



Sen. Anthony Broadman, Co-Chair  
Rep. Paul Evans, Co-Chair  
Subcommittee on Public Safety  
Joint Ways & Means Committee

**RE: Public Testimony on HB 5031**

Dear Co-Chairs Sen. Broadman, Rep. Evans, and Members of the Committee,

My name is Sal Peralta. I am testifying on behalf of the Oregon Defense Consortia Association, which represents 25 law firms and more than 200 attorneys that hold public defense contracts with the state.

At the start of these hearings, Co-Chair Broadman indicated that it was his goal to address the unrepresented crisis and “get good value for taxpayers in the 2025-27 budget”. We believe the recommendations we will make today align with those goals.

First, as all of you know, ODCA supports an elimination or lengthy extension of the sunset on the annual contracting rights for consortia and private firms. This morning, our biggest request is that this policy change be reflected in the budget you are crafting.

That means prioritizing funding for annual contracts rather than hourly contracts and reducing the state trial division expansion recommended in the agency’s request, especially to the degree that any funds have been directed away from the current service level for contractors to pay for those expansions.

As you have heard from the agency and from other stakeholders, contract firms are the most cost-effective method for delivering public defense services, and consortia and private firms are the largest, most stable, and cost-effective segments of Oregon’s public defense workforce.

We feel the work of this segment and growth in costs associated with it more than warrants the standard inflation adjustment at 6.8 percent.

We urge you to take due diligence to ensure that any new standards adopted by the agency that require additional staffing beyond the current service level are paid for under the contract.

Our association has given feedback to OPDC on the proposed changes to the next contract that they presented with this budget. We agree with Director Kampfe that most of the contract changes the agency is recommending will require the contract workforce to take additional caseload.

Some of those changes are either not practicable, create obstacles to having sufficient attorneys to meet the workload demand, and therefore risk running Oregon further afoul of the Betschart decision; or run counter to priorities like the training and retention of attorneys.

We have notified Director Kampfe and the Governor's office in writing of specific concerns about the proposed changes. I have provided those written materials to your committee below.

With respect to addressing the unrepresented crisis, we recommend two policies:

First, under the current contract, attorneys are allowed to go to 115% of maximum caseload. However, they are not compensated for these overages. In the agency's testimony, both here and in the Judiciary committee, OPDC's plan only involves penalties when firms go below or above the maximum caseload.

Our recommendation is that the legislature provide funding that allows firms that exceed the maximum caseload up to 115% to be compensated on a pro rata basis for that work and positions to help alleviate the caseload when firms are at their maximum.

Firms that are at 100% or above of contracted caseload level should be prioritized by OPDC for additional positions.

Second, the legislature should adopt and fund a limited duration crisis caseload that allows, but does not force, firms to exceed the current 115% of maximum caseload by some level and to compensate those attorneys for the overage on a pro rata basis for that additional work.

Both of these suggestions are immediate and cost effective ways to address the unrepresented crisis.

The intent is to free up capacity for any of your most experienced contract attorneys who may have the ethical capacity to take additional caseload.

Thank you for your public service and your attention to this complicated issue. I am happy to answer any questions. Please contact myself at 503-437-2833 or [admin@oregondca.org](mailto:admin@oregondca.org), or Kylie Grunow at 503-707-9653 or [kylie@meriwetherstrategies.com](mailto:kylie@meriwetherstrategies.com)).

Sincerely,

Sal Peralta  
Executive Director, ODCA

## ODCA Letter to OPDC

RE: Proposed Contract Changes  
Attn: OPDC Director, Jessica Kampfe  
CC: Constantin Severe  
Re: Proposed "Modified MAC" contract changes

3/14/2025

Director Kampfe,

Thanks for your service. We are grateful to you and others who helped to develop a Governor's Recommended Budget (GRB) that includes a cost of living adjustment for the contract workforce.

I am writing on behalf of our association, which represents 25 firms and more than 200 attorneys in public defense, to ask that you consider a few comments and proposed amendments to the upcoming "modified MAC contract" and the contract compliance policy you presented at the most recent House Judiciary meeting and other places, including a recent commission work session.

With respect to the contract compliance policy, our association agrees with the proposed steps for compliance. However, we have concerns that the proposed remedies only include penalties but not rewards for performance under the contract. Here are quotes with proposed revisions to the policies indicated by slide 29: Contract compliance:

If a contractor's caseload varies by more than 15% above or below MAC for six consecutive months, OPDC may adjust the number of FTE unless an exception applies.

Corrective action including withholding 1-5% of funds [or increasing compensation on a *pro rata* basis], [increasing or] reducing FTE, reducing qualification, requiring additional mentoring/oversight, and termination of the contract.

The current unrepresented crisis stems from having too few attorneys to meet the current caseload in several places. The most straightforward solution is to allow attorneys who have additional ethical capacity to take more cases, and to compensate those attorneys for that extra work.

**We make the following comments and suggestions about the proposed contract revisions.**

Many of the provisions in the proposed contract amendments are an effective pay cut for public defense firms. Less money and time to recruit new attorneys and imposed performance standards on the lower end of the contract without incentives on the upper end.

- **Agency Recommendation: Partial weighting for early withdrawal/warrant changes.**

**ODCA response:** The current weighting makes more sense relative to the actual timelines and work of attorneys on cases than the proposed changes. It's unclear whether the proposed changes will result in significant cost savings. However, they introduce new uncertainties. For example, concerns were raised that assigning multiple new weights may result in accounting errors. OPDC staff has testified to the commission that a major source of slow pay for PAE and hourly accounts is related to reconciliations due to differing rate structures. We would not like to see similar uncertainty introduced into annual contracts. There is ODCA support for reducing the warrant removal to 90 days.

- **Agency Recommendation: Reduce caseload to 150 MAC for all first-year attorneys.**

**ODCA response:** There is support for this, but it is an expensive fix. Each new attorney would cost double that of an existing attorney. If funds are scarce, please consider a shorter duration (6 months) for this MAC modification and retain more for a cost of living increase and support for the current workforce.

- **Agency Recommendation: Co-counsel required for murder, Jessica Law, life sentences, and Juvenile waiver. Co-counsel in other instances must be approved by OPDC and could be appropriate based on severity of charges, novel issues, attorney development, mentorship, and local counsel.**

**ODCA response:** This proposed change reflects an expansion and improvement in the current scope of practice, which we understand currently only requires co-counsel for Murder 1 cases.

Our association agrees that expanding the use of co-counsel to more case types is a best practice. Our members support the practice. However, we have received feedback from providers in varied parts of the state, both urban and rural, that although this is an important tool for improving representation and training new attorneys, this expansion will be difficult or impossible in some parts of the state and for some case types at the current level of available staffing.

Consideration should be given to how this policy will affect the state's ability to assign attorneys in Betschart cases and how it may result in further adverse action against the state for failing to timely assign counsel in other case types involving defendants who will be incarcerated while awaiting trial.

**Agency Recommendation: 0.5 MAC for second attorney or reassignment of attorney to a case.**

**ODCA response:** With regard to reassignment, we would like to confirm that in the proposed rule, a consortium is an entity, and that therefore a case assigned to a new firm would still receive full caseload. This would track with testimony given at the provider meeting. To the extent that this policy also relates to a second attorney being assigned to a case, the proposed policy is counterproductive for attorney training, as firms use second attorney seats to train up attorneys to new levels of qualification.

- **Agency Recommendation: Vacancy Funding: Half compensation for 60 days.** We support full compensation for 60 days and firms should have 120 days to fill a vacancy position.

**Other Contract Suggestions:**

- **Firms with attorneys that go up to 15% over the contract are not compensated for that additional work. We ask the commission or legislators to amend the contract to compensate attorneys on a pro rata basis when they take additional caseload.**
- **Require OPDC to include a cost of living adjustment** tied to union negotiated rates or other commonly used metrics in all contracts going forward. The state should keep up with inflation on an annual basis for this workforce.
- **Ensure adequacy of process for disbursement of “extraordinary case circumstance” funds.** Some providers note that it is difficult to get funds for this purpose in practice. Contractors should have clear assurance they can receive additional compensation for complicated cases that require more time than the normal assumptions allow.
- **Facilitate “load balancing” across adult and juvenile contracts for providers with both contract types.**

Thank you for your consideration. Please feel free to reach out if you would like to discuss these or other matters.

Best regards,

Sal Peralta  
Executive Director  
Oregon Defense Consortia Association