16
⊕ Attorney 4	16	26	-10
Total	156	128	28

2. Senator Broadman requested public safety partners show their ‘person power’ since 2019. Representative Lewis and Helfrich also requested this information by qualification.

Prior to 2021, Oregon relied on a pay-per-case model for public defense. OPDC (then OPDS/PDSC) contracted with entities to handle a set quota of cases; our contracts and data didn’t go beyond that. The 6th Amendment Report found that this system led to a lack of data and oversight by the Commission. Due to this structure, we don’t have a count of the number of FTE attorneys working in the system prior to our 2022 contracts.

Starting with our July 2022 contracts, we began tracking the FTE of attorneys within each contract, and in July 2023, our contracts began tracking individual attorneys and their qualifications. Our data collection and utilization have made significant progress, and today, we have a public interactive [dashboard](#) where you can view contracted entities, their case appointments, and reported and utilized MAC numbers.

Below is the data we have available since July 2022.

Criminal Contracted Attorneys Over Time

	July 2022	July 2023	July 2024	January 2025
Contracted Criminal FTE	414.40	461.10	511.09	525.61
Consortia		186.56	200.86	206.02
Non-Profit		200.76	241.27	252.21
Other Contracts		73.78	68.96	67.38

Qualifications of Criminal Attorneys Over Time

	July 2023	July 2024	January 2025
Misdemeanor	65.73	66.83	72.40
Low Fel	84.03	95.61	94.29
High Fel	160.12	170.75	180.19
Murder	151.22	177.90	179.73

3. Senator Campos asked what’s working in counties without unrepresented numbers. Representative Grayber later asked a similar question, specifically about Lane County.

One of the challenges in solving this crisis has been its individual nature, county by county. While neither population size nor MAC utilization rates reliably predict whether a county has an unrepresented persons population, attrition rates may shed some light on the problem.

This chart shows that four of the top six counties have a 30% turnover or higher, while 50% of the lowest to no turnover counties have zero unrepresented persons.

Deschutes County offers an example of acute attrition's impact on a county. Deschutes faced a significant staffing challenge over the summer when a wave of public defenders left in a short time; this acute attrition led to an unrepresented count of 155 in the fall. The public defenders in Deschutes County have since fully staffed, and OPDC added additional MAC to their contracts, which has allowed them to eliminate their unrepresented numbers. With stable staffing, Deschutes is no longer a crisis county.

Lane County's presiding judge, district attorney, and public defender presented to the Governor's Public Defense Workgroup in December 2025, and identified four reasons for not having an unrepresented defendant's crisis in their community. (1) The legislature invested money in local public defense providers who used that investment responsibly to hire six additional lawyers; (2) The Lane County district attorney's office is understaffed leading to reduced case filings; (3) Lane County public defenders have handled their workloads and resources to maximize representation; and (4) Lane County Circuit Court's criminal case management system is simple and effective.

Lane County's public defenders have a lower attrition rate than the statewide average, with a 10% county-wide rate compared to the 20% statewide rate.

Lane County's district attorney's office lost 15 prosecutors in 18 months in 2022-23. They worked collaboratively with the courts and public defenders to mitigate their workforce shortage and implemented strategies to prioritize prosecutorial resources. This included a 25%-30% annual 'no file'

HomeCounty	Active Attorneys	Turnover Rate
Coos	6	66.7%
Lake	2	50.0%
Marion	51	43.1%
Deschutes	29	41.4%
Grant, Harney	5	40.0%
Washington	63	31.7%
Multnomah	95	31.6%
Gilliam, Hood River, Sherman, Wasco, Wheeler	13	23.1%
Josephine	14	21.4%
Morrow, Umatilla	5	20.0%
Union, Wallowa	5	20.0%
Jackson	27	18.5%
Malheur	12	16.7%
Columbia	7	14.3%
Linn	17	11.8%
Benton	9	11.1%
Clatsop	9	11.1%
Douglas	18	11.1%
Lincoln	9	11.1%
Umatilla	9	11.1%
Lane	42	9.5%
Klamath	11	9.1%
Yamhill	14	7.1%
Polk	17	5.9%
Clackamas	35	5.7%
Statewide	42	2.4%
Baker	2	
Baker, Union	3	
Crook, Jefferson	13	
Curry	4	
Klamath, Lake	1	
Tillamook	4	

The top 6 unrepresented counties are highlighted in yellow, while counties with 0 unrepresented (as of 2/4/25) are highlighted in green.

rate, reducing many low-level misdemeanors to violations, and high utilization of alternative sentencing into adult treatment court, veteran's court, mental health court, 416 programs, and deflection program.

The Lane County Circuit Court uses a docketing system that allows cases to be siphoned out of a trial posture earlier in the process. This includes a 35-day call docket for cases to be resolved, set over, or sent out for a judicial settlement conference. All criminal cases must use a judicial settlement conference before setting a trial date.

4. Senator Broadman requested the cost of each FTE assignment coordinator.

OPDC currently has 4 assignment coordinators, 2 of whom started in late January.

Position Classification	23-25 FTE	2023-25 expenditures	25-27 FTE	2025-27 current service level	2025-27 Policy Package 106
Program analyst 2	1.00 (permanent)	278,177	1.00 (permanent)	252,515	0
Operations and policy analyst 2	1.00 (permanent)	262,972	1.00 (permanent)	220,951	0
Program analyst 2	1.00 (limited duration)	57,116	1.00 (permanent)	0	220,951
Program analyst 2	1.00 (limited duration)	40,662	1.00 (permanent)	0	220,951

5. Senator Campos asked what oversight looks like to ensure the defendants' 6th Amendment right is upheld in practice, not just in name.

OPDC appreciates this question as it speaks to the findings of the 6th Amendment report. An attorney who is overworked or has too many cases cannot provide adequate defense as required by the 6th Amendment. Due to excessive caseloads, persons receiving public defense services in Oregon experienced a constructive denial of counsel before they experienced the actual denial of counsel, now known as the unrepresented person's crisis. OPDC is working to establish oversight programs to ensure that as we work towards a resolution of the unrepresented persons crisis and maintain standards that ensure vulnerable Oregonians receive effective public defense services. Below are some programs we have already established:

General

- Adopting non-attorney qualification and performance standards;
- Updating attorney qualification standards and performance standards;
- Improved data collection and use and created internal and public dashboards for data-informed decision-making;
- Collaborated with OJD;
- Financial/Case Management System is moving through Stagegate and will allow us to collect and monitor casework information to ensure adequate services are being provided.

Contract

- Training and Supervision in contracts for non-profit public defense entities;
- Annual maximum caseloads (MAC) prorated by month;

- Monthly caseload reporting;
- Reporting all attorneys performing work under a contract, including name, bar number, qualification standard, and FTE;
- Reporting all investigators performing work under contract.

State Employees

- Implemented timekeeping for state employees;
- Tracking caseloads by case type, geographic location, and outcome

Hourly Providers

- Hourly billing provides data and oversight on how time is being used;
- Building an Assigned Counsel Program to replace the current hourly system, which will include:
 - Updated qualification and performance standards
 - Case assignment Process
 - New caseload reporting
 - Audit of billings
 - Online billing through FCMS
 - Documentation and resolution of complaints and investigations;
 - performance assessments and periodic reevaluation of attorney qualifications;
 - New obligations to accept appointments to cases.

6. Representative Evans would like to see a breakdown of work assignments within the Oregon Trial Division, particularly for HB 4002 attorneys.

Case assignments within the Oregon Trial Division are made within the confines of our mandate from SB 337 and the directive of HB 4002 by prioritizing unrepresented defendants in-custody followed by those defendants out-of-custody and felony charges for delivery of controlled substances and drug enforcement misdemeanors.

OTD 337 attorneys prioritize unrepresented cases in the following way:

- Betschart cases in danger of release
- Serious in-custody cases
- Lower-level in-custody cases
- Serious out-of-custody cases
- Oldest out-of-custody cases
- Lower level out-of-custody cases

OTD 4002 attorneys prioritize appointments for unrepresented defendants charged with felony delivery of a controlled substance and drug enforcement misdemeanors. Again, we prioritize in-custody unrepresented felony delivery cases, then in-custody drug enforcement misdemeanors, then out-of-custody felony delivery cases, and then out-of-custody drug enforcement misdemeanors. This prioritization was added to the daily review of all cases in the jurisdictions where OTD operates.

Exceptions to these priorities were allowed for unrepresented defendants who were suffering from mental illness, unrepresented defendants who needed an interpreter, and special set resolution dockets.

These priorities dictate the cases assigned to OTD attorneys on a daily basis. Additionally, OTD has coordinated directly with the courts to provide targeted representation as prioritized by that county.

- In Jackson County, the 4002 attorneys in the Southern Regional Office took all the unrepresented drug cases from a list provided by the court.
- In Marion County, the Southern Regional Office accepted a request from the court to take 20 Spanish-speaking DUII defendants who are diversion eligible and 18 defendants with domestic violence convictions who are charged with probation violations.
- In Marion County the Court has provided a list of the oldest 200 Probation Violation matters from the unrepresented list to OTD, and we are in the process of assigning those cases.

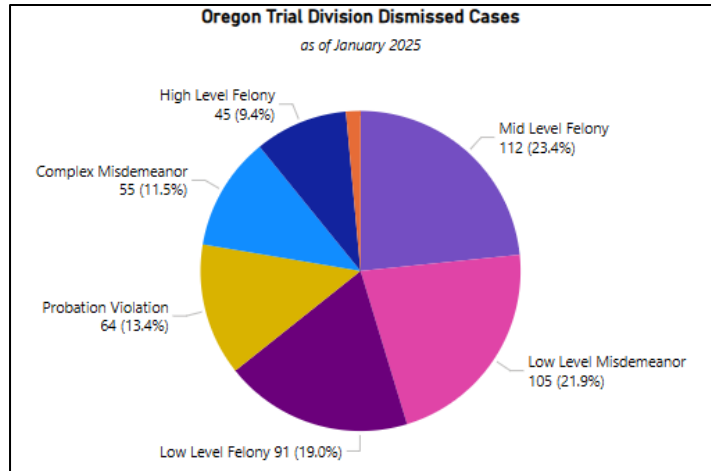
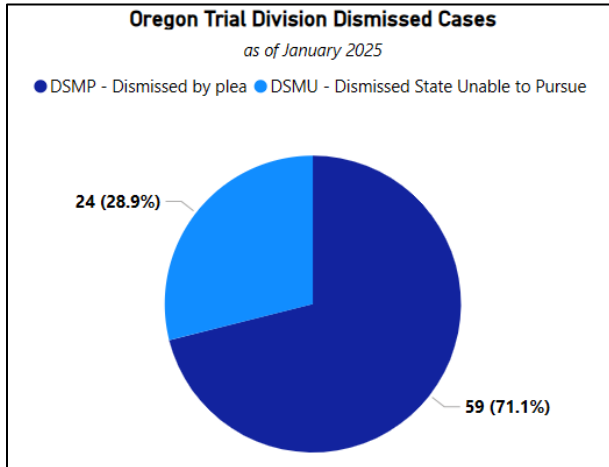
In our current 682 open cases, 75 have the highest charge as a low-level misdemeanor, 62 have the highest charge as a complex misdemeanor, and 86 are low-level felonies.

7. Representative Chotzen asked about the 25% dismissal rate for closed Trial Division cases and whether they were part of global pleas. Representative Compos asked about how much is being spent on cases that are dismissed.

When looking at cases the Oregon Trial Division closed, 83 cases (63 clients) have been dismissed. Of these, 29% were dismissed because the state was unable to pursue them (State), and 71% were dismissed by plea (Plea). Attorneys, investigators, and case managers tracked 693 hours on these cases. Of those hours, 62% went towards cases dismissed due to the State. Calculating the cost of these hours would require additional time and work by OPDC.

Time Tracked on Dismissed Cases					
Activity Category	Hours Tracked	Dismissed plea hours	Dismissed plea hours %	Dismissed state unable hours	Dismissed state unable hours %
Discovery / Case Preparation	176.78	60.73	34.4%	116.05	65.6%
Investigation / Interviews	91.34	3.00	3.3%	88.34	96.7%
Court Time	90.00	51.46	57.2%	38.54	42.8%
Client Communication	81.72	35.99	44.0%	45.73	56.0%
Court Preparation	58.68	20.83	35.5%	37.85	64.5%
Travel Time	48.97	34.78	71.0%	14.19	29.0%
Client Support Services	45.26	16.72	36.9%	28.54	63.1%
Uncategorized	34.72	8.67	25.0%	26.05	75.0%
Legal Research, Motions Practice, and Other Writing	26.77	5.92	22.1%	20.85	77.9%
Negotiations	13.21	10.69	80.9%	2.52	19.1%
Experts	10.64	7.10	66.7%	3.54	33.3%
Discovery and Investigation	4.10	4.10	100.0%		
Post Judgement	3.53	2.03	57.5%	1.50	42.5%
Attorney Investigation / Attorney Interviews	3.36	0.20	6.0%	3.16	94.0%
Sentencing / Mitigation	2.87	0.95	33.1%	1.92	66.9%
Trial Time	1.02			1.02	100.0%
Out-of-court Advocacy Meeting	0.30			0.30	100.0%
Total	693.27	263.17	38.0%	430.10	62.0%

Time Tracked on Dismissed Cases	
Activity Category	Hours Tracked
Discovery / Case Preparation	176.78
Investigation / Interviews	91.34
Court Time	90.00
Client Communication	81.72
Court Preparation	58.68
Travel Time	48.97
Client Support Services	45.26
Uncategorized	34.72
Legal Research, Motions Practice, and Other Writing	26.77
Negotiations	13.21
Experts	10.64
Discovery and Investigation	4.10
Post Judgement	3.53
Attorney Investigation / Attorney Interviews	3.36
Sentencing / Mitigation	2.87
Trial Time	1.02
Out-of-court Advocacy Meeting	0.30
Total	693.27



8. Senator Broadman asked what percentage of attorneys taking cases through the Temporary Hourly Increase Program are doing THIP full-time.

OPDC's data is limited to public defense work. The agency does not have data on what private practice attorneys may do outside of their public defense contracts or hourly work, so we cannot say if an attorney is doing THIP 'full-time'. Below is a breakdown of current hourly providers and the number of cases they have taken. We've weighted these cases to the MAC standard for easier comparison to our contracted attorneys. The average THIP attorney is taking the equivalent of a .2 MAC. THIP attorneys who also have contracts take an average of .12 MAC, which is in line with the assumption that they would have fewer private hours to 'sell' to MAC since they already have a public defense caseload they have to meet. Interestingly, the 32 attorneys who have left contracts but are now taking at least one THIP case also average .22 MAC.

THIP since July 1, 2023				
	Number of attorneys	Cases Taken (weighted for MAC)	Client Count	Average MAC per hourly attorney
Active THIP Providers with Hourly Agreement	236	3,621 cases (47.65 MAC)	2,324	0.20
Currently Contracted	85	899 cases (10.19 MAC)	644	.12
Non-contracted	151	2,732 cases (37.46 MAC)	1,693	.25
Previously contracted*	32	575 cases (6.89 AAC)	348	.22

*These 32 THIP providers are attorneys who were previously under an OPDC contract and left that contract entirely and have since taken at least 1 THIP case. They would be included in the non-contracted count.

I hope this information was helpful. Please let me know if you have any additional questions.

Thank you,

A handwritten signature in grey ink, appearing to read 'JK' or 'J.K.', is positioned above the typed name.

Jessica Kampfe
Executive Director
Oregon Public Defense Commission