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IN THE CIRCUIT COURT OF THE STATE OF OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON;  
  
  Plaintiff,  
  
  v.  
  
KERTEN SALLE;  
  
  Defendant.

Case No.: 23CR00153  
  
EXECUTIVE DIRECTOR SHANNON  
WILSON’S MOTION TO  
WITHDRAW FROM CURRENT  
APPOINTMENTS AND TO DECLINE  
FUTURE APPOINTMENTS  
  
**EVIDENTIARY HEARING  
REQUESTED**

**UTCRC 4.050**

Shannon Wilson (“Director Wilson”), Executive Director for the Public Defender of Marion County, Inc. (“PDMC”), requests an evidentiary hearing on this motion. Director Wilson estimates that the hearing will require four hours and requests official court reporting services.

**MOTIONS**

Director Wilson moves pursuant to Rules 1.16 and 5.1 of the Oregon Rules of Professional Conduct (the “Oregon RPCs” or the “RPCs”) for an order permitting each PDMC public defender to: (a) withdraw from the representation of certain indigent defendants whose cases are pending in this Court; and (b) decline future appointments for indigent defendants in this Court, each as necessary to comply with their professional obligations under the Oregon RPCs. Director Wilson also moves for a declaration pursuant to ORS 28.010 and 28.020 that assignments of criminal defense representation to public defense attorneys who, using the Oregon Project analytics discussed below, have a caseload at, or exceeding, the maximum

1 caseload, are a violation of Article I, section 11, of the Oregon Constitution. Director Wilson  
2 further moves for an order requiring that, in all cases in which indigent defendants do not have  
3 counsel as a result of the relief requested herein, those cases be dismissed with prejudice.  
4 Director Wilson’s motions are supported by the following Memorandum of Law.

5 **MEMORANDUM OF LAW**

6 **INTRODUCTION**

7 The State of Oregon has *less than one-third* of the public defenders that it needs to  
8 provide even the minimal levels of representation required under the state and federal  
9 constitutions. Specifically, an empirical study commissioned by the Office of Public Defense  
10 Service (“OPDS”) found that Oregon needs 1,888 full-time attorneys for the state to provide  
11 adequate assistance of counsel. The state, however, employs only 31.4% of this amount, or  
12 592 full-time attorneys, leaving *a deficit of 68.6%* of the required amount of full-time  
13 attorneys. Put differently, to meet basic constitutional levels of representation, the State of  
14 Oregon needs to retain an additional *1,296 full-time attorneys*.

15 Marion County, and the PDMC in particular, suffers a similar, albeit less severe,  
16 deficit. As of December 2022, the PDMC employed the equivalent of *18.5 full-time attorneys*.  
17 Its caseload, however, requires *29.2 full-time attorneys*, meaning that the office employs only  
18 *63%* of the attorneys necessary to perform at basic constitutional levels. Meanwhile, the  
19 Marion County Association of Defenders (the “Consortium”), the other major provider of  
20 public defense services in Marion County, recently announced that it has reached its  
21 contractual capacity on cases and therefore cannot take on any new cases. Wilson Decl. ¶ 14.

22 As a result of this failed system, the public defenders working at the PDMC – like  
23 public defenders throughout the state – are being forced to violate their ethical duties on a  
24 routine basis. Specifically, all attorneys have an ethical obligation to provide their clients with  
25 competent legal counsel. Public defenders are no exception. If anything, a public defender’s  
26

1 duties under the RPCs are reinforced by the constitutional right of their clients to adequate  
2 representation.

3 Because of grossly excessive workloads, however, it is impossible for public defenders  
4 to meet their basic ethical responsibilities. Every time a PDMC attorney is asked to take on a  
5 new case, they are compelled to violate their ethical duties by expending their limited resources  
6 on one client at the expense of another, with neither client receiving the resources and time  
7 necessary for a proper constitutional defense. PDMC attorneys are unable, for example, to  
8 conduct constitutionally required investigations before advising on a plea deal, build  
9 relationships of trust and confidence with their clients, or adequately develop exculpatory  
10 and/or mitigating evidence. Similarly, public defenders have neither the time nor resources to  
11 humanize their clients or help them navigate a system that can be overwhelming to non-  
12 attorneys.

13 The time has come for the legal community to work together to stop these ethical and  
14 constitutional violations. In fact, based on the state’s ethical rules, Director Wilson is obligated  
15 to file this motion on behalf of PDMC attorneys and, respectfully, this Court is obligated to  
16 provide the relief requested. Specifically, this Court must dismiss existing cases – starting with  
17 nonviolent misdemeanor cases and continuing as necessary thereafter – until such time as  
18 caseloads are reduced to levels that allow public defenders to comply with their ethical duties.

### 19 **BACKGROUND**

20 The Oregon Constitution guarantees that, “[i]n all criminal prosecutions, the accused  
21 shall have the right . . . to be heard by himself and counsel.” Or Const, Art I, § 11. This  
22 language “mandates the appointment of counsel for all indigent defendants whose conviction  
23 may result in a loss of liberty.” *Stevenson v. Holzman*, 254 Or 94, 104 (1969). Yet Oregon has  
24 consistently failed to provide adequate representation to indigent Oregon citizens charged with  
25 a crime and, in so doing, has compelled public defenders to violate their ethical  
26 responsibilities.

1           **I.       The Oregon Project Determined That Public Defender Workloads Are Grossly**  
2           **Excessive.**

3           To understand the current state of the Oregon public defense system, OPDS engaged  
4           the American Bar Association Standing Committee on Legal Aid and Indigent Defense (the  
5           “ABA SCLAID”) to conduct a workload study of Oregon public defenders (the “Oregon  
6           Project”). Simpson Decl. Ex. B, at iv. The ABA SCLAID in turn engaged Moss Adams LLP  
7           (“Moss Adams”), the largest accounting firm west of the Mississippi, with offices in Portland,  
8           Eugene, and Medford, to conduct that analysis. In January 2022, Moss Adams produced a  
9           report entitled “The Oregon Project, An Analysis of the Oregon Public Defense System and  
10          Attorney Workload Standards” (the “Oregon Report”). *Id.* at iii.

11          In performing its analysis, Moss Adams employed the Delphi Method, an analytical  
12          tool developed by the RAND Corporation at the direction of the U.S. Air Force during the  
13          Cold War to assess atomic bomb needs.<sup>1</sup> *Id.* at 37. The Delphi Method has been used in a  
14          wide range of industries and professions. Since being developed to forecast the effect of  
15          technology on warfare, the Delphi method has been applied to healthcare, education,  
16          environmental science, and management. For example, the Delphi Method was used to predict  
17          probable targets that the Russian government might choose to attack the United States.  
18          Researchers also have applied the Delphi Method to “program planning, needs assessment,  
19          policy determination, and resource utilization.” Chia-Chien Hsu & Brian A. Sandford, *The*  
20          *Delphi Technique: Making Sense of Consensus*, 12 *Prac Assessment Rsch & Evaluation* 1, 1  
21          (2007). More recently, the Delphi Method has been used to determine military women’s health  
22          priorities; develop a strategy for military emergency nursing; and study neonatal abstinence  
23          syndrome, neonatal opioid withdrawal syndrome, and clinical pain management. Hanlon Decl.  
24          ¶ 23.

25          <sup>1</sup> Norman Dalkey & Olaf Helmer, *An Experimental Application of the Delphi Method to the*  
26          *Use of Experts* 1 (Jul. 1962),  
[https://www.rand.org/content/dam/rand/pubs/research\\_memoranda/2009/RM727.1.pdf](https://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf).

1 Prior to its use here, the Delphi method had also been applied to the study of public  
2 defender workloads. *See* Simpson Decl. Ex. B, at 18. Previous studies have used the Delphi  
3 method to analyze public defense systems in Missouri, Louisiana, Colorado, Rhode Island,  
4 Indiana, and New Mexico and have been well-received. *See id.* at 18-19. For example, when  
5 the Missouri report was released, ABA President James Silkenat stated that:

6 “It can now be more reliably demonstrated than ever before that for  
7 decades the American legal profession has been rendering an  
8 enormous disservice to indigent clients and to the criminal justice  
system in a way that can no longer be tolerated.”

9 Stephen F. Hanlon, *The Appropriate Legal Standard Required to Prevail in a Systemic*  
10 *Challenge to an Indigent Defense System*, 61 St Louis ULJ 625, 652 (2017) (footnote omitted).

11 Using the Delphi Method, the Oregon Project determined the amount of time required  
12 for a public defense attorney to provide reasonably adequate assistance of counsel pursuant to  
13 prevailing professional norms for a number of case types and task types.<sup>2</sup> *See* Simpson Decl.  
14 Ex. B, at 19. Specifically, the Oregon Project calculated the total number of hours, on average,  
15 that a typical case of a specific category (a “Case Type”) requires to meet minimum  
16 constitutional levels, based on the tasks required for that Case Type. *Id.* at 25. Those  
17 standards then were applied to statewide caseload data to determine the total number of hours  
18 required to perform the necessary work (3.9 million hours), and how many attorneys were  
19 required to perform those hours (1,888 attorneys). *Id.* at 26-27. Those values were compared  
20 to the total number of full-time attorneys actually employed in the system (592 attorneys). *Id.*  
21 at 5.

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24 \_\_\_\_\_  
25 <sup>2</sup> The Oregon Project divided each Delphi area (i.e., Juvenile or Adult) into Case Types and  
26 Case Tasks. Simpson Decl. Ex. B, at 2. Thus, each Case Type (e.g., Misdemeanor, Minor  
Felonies, Major Felonies) was sub-divided into several Case Tasks (e.g., Client  
Communication; Discovery/Case Analysis; Attorney Investigation/Attorney Interviews; Legal  
Research Motions Practice, Other Writing). *See id.* at Appendix D.

1 As the foregoing numbers demonstrate, Moss Adams' analysis revealed the  
2 fundamental failures of the Oregon public defense system. Specifically, the Oregon Project  
3 showed that the state's public defense system needs an additional 1,296 full-time attorneys,  
4 ***two-thirds more than it presently employs***, for public defenders to meet even their minimal  
5 duty to provide adequate assistance of counsel under prevailing professional norms. *Id.* at 3-5.

6 **II. The Workload Crisis Has Caused PDMC Attorneys to Be Unable to Meet Their  
Ethical Responsibilities.**

7 In 2023, the PDMC engaged Moss Adams to conduct an analogous analysis of the  
8 PDMC's workload. Applying the Delphi standards and mathematical methods used in the  
9 Oregon Project to workload and staffing data specific to the PDMC, Moss Adams concluded  
10 that, based on current workloads, the PDMC must employ the equivalent of ***29.2 full-time***  
11 ***attorneys*** to provide adequate assistance of counsel. *Id.* at Ex. A, at 11-13. Yet the PDMC  
12 employs only the equivalent of ***18.5 full-time attorneys***. *Id.* That disparity results in a deficit  
13 of ***37%***. *Id.* In other words, the PDMC needs approximately 10 more attorneys to meet basic  
14 constitutional levels of representation. *Id.* That deficit renders it impossible for the PDMC  
15 attorneys to provide appropriate levels of representation to their clients.

16 The above-described shortfall of attorneys has, unsurprisingly, had a devastating effect  
17 on PDMC attorneys' ability to represent their clients. Director Shannon Wilson has canvassed  
18 the attorneys working at the PDMC about their cases and caseloads, and has found that, due  
19 solely to excessive workloads, PDMC attorneys consistently are unable to provide necessary  
20 services to their clients, even for the most serious cases. *See* Wilson Decl. ¶¶ 32-43. Client  
21 communication, for example, is consistently inadequate, and often delayed. *See id.* ¶¶ 33, 42.  
22 PDMC attorneys rarely are able to proactively communicate with their clients, and when they  
23 do communicate at all, they are consistently rushed. *See id.* When client meetings do take  
24 place, the time pressures during those meetings prevent overworked PDMC attorneys from  
25 developing a meaningful and trusting relationship with their clients. *See id.* ¶ 46. That makes  
26 it impossible for PDMC attorneys to humanely walk clients through a complicated,

1 intimidating, and often dehumanizing system, and makes it largely impossible for PDMC  
2 attorneys to speak with clients about services that may benefit them. *Id.* ¶¶ 38, 46. By the  
3 same token, PDMC attorneys virtually never have time to interact with pretrial release services,  
4 social services, treatment providers, legal aid, medical providers, or other services that may  
5 benefit their client. *Id.* ¶ 46.

6 Excessive workloads also make it impossible for PDMC attorneys to have time to  
7 perform proper investigations. *Id.* ¶ 29. Attorneys are typically unable to go to the scene of  
8 the alleged crime, perform a proper investigation into the facts, canvass potential witnesses, or  
9 identify appropriate experts. *See id.* ¶¶ 28-29, 40, 44. They rarely have time to conduct a  
10 comprehensive review of documents produced during discovery or speak with family members  
11 that may possess relevant information. *See id.* ¶¶ 26, 30, 42. In practice, PDMC attorneys are  
12 rarely able to spend more than fifteen consecutive minutes on any given complex task, unless  
13 they work late into the night or work outside of regular business hours.<sup>3</sup> *Id.* ¶ 27. As a result,  
14 PDMC attorneys are unable to strategize or investigate potential defenses, investigate  
15 impeachment or exculpatory witnesses, communicate with potential expert witnesses, or  
16 conduct an extensive investigation of the incident underlying the charges. *Id.* ¶¶ 27-29.  
17 Attorneys are also unable to complete basic legal research, analyze how legal principles apply  
18 to any specific case, or draft proper motions. *Id.* ¶ 27. In short, due solely to their excessive  
19 workloads, it is rare that a PDMC attorney is able to engage in a proper investigation before  
20 having to provide advice on legal options. *See id.* ¶¶ 33-34.

21 In addition, due to those excessive workloads, PDMC attorneys cannot properly prepare  
22 clients or witnesses for trial, or in many cases even themselves. *Id.* ¶¶ 28, 36. PDMC  
23 attorneys are further unable to think about and file motions in a timely way, and are often left  
24 to rush through potential motions without considering larger strategy issues. *See id.* ¶¶ 27, 41.

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25 <sup>3</sup> “Routinely foregoing sleep in order to complete work risks attorneys’ health and well-being  
26 and also may result in fatigued attorneys making mistakes.” Wilson Decl. n 3.

1 And, once a trial is completed, the matter is considered closed, new cases are assigned, and  
2 PDMC attorneys have little opportunity to provide meaningful post-trial representation. *See id.*  
3 ¶ 34. As such, through every phase of the process, due solely to their excessive caseloads,  
4 PDMC attorneys are unable to provide adequate assistance of counsel.

### 5 **LAW AND ARGUMENT**

6 By requiring that PDMC attorneys take on much more work than they can competently  
7 handle, courts are compelling those attorneys to violate their ethical duties. This Court must  
8 correct the present situation, and in the absence of legislative and/or executive action, must  
9 dismiss cases until such time as caseloads are at appropriate levels.

### 10 **III. Excessive Workloads Imposed on PDMC Attorneys Under the Present System** 11 **Have Forced Those Attorneys to Violate Their Ethical Duties.**

12 Because their excessive workloads render PDMC attorneys unable to provide adequate  
13 assistance of counsel for their many clients, they have been compelled to violate their ethical  
14 obligations. That is a situation that this Court must correct.

#### 15 **A. The Ethical Rules That Apply to PDMC Attorneys**

16 Two sets of rules establish the ethical responsibilities of public defenders: (1) the  
17 Oregon Rules of Professional Conduct; and (2) the ABA Criminal Defense Standards for the  
18 Defense Function (the “Defense Function Standards”). Excessive workloads routinely force  
19 PDMC attorneys to violate both.

#### 20 **1. The Oregon Rules of Professional Conduct**

21 The Oregon Rules of Professional Conduct are clear. Public defenders, like all Oregon  
22 attorneys, must provide the “legal knowledge, skill, thoroughness and preparation reasonably  
23 necessary for the representation.” RPC 1.1. Moreover, under the Oregon RPCs, public  
24 defenders, again like all Oregon attorneys, “shall not neglect a legal matter entrusted to  
25 [them].” RPC 1.3. All attorneys also have a duty to (a) keep a client reasonably informed  
26



1 about their matter and promptly respond to reasonable requests for information and (b) provide  
2 clients with sufficient information to make informed decisions on their matter. RPC 1.4.

3 In addition, the Oregon RPCs prohibit conflicts of interest and require attorneys to  
4 decline representations that would create such conflicts:

5 “(a) Except as provided in paragraph (b), a lawyer shall not represent  
6 a client if the representation involves a current conflict of interest.  
7 A current conflict of interest exists if: . . . (2) there is a significant  
8 risk that the representation of one or more clients will be materially  
limited by the lawyer’s responsibilities to another client . . . .”

9 RPC 1.7(a)(2). Further, the rules on conflicts require an attorney to refuse to represent a client,  
10 or withdraw from a current representation, if necessary to resolve the conflict: “a lawyer shall  
11 not represent a client or, where representation has commenced, shall withdraw from the  
12 representation of a client if: . . . (1) the representation will result in violation of the Rules of  
13 Professional Conduct or other law.” RPC 1.16(a). As in the constitutional context, such a  
14 conflict arises when an attorney takes on more representations than they can competently  
15 handle. *See, e.g., Carrasquillo v. Hampden Cty. Dist. Cts.*, 142 NE3d 28, 48-49 (Mass 2020)  
16 (“[H]aving too many clients and matters at once may create concurrent conflicts of  
17 interest . . . if attorneys are then forced to pick and choose between clients who will receive  
18 their limited time and attention, and others who will necessarily be neglected.”). The same rule  
19 also specifies that, when an attorney terminates a representation, the attorney “shall take  
20 steps . . . to protect a client’s interests.” RPC 1.16(d).

21 The Oregon RPCs also impose obligations specific to supervisory attorneys, such as an  
22 Executive Director like Director Wilson, making supervisory attorneys potentially responsible  
23 for the ethical violations of the attorneys they supervise, and requiring “remedial action” under  
24 certain circumstances:

25 “A lawyer shall be responsible for another lawyer’s violation of  
26 these Rules of Professional Conduct if:

1 (a) the lawyer orders or, with knowledge of the specific  
2 conduct, ratifies the conduct involved; or

3 (b) the lawyer is a partner or has comparable managerial  
4 authority in the law firm in which the other lawyer practices, or has  
5 direct supervisory authority over the other lawyer, and knows of the  
6 conduct at a time when its consequences can be avoided or mitigated  
7 but fails to take reasonable remedial action.”

8 RPC 5.1. These obligations extend beyond the supervision of attorneys. The Oregon RPCs  
9 also require attorneys to appropriately supervise non-lawyers who are employed, retained, or  
10 directed by themselves, including both staff members and non-staff members. RPC 5.3.

11 Notably, there is no public defense exception to the RPCs. To the contrary, the Oregon  
12 State Bar has approved a formal opinion applying such ethical guidelines specifically to public  
13 defenders. In Formal Opinion No 2007-178, entitled “Competence and Diligence: Excessive  
14 Workloads of Indigent Defense Providers,” the Oregon State Bar stated that the ethical rules  
15 “provide no exception for lawyers who represent indigent persons charged with crimes.” Or  
16 State Bar, Formal Op No 2007-178 (2007), at 3. Public defenders, like all attorneys, are thus  
17 “required to provide each client with competent and diligent representation, keep each client  
18 reasonably informed about the status of his or her case, explain each matter to the extent  
19 necessary to permit the client to make informed decisions regarding the representation, and  
20 abide by the decisions that the client is entitled to make.” *Id.* Additionally, for each client, a  
21 public defender is “required to, among other things, ‘keep abreast of changes in the law;  
22 adequately investigate, analyze, and prepare cases; [and] act promptly on behalf of clients.’”  
*Id.* (quoting ABA Comm on Ethics & Pro Resp, Formal Op 06-441 (2006)).<sup>4</sup>

23 Notably, the Oregon State Bar also addressed excessive caseloads. The Formal  
24 Opinion concluded that a “caseload is ‘excessive’ and is prohibited if the lawyer is unable to at

25 <sup>4</sup> The Oregon Formal Opinion relied heavily on the May 13, 2006 ABA Formal Ethics Opinion  
26 06-441, entitled “Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants  
When Excessive Caseloads Interfere with Competent and Diligent Representation.”

1 least meet the basic obligations outlined above.” *Id.* Further, if an attorney “believe[s] that  
2 their workload prevents them from fulfilling their ethical obligations to each client, then their  
3 workload ‘must be controlled so that each matter may be handled competently.’” *Id.* at 4  
4 (quoting Model Rules of Pro Conduct R 1.3 cmt 2 (Am Bar Ass’n (2022))). The Formal  
5 Opinion concluded that “a lawyer who is unable to perform these duties (e.g., adequately  
6 investigate, analyze and prepare cases) may not undertake or continue with representation of a  
7 client. Oregon RPC 1.16(a).” *Id.* at 3.

## 8 2. The ABA’s Defense Function Standards

9 Although they are not mandatory, the ABA’s Defense Function Standards also provide  
10 helpful guidance on how public defenders should conduct themselves. Specifically, although  
11 described as “best practices,” Oregon public defenders are contractually required to engage in  
12 best practices. *See Criminal Contract 2022*, Pub. Def. Cont. Terms,  
13 <https://www.oregon.gov/opds/provider/Pages/contract-terms.aspx>, § 3.3.1 (stating contractor’s  
14 failure to abide by best practices is grounds for contract termination); *id.* at § 7.2.1 (stating  
15 contractor shall comply with best practices). In any event, the standards also state that they  
16 “may be relevant in judicial evaluation of constitutional claims regarding the right to counsel.”  
17 Defense Function Standard 4-1.1(b). Indeed, in 1984, when the United States Supreme Court  
18 held that “[t]he proper measure of attorney performance [under the Sixth Amendment] remains  
19 simply reasonableness under prevailing professional norms,” *Strickland v. Washington*, 466 US  
20 668, 688 (1984), the Court identified the ABA’s Defense Function Standards as “guides to  
21 determining what is reasonable.” *Id.* The Court further substantiated that point in 2010,  
22 referring to the ABA’s Defense Function Standards as “valuable measures of the prevailing  
23 professional norms of effective representation.” *Padilla v. Kentucky*, 559 US 356, 367 (2010).  
24 That is because those standards are “the result of the considered judgment of prosecutors,  
25 defense lawyers, judges, and academics who have been deeply involved in the process” for  
26

1 over half a century. Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty*  
2 *Years of Excellence*, 23 Crim Just 10, 15 (2010).

3 The Defense Function Standards begin by observing that “[d]efense counsel is essential  
4 to the administration of criminal justice. Defense Function Standard 4-1.2(a). A court  
5 properly constituted to hear a criminal case should be viewed as an entity consisting of the  
6 court (including judge, jury, and other court personnel), counsel for the prosecution, and  
7 counsel for the defense.” *Id.* Among defense counsel’s many duties in their role in the  
8 administration of justice are the following:

- 9
- 10 • “a duty to communicate and keep the client informed and advised of significant  
developments and potential options and outcomes” (*Id.* at Standard 4-1.3(d));
  - 11 • “a duty to be well-informed regarding the legal options and developments that can  
12 affect a client’s interests during a criminal representation” (*Id.* at Standard 4-1.3(e));
  - 13 • “a duty to continually evaluate the impact that each decision or action may have at  
14 later stages, including trial, sentencing, and post-conviction review” (*Id.* at  
15 Standard 4-1.3(f));
  - 16 • a duty to “keep the client reasonably and currently informed about developments in  
17 and the progress of the lawyer’s services, including developments in pretrial  
18 investigation, discovery, disposition negotiations, and preparing a defense” (*Id.* at  
19 Standard 4-3.9(a));
  - 20 • “a duty to investigate in all cases, and to determine whether there is a sufficient  
21 factual basis for criminal charges,” which duty is not terminated by “factors such as  
22 the apparent force of the prosecution’s evidence, a client’s alleged admissions to  
23 others of facts suggesting guilt, a client’s expressed desire to plead guilty or that  
24 there should be no investigation, or statements to defense counsel supporting guilt”  
25 (*Id.* at Standard 4-4.1(a), 4-4.1(b)); and
- 26

- a “[d]uty to [e]xplore [d]isposition [w]ithout [t]rial” under which defense counsel “should consider the individual circumstances . . . of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation . . . has been completed.” (*Id.* at Standard 4-6.1(b)).

The Defense Function Standards also address appropriate workloads, specifying that “[d]efense counsel should not carry a workload that, by reason of its excessive size or complexity, interferes with providing quality representation, endangers a client’s interest in independent, thorough, or speedy representation, or has a significant potential to lead to the breach of professional obligations.” *Id.* at Standard 4-1.8(a). “A defense counsel whose workload prevents competent representation should not accept additional matters until the workload is reduced, and should work to ensure competent representation in counsel’s existing matters.” *Id.*

**B. Excessive Workloads Are Forcing PDMC Attorneys to Violate the Oregon RPCs and ABA Defense Function Standards.**

As detailed above, due to excessive workloads, PDMC attorneys are routinely and systematically being forced to violate their ethical duties. They are unable to communicate consistently with their clients and keep them adequately informed. *See* Wilson Decl. ¶¶ 33, 42. They are unable to perform timely investigations, review documents, interview witnesses, visit alleged crime scenes, interview family members, or generally conduct the kind of analysis the ethical rules require before providing advice on legal options. *See id.* ¶¶ 27-29, 33, 44. And when forced to get ready for trial, PDMC attorneys do not have sufficient time to retain the appropriate expert, prepare their client and witnesses for trial, adequately prepare necessary motions, or even get themselves fully ready for trial. *Id.* ¶¶ 28, 30, 40-41. Further, once a trial is completed, PDMC attorneys have little opportunity to provide any further representation for their clients. *Id.* ¶ 34. In short, excessive workloads render it impossible for PDMC attorneys to discharge their ethical duties.

1 As explained by Stephen Hanlon, an expert in ethical requirements and indigent  
2 defense:

3 “[T]he workload of the PDMC is excessive, unethical and  
4 unconstitutional. When a public defender has anything like the  
5 number and type of cases that the PDMC lawyers are being forced  
6 to handle, they cannot do so with reasonable competency and  
7 effectiveness, and there is a significant risk that those public  
8 defenders will have a concurrent conflict of interest under Oregon  
9 Rule of Professional Conduct 1.7 with all of their clients. Moreover,  
10 there is also a significant risk that such those public defenders will  
11 be unable to provide reasonably effective assistance of counsel  
12 pursuant to prevailing professional norms to each of their clients in  
13 violation of Rules of Professional Conduct 1.1, 1.3 and 1.4, Article  
14 I, Section 11 of the Oregon Constitution, and Formal Opinion No.  
15 2007-178.”

16 Hanlon Decl. ¶ 104. Indeed, it should be self-evident that 18 attorneys handling the work of 29  
17 attorneys simply cannot comply with their ethical responsibilities.

18 Fundamentally, it is impossible for PDMC public defenders to act with competence and  
19 diligence in light of the workloads they are carrying. Hanlon Decl. ¶¶ 101-08; Simpson Decl.  
20 ¶¶ 66-75; *see* Wilson Decl. ¶ 45. Every hour a public defender spends on one client’s case  
21 detracts from that attorney’s ability to provide the “thoroughness and preparation” required by  
22 the Oregon RPCs for another client. *See Carrasquillo*, 142 NE2d at 49 (“[I]f attorneys  
23 are . . . forced to pick and choose between clients who will receive their limited time and  
24 attention, [there are] others who will necessarily be neglected.”). When there are not enough  
25 hours in a day for a public defender to represent all of their clients properly, it no longer is a  
26 matter of prioritization; no amount of triaging or case reshuffling can solve the fundamental  
failures in the system.

This dynamic also creates constant conflicts of interest. *See id.* (“having too many  
clients and matters at once may create concurrent conflicts of interest”). This situation creates  
a significant risk that the representation of one or more of their clients will be materially  
limited by their responsibilities to another client. Simpson Decl. ¶¶ 72-73; Hanlon Decl. ¶ 105;

1 see Wilson Decl. ¶ 44. In such circumstances, the Oregon RPCs mandate that PDMC attorneys  
2 decline future representations and withdraw from current representations until their workloads  
3 permit conflict-free representations. See RPC 1.7(a)(2), 1.16.

4 In the face of these systemic failures, Director Wilson has no choice but to seek  
5 widescale change. The Oregon RPCs mandate that Director Wilson, as PDMC attorneys'  
6 supervisor, take "reasonable remedial action." RPC 5.1. This Motion is that action.

#### 7 **IV. Excessive Workloads Have Resulted in Constitutional Violations.**

##### 8 **A. Indigent Defendants Have a Right to Adequate and Conflict-Free Counsel.**

9 The Oregon Constitution<sup>5</sup> provides that indigent defendants have a right "not just to a  
10 lawyer in name only, but to a lawyer who provides adequate assistance." *Jackson v. Franke*,  
11 369 Or 422, 426 (2022) (quotation omitted) (citing *Montez*, 355 Or at 6 (quoting *State v. Smith*,  
12 339 Or 515, 526 (2005)); see also *Krummacher v. Gierloff*, 290 Or 867, 872 (1981).

13 Specifically, the Oregon Constitution demands that counsel "exercise reasonable professional  
14 skill and judgment." *Lichau v. Baldwin*, 333 Or 350, 359 (2002).

15 While formulating a single specific rule for assistance of counsel may be "a fool's  
16 errand," the Oregon Supreme Court in *Krummacher* provided examples of conduct that is  
17 necessary to provide adequate assistance. *Krummacher*, 290 Or at 874. As a baseline,  
18 "[a]dequate assistance of counsel requires the lawyer's devotion to the interests of the  
19 defendant." *Id.* Additionally, "[c]ounsel's functions include informing the defendant, in a  
20 manner and to the extent appropriate to the circumstances and to the defendant's level of  
21 understanding, of the existence and consequences of nontactical choices which are the  
22 defendant's to make, so as to assure that the defendant makes such choices intelligently." *Id.*

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23  
24 <sup>5</sup> Oregon courts examine Article I, section 11 of the Oregon Constitution before analyzing the  
25 analogous Sixth Amendment of the federal constitution. See *Montez v. Czerniak*, 355 Or 1, 7  
26 n.3 (2014). Only if a court finds that an Oregonian constitutional right was not denied does the  
court proceed to consider the analogous federal right. See *id.* For the sake of completeness,  
this Memorandum discusses both state and federal constitutional law but believes that the  
Court's decision can be based on state constitutional law alone.

1 “Counsel [also] must investigate the facts and prepare himself on the law to the extent  
2 appropriate to the nature and complexity of the case so that he is equipped to advise his client,  
3 exercise professional judgment and represent the defendant in an informed manner.” *Id.* at  
4 875. Constitutionally adequate assistance is thus not confined to the courtroom; criminal  
5 defendants are entitled to extensive pre-trial investigative assistance. *Id.*

6 Oregon courts have developed extensive jurisprudence regarding this constitutional  
7 duty to investigate defenses. For example, the Oregon Supreme Court has held that  
8 withdrawing an alibi defense without adequately investigating its strength constitutes  
9 inadequate assistance of counsel. *See Lichau*, 333 Or at 359. Similarly, the Court held that  
10 failing to investigate aspects of a defendant’s juvenile background fell below the required  
11 reasonable levels of representation. *Richardson v. Belleque*, 362 Or 236, 258-59 (2017).  
12 Under that same framework, failing to interview a potential impeachment witness also  
13 qualified as such a failure. *See Stevens v. State*, 322 Or 101, 104-05, 111 (1995).

14 In addition to the protections provided in the Oregon Constitution, the United States  
15 Constitution also provides criminal defendants have the right to effective assistance of  
16 counsel,<sup>6</sup> as articulated in the seminal case of *Strickland*, 466 US at 688. In that case, the  
17 United States Supreme Court explained that indigent defendants have a right to reasonably  
18 effective assistance of counsel, as set by prevailing professional norms. *Strickland*, 466 US at  
19 685, 688 (“That a person who happens to be a lawyer is present at trial alongside the accused,  
20 however, is not enough to satisfy the constitutional command.”). Like in *Krummacher*, the  
21 U.S. Supreme Court set forth some of the “basic duties” of counsel necessary to provide  
22 effective assistance of counsel. For example, because “[c]ounsel’s function is to assist the  
23 defendant,” “counsel owes the client a duty of loyalty, [and] a duty to avoid conflicts of  
24 interest.” *Id.* at 688. Under the Sixth Amendment, the U.S. Supreme Court explained, “the

25 <sup>6</sup> Oregon is empowered to provide its citizens and residents with stronger protections; the U.S.  
26 Constitution is the floor, not the ceiling, for constitutional rights. *California v. Ramos*, 463 US  
992, 1013-14 (1983).



1 overarching duty [of counsel is] to advocate [for] the defendant’s cause and the more particular  
2 duties to consult with the defendant on important decisions and to keep the defendant informed  
3 of important developments in the course of the prosecution.” *Id.* Notably, “counsel [also] has  
4 a duty to make reasonable investigations or to make a reasonable decision that makes particular  
5 investigations unnecessary.” *Id.* at 691. These basic duties from *Strickland* help set a floor to  
6 protect the “bedrock principle in our justice system” that is the right to effective assistance of  
7 counsel. *See Martinez v. Ryan*, 566 US 1, 12 (2012).

8 Further, both the Oregon and U.S. Constitution require that counsel be free of conflicts.  
9 As the Oregon Supreme Court has explained, “adequate assistance of counsel requires the  
10 lawyer’s devotion to the interests of the defendant[,]” and that “devotion must be undivided.”  
11 *Krummacher*, 290 Or at 874; *accord Myhrvold v. Sullivan*, 40 Or App 349, 354 (1979) (“The  
12 right to effective assistance of counsel guaranteed by the Sixth Amendment requires that such  
13 assistance be unimpaired by counsel’s simultaneous representation of conflicting interests.”).  
14 Federal law agrees: “[T]he ‘Assistance of Counsel’ guaranteed by the Sixth Amendment  
15 contemplates that such assistance be untrammelled and unimpaired by a court order requiring  
16 that one lawyer should simultaneously represent conflicting interests.” *Holloway v. Arkansas*,  
17 435 US 475, 482 (1978) (*quoting Glasser v. United States*, 315 US 60, 70 (1942)); *see also*  
18 *McCoy v. Ct. of Appeals of Wis., Dist. 1*, 486 US 429, 438 (1988) (“Every advocate has  
19 essentially the same professional responsibility whether he or she accepted a retainer from a  
20 paying client or an appointment from a court.”).

21 No action by the Court, the Legislature, the PDMC, or any agency can waive indigent  
22 defendants’ constitutional rights. Nor may any party alter those rights by contract. Any such  
23 contract would be unenforceable as a matter of law because to enforce it would constitute state  
24 action depriving indigent defendants of their constitutional right to counsel. *See Shelley v.*  
25 *Kraemer*, 334 US 1, 20 (1948) (holding enforcing a contract constituted state action for  
26 constitutional purposes and that judicial enforcement of a racially restrictive covenant was thus

1 unconstitutional); *see also Bagley v. Mt. Bachelor, Inc.*, 356 Or 543, 552 (2014) (explaining  
2 courts will not enforce illegal agreements and that an agreement is illegal if it violates the law  
3 or cannot be performed without violating the law).

4 **B. The Deficit of Public Defense Attorneys Is Resulting in Constitutional**  
5 **Violations of the Right to Counsel.**

6 It is currently impossible for PDMC attorneys to provide constitutionally adequate  
7 representation to PDMC clients. These failures occur in two dimensions: (1) PDMC attorneys  
8 cannot complete constitutionally required tasks; and (2) their excessive workloads are forcing  
9 PDMC attorneys to pit different clients' interest against each other, resulting in  
10 unconstitutional conflicts of interest. Given present workloads, the further assignment of  
11 indigent defendants to these attorneys constitutes an unconstitutional deprivation of the rights  
12 of indigent defendants. *See* ORS 135.050 (mandating court appointment of public defenders to  
13 certain indigent defendants).

14 **1. Excessive Workloads Leave No Time for Constitutionally Required**  
15 **Tasks.**

16 As previously detailed, with just 18.5 attorneys of the 29.2 attorneys needed, the  
17 present PDMC caseload renders it impossible for PDMC attorneys to render adequate  
18 assistance of counsel. *See supra* Sections II, III.B. That failure occurs at every stage of the  
19 process, from initial client consultation, to investigation and plea deal recommendations, and  
20 through trial and post-trial proceedings. *Id.* Oregon courts consistently have found such  
21 failures to constitute a deprivation of constitutional rights.

22 For example, Oregon courts have repeatedly emphasized the importance of a proper  
23 investigation for a constitutionally adequate defense. *See, e.g., Pike v. Cain*, 303 Or App 624,  
24 633 (2020) (describing “the framework for evaluating a ‘failure to investigate’ claim”).

25 Investigations are critical – indeed, constitutionally required – in a number of circumstances.

26 For instance, the Oregon Constitution demands that defense attorneys ground “decisions

1 regarding what defense theory to pursue . . . on a reasonable investigation into the pertinent  
2 facts.” *Monfore v. Persson*, 296 Or App 625, 635 (2019). Certain strategies require still more  
3 investigation: counsel must conduct the investigation necessary to support whichever strategy  
4 they select. *See Pike*, 303 Or App at 634-35; *accord Gorham v. Thompson*, 332 Or 560, 567  
5 (2001) (“[T]actical decisions must be grounded on a reasonable investigation.”).

6 Investigations also may require certain specific tasks, such as consulting with experts or  
7 reviewing records. *See Richardson*, 362 Or at 258, 260 (failure to consult expert deprived  
8 defendant of adequate assistance of counsel; failure to investigate defendant’s juvenile history  
9 was similarly flawed); *Pike*, 303 Or App at 634-35 (failure to “develop a command” of  
10 defendant’s military history deprived defendant of adequate assistance of counsel). Perhaps  
11 most classically, a constitutionally adequate investigation requires counsel to interview  
12 potential witnesses. Indeed, in *Stevens*, the Oregon Supreme Court held that failure to  
13 interview a potential impeachment witness constituted a constitutionally inadequate  
14 representation. *See* 322 Or at 104-05, 110. Yet, as detailed at *supra* Sections II, III.B, this  
15 work is simply not getting done.

16 Oregon law also requires proper client communication. The Oregon Supreme Court  
17 has specified that “counsel’s functions include informing the defendant . . . of the existence and  
18 consequences of nontactical choices which are the defendant’s to make, so as to assure that the  
19 defendant makes such choices intelligently.” *Krummacher*, 290 Or at 874. But again, as  
20 detailed *supra* at Sections II, III.B, client communications either do not happen, or if they do,  
21 they are not timely and always rushed. Where an attorney does not even have time to visit a  
22 client, or has insufficient time to dedicate to such a visit, that attorney certainly does not have  
23 the time to adequately inform that defendant “of the existence and consequences” of the  
24 “choices which are the defendant’s to make, so as to” enable the defendant to make those  
25 choices “intelligently.” *See id.* As such, excessive workloads have rendered it impossible for  
26 PDMC attorneys to meet this basic constitutional requirement.

1 Investigation and communication are just *two* of the classes of tasks that attorneys must  
2 perform to meet constitutional minimums. Overworked PDMC attorneys are already reporting  
3 that they cannot complete these tasks. There can be no doubt, then, that excessive workloads  
4 are creating constitutional deprivations – and will create still more if left unchecked.

5 **2. Excessive Workloads Create Unconstitutional Conflicts of Interest.**

6 PDMC attorneys’ workloads are also resulting in unconstitutional conflicts of interest.  
7 Where attorneys have so much work that there are not enough minutes in the day to perform it  
8 all adequately, “attorneys are then forced to pick and choose between clients who will receive  
9 their limited time and attention, and others who will necessarily be neglected.” *Carrasquillo*,  
10 142 NE3d at 49. Pitting clients’ interests against each other is a quintessential concurrent  
11 conflict of interest. *See id.*

12 As a result of PDMC attorneys’ excessive workloads, every current PDMC attorney  
13 would have to spend over 13 hours per working day on client representation work alone. And  
14 even that number is extraordinarily conservative. Thirteen hours per working day totals 3,237  
15 hours per year – significantly more than that required of attorneys in large law firms in metro  
16 areas such as New York and Washington, D.C. And that client representation work does not  
17 include administrative work, training, supervisory work, or travel time.

18 It is thus mathematically impossible for PDMC attorneys’ “devotion [to] be undivided,”  
19 as required by the Oregon constitution. *See Krummacher*, 290 Or at 874; *see also Holloway*,  
20 435 US at 482 (stating analogous federal rule). But statistics do not tell the whole story. As  
21 described *supra*, PDMC attorneys are forced to forego a range of constitutionally required  
22 tasks to focus on their most urgent matter, to the detriment of their other clients and resulting in  
23 unconstitutional conflicts of interest. *See Wilson Decl.* ¶¶ 24-47.

24 ///

25 ///

26 ///

1       **V.     The Requested Relief is Necessary to Avoid Ethical and Constitutional Violations.**

2             Where, as here, excessive workloads result in systematic constitutional deprivations  
3     and ethical violations, this Court has no choice but to dismiss appropriate cases until workloads  
4     comport with constitutional requirements and public defenders’ ethical duties.

5             **A.     The Court is Empowered to Grant the Requested Relief.**

6             As a preliminary matter, courts are explicitly permitted to grant motions to withdraw  
7     under the Oregon RPCs. That is especially true where conflicts of interest have arisen. *See*  
8     *State v. Stanton*, 369 Or 707, 718 (2022) (finding court’s decision on whether to grant  
9     attorney’s motion to withdraw hinged on whether a conflict of interest existed). Specifically,  
10    the Oregon Supreme Court advises trial courts to grant motions to withdraw where there is “‘a  
11    bona fide conflict of interest’ or other problem exist[s] in the attorney-client relationship that  
12    prevented [counsel] from ‘participating effectively’ in that relationship.” *Id.* (citation omitted).  
13    “The proper question to ask” when faced with such a motion, is whether counsel can  
14    “adequately perform[] ‘those functions of professional assistances which an accused relies  
15    upon counsel to perform on his behalf.’” *State v. Davis*, 345 Or 551, 581-82 (2008), *cert.*  
16    *denied*, 558 US 873 (2009) (quoting *Krummacher*, 290 Or at 872)). Here, the record  
17    unequivocally establishes that existing conflicts have compromised, are compromising, and  
18    will continue to compromise PDMC attorneys’ “ability to represent their client[s] . . . resulting  
19    in an abridgment of a criminal defendant’s constitutional right to counsel.” *Id.* (quotation  
20    omitted).

21            This Court also must take action to avoid the continuing violation of indigent  
22    defendants’ constitutional rights. “It is the duty of the courts ever to be watchful to protect the  
23    personal rights guaranteed by state and federal constitutions[.]” *Bowden v. Davis*, 205 Or 421,  
24    434 (1955); *see also Hughes v. State*, 314 Or 1, 45-46 (1992) (Fadeley, J., concurring in part)  
25    (“Courts like this one can enforce constitutions. The need for that judicial function impelled  
26    the drafters of our constitution to grant courts independent and separate strength vis-a-vis other

1 branches of government.”). As Justice Unis explained in a dissent later vindicated in  
2 abrogation: “The appropriate role of this court, as final arbiter of the Oregon Constitution,  
3 should be to guard the individual rights guaranteed by Oregon’s Bill of Rights from state  
4 encroachment, not to . . . lessen a burden placed . . . by those constitutional guarantees.” *State*  
5 *v. Hancock*, 317 Or 5, 26 (1993) (Unis, J. dissenting), *abrogated by State v. Birchfield*, 342 Or  
6 624 (2007).

7 Further, that duty may not be abrogated by legislative fiat. Although ORS 135.050 uses  
8 mandatory language (“counsel for defendant shall be appointed”), the Legislature may not  
9 compel the Court to make unconstitutional public defender appointments. Courts possess  
10 “broad inherent powers . . . to do those things that are necessary to perform their judicial  
11 function.” *Law on Behalf of Robert M. Law Profit Sharing Plan v. Zemp*, 362 Or 302, 327-28  
12 (2018). Indeed, “to the extent that courts’ inherent powers are essential to the courts’ work,  
13 those powers cannot be eliminated (or excluded) by legislative fiat.” *Id.*; *see also Ortwein v.*  
14 *Schwab*, 262 Or 375, 385 (1972) (“We look upon the doctrine of inherent judicial power as the  
15 source of power to do those things necessary to perform the judicial function for which the  
16 legislative branch has not provided, and, in rare instances, to act contrary to the dictates of the  
17 legislative branch.”). Thus, even if statutory language might be interpreted, facially, to require  
18 further appointments of over-capacity public defenders, the Court’s inherent power wins out:  
19 the Court has an obligation to refuse to make unconstitutional case assignments.<sup>7</sup>

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21 <sup>7</sup> Indeed, the Court is bound by judicial rules of conduct to not “manifest bias or prejudice,”  
22 including bias based on socioeconomic status, “in the performance of judicial duties.” Or Jud  
23 Conduct R 3.3(b). Importantly, judicial conduct runs afoul of this Rule even where there is  
24 merely an *appearance* of bias. *See In re Day*, 362 Or 547, 623, 625 (2018). Because all public  
25 defenders are carrying workloads that make it impossible for them to provide constitutionally  
26 adequate assistance of counsel, any case assignment to a public defender results in  
constitutional deprivations. *See* Section III.B (detailing how the deficit of PDMC attorneys is  
creating constitutional violations of the right to counsel). Thus, ORS 135.050 forces judges  
into the appearance of treating criminal defendants differently based on socioeconomic status:  
indigent defendants are assigned constitutionally inadequate representation, while non-indigent  
defendants are able to procure constitutionally adequate counsel.

1           Additionally, enforcing a statute that deprives people of constitutional rights is itself an  
2           unconstitutional act. *See Shelley*, 334 US at 14-15 (“That the action of state courts and of  
3           judicial officers in their official capacities is to be regarded as action of the State . . . is a  
4           proposition which has long been established by decisions of this Court.”) In other words,  
5           where a court takes action that operates to violate constitutional rights, that very judicial action  
6           violates the constitution. *See id.* at 18 (“[I]t has never been suggested that state court action is  
7           immunized . . . simply because the act is that of the judicial branch of the state government.”).

8           This Court also is empowered to dismiss cases where indigent defendants who desire  
9           counsel have none. *See* ORS 135.755 (“The court may . . . of its own motion . . . in the  
10          furtherance of justice, order the proceedings to be dismissed.”). Indeed, courts routinely  
11          dismiss cases rather than permit unconstitutional prosecutions to go forward. *See, e.g., City of*  
12          *Salem v. Lawrow*, 233 Or App 32, 34 (2009) (affirming dismissal of unconstitutional charges);  
13          *State v. Hagel*, 210 Or App 360, 361 (2006) (reversing denial of motion to dismiss  
14          unconstitutional charges). In fact, other Oregon courts already have dismissed cases for lack of  
15          available public defense attorneys. Multnomah County trial courts dismissed close to 300  
16          cases for this very reason in 2022. *See, e.g., Claire Rush, Oregon Public Defender Shortage:*  
17          *Nearly 300 Cases Dismissed*, Statesman J (Nov. 24, 2022),  
18          [https://www.statesmanjournal.com/story/news/politics/2022/11/24/cases-dismissed-oregon-](https://www.statesmanjournal.com/story/news/politics/2022/11/24/cases-dismissed-oregon-public-defender-shortage/69675309007/)  
19          [public-defender-shortage/69675309007/](https://www.statesmanjournal.com/story/news/politics/2022/11/24/cases-dismissed-oregon-public-defender-shortage/69675309007/).

20          In still other jurisdictions, courts have held that the judiciary has the ability to provide  
21          the relief requested by the Motion. For example, the Missouri Supreme Court has stated:

22                           “[T]rial courts have both the authority and the responsibility to  
23                           manage their dockets in a way that both moves their cases and  
24                           respects the constitutional, statutory and ethical rights and  
25                           obligations of the defendant, the prosecutor, the public defender and  
26                           the public. In this regard, the trial judge has authority over the public  
                         defender’s caseload that the public defender itself does not. For,  
                         unlike a public defender office, a trial court has the authority to grant  
                         a motion filed by a public defender to be relieved, at least for some

1 period of time, from being required to provide representation in less  
2 serious cases because the lack of resources will not allow the public  
3 defender simultaneously to provide competent representation in  
4 more serious cases.”

5 *State ex rel. Mo. Pub. Def. Comm’n v. Waters*, 370 S W 3d 592, 610-11 (Mo 2012); *see also*  
6 *Lavallee v. Justs. in Hampden Sup. Ct.*, 812 NE2d 895, 911 (Mass 2004) (“If, despite good  
7 faith efforts by [the public defense agency], no attorney has filed an appearance on behalf of an  
8 indigent defendant within forty-five days of arraignment, the criminal case against such  
9 defendant must be dismissed without prejudice.”); *Carrasquillo*, 142 NE3d at 45 (reaffirming  
and elaborating on *Lavallee*).

10 Nor is it an option to reassign the PDMC-assigned cases to Marion County attorneys in  
11 the Consortium. The Consortium already has reported that they are at their contractual  
12 capacity and are unable to take on any more cases. *Wilson Dec.*, ¶ 14.

13 In short, the State of Oregon, writ large, is simultaneously prosecuting indigent  
14 defendants *and* failing to provide them with constitutionally mandated counsel. In so doing,  
15 the state is “improperly shift[ing] the burden of a systemic lapse . . . to the very defendants the  
16 system was designed to protect.” *Carrasquillo*, 142 NE3d at 49 (quotation omitted). This  
17 Court may not be empowered to require the state to stop seeking criminal charges against  
18 defendants to whom the state cannot provide counsel. But this Court *is* empowered to allow  
19 motions to withdraw, to cease making case assignments that create constitutional and ethical  
20 violations, and to dismiss cases where Oregon leaves this Court with no other constitutional  
21 option.

22 **B. This Court is Empowered to Provide Prospective Relief.**

23 The relief requested herein is at least partially prospective in nature, to the extent it  
24 seeks an order that precludes future appointments. The Oregon Supreme Court has not yet  
25 decided a motion seeking prospective relief from violations of the right to counsel, as this  
26 Motion seeks. Indeed, this Motion is a matter of first impression in Oregon’s courts.



1 However, the Eleventh Circuit has set forth a test for just such a matter, and is a standard  
2 which has since been accepted by several states' courts. Further, each of the test's elements  
3 comports with well-established Oregon law. The Eleventh Circuit's prospective right-to-  
4 counsel test is thus appropriate guidance for this Court.

5 **1. The Standard Set Forth in *Luckey v. Harris* is Consistent with**  
6 **Oregonian Jurisprudence.**

7 In *Luckey v. Harris*, 860 F2d 1012, 1017 (11th Cir 1988), *cert denied*, 495 US 957  
8 (1990), *rev'd on other grounds in Luckey v. Miller*, 976 F2d 673 (11th Cir 1992),<sup>8</sup> a class of  
9 indigent persons and their counsel sought prospective injunctive relief for Sixth Amendment  
10 violations, "including inadequate resources, delays in the appointment of counsel, [and]  
11 pressure on attorneys to hurry their clients' case to trial or to enter a guilty plea[.]" *Luckey*,  
12 860 F 2d at 1013. In reversing the trial court's dismissal of the complaint, the Eleventh Circuit  
13 set forth a two-pronged test for establishing a prospective workload-based federal Sixth  
14 Amendment violation. Under that test, a party seeking prospective relief must establish: (1) a  
15 "likelihood of substantial and immediate irreparable injury"; and (2) "the inadequacy of  
16 remedies at law." *Id.* at 1017 (citation omitted).

17 Notably, this standard does not require proof that any *specific* client will be or has been  
18 injured. *See id.* (requiring a showing of likelihood of injury, unanchored to specific class  
19 members). Indeed, the Eleventh Circuit explicitly rejected requiring litigants to "establish that  
20 ineffective assistance was inevitable for each of the class members." *Id.* Specifically, the trial  
21 court had attempted to impose a higher standard, namely "an across-the-board future  
22 inevitability of ineffective assistance," or proof that *every* class member would inevitably  
23

24 <sup>8</sup> The Eleventh Circuit ultimately dismissed *Luckey* on *Younger* abstention grounds. *Luckey v.*  
25 *Miller*, 976 F2d at 679. As such, *Luckey*'s two-pronged test was never called into question.  
26 Furthermore, the *Younger* doctrine is irrelevant where the proceedings at issue are in state court  
(such as the present proceedings in this Court). *See id.* at 676 (describing the *Younger*  
abstention doctrine as "abstention from interference [by federal courts] in state criminal  
proceedings").

1 suffer ineffective assistance of counsel. *See id.* at 1016 (quotation omitted). In reversing, the  
2 Eleventh Circuit held that the prospective nature of the relief sought required a lesser burden.  
3 The Court distinguished between the prospective relief at issue in *Luckey* and retrospective  
4 relief, as articulated in *Strickland*. *See id.* at 1017 (citing *Strickland*, 466 US at 687). Where  
5 litigants seek prospective relief, the Eleventh Circuit explained, courts should focus on “the  
6 question of whether such a right exists and can be protected prospectively[,]” rather than  
7 “[w]hether an accused has been prejudiced[.]” *Id.* That is because “[p]rospective relief is  
8 designed to avoid future harm[,]” and can thus “protect constitutional rights, even if the  
9 violation of these rights would not affect the outcome of a trial.” *Id.* Because the trial court’s  
10 standard was too bound up in the logic of retrospective relief, the Eleventh Circuit remanded.  
11 *See id.*

12 The United States Supreme Court, for its part, has never spoken on the application of  
13 the *Luckey* test to prospective relief for right-to-counsel violations but has approved the test for  
14 prospective relief generally. *See O’Shea v. Littleton*, 414 US 488, 502 (1974) (identifying the  
15 “basic requisites of the issuance of equitable relief” as “the likelihood of substantial and  
16 immediate irreparable injury, and the inadequacy of remedies at law.”). Furthermore, several  
17 state courts have adopted the *Luckey* test for right-to-counsel claims. *See, e.g., Kuren v.*  
18 *Luzerne Cnty.*, 146 A 3d 715, 743 (Pa 2016) (“[W]e find the majorities’ reasoning in *Luckey*,  
19 *Duncan*, and *Hurrell-Harring* to be persuasive, and indeed, compelling”); *Pub. Def., Eleventh*  
20 *Jud. Cir. Of Fla. v. State*, 115 So 3d 261, 279 (Fla 2013) (“Based on the cases and analysis  
21 above [including *Luckey*], we conclude that the prejudice required for withdrawal when it is  
22 based on an excessive caseload is a showing of ‘a substantial risk that the representation of  
23 [one] or more clients will be materially limited by the lawyer’s responsibilities to another  
24 client.” (citation omitted)); *Lavallee*, 812 NE2d at 905 (citing *Luckey* for the proposition that,  
25 “[b]ecause the petitioners are seeking redress for the ongoing violation of their fundamental  
26 constitutional right that affects the manner in which the criminal case against them will be

1 prosecuted and defended, it is enough that they have shown a violation of that right that may  
2 likely result in irreparable harm if not corrected.”); *Duncan v. State*, 774 NW2d 89, 128-29  
3 (Mich App 2009) (“We fully agree with the statements and observations made in [*Luckey*], and  
4 they mirror our thoughts voiced earlier in this opinion.”); see also *Lozano v. Cir. Ct. of Sixth*  
5 *Jud. Dist.*, 460 P3d 721, 737 (Wyo 2020) (citing *Luckey* and holding “[w]e also disagree with  
6 the circuit court’s assertion . . . that the public defender must prove an individualized injury in  
7 fact or make the individualized substantial prejudice showing in *Strickland*.”); *State v. Peart*,  
8 621 So 2d 780, 787 (La 1993) (citing *Luckey* for the proposition that “[i]t matters not that the  
9 ineffective assistance rendered may or may not affect the outcome of the trial to the  
10 defendant’s detriment.”); *Pruett v. State*, 574 So2d 1342, 1359 (Miss 1990) (citing *Luckey* and  
11 holding that “in order to show a constitutional violation in the *system* as applied, it is not  
12 necessary that it be shown that *all* defendants who are represented by inadequately funded  
13 attorneys, were provided with assistance below the *minimum* standards set forth in *Strickland*.”  
14 (alteration in original)). Furthermore, as set forth *infra*, the *Luckey* test’s elements align with  
15 existing Oregon Supreme Court jurisprudence in analogous areas of the law. *Luckey* is thus an  
16 appropriate source of guidance for this Court.

## 17 2. PDMC Clients Face a Likelihood of Substantial Injury Due to 18 Overburdened Public Defenders.

19 The first *Luckey* prong asks whether there is a “likelihood of substantial and immediate  
20 irreparable injury.” 860 F2d at 1017. *Luckey* did not elaborate on this element, but well-  
21 trodden Oregonian jurisprudence offers guidance in the realm of preliminary injunctions,  
22 where courts must routinely weigh whether injuries are irreparable. In that context, Oregon  
23 courts find irreparable harm where there is no adequate remedy at law, and there is an  
24 appreciable threat of continuing harm. *Levasseur v. Armon*, 240 Or App 250, 259 (2010).  
25 Irreparable harm also exists when it is difficult, if not impossible, to accurately measure  
26

1 damages. *Crouch v. Cent. Lab. Council of Portland & Vicinity*, 134 Or 612, 620 (1930); see  
2 also *Phipps v. Rogue River Valley Canal Co.*, 80 Or 175, 181 (1916).

3 In that regard, the Oregon Supreme Court has held that even a brief deprivation of  
4 constitutional rights constitutes irreparable injury. See, e.g., *Barcik v. Kubiacyk*, 321 Or 174,  
5 199 (1995) (“[L]oss of First Amendment freedoms, for even minimal periods of time,  
6 unquestionably constitutes irreparable injury” (citing *Elrod v. Burns*, 427 US 347, 373  
7 (1976))); accord *Total Real Est. Grp., LLC v. Strode*, 588 F Supp 3d 1137, 1156 (D Or 2022)  
8 (“The deprivation of a constitutional right . . . may constitute irreparable injury.” (citing  
9 *Melendres v. Arpaio*, 695 F3d 990, 1002 (9th Cir. 2012))). Further, under Oregon law,  
10 constitutional rights relating to liberty are particularly essential, and “any significant loss of  
11 liberty is irreparable *per se*.” *Evans v. Or. State Penitentiary, Corrs. Div.*, 87 Or App 514, 525  
12 (1987); see also *Mueller v. Cupp*, 45 Or App 495, 499 (1980) (finding prisoner was irreparably  
13 and immediately harmed when they were deprived of their constitutional rights). As such,  
14 under clear and long-standing Oregon law, the harm caused by the excessive workloads is  
15 irreparable.

16 Other states’ courts provide further support. Applying the *Luckey* test, the Idaho  
17 Supreme Court interpreted the likelihood-of-injury element to be satisfied by a “likelihood of  
18 future systemic harm” to any class member. *Tucker v. State*, 484 P3d 851, 862 (Idaho 2021).  
19 In *Kuren*, the Pennsylvania Supreme Court directed courts to focus on: (1) system-wide factors  
20 such as client consultation, sufficient investigation, and adequate adversarial testing of  
21 opposing side’s arguments; and (2) substantial structural limitations such as a lack of  
22 resources, high workloads, or critical understaffing of public defenders offices to prove this  
23 element. 146 A3d at 744. Still other courts have specified that evidence of inadequate  
24 resources, alone, is sufficient to prove irreparable harm. See, e.g., *Kenny A. ex rel. Winn v.*  
25 *Perdue*, 356 F Supp 2d 1353, 1362 (ND Ga 2005); *N.Y. Cty. Law. ’s Ass’n v. State*, 763 NYS  
26 2d 397, 412 (Sup Ct 2003) (noting litigants suffer “irreparable” harm “when they are

1 represented by overburdened and inattentive assigned counsel who fail to, or are unable to,  
2 perform the basic tasks necessary to provide meaningful and effective representation, and when  
3 they must endure prolonged delay in family and criminal court proceedings.”).

4 Under both the Oregonian “irreparable injury” standard and other states’ analysis of  
5 *Luckey*’s first prong, PDMC’s clients face a likelihood of substantial and irreparable injury.  
6 The PDMC is buckling under the weight of a caseload that it cannot handle. That situation has  
7 caused PDMC attorneys to triage cases rather than properly represent their clients. *See Wilson*  
8 Decl. ¶¶ 20, 26, 41. As such, Marion County is suffering from system-wide and structural  
9 limitations, resulting from a profound lack of resources. *See Simpson Decl. Ex. A*, at 11-13.  
10 That means that *every* indigent criminal defendant represented by the PDMC is at risk that their  
11 case will be neglected.

12 Further, this situation is more than a brief deprivation of a critical constitutional right.  
13 It is an ongoing, serious violation of a right that the Oregon Supreme Court has called “one of  
14 the ‘fundamental principles of liberty and justice which lie at the base of all our civil and  
15 political institutions.’” *Watkins v. Ackley*, 370 Or 604, 629 (2022) (quoting *Gideon v.*  
16 *Wainwright*, 372 US 335, 341 (1963)); *see also State v. Burlison*, 342 Or 697, 702 (2007)  
17 (holding irreparable harm existed in part because a criminal defendant is prevented from  
18 appealing until final judgment was entered).

### 19 3. There is No Other Adequate Remedy at Law.

20 *Luckey*’s second prong requires Director Wilson to show that there is an “inadequacy of  
21 remedies at law.” 860 F2d at 1017. The Oregon Supreme Court’s mandamus jurisprudence  
22 offers a roadmap for analyzing this issue. Specifically, mandamus is only available when there  
23 is no adequate remedy at law that could be vindicated by a direct appeal. *See, e.g., State ex rel.*  
24 *Anderson v. Miller*, 320 Or 316, 323 (1994) (analyzing ORS 34.110 (prohibiting mandamus  
25 unless there is no “adequate remedy in the ordinary course of law”)). As such, a well-  
26

1 established body of mandamus law analyzes circumstances where no adequate remedy at law  
2 exists.

3 Those mandamus cases make clear that no adequate remedy at law exists here. In  
4 *Burleson*, for example, the Oregon Supreme Court specifically rejected the adequacy of direct  
5 appeal where the underlying problem might have affected a party’s investigation or strategy.  
6 *See* 342 Or at 626, 628 (noting lack of evidence prevented prosecution from questioning victim  
7 on key events or even determining “what kind of crime defendant may have committed, and  
8 how the state would characterize and charge that crime.”). And in *State ex rel. Auto.*  
9 *Emporium v. Murchison, Inc.*, “an irretrievable loss of information and tactical advantage  
10 which could not be restored . . . on direct appeal” also meant that direct review was inadequate.  
11 289 Or 265, 269 (1980). As such, the Oregon Supreme Court already has recognized the  
12 absence of an adequate remedy at law resulting from a litigant’s inability to investigate a case –  
13 just *one* of the many tasks overburdened public defenders are unable to perform. *See, e.g.,* Or  
14 State Bar, Formal Op 2007-178 (2007), at 3 (stating public defenders are “required to, among  
15 other things, ‘keep abreast of changes in the law; adequately investigate, analyze, and prepare  
16 cases; act promptly on behalf of clients; and communicate effectively on behalf of and with  
17 clients’ among other responsibilities.”) (citing ABA Comm. on Ethics & Pro. Resp., Formal  
18 Op 06-441 (2006))).

19 Further, Oregonian jurisprudence emphasizes the importance of the underlying process  
20 in assessing whether a remedy at law exists, rather than focusing on the results to the exclusion  
21 of all else. In *Miller*, for example, a litigant was denied the right to videotape a deposition.  
22 *See* 320 Or at 323. The Oregon Supreme Court held that a direct appeal was insufficient in that  
23 instance because an appellate court would have difficulty assessing the impact a video may  
24 have on a jury. *Id.*; *see also State v. Ross*, 367 Or 560, 564 (2021) (finding direct appeal of a  
25 non-unanimous jury verdict was insufficient because a jury verdict that might otherwise result  
26 in an acquittal may instead result in a retrial). This analysis comports with federal

1 jurisprudence. *See Luckey*, 860 F2d at 1017 (“The sixth amendment protects rights that do not  
2 affect the outcome of a trial.”); *see also Coleman v. Alabama*, 399 US 1, 9-10 (1970) (finding  
3 indigent defendant is entitled to attorney at state preliminary hearing because it is a “critical”  
4 stage of proceedings that may substantially prejudice defendant’s rights); *United States v.*  
5 *Wade*, 388 US 218, 236-37 (1967) (finding defendant was entitled to attorney at post-  
6 indictment line-up because it was a “critical stage of the prosecution” with “grave potential for  
7 prejudice, intentional or not . . .”).

8 Courts also look to whether a litigant “would suffer a special loss beyond the burden of  
9 litigation” in assessing whether an adequate remedy at law exists. *Miller*, 320 Or at 323 (citing  
10 *Murchison*, 289 Or at 269). In *Miller*, the Oregon Supreme Court recognized just such a  
11 “special loss” because “[t]he advantages of videotaped depositions are unique and serve to  
12 vindicate systemic rights[.]” *Id.* The right to adequate counsel generally is even more  
13 fundamental and systemically important. *Watkins*, 370 Or at 629.

14 When public defenders are not dragged down by overwhelming caseloads, they are  
15 capable of providing adequate legal representation to every client. They also are able to help  
16 indigent defendants navigate what may be the most stressful experience of their lives.<sup>9</sup> As  
17 explained in Director Wilson’s declaration, overworked PDMC attorneys do not have the  
18 capacity to develop relationships of trust with their clients. Wilson Decl. ¶¶ 28, 46. The result  
19 is that, as public defenders, PDMC attorneys become just another part of a faceless process in  
20 which indigent defendants are swept towards prison. *See id.* That process strips them of

21  
22 <sup>9</sup> *See* Marc. S. Galanter, *The Day After the Litigation Explosion*, 46 Md L Rev 3, 9 (1986)  
23 (noting that “[f]or plaintiffs and defendants alike, litigation proves a miserable, disruptive,  
24 painful experience” and that “[e]ven those who prevail may find the process very costly.”  
25 (citations omitted)); Albert W. Alschuler, *Courtroom Misconduct by Prosecutors and Trial*  
26 *Judges*, 50 Tex L Rev 629, 631 (1972) (noting that a criminal defendant, whose “liberty is at  
stake . . . is involved in one of the most traumatic experiences of his life”); *see also* Russell M.  
Gold, *Jail as Injunction*, 107 Geo LJ 501, 503 (2019) (detailing many costs and stresses  
indigent defendants who are imprisoned but not convicted of a crime face such as loss of  
income, inability to maintain payments for their home, and increased risk of self-harm due to  
arrest and detention).

1 dignity and humanity: a “special loss beyond the burden of litigation.” *See Miller*, 320 Or at  
2 323.

3 In addition, litigation in which an underrepresented defendant must face the full power  
4 of the state can hardly be described as ‘standard’ – meaning any unrepresented defendant faces  
5 a “special loss beyond the burden of litigation.” *See id.* “Governments, both state and  
6 federal, . . . spend vast sums of money to establish machinery to try defendants accused of  
7 crime.” *Gideon*, 372 US at 344. Underrepresented indigent defendants thus do not face an  
8 ordinary adversary: they have “the whole power of the state arrayed against [them].” *Powell v.*  
9 *Alabama*, 287 US 45, 73 (1932). The United States Supreme Court has long recognized the  
10 uneven balance of power in such a situation:

11 “Even the intelligent and educated layman has small and sometimes  
12 no skill in the science of law. If charged with crime, he is incapable,  
13 generally, of determining for himself whether the indictment is good  
14 or bad. He is unfamiliar with the rules of evidence. . . . He lacks  
both the skill and knowledge adequately to prepare his defense, even  
though he have a perfect one.”

15 *Id.* at 69. Being forced to litigate against the vast power and resources of the state without the  
16 adequate assistance of counsel is necessarily a burden heavier than that of ‘standard’ litigation,  
17 where counsel is assumed.

## 18 **VI. REQUESTED RELIEF**

19 PDMC Executive Director Shannon Wilson requests that the Court conduct an  
20 evidentiary hearing on this matter, and that, following that hearing, the Court issue an Order  
21 granting the following relief:

- 22 1. Permitting each PDMC public defender to withdraw from current appointments and  
23 decline future appointments to any case until, utilizing the Oregon Project analytics,  
24 each PDMC public defender’s workload is no greater than 100% of their annual  
25 capacity;



- 1 2. Delaying the effectiveness of the Order for 30 days after its entry to allow for an  
2 orderly transition;
- 3 3. Directing Director Wilson to file, every 60 days until further order of the Court, an  
4 updated PDMC workload metric report showing the actual workloads then being  
5 handled by the PDMC public defenders;
- 6 4. Providing that, in the event no PDMC public defender or other competent attorney with  
7 sufficient capacity can be found to represent any one or more indigent defendants on  
8 the Court's docket, the case against such indigent defendant shall be dismissed with  
9 prejudice and, if the defendant is in custody, he or she shall be released;
- 10 5. Declaring, pursuant to ORS 28.010 and 28.020, that assignments of criminal defense  
11 representation to public defense attorneys who, using the Oregon Project analytics,  
12 have a caseload at or exceeding the maximum caseload, is a violation of Article I,  
13 section 11, of the Oregon Constitution; and
- 14 6. Providing that this Court shall retain jurisdiction of this cause to enforce its Orders  
15 entered herein.

16 **VII. REQUEST FOR EVIDENTIARY HEARING**

17 Shannon Wilson prays that the Court schedule an evidentiary hearing on this Motion as  
18 soon as practicable to permit them to establish the grounds and need for the foregoing relief.

19 DATED this 15th day of March, 2023.

20 HOLLAND & KNIGHT LLP

21  
22 By: /s/ J. Matthew Donohue  
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**CERTIFICATE OF SERVICE**

I hereby certify that I caused the foregoing EXECUTIVE DIRECTOR SHANNON WILSON'S MOTION TO WITHDRAW FROM CURRENT APPOINTMENTS AND TO DECLINE FUTURE APPOINTMENTS to be served on the party/ies listed below:

Marion County District Attorney  
Marion County District Attorney's Office  
555 Court Street NE, Suite 3250  
Salem, OR 97301  
[districtattorney@co.marion.or.us](mailto:districtattorney@co.marion.or.us)

by the following indicated method or methods:

- by e-mail and/or electronically mailed notice from the Court to the parties' email addresses as recorded in the Court's e-filing system on the date set forth below.
- by mailing full, true and correct copies thereof in sealed, first class postage prepaid envelopes, addressed to the parties and/or their attorneys as shown above, to the last-known office addresses of the parties and/or attorneys, and deposited with the United States Postal Service at Portland, Oregon, on the date set forth below.
- by causing full, true, and correct copies thereof to be hand-delivered to the parties and/or their attorneys at their last-known office addresses listed above on the date set forth below.

DATED: March 15, 2023.

*s/ Kristin Asai*  
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Kristin Asai

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IN THE CIRCUIT COURT OF THE STATE OF FOR OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON;  
  Plaintiff,  
                  v.  
KERTEN SALLE;  
  Defendant.

Case No.: 23CR00153  
DECLARATION OF SHANNON WILSON  
IN SUPPORT OF MOTION TO  
WITHDRAW FROM CURRENT  
APPOINTMENTS AND TO DECLINE  
FUTURE APPOINTMENTS

I, Shannon Wilson, declare as follows:

- 1. I make this declaration in support of my Motion to Withdraw from Current Appointments and to Decline Future Appointments, which I understand is being filed contemporaneously with this Declaration. I make the statements in this declaration on the basis of my personal knowledge and from my review of the Oregon Rules of Professional Conduct (the “Oregon RPCs” or the “RPCs”), and specifically RPC 1.1 [Competence], RPC 1.2(a) [Scope of Representation and Allocation of Authority], RPC 1.3 [Diligence], and RPC 1.4 [Communication]. I have reviewed Oregon State Bar Formal Ethics Op. 2007-178 and also ABA Formal Ethics Op. 06-441 (2006).
- 2. I am a member in good standing of the bar of this Court. I have worked in public defense for fifteen years and I am currently the Executive Director of Public Defender of Marion County, Inc. (“PDMC”). I have been employed in this role since June 28, 2021.
- 3. As Executive Director of PDMC, I am responsible for overseeing twenty-one (soon to be twenty-two) attorneys, four (soon to be five) investigators, and fourteen (soon to be

1       seventeen) support staff.<sup>1</sup> My supervisory responsibilities include assigning cases to attorneys  
2       within my office, determining the capacity of the attorneys in my office to handle additional  
3       cases, and reporting such capacity to the court. I am also responsible for acting as the point of  
4       contact for the PDMC for all criminal legal system partners, including the judiciary, the District  
5       Attorney’s Office, correctional departments, the Legislature, other public defense organizations,  
6       and law schools. My responsibilities further include overseeing all financial transactions,  
7       contractual negotiations, union negotiation and grievance matters, operations, attorney  
8       supervision, and all employee staffing issues. In addition to my leadership and supervisory  
9       responsibilities, I also represent clients eligible for public defense services in court. I typically  
10      work on complex cases, such as homicide and Jessica’s Law matters.

11           4.       Although I understand that “indigent” is a term of art in the jurisprudence  
12      regarding defendants eligible for public defense services, “indigent” can be a loaded and  
13      reductive term. As our society increasingly recognizes, labeling individuals by single traits that  
14      come weighted with socioeconomic disadvantages can be demeaning. PDMC clients – indeed,  
15      all defendants eligible for public defense services – are whole and complete individuals who  
16      happen to be experiencing financial challenges. People are more than their economic status, and  
17      I believe that part of the role of a public defender is to emphasize to the judicial system the whole  
18      humanity of these individuals rather than to allow them to be reduced to their economic status.  
19      I therefore use the term “eligible for public defense services” when others might default to the  
20      term “indigent.”

21      **I.       Overview of the Oregon Public Defense System.**

22           4.       The Oregon Public Defense Services Commission (“PDSC”) is an independent  
23      body overseeing the Office of the Public Defense Services (“OPDS”). Through OPDS, PDSC

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24      <sup>1</sup> I understand that the number of attorneys I oversee is not identical to Public Defender of  
25      Marion County Report by Moss Adams because that report used the number of full-time  
26      equivalent PDMC attorneys as of December 31, 2022. My office has hired additional attorneys  
    since that date.

1 provides counsel to defendants eligible for public defense services in adult criminal, juvenile  
2 delinquency, juvenile dependency, and civil commitment proceedings at the trial and direct  
3 appellate levels.

4 5. OPDS contracts with different types of providers to provide public defense  
5 services: nonprofit public defender organizations such as the PDMC, law firms, consortia, and  
6 individual attorneys. All the Oregon Circuit Court trial-level public defense representation is  
7 through these contracts.

8 6. OPDS uses a contract model based on Full-Time Equivalent<sup>2</sup> (“FTE”) attorneys.  
9 Under this model, OPDS funds a specific number of FTE attorneys under each contract. Not all  
10 attorneys contracting with OPDS work on public defense matters full-time. Under the FTE  
11 system, an attorney can contract to use only a portion of their time representing public defense  
12 clients. Thus, an attorney might spend 40% of their time on public defense work, so would  
13 represent 0.4 of an FTE in the public defense system. If another attorney constitutes 0.6 of an  
14 FTE, the total of those two attorneys’ public defense time together is 1.0 FTE.

15 7. In 2022, OPDS first started paying public defender offices or individual attorneys  
16 5% of the regular contract for administration, regardless of the size of the contractor. Some  
17 consortia and law firms historically received contract administrative costs included in their  
18 contracts, up to as much as 9% of the total contract amount prior to 2022, but this administrative  
19 cost does not cover attorney supervision or training. Also in 2022, OPDS began providing  
20 funding to nonprofit public defender offices for training and supervision with the emergency  
21 funds made available by the legislature to build attorney capacity. I was recently notified that  
22 training and supervision funds will not “roll-up” into the next OPDS provider contracts as

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23 <sup>2</sup> OPDS developed and implemented the FTE/Caseload contracting model on January 1, 2021.  
24 The Oregon Report’s analysis was based on this model. My understanding is that that the term  
25 FTE was replaced with Maximum Attorney Caseload (“MAC”) during the 2022 contract cycle.  
26 However, many contracts continue to refer to, and use, the term FTE. For consistency with  
these contracts and the Oregon Report, this Declaration uses the term FTE instead of MAC.

1 separately funded FTE positions within a public defense office. Currently, it is unclear whether  
2 defense providers will continue to receive funding for supervision for their attorneys or a  
3 professional training program or whether defense providers must pay for these services out of  
4 the administrative fees or the allotted attorney FTE amount, reducing funds available for attorney  
5 salary, overhead and support staff, or raising additional funds to do so.

6 **II. Assignment Of Cases to and Within the PDMC.**

7 9. The Marion County Circuit Court Annex administers the daily arraignment  
8 docket for all criminal matters and determines which criminal defendants are eligible for public  
9 defense services. The court then assigns public defense cases to attorneys. There are two broad  
10 categories/groups of attorneys to which the court assigns cases: public defender offices and the  
11 consortia.

12 10. The Public Defender offices, like the PDMC, are 501(c)(3) organizations with  
13 nonprofit status. The Public Defender offices are run by Executive Directors that are monitored  
14 and overseen by an independent nonprofit board. The Public Defender offices are law firms  
15 with ethical obligations to adequately train and supervise all employees within the office and to  
16 ensure that attorneys meet the required ethical obligations and competency standards for public  
17 defense work. They employ staff, investigators, attorneys, case managers, and law students on  
18 an ongoing basis. Nearly all the employees at a Public Defender office are full-time employees.  
19 The Public Defender offices pay for all the organization and employee business costs, office  
20 overhead, legal trainings, liability insurance, membership dues, medical and retirement benefits,  
21 regular business reimbursements, and employees' paid time off. Public Defense offices contract  
22 with OPDS for a certain number of FTE attorneys. Nearly all attorneys', support staff's, and  
23 law students' overhead costs, salaries, and benefits are deducted from the total attorney FTE  
24 amount provided by OPDS. Approximately half of the investigators' overhead, costs, salaries,  
25 and benefits are also taken from the total attorney FTE amount.

26

1           11.     A consortium is a group of attorneys that contract together with OPDS during any  
2 given contract period. They are typically comprised of solo attorneys or small for-profit  
3 businesses, and do not hold 501(c)(3) nonprofit status. In contrast to the Public Defense offices,  
4 the consortia are not overseen by an independent board. The composition of a consortium board  
5 is mostly its own attorney members. Consortia attorneys are not liable for the supervision,  
6 training, or competency of other consortia attorneys. The attorneys providing public defense  
7 under the consortia model often maintain their own private caseload in addition to an  
8 overwhelming public defense contractor caseload. Consortia attorneys receive the entire amount  
9 of the OPDS attorney FTE funds, depending on the specifics of the agreement between the  
10 attorney and the consortium where they practice. Attorneys are expected to fund at least one  
11 part-time support staff person from their total FTE amount. It is not clear what qualifies as a  
12 part-time support staff person under the consortia contracts.

13           12.     The consortium in Marion County is the Marion County Association of  
14 Defenders (the “Consortium”). The Consortium is the other major provider of public defense  
15 services in Marion County.

16           13.     On Monday mornings, the court conducts arraignments and assigns all of those  
17 cases scheduled for that day to the PDMC. Thus, the PDMC will onboard cases of qualifying  
18 defendants eligible for public defense services who are arrested on Fridays, Saturdays, Sundays,  
19 and Monday mornings. The Consortium takes on cases on Tuesday through Friday, thus  
20 covering qualifying defendants eligible for public defense services who are arrested on Monday  
21 evenings, Tuesdays, Wednesdays, and Thursdays. Recently, the PDMC has taken on numerous  
22 additional clients on the regular Consortium pickup days.

23           14.     On multiple occasions in February 2023, the Executive Director of the  
24 Consortium, D. Olcott Thompson, announced that the Consortium had reached its contractual  
25 maximum of cases and therefore could take on no further cases under the Consortium’s contract.  
26



1           15. In assigning clients to PDMC attorneys, the PDMC considers the level of  
2 experience and licensure of each attorney, the OPDS qualification certification held by the  
3 attorneys, the complexity of the legal issues, the level and seriousness of the charges, and several  
4 workload factors that are either attorney-specific or client-specific.

5           **III. Determining Capacity.**

6           16. Each week, in order to provide the court with the capacity report for PDMC  
7 attorneys, I measure capacity within my office. I consider a number a different workload factors  
8 when determining capacity. My goal is to have each attorney work an average of 50-60 hours  
9 per week. Thus, when an attorney is working on average 50-60 hours per week, I consider that  
10 attorney at 100% capacity.

11           17. When determining capacity, I consider two broad categories of factors: (1)  
12 attorney-specific factors and (2) client-specific factors.

13           18. With respect to attorney-specific factors, I begin with each attorney's experience.  
14 I consider not only the attorney's overall experience, but also their experience specific to the  
15 types of charges at issue. Furthermore, I consider how many clients that attorney is currently  
16 representing, the types of cases these clients have, and whether the attorney has any upcoming  
17 trials or is supervising upcoming trials for a less experienced attorney. Furthermore, I consider  
18 the attorney's personal needs, such as the likelihood of imminent burnout, including examining  
19 their past trial schedule and evaluating recent trial performance and motion practices. I also  
20 consider the attorney's vacation schedule, close family or personal medical issues, or any  
21 upcoming and intensive continuing legal education ("CLE") courses. Attorneys suffering from  
22 certain medical issues, or attorneys who are exhausted from not having taken vacations in a long  
23 time, may be unable to represent their clients competently and effectively.

24           19. With respect to client-specific factors, I consider whether clients are in-custody  
25 or held in court ordered medical facilities. If clients are in either such locations, attorneys will  
26 require additional time for organizing meetings, travel time, additional hearings, and in person

1 client meetings. For example, a check-in meeting with a client in-custody requires three to four  
2 hours. A check-in meeting with an out-of-custody client does not require travel time and can  
3 usually be accomplished in under one hour. I also consider whether clients require interpreters  
4 – and if so, which language is at issue. Clients who need interpretation services require  
5 substantially more attorney time and staff resources for legal counsel and representation. Rarer  
6 languages may require more than one interpreter to be present at the same time, and the necessary  
7 amount of attorney time can easily surpass four times the typical amount spent on clients who  
8 do not require interpretive services. Also, the timeline in which the attorney must be fully  
9 prepared to defend the in-custody client at trial is significantly shorter than an out-of-custody  
10 client timeline. These shorter trial and pretrial motion timelines are mandated by law because  
11 of the client’s deprivation of liberty while presumed innocent.

12 20. In considering these factors, I rely on my own experience, as well as meetings  
13 with PDMC unit supervisors, ongoing analysis of attorneys’ caseload reports, and weekly written  
14 reports from each attorney. To be clear, however, in creating these reports, I make no attempt  
15 to determine how much time an attorney *should* be spending on a matter. I base my analysis on  
16 the type of triage work that I describe below, and the amount of time that we have historically  
17 put into cases, and not on any kind of determination of what does or should constitute adequate  
18 representation under prevailing professional norms.

19 21. I use the information gathered to draft the weekly capacity reports. Each report  
20 breaks down the following information: the number of new clients each attorney can absorb  
21 based on the highest level of the clients’ charges and the available attorneys’ current client  
22 workloads. Exhibit A is a true and accurate copy of the PDMC capacity report from the week  
23 of February 13, 2023.

24 22. I provided these reports weekly to the Court prior to the morning arraignment  
25 docket and until the court requested for the PDMC to stop providing weekly workload capacity  
26

1 reports to the court, after providing the February 13, 2023, PDMC Workload Report. Workload  
2 capacity reports are still produced weekly for internal monitoring and supervision.

3 23. If the court orders or directs appointment of cases to PDMC attorneys who are  
4 already above capacity, or in a way that causes them to be above their capacity, I can orally  
5 object to the directed appointment made above available attorney capacity.

6 **IV. The Impact of Excessive Workloads on PDMC Attorneys and their Clients.**

7 24. The impact of excessive workloads has had an enormous negative impact on both  
8 the public defense attorneys in my office and our clients.

9 25. In terms of the attorneys themselves, there is not a week that goes by where I do  
10 not have multiple attorneys communicating symptoms of burnout and severe mental health  
11 concerns to me. Attorneys need extended leave without much notice to the PDMC because they  
12 have experienced a sudden mental health crisis requiring immediate medical leave and,  
13 subsequently, long-term reductions in their previous workloads. When these attorneys are on  
14 leave, the remaining already overwhelmed attorneys must cover the absent attorneys' workloads.  
15 This can have a domino effect in the office, where attorneys are spread thin trying to help one  
16 another recover.

17 26. In terms of our clients, we function essentially in a triage capacity. We are forced  
18 to focus only on the work that needs to be performed immediately that day. Often that triage is  
19 performed in reaction to unforeseen and urgent orders from the court, with no opportunity to  
20 appropriately plan or focus on anything other than one emergency after the other, and with no  
21 time or energy to build a proper defense. We also lack any meaningful opportunity to identify,  
22 gather necessary evidence for, organize, or present client mitigating factors that could impact  
23 sentencing.

24 27. Carrying our present workload has had multiple negative impacts across our  
25 caseload. For example, attorneys are rarely capable of spending more than fifteen consecutive  
26 minutes on any given complex task, unless they work late into the night or otherwise outside of

1 regular business hours.<sup>3</sup> This means that attorneys have been unable to properly strategize or  
2 investigate potential defenses. It also means attorneys have been unable to complete legal  
3 research or analyze how legal principles apply to any specific case. Furthermore, it hinders  
4 effective legal writing, such as for motions. These deficiencies occur across the board on our  
5 cases.

6 28. Another type of task that requires long, uninterrupted blocks of time is client and  
7 witness interviewing. Due to our current workloads, our attorneys cannot properly prepare  
8 clients or witnesses because attorneys are forced to rush through these meetings to cope with  
9 other demands on their time. The time pressures on client meetings, in particular, have prevented  
10 our overworked public defenders from developing meaningful and trusting relationships with  
11 their clients.

12 29. Time pressures also have impeded proper investigations. PDMC attorneys have  
13 been unable to investigate impeachment or exculpatory witnesses and do not have time to  
14 conduct full investigations of the incidents underlying the charges.

15 30. Media-related tasks are another example of tasks that overworked public  
16 defenders must neglect. Now, more than ever before, attorneys must handle large amounts of  
17 electronic discovery and digital media. But over-capacity public defenders do not have sufficient  
18 time to prepare demonstratives or exhibits for trial. Review, redaction, organization, and  
19 transcription of body cam footage, in addition to other video/ audio discovery, have increased  
20 the attorney time and resources necessary to adequately manage discovery by around 30%-50%  
21 per case. Statutorily mandated redaction must often be outsourced to other contractors due to  
22 high workloads and inadequate support staff funding. Even with maximum use of outside  
23 contractors, PDMC is approximately thirty to sixty days behind in providing discovery to our  
24 clients.

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25 <sup>3</sup> Routinely foregoing sleep to complete work risks attorney health and well-being and also  
26 may result in fatigued attorneys making mistakes.

1           31. Finally, over-capacity public defenders have struggled to complete basic  
2 administrative or case-management tasks, such as updating case management systems,  
3 organizing client files, reconciling court calendars, or access trainings.

4           32. Several PDMC attorneys volunteered to identify necessary tasks<sup>4</sup> they are unable  
5 to complete, in order to provide concrete examples of how their excessive workloads impact  
6 their ability to represent their clients. Their high-level assessments paint a consistent picture:  
7 attorneys with excessive workloads are forced to choose between legitimate client needs and are  
8 left unable to provide adequate representation.

9           33. Certain tasks are unable to be completed across not just a portion of cases, but for  
10 all clients and all cases. Multiple attorneys identified Attorney Investigation/Interviews as one  
11 such task. Similarly, almost every attorney who participated identified Client Communication  
12 and Legal Research, Motions Practice as two tasks they are unable to complete across nearly all  
13 of their cases.

14           34. Consider one common charge assigned to PDMC attorneys: burglary. PDMC  
15 attorneys are currently assigned cases involving Attempted Burglary I, Burglary I, and Burglary  
16 II across a variety of clients. In cases involving Attempted Burglary I, PDMC attorneys indicated  
17 they were unable to fully complete the following tasks: Client Communication, Discovery/Case  
18 Preparation, Attorney Investigation/ Interviews; Experts; Legal Research, Motions Practice;  
19 Negotiations; Court Preparation; Court Time; and Sentencing/Mitigation. The story is similar  
20 with Burglary 1, although for this charge, attorneys identified an even greater number of tasks  
21 they were unable to complete: Client Communication; Client Support Services; Discovery/Case

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22 <sup>4</sup> These attorneys used the Case Tasks identified in the Oregon Report as the basis of their  
23 assessments. *See* Oregon Report, at Appendix C (identifying and defining case tasks as: Client  
24 Communication; Client Support Services; Discovery/Case Prep; Attorney  
25 Investigation/Interviews; Experts; Legal Research, Motions Practice; Negotiations; Court Prep;  
26 Court Time; Sentencing/Mitigation; and Post Judgment). Notably, this information does not  
account for time that PDMC attorneys must spend supervising current attorneys or training and  
supervising new attorneys, which may occur across all cases regardless of charge level.

1 Preparation; Attorney Investigation/Interviews; Experts; Legal Research, Motions Practice;  
2 Negotiations, Court Preparation; Court Time, Sentencing/Mitigation; and Post Judgment. Not  
3 being able to complete any individual task can detrimentally impact clients. One attorney  
4 articulated how high workloads mean that once a case is closed, additional post judgment matters  
5 are given the lowest priority level. As a result, that attorney is unable to file motions to terminate  
6 probation, reduce sentencing, provide relief from sex offender registration, or expunge records.

7 35. PDMC attorneys with Burglary II cases had a similar breadth of tasks they were  
8 unable to complete: Client Communication; Discovery/Case Preparation; Attorney  
9 Investigation/Interviews; Experts; Legal Research, Motions Practice; Negotiations; Court  
10 Preparation, Court Time; and Sentencing/Mitigation.

11 36. Notably, PDMC attorneys identified court preparation as a task they are unable  
12 to complete across all burglary charges. With current workloads, a PDMC attorney does not  
13 have sufficient time, for example, to prepare witnesses for trial. Instead, attorneys have only  
14 enough time to present witnesses with a quick overview of the information to provide on the  
15 stand and offer a few cursory suggestions on their demeanor.

16 37. Another charge many PDMC attorneys are currently assigned is homicide. This  
17 includes Attempted Murder, Manslaughter 1, Murder I, and Murder II. For Attempted Murder,  
18 attorneys identified being unable to execute the following tasks: Client Support Services;  
19 Experts; Legal Research, Motions Practice; and Negotiations.

20 38. For Manslaughter I, attorneys identified only client support services as a task they  
21 were unable to complete in their current caseload. It is, however, a significant task. PDMC  
22 attorneys rarely have enough time to interact with pretrial release services, social services,  
23 treatment providers, referral to legal aid, or handle medical issues. As a result, these burdens  
24 fall on clients who need to not only navigate the difficulties of a legal case, but also face a  
25 complex bureaucratic system outside the courtroom alone.

26

1           39. For Murder I, attorneys indicated being unable to complete: Discovery/Case  
2 Preparation; Attorney Investigation/Interviews; Experts; Legal Research, Motions, Practice; and  
3 Sentencing/Mitigation.

4           40. Consider the effect of an attorney's inability to spend sufficient time with experts.  
5 In that instance, a PDMC attorney lacks time to research and find new experts, who may be  
6 better fits for a particular case, and must instead rely on previous experts with whom they have  
7 existing relationships. Attorneys are also unable to ensure they are receiving proper expertise.  
8 One attorney detailed submitting a request to a computer crimes expert to determine the  
9 appropriateness of a police investigation's scope. The expert never responded, and the attorney's  
10 workload has prevented them from checking in with the expert.

11           41. For Murder II, attorneys identified the following tasks they were unable to  
12 complete: Client Communication; Discovery/Case Preparation; and Legal Research, Motions  
13 Practice. PDMC attorneys identified Legal Research, Motions Practice as a task they are unable  
14 to sufficiently complete across all murder charges. Instead, attorneys are forced to triage drafting  
15 or filing motions based on their assessment of what is most likely to go to trial. Jury instructions,  
16 which can change the shape of a verdict, are often only considered in the week prior to trial.

17           42. To understand how a PDMC attorney's excessive workload affects clients, it is  
18 useful to consider not only the charge level, but also the case stage. A PDMC attorney's  
19 excessive workload impacts a single defendant's case at many stages of the litigation. For a  
20 high-level felony case, one PDMC attorney explained how their inability to complete several  
21 tasks leaves them unable to spend time formulating strategy. This attorney did not have time to  
22 communicate with their client or their client's family, nor did they have time to contact the  
23 psychologist who performed the client's last evaluation. Moreover, that attorney is unable to  
24 fully investigate the felony because they must prioritize other more urgent matters that may reach  
25 trial sooner. That attorney is also unable to review the client's discovery meticulously.  
26

1           43.     These are common occurrences. The inability to complete a single one of these  
2 tasks could reshape the entire investigation, but the inability to complete any means a PDMC  
3 attorney lacks necessary information to best advise their client.

4           44.     The problem is no less dire for cases with lighter sentences. A probation violation  
5 may be just as time-consuming as a higher-level felony. As with most cases, PDMC attorneys  
6 handling such matters are unable to fully communicate or reassure clients. Attorneys also lack  
7 proper time for discovery. Even a small probation violation can be accompanied by hundreds  
8 of pages of discovery. An attorney with limited bandwidth must choose to prioritize and is  
9 forced to skim such materials, potentially missing valuable information that could help their  
10 client. One attorney detailed how they were unable to perform an investigation or even complete  
11 investigation reports or to speak with investigators.

12           45.     These types of deficiencies have existed since I have been Executive Director at  
13 the PDMC, and without change in caseloads, I anticipate that they will continue into the  
14 indefinite future.

15           46.     Further, my goals for my office include not just providing effective legal  
16 representation; I also want to ensure that the process is humane. Our legal system suffers from  
17 racial and socioeconomic disparities that can make our clients feel dehumanized by the criminal  
18 justice process. These disparities make it particularly critical for public defenders to offer not  
19 just *effective* legal representation, but also *humane* representation. I believe our clients should  
20 feel that they are human beings being treated with justice, not product being moved through a  
21 faceless system. In order to help our clients navigate the system with dignity and humanity, our  
22 attorneys need to be able to spend a reasonable amount of time on each case. They need to be  
23 able to develop meaningful relationships of trust with each client. They need to have time to  
24 think of the human component that each client represents – the impact of events on themselves,  
25 their families, and their jobs. Unfortunately, none of this is possible under present workloads;  
26



1 allocating enough time to treat even one client that way would further undermine our  
2 representation of all other clients.

3 47. Because the public defenders in my office are not able to get to know their clients,  
4 they cannot properly do their job, or even approach their job in a humane way. Without the  
5 ability to humanely do their job, our attorneys are just part of the pipeline of sending people to  
6 prison. In my view, that is a particularly egregious result of excessive workloads.

7 **V. The Oregon Project.**

8 48. I was a participant in the Oregon Project, which I understand has been described  
9 in other declarations being filed contemporaneously with my motion.

10 49. As a participant in the project, I responded to two surveys and participated in a  
11 third, live discussion round. The survey questions were identical in each, but the circumstances  
12 were somewhat different. For the first survey, I was given a form that listed various tasks and  
13 types of cases and asked to estimate the number of hours needed per task, the frequency in which  
14 those tasks had to be completed, and how frequently certain types of cases would go to trial or  
15 would be resolved in some other manner. The only input that was provided to me at that time  
16 was that I should rely on my experience and expertise and have in mind the state and ABA Rules  
17 of Professional Conduct and Defense Function Standards. I also was asked to assume that, for  
18 a given matter, the hypothetical public defense attorney had adequate investigative and  
19 administrative support, which most definitely is not the case in practice.

20 50. I also was encouraged not to supply information for case types if I did not have  
21 the requisite experience. For the first survey, for example, I did not feel that I had adequate  
22 expertise to opine on murder cases, although by the last round I had acquired that expertise.

23 51. For the second survey, I was asked to fill out the same questions, but before doing  
24 so, I was given the responses from other survey takers from the first round.

25 52. For the third phase, I participated in a Zoom discussion with the other survey  
26 respondents, where we discussed the amount of time it would take to provide adequate

1 representation under prevailing professional norms for various tasks and case types. I found  
2 these discussions to be very helpful, and together with the other respondents, we were able to  
3 reach a consensus on the amount of hours necessary for those case types and task types.

4 53. This process was stressful and grueling. We found ourselves almost stuck in our  
5 default state, in which time scarcity is assumed. Over time, however, we were able to engage in  
6 meaningful conversations regarding how much time should be spent on certain case tasks. In  
7 doing so, we were forced to face the fact that, as defense attorneys, we do not spend anywhere  
8 near the amount of time on case tasks that is necessary to provide adequate representation.

9 54. I have reviewed the results from the Oregon Project, and I agree with them. They  
10 were the result of a broad consensus reached by experts in the field, including myself, and  
11 constitute the minimum time necessary for us to perform our job properly. I note that the hours  
12 described therein are considerably more than the hours that we are able to provide at the PDMC  
13 due to our excessive workloads.

14 I hereby declare that the above statement is true to the best of my knowledge and belief,  
15 and that I understand that it is made for use as evidence in court and is subject to penalty for  
16 perjury.

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DATED this 15th day of March, 2023.

A handwritten signature in cursive script that reads "Shannon I. Wilson". The signature is written in black ink and is positioned above a horizontal line.

Shannon I. Wilson, OSB #061406

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# **EXHIBIT A**

Dear Judge Prall, Judge Gardiner, and Judge Queen,

Please find PDMC's available attorney capacity report for **February 12, 2023**, included within this email.

Our old database continues to be down and we are unable to complete all potential conflict checks for this docket. We hope to have all database issues resolved this week (We were told that it would be resolved last week by IT contractors and we are doing our best to fix this issue). We will follow the proper court procedures regarding any later discovered client conflicts of interest.

Currently, there are four attorneys far above a reasonable workload level and we will not be assigning cases to these attorneys, unless forced to do so by the court.

Last week, Mr. Hayes provided his notice of resignation from PDMC. He will be going to OPDS to work in their trial services division. We will keep you updated on the possible absorption of his cases by other attorneys. We are hoping to fill that vacancy as soon as possible with a highly qualified attorney.

**Bailey Moody** will be handling the morning arraignment docket and **Moody or Goldberg and Aaron Jeffers** will be assisting with the afternoon arraignment docket. If possible, please assign all stand alone in custody **PVs to Mr. Hayes**.

As always, we will do our best to send an updated attorney capacity report prior to the afternoon docket. Please let me know if you have any questions or concerns regarding our attorneys' abilities to absorb new client cases this week.

### **2.13.23 - PDMC Total Capacity for New Clients:**

#### **OUT CUSTODY CAPACITY**

- 12** - OUT of Custody Misdemeanors or Contempt Clients
- 7** - OUT of Custody Minor Felony Clients
- 5** - OUT of Custody Major Felony Clients (*\*or Minor Felony DV*)
- 1** - OUT of Custody **A & A** Major Felony Clients (*\*or lower than major felony*)

#### **IN CUSTODY CAPACITY**

- 8** - IN Custody Misdemeanors or Contempt Clients
- 5** - IN Custody Minor Felony Clients
- 7** - IN Custody Major Felony Clients (*\*or Minor Felony DV*)
- 1** - IN Custody **A & A** Major Felony Clients (*\*or lower than major felony*)
- 2** - IN Custody or OUT of Custody J. Law or M11 Client(s)

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### **Individual Attorney Capacity Report:**

#### **Misdemeanors**

Heather Enderle	2 OUT Misdo/ Contempt <b>and</b> 0 IN Misdo/ Contempt
Michael Flickner	3 OUT Misdo/ Contempt <b>and</b> 1 IN Misdo/ Contempt
Sunny Maxwell	2 OUT Misdo/ Contempt <b>and</b> 3 IN Misdo/ Contempt

Zoe Janachek 2 OUT Misdo/ Contempt **and** 3 IN Misdo/ Contempt  
Samantha Galimba 3 OUT Misdo/ Contempt **and** 1 IN Misdo/ Contempt

**Minor Felonies**

Jesse Thompson 2 OUT Minor Felony **and** 2 IN Minor Felony  
Marykate Trainor 2 OUT Minor Felony **and** 2 IN Minor Felony  
Laura Johnson 3 OUT Minor Felony **and** 1 IN Minor Felony

**Major Felonies (Major Felony or Minor Felony DV)**

M. Palmer 1 OUT Major Felony **and** 1 IN Major Felony  
C. Muro 2 OUT Major Felony **and** 2 IN Major Felony  
S. Bailly 2 OUT Major Felony **and** 2 IN Major Felony  
B. Breazeale 0 OUT Major Felony **and** 2 IN Major Felony

**PV Major Felonies**

D. Hayes All Major Felony PVs (Resignation 3/10)

**Aid and Assist Major Felonies**

B. Moody 1 OUT Major Fel. / A&A **and** 1 IN Major Fel. / A&A Clients

**J. Law or Lower Complex Felonies**

K. Davis 1 IN **or** OUT  
B. Breazeale 1 IN **or** OUT

**MAX WORKLOAD**

Stephanie Blackwell \*At Maximum Workload Capacity  
Dustin Ellett \*At Maximum Workload Capacity  
Aaron Jeffers \*At Maximum Workload Capacity  
Tim Downin \*At Maximum Workload Capacity

**COURT FORCED/ DIRECTED APPOINTMENTS**

**Should the court appoint new clients above PDMC's available attorney capacity, please direct the orders as follows:**

Misdemeanors - Alyssa Gerber

Minor Felonies - Ben Goldberg

Major Felonies - Kim Davis

M11 or Higher - Aaron Jeffers

Thank you,

Shannon I. Wilson

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IN THE CIRCUIT COURT OF THE STATE OF FOR OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON;	
Plaintiff,	
v.	
KERTEN SALLE;	
Defendant.	

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Case No.: 23CR00153	
DECLARATION OF STEPHEN F. HANLON IN SUPPORT OF EXECUTIVE DIRECTOR SHANNON WILSON’S MOTION TO WITHDRAW FROM CURRENT APPOINTMENTS AND TO DECLINE FUTURE APPOINTMENTS	

I, Stephen F. Hanlon, declare as follows:

**I. Background and Experience.**

1. I began the practice of law in 1966. In 1989, I founded the Community Services Team (“CST”) at Holland & Knight. For the next twenty-three years, I served as the Partner in Charge of the CST, which during my tenure was the largest full-time private practice pro bono department in the nation. My current bio is attached at Exhibit A.

2. Since my retirement from Holland & Knight at the end of 2012, I have focused my practice exclusively on assisting and representing public defenders with excessive workloads. I have been doing that work for the past twenty-five years.

3. I was the General Counsel to the National Association for Public Defense (“NAPD”) from 2013 to 2018. The NAPD is a national organization of more than 30,000 public defense professionals.

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1           4.       I am currently the principal of Lawyer Hanlon, a firm that works with other law  
2 firms, lawyers, experts, law professors, and law students who are interested in assisting public  
3 defenders facing excessive workloads.

4           5.       I am a Professor of Practice at St. Louis University School of Law, where I have  
5 taught a course on systemic indigent defense litigation.

6           6.       I have authored the following law review articles, all of which address systemic  
7 indigent defense problems in the country:

8           a.       Stephen F. Hanlon, *State Constitutional Challenges to Indigent Defense*  
9                    *Systems*, 75 Mo L Rev 751 (2010);

10          b.       Stephen F. Hanlon, *The Gideon Decision: Constitutional Mandate or*  
11                    *Empty Promise? A Fifty-Year Deal Under Fire*, 52 U Louisville L Rev  
12                    Online 32 (2013);

13          c.       Stephen F. Hanlon, *The Appropriate Legal Standard Required to Prevail*  
14                    *In A Systemic Challenge to An Indigent Defense System*, 61 St Louis ULJ  
15                    625 (2017); and

16          d.       Stephen F. Hanlon, *Case Refusal: A Duty for a Public Defender and a*  
17                    *Remedy for All of a Public Defender's Clients*, 51 Ind L Rev 59 (2018).

18          7.       From 2012 to 2015, I was the Chair of the Indigent Defense Advisory Group  
19 for the Standing Committee on Legal Aid and Indigent Defendants (“ABA SCLAID”) of  
20 the American Bar Association (“ABA”). SCLAID is the ABA’s oldest standing committee  
21 and was originally established in 1920. It has jurisdiction within the ABA over matters  
22 related to the creation, maintenance, and enhancement of effective civil legal aid and  
23 criminal indigent defense delivery systems and services. As Chair of ABA SCLAID, I led  
24 the committee’s efforts in seven state public defender workload studies over the course of  
25 the past ten years. I also acted as ABA SCLAID’s liaison to the ABA’s Criminal Justice  
26 Section for several years.



1           8.       I was lead counsel for the plaintiff in *Missouri Public Defender in State ex rel.*  
2 *Mo. Public Defender Commission v. Waters*, 370 SW3d 592 (Mo 2012), which was the first state  
3 supreme court case to expressly uphold the right and duty of a public defender organization to  
4 refuse additional cases when confronted with excessive workloads. *Waters* has been described  
5 as a “historic win” and a “watershed moment” in the history of indigent defense. Davies, Andrew  
6 Lucas Blaize, *How Do We “Do Data” in Public Defense?* 78 Albany L Rev 1179 (2014-2015).

7           9.       I have litigated three public defender excessive workload cases: two in Florida  
8 and one in Massachusetts. Specifically, I assisted in *Arianna S. ex. rel. Weber v. Mass*, No SJ-  
9 2004-0282 (June 28, 2004), where a class of indigent criminal defendants challenged the  
10 constitutionality of the Massachusetts indigent defense system. As a result of our work, the  
11 Massachusetts Legislature increased public defender appropriations from \$98 million to \$158  
12 million. Additionally, I was involved with two cases challenging the constitutionality of capital  
13 indigent defense system in Florida: *Arbelaez v. Butterworth*, 738 So 2d 326 (Fla 1999) and *Maas*  
14 *v. Olive*, 992 So 2d 196 (Fla 2008). These cases resulted in a substantial increase in funding and  
15 held that, in Florida, compensation above legislative caps was appropriate.

16           10.       I have been qualified to testify and did testify as an expert witness in three state  
17 court cases, two in Louisiana and one in Missouri, concerning claims of excessive workloads  
18 being handled by public defense lawyers. I have testified in excess of thirty times on litigation  
19 involving the reasonableness of the hours spent on matters by civil rights attorneys.

20           11.       I have lectured on ethics issues in public defense practice many times across the  
21 country, including before state and local public defender organizations, in seminar meetings of  
22 the NAPD, and at law schools including Harvard Law School.

23           12.       Furthermore, during my thirty years of practicing law in Florida, I represented  
24 many criminal defense and civil rights lawyers in grievance proceedings brought against them  
25 by the Florida Bar.

26       ///

1           13.     I served as the ABA Project Director in the study of the workload of the Missouri  
2 Public Defender undertaken by RubinBrown, one of the nation’s leading accounting and  
3 professional consulting firms, on behalf of the ABA, known as “The Missouri Project,”  
4 attached at Exhibit B. The Missouri Project Report was published in February, 2014. It has been  
5 described as “one of the most sophisticated, data-driven analyses of defender workloads to date.”  
6 Davies, *supra*, at 1179-92.

7           14.     I served as the ABA Project Director in similar workload studies conducted and  
8 completed in Louisiana, Rhode Island, Colorado, Indiana, New Mexico and, as discussed  
9 further below, Oregon.

10          15.     I am presently one of four Principal Investigators involved in a study that will  
11 produce the New National Public Defense Workload Standards (“NPDWS”) scheduled for  
12 publication in April, 2023. The NPDWS is intended to replace the 1973 National Advisory  
13 Commission (“NAC”) Standards that have been in effect, unchanged, for the last fifty years.  
14 The other Principal Investigators included in this study are the Rand Corporation, ABA  
15 SCLAID, and the National Center for State Courts.

16       **II.     The Oregon Project and Marion County Project.**

17          16.     In 2020, the Oregon Office of Public Defense Services (“OPDS”) engaged ABA  
18 SCLAID and Moss Adams LLP (“Moss Adams”) to analyze the historical caseloads of public  
19 defense cases in Oregon, determine how many lawyers were necessary to handle that caseload,  
20 and compare that number to the actual number of full-time lawyers then employed in Oregon’s  
21 public defense system (the “Oregon Project”).

22          17.     As noted above, I served as the Project Manager for the ABA in connection with  
23 the Oregon Project. The Oregon Project required expertise in both: (1) the law and standards  
24 applicable to the study and (2) the surveying and data analyses that the study utilized. As Project  
25 Manager, I was primarily responsible for the first facet, Moss Adams for the second facet. These  
26

1 areas of expertise often overlapped and thus required close collaboration between myself and  
2 Moss Adams to perform the study.

3 18. The Oregon Project consisted of two main phases: (1) the application of a  
4 technique known as the Delphi Method, which was used to determine the amount of time that  
5 various types of public defense cases and associated tasks required; and (2) an analysis of the  
6 Oregon public defense system's historical staffing and caseloads.

7 19. The Oregon Project reached five fundamental conclusions as of November, 2021,  
8 discussed more fully below. First, the Oregon public defense system had an estimated annual  
9 workload of approximately **95,473 cases per year**. Oregon Report (attached hereto as Exhibit  
10 C) at 27. Second, the Oregon public defense system employed **592 full-time equivalent**  
11 **("FTE") attorneys**. *Id.* at 13. Third, the Oregon public defense system required **4,047,642**  
12 **hours** to be worked per year to provide indigent defendants with an adequate defense. *Id.* at 27.  
13 Fourth, the total number of fulltime attorneys needed to perform that work was, conservatively,  
14 **1,888 attorneys**. *Id.* Fifth, subtracting the resources currently in the system showed that the  
15 system was deficient by **1,296 full-time attorneys**. *Id.* In other words, to meet even minimal  
16 levels of adequate representation under the caseloads as they existed at that time, the Oregon  
17 system needed **roughly three times** as many lawyers as it had. The details and bases for those  
18 conclusions follow.

19 20. I understand that Moss Adams has performed the same analysis specific to the  
20 Marion County Public Defender's Office ("PDMC"), relying upon the results of the Delphi  
21 Method in the Oregon Project as part of that analysis. The PDMC Report is attached hereto as  
22 Exhibit D.

23 21. I have reviewed the report resulting from that analysis.

### 24 **III. The Use of the Delphi Method.**

25 22. The Delphi Method was first created by the RAND Corporation ("RAND")  
26 during the Cold War at the direction of the United States Air Force. RAND is an organization

1 formed just after World War II in order to provide research and development to the U.S. military.  
2 In 1948, RAND transitioned to a nonprofit corporation status. Its articles of incorporation state  
3 that the corporation’s purpose is “[t]o further and promote scientific, educational, and charitable  
4 purposes, all for the public welfare and security of the United States of America.”<sup>1</sup>

5 23. The Delphi Method has been used in a wide range of industries and professions.  
6 Its original purpose was to forecast the effect of technology on warfare, and it has since been  
7 applied to healthcare, education, environmental science, and management. For example, the  
8 Delphi Method was used to predict probable targets that the Russian government might choose  
9 to bomb in the event that it attacked the United States. Researchers have applied the Delphi  
10 Method to many purposes, primarily “program planning, needs assessment, policy  
11 determination, and resource utilization.”<sup>2</sup> More recently, for instance, the Delphi Method has  
12 been used to determine military women’s health priorities; develop a strategy for military  
13 emergency nursing; and study neonatal abstinence syndrome, neonatal opioid withdrawal  
14 syndrome, and clinical pain management.

15 24. The Delphi Method employs a multi-round survey process designed to “obtain  
16 the most reliable consensus of opinion in a group of experts.”<sup>3</sup> In particular, the Delphi Method  
17 was developed to build consensus among experts where other forms of objective data were not  
18 available.

19 25. I first became aware of the Delphi Method in 2010 while working with Norman  
20 Lefstein in connection with his seminal publication, *Securing Reasonable Caseloads*.<sup>4</sup> This

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22 <sup>1</sup> *A Brief History of RAND*, RAND Corp, <https://www.rand.org/about/history.html>.

23 <sup>2</sup> Chia-Chien Hsu & Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus*, 12  
24 *Prac Assessment Rsch & Evaluation* 1, 1 (2007).

25 <sup>3</sup> Norman Dalkey & Olaf Helmer, *An Experimental Application of the Delphi Method to the Use*  
26 *of Experts* 1, 1 (July 1962).

<sup>4</sup> See generally Norman Lefstein, *Securing Reasonable Caseloads: Ethics and Law in Public*  
*Defense*,

[https://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reas  
onable\\_caseloads.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reas<br/>onable_caseloads.authcheckdam.pdf).

1 publication suggested that the Delphi Method should be used to determine average caseloads per  
2 public defender. I then undertook considerable research on the Delphi Method. Based on what  
3 I learned, I thought it could be a good candidate for assessing the number of hours that should  
4 be expended when performing public defense work. To determine if that was the case, I asked  
5 ABA SCLAID, and ABA SCLAID agreed, to retain RubinBrown to perform several  
6 analyses.

7 26. First, RubinBrown reviewed my research on the Delphi Method and then  
8 conducted an exhaustive literature review of the Delphi Method to determine whether the Delphi  
9 Method was a reliable tool for producing a reliable consensus of expert opinion. RubinBrown  
10 conducted this review and determined that the Delphi Method was such a reliable tool.

11 27. Second, RubinBrown assessed whether the Delphi Method was a reliable  
12 research tool to determine the appropriate workload of a public defender organization.  
13 RubinBrown conducted such an assessment and determined that the Delphi Method was a  
14 reliable tool for such an analysis and, moreover, had been reliably used in program planning,  
15 needs assessments, policy determination, and resource utilization studies in other contexts.<sup>5</sup> The  
16 public defender workload study we conducted in the Oregon Report is primarily a needs  
17 assessment study.

18 28. Third, RubinBrown reviewed previous workload studies performed on public  
19 defender workloads in various states around the nation.

20 29. Fourth, RubinBrown conducted a rigorous application of the Delphi Method's  
21 principles to the workload of the Missouri Public Defender.

22 ///

23  
24 <sup>5</sup> See, e.g., RubinBrown, *The Missouri Project: A Study of the Missouri Public Defender System*  
25 *and Attorney Workload Standards with a National Blueprint* 10 (June 2014),  
26 [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/lis\\_sclaid\\_pub\\_def\\_mo\\_workstudies\\_rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_pub_def_mo_workstudies_rept.pdf).

1           30.     Finally, RubinBrown provided a national blueprint for future Delphi studies of  
2 public defender workloads.<sup>6</sup>

3           31.     After retaining RubinBrown, I worked with major accounting and consulting  
4 firms across the nation to conduct six more public defense workload studies. Specifically, I  
5 worked with: (1) Postlethwaite & Netterville in Louisiana; (2) BlumShapiro in Rhode Island; (3)  
6 RubinBrown in Colorado; (4) Crowe LLP in Indiana; (5) Moss Adams in New Mexico; (6) Moss  
7 Adams in Oregon; and (7) the Public Policy Research Institute<sup>7</sup> at Texas A&M.

8           32.     In each of the public defender workload studies identified above, I acted as the  
9 Project Director for ABA SCLAID and further served as the Law and Standards Facilitator for  
10 the Delphi Panels. For each study, I spent hundreds of hours – thousands cumulatively over the  
11 course of the last ten years – working with these accounting and consulting firms as well as the  
12 relevant public defender entities. I attended all but one of the expert panels conducted either in-  
13 person or on Zoom.

14           33.     Based on the above research and experience, it is my professional opinion that  
15 the Delphi Method has provided a reliable consensus of professional judgment on the amount of  
16 time that should be required of a public defender in their state to provide reasonably effective  
17 assistance of counsel in each of these public defender workload studies. The professionals I  
18 have worked with in these studies focusing on the data and analytic aspects have also come to  
19 the same conclusion on the Delphi Method’s reliability.

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21 ///

22 ///

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23 <sup>6</sup> The history of my involvement in the development of this kind of public defender workload  
24 study is set out in Stephen F. Hanlon, Malia N. Brink & Norman Lefstein, *Use of Delphi Method*  
25 *in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned*,  
26 [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls-sclaid-  
indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-<br/>indef-delphi-method-lessons.pdf).

<sup>7</sup> I was a consultant for the Texas Study and attended all in-person expert panel sessions.

1       **IV. How the Oregon Analysis Was Conducted.**

2           **A. Determining the Law and Standards Applicable to the Study**

3           34. As is consistent with each of the seven public defender workload standard studies  
4 I worked on prior to the Oregon Project, we determined that the following law and standards  
5 would be applied to the fundamental question the study set out to answer: how much time *should*  
6 a public defender be spending in order to provide reasonably effective representation to their  
7 clients?

8           35. In 1984, the United States Supreme Court held that the Sixth Amendment’s  
9 requirement of counsel means the right to “reasonably effective assistance of counsel pursuant  
10 to prevailing professional norms of practice.”<sup>8</sup> The Court then identified the American Bar  
11 Association Criminal Justice Section’s Defense Function Standards as “guides to determining  
12 what is reasonable[.]” *Strickland*, 466 US at 688.

13           36. In 2010, the Court described the ABA’s Defense Function Standards as “valuable  
14 measures of the prevailing professional norms[.]” *Padilla v. Kentucky*, 559 US 356, 367 (2010).  
15 These standards are a result of a lengthy process that began in 1964, and are “the result of the  
16 considered judgment of prosecutors, defense lawyers, judges and academics who have been  
17 deeply involved in the process[.]” Martin Marcus, *The Making of the ABA Criminal Justice*  
18 *Standards: Forty Years of Excellence*, 23 Crim Just 10, 15 (2009).

19           37. It is for that reason that the Oregon Project decided that the professional  
20 judgments of the experts in its study would be primarily informed and guided by: (1) *Strickland*’s  
21 “reasonably effective assistance of counsel pursuant to professional norms” standard; (2) the  
22 American Bar Association Criminal Justice Section’s Defense Function Standards; and (3) the  
23 American Bar Association’s Model Rules of Professional Responsibility, as well as the virtually  
24

25 \_\_\_\_\_  
26 <sup>8</sup> *Strickland v. Washington*, 466 US 668, 687 (1984).

1 identical provisions in Oregon’s Rules of Professional Conduct (the “Oregon RPCs” or the  
2 “RPCs”).

3 38. I discuss below how we conducted the Oregon Project’s state-wide analysis to  
4 determine whether there were any potential deficiencies in Oregon’s public defense system. At  
5 a high level, the potential deficiency was identified by determining the proposed caseload  
6 (obtained by analysis of the historical caseloads) and multiplying it by the time needed for a  
7 Case Type (as determined by the Delphi panels). This result produced an estimate of the hours  
8 required annually to provide reasonably effective assistance of counsel pursuant to prevailing  
9 professional norms.

10 39. This hour estimate can then be translated into an estimate of the number of FTEs  
11 required. By taking this estimated number of the minimum FTEs required and comparing it to  
12 the current level of FTEs, we are then able to calculate whether a state’s public defense system  
13 is in deficit or in excess.

14 40. Using this analysis, Moss Adams concluded that OPDS is deficient and requires,  
15 at minimum, 1,296 FTE contract attorneys to meet its anticipated Adult Criminal and Juvenile  
16 caseloads. In other words, OPDS requires a minimum of 1,888 FTE contract attorneys to meet  
17 its public defense needs. With currently only 592 such attorneys, the OPDS as of now has only  
18 31% of the FTE contract attorneys needed to provide reasonably effective assistance of counsel  
19 pursuant to prevailing professional norms in Oregon. I explain how we reached these  
20 conclusions below.

21 **B. The System’s Current Staffing Resources**

22 41. I understand that Oregon’s public defense system uses a combination of attorneys  
23 appointed on a case-by-case basis and contracts with various groups of attorneys (such as  
24 consortia or solo practitioners). I understand that the vast majority of trial-level public defense  
25 representation is through these contracts.

26 ///



1           42. I also understand that not all attorneys contracting with OPDS work on public  
2 defense matters full-time. The contracting system thus uses a model based on full-time  
3 employees, or FTEs. Under this system, an attorney can contract to use only a portion of their  
4 time representing public defense clients. Thus, an attorney might spend 40% of their time on  
5 public defense work, so would represent 0.4 of an FTE in the public defense system. If another  
6 attorney constitutes 0.6 of an FTE, the total of those two attorneys' public defense time is 1.0  
7 FTE.

8           43. I further understand that, during the last contract cycle, OPDS executed more than  
9 100 contracts with various providers, including public defender offices, consortia, law firms,  
10 non-profit organizations, and individual attorneys. Based upon information provided by OPDS,  
11 I understand that the contract cycle employed 592 FTEs. Oregon Report, Ex. C, at 13.

12           **C. Analysis of the System's Historical Staffing and Caseloads**

13           44. Determining the Oregon public defense system's workload also required an  
14 analysis of the system's historical staffing and caseloads.

15           45. Moss Adams collected most of the data for this analysis from the Oregon Judicial  
16 Department's case management system, Odyssey. Moss Adams also captured some data from  
17 the OPDS Contractor database. This work was performed by OPDS as well.

18           46. Based on the work performed by OPDS and Moss Adams, it is my understanding  
19 that in 2017, 98,412 public defense cases were filed. In 2018, that figure was 96,387. In 2019,  
20 there were 92,831 such cases filed. In 2020, there were 81,307. Finally, from January 1, 2021  
21 to October 10, 2021, there were 47,698 public defense cases filed. Oregon Report, Ex. C, at 16.

22           **D. Determining the Total Hours Required per Year**

23           47. I discuss below how we applied the Delphi Method to determine how many hours  
24 were needed for the existing caseload in order to provide reasonably effective assistance of  
25 counsel pursuant to prevailing professional norms for those clients and cases.

26           ///

1           48.     As noted above, the purpose of the Delphi Method is to identify experts in the  
2 field to be studied and enable them to build consensus regarding the questions posed. In this  
3 case, we sought to determine, for a range of case types and tasks required for those case types,  
4 how many hours would typically be required to provide each of those clients with reasonably  
5 effective assistance of counsel pursuant to prevailing professional norms.

6           49.     Before administering the Delphi Method's surveys, however, we first had to  
7 select experts to respond to the surveys, and had to design the surveys themselves.

8           50.     Also, because Oregon's public defense system handles both Adult Criminal and  
9 Juvenile matters, and because these two types of cases are substantively and procedurally  
10 different from each other, we studied the two fields separately. Although we used the same  
11 methods to study both, we created separate surveys and panels for each field.<sup>9</sup>

12           51.     In order to select survey respondents, we created Selection Panels. These panels  
13 were made up of highly regarded individuals in the legal community who had extensive practical  
14 experience in the field. These individuals were selected by OPDS's management team in  
15 consultation with other members of the Oregon Bar.

16           52.     We provided the Selection Panels with an initial list of prospective Delphi panel  
17 participants identified by OPDS staff to possess the appropriate experience, expertise, and  
18 respect for the task. This group consisted of experienced public defenders, contract attorneys,  
19 and private practitioners practicing throughout Oregon. This initial list was prepared with  
20 geographic diversity in mind and also was designed to comprise a mix of different types of  
21 contract attorneys, as well as different private practice attorneys. The Selection Panel members  
22 removed any proposed participants they believed lacked the expertise, experience, and respect  
23 necessary to complete the survey, and added participants they considered qualified to participate.

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25 <sup>9</sup> If a potential respondent was experienced in both Adult Criminal and Juvenile matters, that  
26 respondent was permitted to serve as a respondent on both panels.

1 Once approved by the relevant Selection Panel, the list of participants on each Delphi panel was  
2 finalized.

3 53. The Selection Panel then chose Consulting Panels to draft the surveys to be  
4 administered. For these Consulting Panels, the Selection Panel again gathered experienced  
5 public defenders, contract attorneys and private practitioners from across the state for each panel  
6 – one panel for Adult Criminal (eight members) and one panel for Juvenile (ten members).

7 54. The Consulting Panels were responsible for determining which Case Types and  
8 Case Tasks would be included on the Delphi Method surveys. Case Types are groupings of  
9 different kinds of cases. Examples of Case Types are “Low-Level Misdemeanor” and  
10 “Homicide and Sex Cases.” By contrast, Case Tasks are sub-categories – groupings of different  
11 kinds of tasks within each case type. Examples of Case Tasks are “Court Preparation” and  
12 “Client Communication.” Dividing the practice of public defense representation into Case Types  
13 and Case Tasks allowed greater precision in the survey process.

14 55. Once the Consulting Panels had determined the different Case Types and Case  
15 Tasks that make up public defense representation in Oregon, Moss Adams, and ABA SCLAID  
16 used this information to create the surveys themselves.

17 56. The first two steps of the Delphi Method as used with the Oregon Project  
18 comprised two rounds of surveys. In these two rounds, Moss Adams administered the surveys  
19 developed as described above.

20 57. Both rounds of surveys were administered online. The two surveys were  
21 identical, except that before administering the second-round survey, Moss Adams provided  
22 respondents with a summary of the results of the first round, described in greater detail *infra*.

23 58. A true and correct copy of both surveys is attached hereto as Exhibit E. As with  
24 the rest of the analysis, there were two surveys: one survey sought information on the Adult  
25 Criminal field, while the other sought information on the Juvenile field.

26 ///

1           59.     Broadly speaking, the surveys sought information on three topics: (1) resolution;  
2           (2) frequency; and (3) time required. With regard to resolution, Moss Adams asked respondents,  
3           for each Case Type, what percentage of cases typically go to trial, as opposed to another type of  
4           resolution (such as a plea deal). With regard to frequency, Moss Adams asked respondents, for  
5           each Case Task within each Case Type, which Case Tasks needed to be conducted for each Case  
6           Type, and how often they needed to be conducted. This second category was asked twice: once  
7           for cases that went to trial and once for cases that reached another resolution. Finally, for time  
8           required, Moss Adams asked respondents how much cumulative time an attorney would need,  
9           on average, to perform each Case Task – again, for each Case Type, and for each resolution type.

10          60.     Before the surveys were administered, Moss Adams instructed respondents to  
11          keep three categories of information in mind while responding to the surveys: (1) the ABA and  
12          Oregon State Bar standards for defense representation; (2) the Oregon RPCs; and (3) the  
13          respondents’ expertise and experience. In particular, when determining how much time a given  
14          Case Task required, respondents were to consider what these standards and rules required, as  
15          well as respondents’ experience and expertise.

16          61.     Moss Adams also directed respondents to assume that they had adequate  
17          investigative, secretarial, and other support services when considering the survey questions, even  
18          if that was not the case with their actual practices. I note that that assumption built  
19          conservatism into the analysis, because the Oregon public defense system often lacks adequate  
20          support services.

21          62.     The surveys were designed such that respondents could skip questions that the  
22          respondents felt they lacked sufficient experience to answer. Specifically, the surveys were  
23          divided into Case Types. Before respondents answered questions about a particular Case Type,  
24          respondents were asked whether they had sufficient experience in that Case Type to respond to  
25          questions about it. If respondents replied no, the survey would automatically move on to the  
26          next Case Type.

1           63. For the first round of responses, as contemplated by the Delphi Method,  
2 respondents did not communicate with each other at all. The purpose of this first round was to  
3 obtain a baseline understanding of the responses from the various respondents before they had  
4 the opportunity to determine if a consensus could be formed on the questions posed.

5           64. The survey results from this first round ultimately provided data regarding how  
6 much time each respondent believed was required, on average, for each Case Task for each Case  
7 Type, in what percentage of cases the respondent believed that Case Task would arise, and what  
8 percentage of each Case Type would go to trial.

9           65. Moss Adams then applied a statistical analysis to these survey results to  
10 determine the trimmed peer range and the peer mean. The trimmed peer range was a range  
11 trimmed to leave only the middle 60% of responses. The trimmed peer mean was a single data  
12 point showing the mean response.

13           66. An example of these statistics for the first round for a sampling of Case Tasks  
14 results for Adult Criminal cases can be found below. These results showed that some case tasks  
15 had a large differentiation in low and high range, whereas others had a narrow differentiation.  
16 For instance:

Case Type	Resolution Type	Case Task	Low	High	Mean
Homicide and Sex Cases	Plead Guilty	Discovery/ Case Preparation	20.00	120.00	55.48
Homicide and Sex Cases	Go to Trial	Client Communication	25.00	100.00	58.70
Homicide and Sex Cases	Plead Guilty	Client Communication	20.00	75.00	41.41
Low-Level Misdemeanor	Go to Trial	Court Time	8.00	20.00	12.36
Low-Level Misdemeanor	Plead Guilty	Negotiations	0.50	1.00	0.80
Probation Violations	Resolved	Court Preparation	0.50	1.00	0.64

23           67. After Moss Adams calculated the trimmed peer range and the peer mean from the  
24 first round of surveys, we administered the second round of surveys.

25           68. As noted above, the surveys themselves – i.e., the questions asked of respondents  
26 – were identical between the two rounds. However, there were two procedural differences

1 between the two rounds: (1) any respondent who did not complete the first round could not  
2 participate in the second round; and (2) we provided the second-round respondents with the  
3 trimmed peer range and the peer mean from the first-round results. Of the 246 surveys sent to  
4 respondents for the first round, 108 responded. Those respondents received the survey this  
5 second time.

6 69. The reason for providing respondents with these statistics goes to the heart of the  
7 Delphi Method. The goal of the Delphi Method is to allow experts in a given field to collaborate  
8 in order to build consensus between them. So, for example, a seminal application of the Delphi  
9 Method narrowed expert opinions on the number of atomic bombs required, from the perspective  
10 of the U.S.S.R., to reduce U.S. munitions output to a certain level.<sup>10</sup> Where the range began as  
11 50 to 5,000 bombs, it ended as 167 to 360 bombs. Here, by conveying to the panel in an  
12 anonymous fashion the results of fellow respondents, the respondents could start the process of  
13 building consensus, if consensus could be established.

14 70. I will note that consensus cannot be achieved in all circumstances. In the Oregon  
15 Project, we defined consensus as two-thirds of the panel agreeing, although our panelists often  
16 reached higher rates of agreement, including 100% agreement on multiple occasions. If no  
17 consensus can be reached on a particular topic, then the Delphi Method requires that the  
18 administrator report that result. Although the Delphi Method generally produces consensus,  
19 where it does not, respondents generally “polarize around two distinct values, so that two schools  
20 of thought regarding a particular issue seem[] to emerge.”<sup>11</sup>

21 71. This second round, however, was still conducted without any collaboration or  
22 communication between or among respondents. The only new information that each respondent  
23 possessed was the trimmed down results of the other respondents.

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25 <sup>10</sup> Norman Dalkey & Olaf Helmer, *An Experimental Application of the Delphi Method to the*  
26 *Use of Experts* 1, 5 (July 1962).

<sup>11</sup> Olaf Helmer, *Analysis of the Future: The Delphi Method* 1, 9 (1967).

1           72. Moss Adams again analyzed the data from the results of the second round of  
2 surveys to determine the trimmed peer mean and the peer range.

3           73. Seventy-four lawyers responded to the second round of surveys. As is typical  
4 with the Delphi Method, the information regarding responses resulted in changes in prior  
5 answers.

6           74. Following the two rounds of surveys, Moss Adams conducted live discussion  
7 panels, consisting of respondents who responded to both rounds of surveys. Due to pandemic  
8 restrictions, Moss Adams conducted the live discussion panels over Zoom. For Adult Criminal,  
9 four sessions were convened, each lasting around three hours. For Juvenile, four sessions were  
10 convened, each approximately three hours, as well as two sessions, each approximately one and  
11 a half hours.

12           75. Before conducting the live discussion panels, we provided respondents with the  
13 following materials: (1) the ABA and Oregon State Bar standards for defense representation; (2)  
14 the Oregon RPCs; (3) Case Type definitions; and (4) Case Task definitions.

15           76. Acting as the Facilitator for the law and standards applicable to the study, I then  
16 made a short presentation that emphasized certain laws and standards. First, I stressed that the  
17 primary question to be answered in this study is how much time should it take a lawyer, on  
18 average, to provide reasonably effective assistance of counsel pursuant to prevailing professional  
19 norms. I also reminded respondents to consider the electronic surveys they had completed. I  
20 then reminded them of the legal standard the Supreme Court had set out in *Strickland*. I  
21 highlighted that one particular Rule of Professional Conduct and one professional norm were  
22 particularly relevant to their considerations: (1) the Concurrent Conflict provisions set out in  
23 both the ABA Model Rule and RPC 1.7(a)(2), which prohibit lawyers from representing more  
24 people than they can competently represent; and (2) the ABA Criminal Justice Standard, Defense  
25 Function 4-6.1(b), which requires defense counsel in every case to consider a client's individual  
26 circumstances and to analyze relevant law, the prosecution's case, potential dispositions,

1 relevant collateral consequences, and to complete their study and investigation of the case before  
2 making a recommendation of a plea or a trial to a client.

3 77. At the beginning of the live discussion panels, Moss Adams also provided  
4 respondents with the trimmed peer range and the peer mean from the second-round survey  
5 results. In connection with the discussions that they would be having, Moss Adams also further  
6 instructed respondents to keep in mind, in addition to the ABA and Oregon State Bar standards  
7 for defense representation, and the Oregon RPCs: (1) their expertise and experience; (2) the  
8 survey results previously mentioned; and (3) the thoughts provided by their fellow panel  
9 members during those discussions.

10 78. Moss Adams then asked respondents to attempt to reach consensus through  
11 discussion on the resolution, frequency, and time required for each Case Task and Case Type.  
12 Before proceeding to that discussion, however, Moss Adams began by providing respondents  
13 with the round-two trimmed mean and conducting an anonymous poll. In the poll, respondents  
14 were asked either to agree with the trimmed mean or to respond that the value was too high or  
15 too low.

16 79. To the extent that any disparity existed in the panelists' responses, Moss Adams  
17 had the panelists discuss their differences among themselves. After the discussion, Moss Adams  
18 conducted another poll and repeated the cycle until respondents reached consensus.

19 80. At the end of the process, respondents were able to reach consensus, as Moss  
20 Adams defined that term above, on how much time was required, on average, for each Case Task  
21 for each Case Type, in what percentage of cases the respondent believed that Case Task would  
22 arise, and what percentage of each Case Type would go to trial. Those results can be found at  
23 Ex. C at 25, 71-82.

24 81. For example, for the below six statistics, participants were able to reach  
25 consensus on estimates for each Case Task. For each Case Task below, the low and high range  
26 was determined from Round 1 and a final consensus was reached in Round 3 of a reasonable



1 estimate of time to provide reasonably effective assistance of counsel pursuant to prevailing  
 2 professional norms for each Case Task per Case Type.

3 <b>Case Type</b>	<b>Resolution Type</b>	<b>Case Task</b>	<b>Low</b>	<b>High</b>	<b>Final</b>
4 Homicide and Sex Cases	Plead Guilty	Discovery/ Case Preparation	20.00	120.00	100
5 Homicide and Sex Cases	Go to Trial	Client Communication	25.00	100.00	80
6 Homicide and Sex Cases	Plead Guilty	Client Communication	20.00	75.00	60
7 Low-Level Misdemeanor	Go to Trial	Court Time	8.00	20.00	12.50
8 Low-Level Misdemeanor	Plead Guilty	Negotiations	0.50	1.00	0.75
	Resolved	Court Preparation	0.50	1.00	0.75

9 82. From the consensus responses, Moss Adams totaled the Case Task hours –  
 10 weighted by the frequency by which those Case Tasks would be required, and in turn weighted  
 11 by the resolution types – in order to reach the average number of hours required per case. For  
 12 example, respondents concluded that Low-Level Misdemeanors required 22.26 hours per case  
 13 and High-Level Felonies required 148.95 hours per case. Oregon Report, Ex. C, at 69.

14 83. In order to determine the total work hours needed per year per Case Type, Moss  
 15 Adams multiplied the average annual caseload by the Delphi Method’s consensus of how many  
 16 hours are required for each Case Type.

17 84. In order to determine the system-wide total hours required per year, we began  
 18 with the consensus response for each Case Task. By multiplying the hours estimated by Case  
 19 Task by their Frequency, we were able to estimate the expected time, on average, that should be  
 20 spent on each Case Task. To then determine the total work hours per Case Type, we multiplied  
 21 the average annual caseload by the Delphi Method consensus of hours required per Case Type.  
 22 This provided an estimate of “Total Hours” per Case Type. To then aggregate this for a system-  
 23 wide estimate, all Case Types within both Adult Criminal and Juvenile Workloads were  
 24 identified. For each Case Type featured in the Workload, the Total Hours estimate was summed.  
 25 This final number provided a total hour estimate for each type of Workload, Adult Criminal and  
 26 Juvenile. By then summing those two results, we were able to determine the grand total of hours

1 needed for the Oregon public defense system—4,047,642. This number was then reduced by  
2 3% to account for the highest estimate provided of attorneys appointed outside of the contracting  
3 system. The final result was that the total number of hours needed by contract attorneys per year  
4 in the OPDS was 3,926,213 hours.

5 85. Moss Adams thus determined that the Oregon public defense system – before  
6 accounting for the resources already in the system – requires 4,047,642 hours per year. Oregon  
7 Report, Ex. C, at 69.

8 86. Moss Adams then needed to determine how many lawyers were needed to  
9 perform the hours.

10 87. In calculating that number, I understand that Moss Adams was very conservative.  
11 Specifically, they assumed that a full-time attorney works forty hours per week, fifty-two weeks  
12 per year, without vacation or holidays, and that all of that forty hours per week is devoted to case  
13 work, and not administrative work, continuing education or travel time, for example. Based on  
14 those numbers, a full-time attorney works 2,080 hours per year.

15 88. Dividing the total amount of work in the system – 4,047,642 hours – by 2,080  
16 hours tells us the total number of FTEs required by the system. The total number of full-time  
17 attorneys needed by the system, based on that math, is 1,888 FTEs.

18 **V. The Hours Deficiency in the Statewide Public Defense System.**

19 89. To determine whether any deficiency existed in the statewide system, Moss  
20 Adams compared the number of available FTEs to the number of FTEs needed, i.e. 1,888 FTEs  
21 needed compared to the 592 FTEs available.

22 90. Moss Adams subtracted the number of FTEs already in the system to determine  
23 the deficiency. They concluded that the deficiency is equal to 1,296 FTEs. This difference  
24 means that the system is only providing 31% of the required legal capacity – i.e. it is 69%  
25 deficient.

26 ///

1           91.     Due to the multiple conservative assumptions in our methodology, I understand  
2 that 1,296 FTEs is the *minimum* the system lacks. That is because: (1) respondents were asked  
3 to assume adequate support and investigative services; (2) our count of caseload does not account  
4 for cases that last for more than one year; and (3) we assumed that attorneys would dedicate  
5 2,080 hours per year to client representation. In fact, public defenders and contract attorneys  
6 often lack sufficient support and investigative services; many cases last more than one year  
7 before resolution; and attorneys require time for vacation, sick leave, administrative tasks, and  
8 other non-representation work.

9     **VI.    How The Marion County and PDMC Analysis Was Conducted.**

10          92.     In 2022, Moss Adams performed an analogous workload and capacity analysis  
11 on the Marion County public defense system and, in particular, the PDMC.

12          93.     For this analysis, I understand that they began with the Oregon Project’s Delphi  
13 method results, which, as described *supra*, provided the average hours required for each Case  
14 Type.

15          94.     To determine the discrepancy, if any, between the amount of FTEs available and  
16 the amount required by the Marion County public defense system, however, Moss Adams  
17 collected Marion County-specific data.

18          95.     In order to determine the system’s demands, I understand, Moss Adams gathered  
19 data regarding Marion County’s historical caseload, including which types of cases arose. Moss  
20 Adams gathered case data specific to PDMC from PDMC’s case management system, MyCase  
21 and also obtained data from the OPDS Contractor database and from the Oregon Judicial  
22 Department’s case management system, Odyssey.

23          96.     To determine the FTEs currently available in the system, Moss Adams gathered  
24 staffing data from PDMC and determined that as of December 31, 2022, PDMC had 18.5 public  
25 defender FTE for adult criminal defense. PDMC does not perform juvenile representation or  
26

1 appellate representation. I understand, Moss Adams applied the same mathematical formula as  
2 used in the Oregon Project.

3 97. This calculation is depicted in the following diagram:



8 **VII. The Hours Deficiency for the PDMC.**

9 98. Applying the same mathematical formula as described *supra* to the PDMC-  
10 specific data, I understand that, Moss Adams determined that the total number of FTE attorneys  
11 needed at PDMC to provide reasonably effective assistance of counsel under prevailing  
12 professional norms, based on historic workloads, is 29.22 FTE.

13 99. Moss Adams determined there is a deficiency of 10.72 FTE attorneys, or a  
14 deficiency of 37 percent in the amount of FTEs in PDMC. 10.72 FTE is the result of 29.22 FTE  
15 compared to the number of FTE attorneys actually available – 18.5 FTE attorneys. I understand  
16 this is a conservative total based on Moss Adams’ conservative assumptions which were: (1)  
17 Oregon Project respondents were asked to assume adequate support and investigative services;  
18 (2) their count of caseload did not account for cases that last for more than one year; and (3) we  
19 assumed that attorneys would dedicate 2,080 hours per year to client representation. However  
20 public defenders and contract attorneys often lack sufficient support and investigative services;  
21 many cases last more than one year before resolution; and attorneys require time for vacation,  
22 sick leave, administrative tasks, and other non-representation work.

23 100. The calculation to determine the deficiency is depicted in the following  
24 diagram:

25 ///

26 ///



**VIII. Professional Opinion.**

101. In my professional opinion, the workload of public defense attorneys in Oregon is excessive, unethical, and unconstitutional. When a public defense office has anything like triple the caseload that it can handle collectively with reasonable competency and effectiveness, there is a significant risk that that the public defense office will have a concurrent conflict of interest under Oregon RPC 1.7 with all of their clients. Moreover, there is also a significant risk that such a public defense office will be unable to provide reasonably effective assistance of counsel pursuant to prevailing professional norms to each of their clients in violation RPC 1.1, 1.3 and 1.4, Article I, section 11 of the Oregon Constitution, and Formal Opinion No 2007-178.

102. Because Oregon and PDMC attorneys in particular both have many more cases than they can handle competently and effectively, there is also a significant risk that the public defense office will be unable to complete their investigation and study of each case for every client before recommending either acceptance of a plea or proceeding to trial, as called for by ABA Criminal Justice Section, Defense Function Standard 4-6.1(b). The Defense Function Standards are standards the Supreme Court has specifically directed us to consider to determine what constitutes reasonably effective assistance of counsel pursuant to prevailing professional norms. *Strickland*, at 466 US at 688.

103. It is important to note here that although the Defense Function Standards “are not intended to serve as the basis for the imposition of professional discipline, to create substantive or procedural rights for clients, or to create a standard of care for civil liability,” the drafters of the Standards were clear that these standards “may be relevant in judicial evaluation of constitutional claims regarding the right to counsel,” which is exactly how we are asking the

1 Court to use them in this case. See Am Bar Ass'n, *Criminal Justice Standards: Defense Function*  
2 (2017),  
3 [https://www.americanbar.org/groups/criminal\\_justice/standards/DefenseFunctionFourthEdition](https://www.americanbar.org/groups/criminal_justice/standards/DefenseFunctionFourthEdition)  
4 /.

5 104. A principal problem in the vast majority of these cases, both in Oregon and, with  
6 rare exception, all over the nation, is that there is little or no investigation being done in these  
7 cases before recommending a disposition, as the public defense office should do under prevailing  
8 professional norms.

9 105. More generally, the public defense office is proceeding in specific violation of  
10 the provisions of Model Rule and RPC 1.7(a)(b) when the office has significantly more work  
11 than they can handle competently and effectively, because any one public defender is necessarily  
12 taking resources away from some clients to give to others and generally failing to provide a  
13 proper representation for all of their clients. In that situation, there is not just a significant risk  
14 that the attorney's responsibilities to other clients will be materially limited by their  
15 representation of that one client, there is a certainty that it will happen. When such an attorney  
16 acts in that way, that attorney is acting unethically. In short, when a public defense office has  
17 significantly more work than they can handle competently and effectively, they are acting  
18 unethically.

19 106. As stated by the Missouri Supreme Court, "[f]or while the ethical rules do not  
20 supplant 'a trial judge's obligation to protect [a] defendant's Sixth Amendment rights,' they do  
21 'run parallel to' that duty and, therefore, can assist both judges and public defenders in ensuring  
22 that constitutional rights are protected when appointments are made." *Waters*, 370 SW 3d at  
23 608.

24 107. In my professional opinion, the workload of the PDMC is excessive, unethical,  
25 and unconstitutional. When a public defender has many more cases than they can handle with  
26 reasonable competency and effectiveness, there is a significant risk that that public defender will

1 have a concurrent conflict of interest under Oregon Rule of Professional Conduct 1.7 with all of  
2 their clients. Moreover, there is also a significant risk that such a public defender will be unable  
3 to provide reasonably effective assistance of counsel pursuant to prevailing professional norms  
4 to each of their clients in violation of Rules of Professional Conduct 1.1, 1.3 and 1.4, Article I,  
5 Section 11 of the Oregon Constitution, and Formal Opinion No. 2007-178.

6 108. In my professional opinion, the workload of the PDMC, and each of its public  
7 defenders, is excessive, unethical, and unconstitutional. When a public defense office has so  
8 many more cases than they can handle with reasonable competency and effectiveness, there is a  
9 significant risk that any public defender employed by that office will have a concurrent conflict  
10 of interest under Oregon Rule of Professional Conduct 1.7 with all of their clients. Moreover,  
11 there is also a significant risk that such a public defender will be unable to provide reasonably  
12 effective assistance of counsel pursuant to prevailing professional norms to each of their clients  
13 in violation of Rules of Professional Conduct 1.1, 1.3 and 1.4, Article I, Section 11 of the Oregon  
14 Constitution, and Formal Opinion No. 2007-178.

15 **IX. Basis For Opinion.**

16 109. Assessing an appropriate workload for a public defender is rooted in the Supreme  
17 Court's *Strickland* holding. In that decision, the Supreme Court directed us to "prevailing  
18 professional norms" when determining what constitutes reasonably effective assistance of  
19 counsel. *See Strickland*, 446 US at 688 ("The proper measure of attorney performance remains  
20 simply reasonableness and prevailing professional norms.") Those professional norms can be  
21 found in the Oregon RPCs and the American Bar Association's Criminal Justice Section's  
22 Defense Function Standards (the "Defense Function Standards").

23 **A. The Oregon Rules of Professional Conduct**

24 110. The primary source for prevailing professional norms for an Oregon attorney can  
25 be found in Oregon's RPCs.

26 ///

1           111. RPC 1.1 states that a “lawyer shall provide competent representation to a client,”  
2 which “requires the legal knowledge, skill, thoroughness and preparation necessary for the  
3 representation.” RPC 1.3, meanwhile, states that a “lawyer shall not neglect a legal matter  
4 entrusted to the lawyer.”

5           112. RPC 1.4 concerns communications, and states that a “lawyer shall keep a client  
6 reasonably informed about the status of a matter and promptly comply with requests for  
7 information,” RPC 1.4(a), and “shall explain a matter to the extent necessary to permit the client  
8 to make informed decisions regarding the representation.” RPC 1.4(b).

9           113. Finally, a “lawyer shall not represent a client if the representation involves a  
10 current conflict of interest,” which exists if “there is a significant risk that the representation of  
11 one or more clients will be materially limited by the lawyer’s responsibilities to another client.”  
12 RPC 1.7(a)(2).

13           114. As set forth in Formal Opinion No 2007-178, approved by the Oregon State Bar  
14 in 2007, “the rules ‘provide no exception for lawyers who represent indigent defendants charged  
15 with crimes.’” Or State Bar, Formal Op 2007-178 (2007), at 3 (quoting ABA Formal Ethics  
16 Opinion No 06-441).

17           115. Formal Opinion No 2007-178 addresses circumstances very similar to the current  
18 state of workloads in Marion County and Oregon generally. Specifically, it addresses the ethical  
19 responsibilities of public defense lawyers and their supervisors when those public defense  
20 lawyers experience excessive workloads. The opinion begins by observing that public  
21 defenders, like all lawyers, are “required to, among other things, ‘keep abreast of changes in the  
22 law, adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; and  
23 communicate effectively on behalf of and with clients,’ among other responsibilities.” *Id.* It  
24 then states that a “lawyer who is unable to perform these duties may not undertake or continue  
25 with representation of a client.” *Id.* (citing RPC 1.16(a)).

26       ///



1           116.     Notably, the opinion states that a “caseload is ‘excessive’ and is prohibited if the  
2 lawyer is unable to at least meet the basic obligations” set forth in the preceding paragraph. *Id.*  
3 In that instance, the lawyer’s “workload ‘must be controlled so that each matter may be handled  
4 competently.’” *Id.* at 4 (citing ABA Model RPC 1.3 cmt [2] and *Qualification Standards for*  
5 *Court-Appointed Counsel to Represent Financially Eligible Persons at State Expense*, Pub Def  
6 Servs. Comm’n 1, 1 (Dec. 21, 2013), <https://njdc.info/wp-content/uploads/2016/02/Oregon-AttorneyQualificationStandards12-21-13.pdf>) (“[n]either defender organizations nor assigned  
7 counsel shall accept workloads that, by reason of their size or complexity, interfere with  
8 rendering competent and adequate representation or lead to the breach of professional  
9 obligations.”).

11           117.     Remedial action in such a situation, as set forth in the Formal Opinion, includes  
12 “declining appointment on new cases, transferring current cases, and filing motions with the  
13 court to withdraw from enough cases to achieve a manageable workload.” *Id.* at 4-5. That is  
14 true for the public defense attorney themselves, and for supervisory attorneys responsible for  
15 that attorney’s caseload. *Id.* at 5-6; see also RPC 5.1.

16           118.     In my opinion, the present workloads in Oregon generally, Marion County, and  
17 the PDMC in particular cause public defense attorneys to violate their ethical responsibilities as  
18 set forth in the RPCs, and places them at significant risk of doing so in the future. It is simply  
19 impossible for such lawyers to comply with their responsibilities under RPC 1.1, 1.4, and  
20 1.7(a)(2) when they are required to literally do the work of three attorneys in Oregon generally  
21 and the PDMC specifically. By being forced to take on more clients than they can competently  
22 handle, the system creates a concurrent conflict of interest under RPC 1.7, in that the addition of  
23 one case materially and detrimentally affects their ability to handle existing cases. In that  
24 situation, the provisions of RPC 1.16(a) require that a lawyer “shall not represent a client or,  
25 where representation has commenced, shall withdraw from the representation of the client.  
26 Moreover, the provisions of RPC 1.16(d) require the withdrawing lawyer to “take steps to the

1 extent reasonably practicable to protect the client’s interests[.]” In the ABA’s Eight Guidelines  
2 of Public Defense Related to Excessive Workloads, one such guideline provides that: “[A] court  
3 should be asked to stop additional assignments in all or certain types of cases, and if necessary,  
4 that lawyers be permitted to withdraw from representation in certain cases.” Am Bar Ass’n,  
5 *Eight Guidelines of Public Defense Related to Excessive Workloads* 12 (Aug 2009)  
6 <https://dids.nv.gov/uploadedFiles/didsnvgov/content/Resources/ABAEightGuidelinesofPublic>  
7 [DefenseRelatedtoExcessiveWorkloads\(1\).pdf](https://dids.nv.gov/uploadedFiles/didsnvgov/content/Resources/ABAEightGuidelinesofPublic). “It may also be appropriate to include in a motion  
8 to withdraw a request that charges against one or more clients be dismissed due to the failure of  
9 the government to provide effective assistance of counsel as required by federal and state law.”  
10 *Id.* at 12, n.42. For all of these reasons, the present workloads of Oregon and Marion County  
11 public defenders have resulted in, are resulting in, and in the future will result in systemic  
12 violations of public defense counsel’s ethical and constitutional duties.

13 **B. The Defense Function Standards**

14 119. The Defense Function Standards have been created and refined over decades by  
15 task forces comprised of prosecutors, judges, defense attorneys and academics. *See* Marcus,  
16 *supra* at 5. In addition, over 700 courts – both state and federal – have cited approvingly to the  
17 Defense Function Standards. *Id.* at 2. The Supreme Court has referred to them as “valuable  
18 measures of the prevailing professional norms of effective representation,” *Padilla*, 559 US at  
19 367, and “important guides” for the same, *Missouri v. Frye*, 566 US 134, 146 (2012). Discussing  
20 the ABA Standards for Criminal Justice – of which the Defense Function Standards are a sub-  
21 category – Chief Justice Burger opined that “[e]veryone connected with criminal justice should  
22 become totally familiar with the substantive content of the Standards . . . . [T]he Justices of the  
23 Supreme Court and hundreds of other judges . . . consult the Standards.” *Moran v. Burbine*, 475  
24 US 412, 441 n.12 (1986) (Stevens, J., dissenting) (quoting Warren E. Burger, *Introduction: The*  
25 *ABA Standards for Criminal Justice*, 12 Am Crim L Rev 253 (1974)).

26 ///

1           120. A number of Defense Function Standards are relevant to this inquiry. I address  
2 each in turn.

3           121. Standard 4-4.1, entitled Duty to Investigate and Engage Investigators, provides  
4 that defense counsel “has a duty to investigate in all cases, and determine whether there is a  
5 sufficient factual basis for criminal charges.” Defense Function Standard 4-4.1(a). Further, that  
6 “duty to investigate is not terminated by factors such as the apparent force of the prosecution’s  
7 evidence, a client’s alleged admissions to others of facts suggesting guilt, a client’s expressed  
8 desire to plead guilty or that there should be no investigation, or statements to defense counsel  
9 supporting guilt.” Defense Function Standard 4-4.1(b).

10           122. In *U.S. v. Cronin*, the Supreme Court held that to be effective, counsel must  
11 “subject the prosecution’s case to ‘meaningful adversarial testing.’” *United States v. Cronin*, 466  
12 US 648, 656, 659 (1984). Without such adversarial testing, the Supreme Court explained, “the  
13 adversary process itself” is “presumptively unreliable.” *Id.*

14           123. In addition to subjecting the prosecution’s case to meaningful adversarial testing,  
15 under Standard 4-6.1(b), in every case counsel has a duty to explore disposition without trial, *i.e.*  
16 a guilty plea or other negotiated disposition. Thus, counsel should be knowledgeable about  
17 potential dispositions that are alternatives to trial or imprisonment, including diversions from the  
18 criminal process and relevant collateral consequences. Most importantly, in every case, counsel  
19 should complete such study and investigation of the case before making a recommendation of a  
20 plea or a trial to a client.

21           124. In *Missouri v. Frye*, 566 US 134, 143 (2012), the Supreme Court, citing to the  
22 Department of Justice, Bureau of Statistics, noted that “ninety-four percent of state convictions  
23 are the result of guilty pleas.” The court quoted a Yale Law Review Journal article approvingly:  
24 “[Plea bargaining] . . . is not some adjunct to the criminal justice system; it *is* the criminal justice  
25 system.” *Id.* at 144 (citation omitted). This reality highlights the significance of counsel’s duty  
26 to explore disposition without trial.

1           125. Defense Function Standard 4-8.3 provides a good overview of the immense  
2 responsibilities of defense counsel for both plea negotiations and sentencing. Under this rule,  
3 defense counsel should “become familiar with the client’s background, applicable sentencing  
4 laws and rules, and what options might be available as well as what consequences might arise if  
5 the client is convicted.” Defense Function Standard 4-8.3(a). Defense counsel is further  
6 suggested to learn about the court’s common practices, collateral consequences of various  
7 sentences, and typical sentencing patterns. *Id.* at 4-8.3(b). All aspects of the proceeding,  
8 including those mentioned before as well as the presentence investigation process, should be  
9 fully explained to the client. *Id.* at 4-8.3(c). Defense counsel should also gather all potentially  
10 relevant mitigating information and discuss alternative rehabilitation options with their client.  
11 *Id.* at 4-8.3(d). Defense counsel should also attempt to verify presentence report information,  
12 engaging in independent investigation, and challenge the report if necessary. *Id.* at 4-8.3(e).

13           126. Standard 4-6.1(b), entitled Duty to Explore Disposition Without Trial, provides  
14 that, “in every criminal matter, defense counsel should consider the individual circumstances of  
15 the case and of the client, and should not recommend to a client acceptance of a disposition offer  
16 unless and until appropriate investigation and study of the matter has been completed.” The  
17 term “completed” is of critical importance, especially given that in the vast majority of public  
18 defense cases there is little to no investigation done. The Standard also states that such study  
19 “should include discussion with the client and an analysis of relevant law, the prosecution’s  
20 evidence, and potential dispositions and relevant collateral consequences.” *Id.* In addition,  
21 “defense counsel should advise against a guilty plea at the first appearance, unless, after  
22 discussion with the client, a speedy disposition is clearly in the client’s best interest.”

23           127. Standard 4-1.8, entitled Appropriate Workload, is particularly on point. Standard  
24 4-1.8(a) provides that “defense counsel should not carry a workload that, by reason of its  
25 excessive size or complexity, interferes with providing quality representation, endangers a  
26 client’s interest in independent, thorough, or speedy representation, or has a significant potential

1 to lead to the breach of professional obligations. A defense counsel whose workload prevents  
2 competent representation should not accept additional matters until the workload is reduced, and  
3 should work to ensure competent representation in counsel's existing matters. Defense counsel  
4 within a supervisory structure should notify supervisors when counsel's workload is approaching  
5 or exceeds professionally appropriate levels."

6 128. Other standards are applicable to my opinion as well. Standard 4-1.9, entitled  
7 Diligence, Promptness and Punctuality, provides that lawyers should avoid both unnecessary  
8 delays and acting with haste that might compromise the quality of representation. In addition,  
9 this Standard advises that counsel should be adequately supported by facilities and staff.

10 129. Standard 4-3.1, entitled Establishing and Maintaining an Effective Client  
11 Relationship, advises that counsel should work to establish an appropriate attorney-client  
12 relationship immediately upon appointment or retention. Standard 4-1.3(d), entitled Continuing  
13 Duties of Defense Counsel, recommends a duty for counsel keep the client informed of  
14 significant developments and potential options and outcomes.

15 130. Standard 4-3.3, meanwhile, entitled Interviewing the Client, advises counsel to  
16 establish an effective attorney-client relationship and discuss relevant matters including, but not  
17 limited to, pertinent evidentiary materials, likely length of future proceedings, the client's  
18 wishes, probable legal options, and potential outcomes.

19 131. Standard 4-3.7, entitled Prompt and Thorough Actions to Protect the Client,  
20 advises that, at the earliest opportunity, counsel should inform the client of his or her rights in  
21 the criminal process.

22 132. Standard 4-3.9, entitled Duty to Keep Client Informed and Advised About the  
23 Representation, suggests counsel not only to keep the client informed about developments, but  
24 also to comply promptly with the client's reasonable requests for information.

25 133. Standard 4.4-3, entitled Relationship with Witnesses, recommends counsel or  
26 counsel's agents to seek to interview all witnesses, including the alleged victim(s).

1           134. Standard 4-4.4, entitled Relationship with Expert Witnesses, states that when  
2 counsel retains an expert witness, counsel should provide such expert with all information  
3 necessary to support a full and fair opinion. In addition, counsel should investigate any expert  
4 before an engagement.

5           135. Standard 4.4-6, entitled Preparation for Court Proceedings, advises that counsel  
6 adequately prepare prior to court proceedings. Defense counsel should appear at all relevant  
7 proceedings and document what occurs, as well as notify appropriate persons of significant  
8 orders. This Standard also suggests that counsel have sufficient resources to prepare adequately  
9 for proceedings.

10           136. Standard 4.5-1. entitled Advising the Client, states that counsel should keep  
11 clients reasonably informed on their case status at regular intervals and promptly communicate  
12 relevant developments. Counsel should also provide advice in sufficient time for clients to  
13 consider all potential options, considering their client's views and desires and advising of their  
14 client of both potential advantages and disadvantages to options.

15           137. Standard 4-6.3, entitled Plea Agreements and Other Negotiated Dispositions,  
16 recommends that counsel investigate and be knowledgeable about sentencing law and  
17 procedures, in addition to alternatives, collateral consequences, likely outcomes, and the  
18 practices of the sentencing judge.

19           138. Standard 4-8.3, entitled Sentencing, advises that counsel consider issues that  
20 could affect sentencing throughout the pendency of the case.

21           139. Based on the foregoing, it is clear that the ABA has set a standard that public  
22 defenders in Oregon generally, and in Marion County in particular, cannot hope to meet. Where  
23 a single attorney is asked to perform the work of three attorneys, it is simply impossible for them  
24 to comply with the professional norms contained in the ABA Defense Function Standards.

25       ///

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1           **C.       The Declaration of Shannon Wilson**

2           140. I have read the Declaration of Shannon Wilson (the “Wilson Declaration”),  
3 including their statements with regard to the deficiencies in representation resulting from  
4 excessive workloads. In my opinion, these deficiencies are entirely predictable and are caused  
5 by the inability of the PDMC to comply with prevailing professional norms, in systemic violation  
6 of the constitutional right to counsel, due to their excessive caseloads and workloads. It is also  
7 the case that under present workload conditions in Marion County, there is a significant risk that  
8 the representation of one indigent client is materially limiting and will materially limit the  
9 representation of every one of the Marion County public defenders’ other clients, in systemic  
10 violation of RPC 1.7.

11           141. My understanding from reviewing the Wilson Declaration is that the public  
12 defenders at PDMC are unable to complete tasks necessary for adequate representation due to  
13 their high workloads and limited time. It is my professional opinion that the inability to complete  
14 the tasks outlined in the Wilson Declaration violates the Defense Function Standards iterated  
15 above. Below, I provide some specific examples from the Wilson Declaration to illustrate how  
16 the inability to accomplish these tasks violates the Defense Function Standards.

17           142. I understand that several PDMC attorneys stated they are unable to adequately  
18 investigate and interview witnesses. I understand that attorneys specifically stated they were  
19 unable to meticulously review evidence and were forced to skim thousands of pages of  
20 discovery. I further understand that other attorneys explained how they were unable to perform  
21 investigations themselves, speak to investigators, or even complete investigation reports.

22           143. It is my professional opinion that the failure to properly investigate a client’s case  
23 violates several Defense Functions Standards. An attorney who cannot properly investigate a  
24 matter cannot determine if sufficient factual bases for charges exist, in violation of Defense  
25 Function Standard 4-4.1(b). They also cannot meaningfully provide adversarial testing, in  
26 violation of Defense Function Standard 4-6.1(b). Further, an attorney without sufficient time to

1 complete an investigation is necessarily unable to interview all witnesses, in violation of Defense  
2 Function Standard 4.4-3.

3 144. I also understand that several PDMC attorneys indicated they were unable to  
4 communicate sufficiently or satisfactorily with their clients. Specifically, attorneys detailed  
5 being unable to provide adequate time to speak with a client or their family members.

6 145. It is my professional opinion that these failures, too, violate several Defense  
7 Function Standards. For instance, in violation of Defense Function Standard 4-8.3, defense  
8 counsel who cannot sufficiently communicate with their client cannot gather all potentially  
9 relevant information or fully explain relevant information to their client. Attorneys in such a  
10 situation are also unable to maintain effective and appropriate attorney-client relationships  
11 immediately upon appointment. *See id.* at 4-3.1. Attorneys in such situations are further unable  
12 to properly interview clients and discuss relevant matters with clients, such as evidence, future  
13 proceedings, and their client's wishes, counter to Defense Function Standard 4-3.3. Such  
14 attorneys are also unable to inform their client of their rights at the earliest opportunity or keep  
15 their client informed about case developments. *See id.* at 4-3.7, 4-3.9. Counsel that are unable  
16 to communicate with clients also run afoul of Defense Function Standard 4.5-1 in that they are  
17 unable to provide advice to their clients with sufficient time for clients to consider all potential  
18 options.

19 146. I further understand that PDMC attorneys have reported that they are unable to  
20 adequately prepare for court proceedings. These attorneys report, for example, that they have  
21 insufficient time to prepare witnesses for trial. In addition, they are forced to triage which legal  
22 issues to research based on what matter is most likely to go to trial at any given moment. One  
23 PDMC attorney details how important matters for court proceedings, such as jury instructions,  
24 are often left to the last second due to the need to prioritize more urgent client matters. I further  
25 understand that post-judgment hearings are particularly impacted, as they are often assigned the  
26 lowest priority when overworked public defense attorneys must triage.



1           147. It is my professional opinion that the above-described failures violate Defense  
2 Function Standard 4.4-6. This standard states that counsel should adequately prepare for all  
3 court proceedings.

4           148. I also understand that PDMC attorneys have reported that they are unable to  
5 properly interact with actual or potential expert witnesses. These attorneys report that they do  
6 not have time to fully investigate or find new experts and thus must employ the experts with  
7 whom they have existing relationships. Multiple attorneys also detailed how they were unable  
8 to properly follow up with experts to ensure that the experts have sufficient information in  
9 forming their opinion or to assure that the expert has fully and timely completed their  
10 investigation.

11           149. It is my professional opinion that these failures are in violation of Defense  
12 Function Standard 4-4.4, which counsels that lawyers should investigate experts prior to  
13 engaging them and provide experts with all the information necessary to support their opinions.  
14 In my opinion, PDMC attorneys are unable to meet either aspect of this standard.

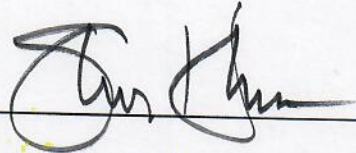
15           150. It is my professional opinion that all of these failures, individually and taken  
16 together are in clear violation of the Defense Function Standards. Notably, being forced to  
17 constantly triage means that lawyers are unable to avoid unnecessary delays, in violation of  
18 Defense Function Standard 4-1.9. Perhaps most obviously, when these anecdotes and details are  
19 considered collectively, the PDMC office as a whole is in violation of Defense Function Standard  
20 4-1.8. That standard provides that defense counsel should not be subject to a workload that, due  
21 to its excessive nature, endangers a client's interest in an independent, thorough, and speedy  
22 investigation. *See id.* at 4-1.8. However, the PDMC as a whole is constantly forced to violate  
23 this Defense Function Standard, and such violation, in turn, compels the PDMC to violate still  
24 more ethical standards.

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26       ///

1 I hereby declare that the above statement is true to the best of my knowledge and belief,  
2 and that I understand that it is made for use as evidence in court and is subject to penalty for  
3 perjury.

4 DATED this 14<sup>th</sup> day of March, 2023.

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8 Stephen F. Hanlon  
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# **EXHIBIT A**

# Stephen F. Hanlon, J.D.

Professor

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## Courses Taught

Public Interest Litigation Practice

## Education

University of Missouri School of Law, 1966

## Honors and Awards

- Nelson Poynter Award, American Civil Liberties Union of Florida, 1996
- Steven M. Goldstein Criminal Justice Award, Florida Association of Criminal Lawyers, 2000
- Equal Justice Award, Southern Center for Human Rights, 2001
- Pro Bono Award, The Florida Bar Appellate Practice Section, 2004
- Citation of Merit, University of Missouri Columbia School of Law, 2006
- Champions Award, The Legal Times, 2012

- Robert F. Drinan Award, Individual Rights and Responsibilities Section, American Bar Association, 2013

## Professional Organizations and Associations

- General Counsel, National Association for Public Defense, [www.publicdefenders.us](http://www.publicdefenders.us) <<http://www.publicdefenders.us>> (22,000 members), 2014-2020
- Past Chairman, The Florida Bar, Public Interest Law Section
- Past President, Florida Legal Services
- Past Chair of the Executive Council, American Bar Association, Individual Rights and Responsibilities Section
- Past Chair, American Bar Association, Death Penalty Moratorium Implementation Project
- Chair, Indigent Defense Advisory Group, Standing Committee on Legal Aid and Indigent Defense, American Bar Association
- Past Chair, The Constitution Project, [www.constitutionproject.org](http://www.constitutionproject.org) <<http://www.constitutionproject.org/>>
- Adjunct Professor of Law, Georgetown University Law Center

## Community Work and Service

Stephen F. Hanlon has a long history of handling public interest and civil rights cases. In 1989, he founded the Community Services Team (CST) at Holland & Knight and for the next 23 years he served as the Partner in Charge of the CST, which during Hanlon's tenure was the largest full-time private practice pro bono department in the nation. In 1997, Holland and Knight received the ABA Pro Bono Publico Award. The American Lawyer described Holland and Knight as a "pro

bono champion.” In 2006, Hanlon received the Chesterfield Smith Award from Holland & Knight, the firm's highest individual recognition given to a firm partner.

Since his retirement from Holland & Knight at the end of 2012, Hanlon has confined his practice to assisting and representing public defenders with excessive caseloads. He now serves as a Professor of Practice at Saint Louis University School of Law.

Hanlon was lead counsel for the Missouri Public Defender in State ex rel. Mo. Public Defender Commission, , 370 S.W.3d 592 (Mo.banc 2012), which was the first state supreme court case to uphold the right of a public defender organization to refuse additional cases when confronted with excessive caseloads. The Waters case has been described as a “watershed moment” in indigent defense. Davies, Andrew Lucas Blaize Davies, “How Do We ‘Do Data’ in Public Defense?,” 78 Albany Law Review 1179.

Hanlon was the project director for the American Bar Association in the critically acclaimed study of the workload of the Missouri Public Defender undertaken by RubinBrown on behalf of the American Bar Association, known as “The Missouri Project,” available at [www.indigentdefense.org](http://www.indigentdefense.org) <<http://www.indigentdefense.org/>>. He currently serves as the project director for similar studies in several states. The ABA Journal Magazine has called him “The Oracle” for public defender workload studies. In 2019, the New York Times described him as “one of the leading voices in public interest law for decades.”

For the last 20 years, Mr. Hanlon has filed systemic indigent defense reform litigation across the nation, published four law review articles about that system, taught a law school course at SLU LAW about that system, spoken out publicly about that system, and testified as an expert witness in litigation seeking to change that system. His work has been featured in the New York Times, on 60 Minutes and on the PBS Evening News Hour.

After graduating from the University of Missouri School of Law in 1966, Hanlon practiced law with his father in St. Louis. He then served as the executive vice

president and general counsel of a joint venture subsidiary of Marathon Oil Company before moving to Florida to begin his civil rights practice with Bay Area Legal Services in Tampa in 1976. In the 1980s, Hanlon engaged in a wide variety of civil trial practice while continuing his civil rights work.

Mr. Hanlon has recently formed his own law firm, known as **LAWYER HANLON** <<http://www.lawyerhanlon.com>> . This firm now works with other law firms, lawyers, experts, law professors and law students who have expressed an interest in working with him in his efforts to achieve significant structural reform of our nation's criminal justice system through systemic change of our nation's public defense system.

Hanlon has represented many individuals in housing, employment and HIV/AIDS discrimination cases, as well as two inmates on Florida's death row. Some of his significant cases in class action, multiple plaintiff and associational plaintiff litigation are summarized below.

- Class action on behalf of all Florida high school students challenging constitutionality of Florida's Functional Literacy Test. Four year injunction. (Work with Center for Law and Education.) *Debra v. Turlington*, 730 F.2d 1405 (11th Cir. 1984.)
- Class of 5,000 dark-skinned tenant-applicants for apartment housing. Obtained injunctive relief and \$3.4 million settlement. (Work with Lawyers Committee for Civil Rights Under Law.)
- Survivors and descendants of African American town of Rosewood destroyed by neighboring whites in 1923. \$2.1 million award from Florida Legislature. (Work with Partner Martha Barnett). (See, "Like Judgment Day", Michael D'Orso, Boulevard Books, New York).

- Class of indigent criminal defendants challenging constitutionality of Massachusetts indigent defense system. Massachusetts Legislature increased public defender appropriations from \$98 million to \$154.5 million.
  
- Two cases challenging the constitutionality of capital indigent defense system in Florida. Substantial increase in funding and holding that compensation above legislative caps is appropriate. *Arbelaez v. Butterworth*, 738 So. 2nd 326 (Fla. 1999); *Mass v. Olive*, 992 So. 2nd 196 (Fla. 2008)
  
- Overburdened statewide public defender organization's refusal to accept additional cases sustained, even if that ultimately means some low risk offenders will be released because they don't have a lawyer. *State ex rel. Missouri Public Defender v. Waters*, 370 S.W. 2d 592 (Mo. banc 2012)
  
- See, Stephen F. Hanlon, "The Appropriate Legal Standard Required to Prevail in a Systemic Challenge to an Indigent Defense System," 61 St. Louis U.L.J. 625 (2017); Case Refusal: A Duty for a Public Defender and a Remedy for All of a Public Defender's Clients, 51 Ind. L. Rev. 59 (2018)"
  
- See, Stephen F. Hanlon, "State Constitutional Challenges to Indigent Defense Systems," 75 MO.L.REV 751 (2010); "The Gideon Decision: Constitutional Mandate or Empty Promise? A Fifty-Year Deal Under Fire," 52 U. Louisville L. Rev. Online 32 (2013)
  
- Class of low-income, high risk pregnant women who were unwitting subjects of medical experimentation. Obtained injunctive relief and \$3.8 million in damages. *Diaz v. Hillsborough County Hospital*, 2000 WL 1682918 (M.D. Fla), August 7, 2000.



- Unincorporated association obtained wide-ranging consent decree to end decades of lead based paint problems in public housing complex. Concerned Parents of Jordan Park v. The Housing Authority of The City of St. Petersburg, 934 F.Supp. 406 (M.D. Fla. 1996).
  
- Class action on behalf of all Mississippi death row prisoners. Obtained injunction requiring far reaching reforms of grossly inhumane conditions. (Work with Margaret Winter). Gates v. Cook, 376 F.3d 323 (5th Cir. 2004).
  
- Class of 1,000 men in Mississippi supermax prison. By settlement, obtained release from confinement of 90% of state's administrative segregation population and ultimately closed down the supermax prison. (Work with Margaret Winter). Presley v. Epps, (N.D. Miss.2004)
  
- See, Margaret Winter and Stephen F. Hanlon "Parchman Farm Blues," ABA Magazine Litigation, Volume 35, Number 1, Fall, 2008.



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# **EXHIBIT B**

# The Missouri Project

A Study of the Missouri Public Defender System  
and Attorney Workload Standards



Includes a National Blueprint for Future Workload Studies

The Missouri Project:  
A Study of the Missouri Public Defender System  
and  
Attorney Workload Standards

*With a National Blueprint*

June 2014

Prepared by:



On Behalf of the American Bar Association's  
Standing Committee on Legal Aid and Indigent Defendants



**This publication has been prepared by RubinBrown on behalf of the American Bar Association's Standing Committee on Legal Aid and Indigent Defendants. The views expressed herein, unless otherwise noted, have not been approved by the House of Delegates or the Board of Governors of the American Bar Association and, accordingly, should not be construed as representing the policy of the American Bar Association.**



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RubinBrown was engaged by the American Bar Association (“ABA”) on behalf of its Standing Committee on Legal Aid and Indigent Defendants (“SCLAID”) to provide consulting services and assist in the development of a process to calculate workload standards for the Missouri State Public Defender System. This report presents the results of the engagement. Our services were performed in accordance with the Statements on Standards for Consulting Services as prescribed by the American Institute of Certified Public Accountants.

*RubinBrown LLP*

RubinBrown LLP

# Preface

This report is the result of a collaborative effort between RubinBrown LLP (“RubinBrown”),<sup>1</sup> the American Bar Association (“ABA”),<sup>2</sup> and the Missouri State Public Defender System (“MSPD”). The ABA has denominated the effort “The Missouri Project.” The effort was led by Michael T. Lewis (Partner-In-Charge of the Business Advisory Services group at RubinBrown). The research team consisted of Jason Mannello (RubinBrown), Josh Leesmann (RubinBrown), and Kent Bausman, Ph.D. (Maryville University).

We would like to thank Stephen F. Hanlon,<sup>3</sup> Chair of the Indigent Defense Advisory Group of the ABA’s Standing Committee on Legal Aid and Indigent Defendants (“SCLAID”)<sup>4</sup> for his assistance in this effort. We would also like to thank Cathy Kelly and Peter Sterling (Director and General Counsel, respectively, Missouri State Public Defender System) for providing guidance and insight into the MSPD’s practices and technical systems. We also appreciate the input and editorial comments of Norman Lefstein.<sup>5</sup> We would also like to thank Dean Hunter for his editorial review.<sup>6</sup>

We would like to thank each member of the MSPD for their cooperation and input throughout the project. We would also like to thank the group of private bar attorneys and public defender experts asked to participate in numerous surveys and meetings. The project would not be possible without their input and efforts.

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<sup>1</sup> Founded in 1952, RubinBrown ([www.RubinBrown.com](http://www.RubinBrown.com)) is one of the nation’s leading accounting and professional consulting firms. RubinBrown helps its clients build and protect value, while at all times honoring the responsibility to serve the public interest. RubinBrown’s vision statement is: One firm, highly respected and nationally prominent with a solid foundation of core values, inspired team members and totally satisfied clients.

<sup>2</sup> The ABA ([www.AmericanBar.org](http://www.AmericanBar.org)) is the largest voluntary professional membership organization and the leading organization of legal professionals in the United States. Its nearly 400,000 members come from all 50 states and other jurisdictions. They include attorneys in private law firms, corporations, nonprofit organizations, government agencies, and prosecutorial and public defender offices, as well as judges, legislators, law professors, and law students.

Since its founding, the ABA has actively worked in the fields of legal ethics and indigent defense. In 1908, the ABA adopted its first Canons of Professional Ethics (now the Model Rules of Professional Conduct) (“ABA Model Rules”). In 1913, the ABA created the entity now known as the ABA Standing Committee on Ethics and Professional Responsibility (“ABA Ethics Committee”). The ABA Ethics Committee publishes formal ethics opinions on professional and judicial conduct, provides informal responses to ethics inquiries, and, upon request, assists courts in their development, modification, and interpretation of ethical standards such as the ABA Model Rules and the ABA Model Code of Judicial Conduct.

<sup>3</sup> For the last 20 years, much of Mr. Hanlon’s work has involved systemic challenges to indigent defense systems. Mr. Hanlon currently limits his practice to advising and representing public defenders with excessive caseloads. He currently teaches indigent defense at St. Louis University School of Law.

<sup>4</sup> The ABA created SCLAID in 1920 and charged the entity with examining the delivery of legal services to assist the poor.

<sup>5</sup> Mr. Lefstein is Professor of Law and Dean Emeritus of the Indiana University Robert H. McKinney School of Law, former Chairman of the ABA Section of Criminal Justice, Reporter for the Second Edition of ABA Criminal Justice Standards Relating to *The Prosecution Function* and *The Defense Function, Providing Defenses Services*, and *Pleas of Guilty*, and former Chairman of the ABA Committee on Criminal Justice Standards.

<sup>6</sup> Mr. Hunter is the Spring managing editor of the St. Louis University Public Law Review.



# Table of Contents

Executive Summary .....	5
Introduction.....	7
Literature Review .....	9
Methodology & Analysis.....	11
A. System Analysis .....	12
B. Case Type / Case Task Summary .....	13
C. Time Study.....	15
D. Time Sufficiency Survey.....	16
E. Delphi Process .....	17
Attorney Workload Standard Conclusion.....	21

## Report Exhibits

Exhibit 1: Concluded Workload Standards by Case Type and Case Task Group .....	23
Exhibit 2: Current Average Reported Case-Related Hours by Case Type and Case Task Group .....	24
Exhibit 3: Case Task Descriptions .....	25
Exhibit 4: List of Tasks Identified as Often Having Sufficient Time to Perform .....	26

## National Blueprint Appendix

Appendix 1: Example Sufficiency Survey Instructions .....	28
Appendix 2: Example Sufficiency Survey .....	30
Appendix 3: The Delphi Methodology Employed in The Missouri Project.....	31
Appendix 4: Example Delphi Panel Invitation .....	32
Appendix 5: Example Delphi Time Survey Instructions .....	33
Appendix 6: Example Time Survey Questions .....	35
Appendix 7: Example Delphi Time Survey Instructions for Successive Surveys .....	36
Appendix 8: Example Delphi Frequency Survey Instructions .....	38
Appendix 9: Example Frequency Survey Questions .....	40
Appendix 10: Example Structure and Layout of Response Summary .....	41
Appendix 11: Example Response Rates from the Time Survey .....	42
Appendix 12: Estimated Response Rates from the Time Sufficiency Survey .....	43
Appendix 13: A Note on Public Defender System Requirements.....	44
Appendix 14: Example Engagement Letter Language .....	45

## Executive Summary

This report lays out the methodology, analysis, and results of the joint efforts of the MSPD, the ABA, and RubinBrown to develop data-supported workload standards. Although this effort is not the end of the process, it is a critical first step in establishing supportable, data-driven workload standards that can assist the MSPD in assessing staffing requirements and provide empirical support to determine maximum workloads.

In 1973, the National Advisory Commission on Criminal Justice Standards and Goals recommended maximum case loads for public defender programs (the “NAC Standards”). However, the NAC Standards were not based upon empirical study<sup>7</sup> and MSPD’s recent application of the NAC Standards has been criticized by the Missouri State Auditor and the National Center for State Courts (“NCSC”). Both the Missouri State Auditor and the NCSC concluded:

- MSPD’s protocol “suffers significantly from its failure to depart from NAC caseload standards,”
- The protocol suffers “from its apparent inability to make fuller use of a 2006 time study,”<sup>8</sup> and
- “Our review of the calculations and available data supporting the caseload protocol noted the MSPD lacks sufficient support for the data and methodology used for protocol calculations.”<sup>9</sup>

These critiques were at the forefront of the analysis to establish new workload standards for the MSPD. This study does not rely upon the 1973 NAC Standards. It instead utilizes MSPD’s current time data, combined with a data-driven survey process, to calculate new workload standards.

Daily time entry became a mandatory function for all MSPD practitioners as of March 1, 2013.<sup>10</sup> This study utilized MSPD time data for a 25-week period beginning in March of 2013 and ending August of 2013 as the foundation for workload standards.

Excessive workloads result in insufficient time available to provide reasonably effective assistance of counsel to all clients. As in prior studies of this type, this study required a means to identify areas where MSPD attorneys reported they often did not have sufficient time to complete certain tasks with reasonable effectiveness.

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<sup>7</sup> “From the NAC commentary, it is clear that no empirical study in support of its recommended caseload limits was ever undertaken.” NORMAN LEFSTEIN, AMERICAN BAR ASSOCIATION, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE, 44-5 (2011).

<sup>8</sup> NATIONAL CENTER FOR STATE COURTS, BRIEF COMMENT ON THE MISSOURI STATE PUBLIC DEFENDER COMMISSION’S CASELOAD STANDARD PROTOCOL: TECHNICAL ASSISTANCE PAPER 2, 11 (2010).

<sup>9</sup> THOMAS. A. SCHWEICH, MO. STATE AUDITOR, REPORT NO. 2012-129, MISSOURI STATE PUBLIC DEFENDER 11 (2012).

<sup>10</sup> At the time this report was issued, MSPD personnel did not record sick leave, vacation, or holidays in the time log system. However, this information was tracked in a separate form. Further, the Appellate division did not begin tracking time until April 1, 2013.

The study surveyed MSPD practitioners directly and was used to identify which case-related tasks they reported they often had either sufficient or insufficient time to perform based on current practices and staffing levels. The study then utilized a Delphi method to estimate the amount of time that should be allotted for those tasks that MSPD line defenders identified as often not having sufficient time to complete with reasonable effectiveness.<sup>11</sup> The Delphi method used in this study was an iterative process that included both experienced private practice criminal defense attorneys as well as MSPD line defenders.<sup>12</sup>

The resulting attorney workload standards, shown below, reflect estimates of the average amount of time<sup>13</sup> an attorney can expect to spend on a category of Case Tasks for a particular type of case to provide reasonably effective assistance of counsel.<sup>14</sup>

<b>Case Type</b>	<b>Controllable Case Task Hours per Case</b>
Murder/Homicide	106.6
A/B Felony	47.6
C/D Felony	25.0
Sex Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appellate/PCR	96.5
Probation Violation	9.8

The conclusion shown in the above chart reflects the consensus time expectations (under prevailing professional norms and standards) of a group of both private practice and public defender experts from across the state of Missouri. The above workload standards, however, are not the end of the process. Stakeholders throughout the criminal justice system recognize that the study and calculation of workload and related workload standards is a continuous process.

<sup>11</sup> MSPD line defenders were asked to identify tasks that they often did not have sufficient time to complete with reasonable effectiveness in the current environment (i.e., current practices and staffing levels).

<sup>12</sup> The study excluded MSPD personnel solely tasked with the administration and management of the system, focusing only on MSPD practitioners that carry a caseload.

<sup>13</sup> Of course, some cases will take less time and some cases will take more time, but in each case, as the recent decision of the United States District Court for the Western District of Washington makes clear, reasonably effective representation “presumes a certain basic representational relationship” and the system of public defense must “[allow]...counsel to give each case the time and effort necessary” to ensure reasonably effective representation, *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, 2013 WL 6275319, at \*1, \*3 (W.D. Wash. December 4, 2013), so that the prosecutor’s case can be subjected to “meaningful adversarial testing,” *United States v. Cronin*, 466 U.S. 648, 654, 659 (1984).

<sup>14</sup> The workload standards include only case-related tasks over which an attorney has some control (i.e., exclude in court, travel, training, and administrative time). Further, the workload standards assume adequate support staff and attorney resources are available. Private practice defense counsel reported utilizing 2 support staff resources per attorney, on average. By contrast, the MSPD currently has approximately 2 attorneys for every 1 support staff resource (0.55 support staff per attorney, or approximately 1/4<sup>th</sup> of the support staff available to private practice defense counsel).

These standards should be revisited periodically to account for potential changes in technology and technology usage, indigent defendant demographics and crime patterns, the Missouri criminal code, and the staffing and organizational structure within the MSPD and the larger criminal justice system.

In addition, as the MSPD's time entry system matures and the amount of data contained within it increases, the ability to utilize that data to examine organization practices, study different types of complexity factors, and quantify time sufficiency will increase.

## Introduction

The guarantee of assistance of counsel in one's defense against criminal prosecution is a right afforded under the Sixth Amendment to the U.S. Constitution and Article 1, Section 18(a) of the Missouri Constitution.

In 1963, the Supreme Court's decision in *Gideon v. Wainwright* extended the right to counsel to felony cases in state criminal courts;<sup>15</sup> subsequently, the Supreme Court extended the right to counsel to misdemeanor cases ending with the defendant being imprisoned.<sup>16</sup> A majority of states, however, recognize the right to a lawyer if the defendant is charged with a misdemeanor. In Missouri, the right to counsel is extended to defendants in misdemeanor cases if incarceration is probable.<sup>17</sup>

Despite the promise provided by the *Gideon* decision, many academics and legal scholars have concluded that much of that promise has remained unfulfilled.<sup>18</sup> Simply assigning an attorney to a defendant does not ensure a fair outcome.<sup>19</sup> Rather, pursuant to the Rules of Professional Conduct, proper defense representation requires that lawyers: 1) be competent to represent the client, 2) offer prompt and diligent representation of the client's interests, and 3) productively engage with the client while exercising independent judgment.<sup>20</sup>

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<sup>15</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>16</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972).

<sup>17</sup> See *State v. Watson*, 687 S.W.2d 667, 669 (Mo. Ct. App. 1985) (citing *Argersinger*, 407 U.S. at 37).

<sup>18</sup> Bruce R. Jacob, *50 Years Later: Memories of Gideon V. Wainwright*, 87 FLA. B.J. 10 (2013); Cara H. Drinan, *Getting Real About Gideon: The Next Fifty Years of Enforcing the Right to Counsel*, 70 WASH. & LEE L. REV. 1309 (2013); Roger A. Fairfax, Jr., *Searching for Solutions to the Indigent Defense Crisis in the Broader Criminal Justice Reform Agenda*, 122 YALE L.J. 2316 (2013); NATIONAL RIGHT OF COUNSEL COMMITTEE, JUSTICE DENIED: AMERICA'S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL (2009), available at <http://www.constitutionproject.org/pdf/139.pdf> and [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_justice\\_denied.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_justice_denied.authcheckdam.pdf); and ABA STANDING COMMITTEE ON LEGAL AID AND INDIGENT DEFENDANTS, GIDEON'S BROKEN PROMISE: AMERICA'S CONTINUING QUEST FOR EQUAL JUSTICE, (2004), available at [http://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_bp\\_right\\_to\\_counsel\\_in\\_criminal\\_proceedings.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_bp_right_to_counsel_in_criminal_proceedings.authcheckdam.pdf).

<sup>19</sup> *Wilbur v. City of Mount Vernon*, No. C11-1100RSL, 2013 WL 6275319, at \*6 (W.D. Wash. December 4, 2013).

<sup>20</sup> Phyllis E. Mann, *Ethical Obligations of Indigent Defense Attorneys to Their Clients*, 75 MO. L. REV. 715 (2010).

To guide policy makers and criminal defense practitioners in ensuring a fair and proper process, the American Bar Association has developed Criminal Justice Standards (“ABA Standards”)<sup>21</sup> and the state of Missouri has developed the Missouri State Public Defender Guidelines for Representation (“Missouri Guidelines”).<sup>22</sup>

The fulfillment of these obligations is dependent upon having sufficient resources available. In the years since *Gideon*, the consensus is that indigent defense in the United States has been inadequately supported, creating a crisis in the state of indigent defense.<sup>23</sup> According to Drinan, “[f]rom the start, states have failed to fund the indigent defense function adequately, and as the volume of criminal cases has grown over the years, too few lawyers have faced ever-increasing workloads. The result has been what many have called ‘assembly-line justice’ – in other words, egregious and persistent violations of the right to counsel.”<sup>24</sup>

To address the potential violations of the right to counsel, several states and counties throughout the United States have begun to search for data-driven workload standards to assess and manage attorney resources in an attempt to provide adequate criminal defense for the poor. From our discussions with the MSPD, it was also clear that the system would benefit from a consistent methodology that would allow public defenders to quantify workload expectations necessary to provide reasonably effective assistance of counsel to indigent defendants.

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<sup>21</sup> The ABA Standards are the result of a lengthy process that has been in continual development since 1964. Specifically, the ABA Standards “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process, either individually or as representatives of their respective associations, and only after the [ABA] Standards have been drafted and repeatedly revised on more than a dozen occasions, over three or more years.” Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. (2009), available at [http://www.americanbar.org/groups/criminal\\_justice/standards.html](http://www.americanbar.org/groups/criminal_justice/standards.html).

<sup>22</sup> MISSOURI STATE PUBLIC DEFENDER SYSTEM, GUIDELINES FOR REPRESENTATION (1992).

<sup>23</sup> NATIONAL RIGHT OF COUNSEL COMMITTEE, *supra* note 18, at 4.

<sup>24</sup> Drinan, *supra* note 18, at 1311.

## Literature Review

The Delphi method was introduced in 1962 by researchers at the Rand Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.<sup>25</sup> As a methodological strategy, the Delphi method proposed that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage.<sup>26</sup> The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on some fundamental question of significance to the group of experts convened for feedback.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”<sup>27</sup> At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming well-thought-out opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”<sup>28</sup> Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, e.g., a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by...the experts..., or of factors and considerations suggested as potentially relevant by one or another respondent.”<sup>29</sup>

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<sup>25</sup> NORMAN DALKEY & OLAF HELMER, RM-727, AN EXPERIMENTAL APPLICATION OF THE DELPHI METHOD TO THE USE OF EXPERTS 1 (1962), available at [http://www.rand.org/content/dam/rand/pubs/research\\_memoranda/2009/RM727.1.pdf](http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf).

<sup>26</sup> *Id.*

<sup>27</sup> Gene Rowe & George Wright, *The Delphi Technique as a Forecasting Tool: Issues and Analysis*, 15 INT’L J. OF FORECASTING 353, 354 (1999).

<sup>28</sup> OLAF HELMER & NICHOLAS RESCHER, P-1513, ON THE EPISTEMOLOGY OF THE INEXACT SCIENCES 42 (1958) available at <http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf>.

<sup>29</sup> DALKEY & HELMER, *supra* note 25, at 2.

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not have previously considered.<sup>30</sup>

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.<sup>31</sup> In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved, however it has been found that three to four iterations is usually all that is required to reach consensus.<sup>32</sup> Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques utilized for similar purposes, the Delphi method was found to "lead to improved judgments over staticized groups and unstructured interacting groups."<sup>33</sup>

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.<sup>34</sup> The purpose of its use beyond forecasting has ranged from "program planning, needs assessment, policy determination, and resource utilization."<sup>35</sup> Within the legal system, early examples of use of the Delphi method can be traced back a couple of decades.

Examples of these attempts were sponsored by both the National Association of Court Management ("NACM") and the National Center for State Courts ("NCSC"). These efforts were principally charged with assessing judicial and court support staff needs.<sup>36</sup>

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<sup>30</sup> *Id.* at 2–3.

<sup>31</sup> Rowe & Wright, *supra* note 27, at 354.

<sup>32</sup> Chia-Chien Hsu & Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus*, 12 PRAC. ASSESSMENT, RES. & EVALUATION 1 (2007), available at <http://pareonline.net/pdf/v12n10.pdf>.

<sup>33</sup> Rowe & Wright, *supra* note 27, at 366.

<sup>34</sup> HAROLD A. LINSTONE & MURRAY TUROFF, THE DELPHI METHOD: TECHNIQUES AND APPLICATIONS 10–11 (2002); Rowe & Wright, *supra* note 27, at 355.

<sup>35</sup> Hsu & Sandford, *supra* note 32, at 1. For detailed examples of the application of the Delphi method, see LINSTONE & TUROFF, *supra* note 34.

<sup>36</sup> See, e.g., VICTOR E. FLANGO & BRIAN J. OSTROM, NAT'L CENTER FOR STATE COURTS, ASSESSING THE NEED FOR JUDGES AND COURT SUPPORT STAFF (1996).

In the 2000's, the NCSC started using Delphi techniques in addressing the caseload and workload crisis of indigent defense in the United States. In a recent book, Lefstein comments on the use of the Delphi method, noting:

“The technique is recommended when a problem does not lend itself to precise measurement and can benefit from collective judgments. This would seem to be precisely the situation when a defense program seeks to determine how much additional time, on average, its lawyers need to spend on a whole range of activities involving different kinds of cases.”<sup>37</sup>

The Delphi method has been recommended as a necessary complement to time-based studies that seek to determine appropriate caseloads for defense lawyers.<sup>38</sup> What the Delphi method is believed to offer is a method to adjust preliminary case weights based on time studies while avoiding the institutionalization of potentially sub-standard current practices.

## Methodology & Analysis

Past workload studies<sup>39</sup> were reviewed and assessed in developing the methodology advanced in this study, which sought to quantify the amount of time a public defender should expect to spend on a particular task in a particular case type through an application of the Delphi method. As in prior studies, the Delphi methodology was used to provide an estimate of what workload standards *should be* in order for a public defender to provide reasonably effective assistance of counsel. However, among other things, this study expands upon prior work in this field in that it focuses on both the amount of time that should be spent on a task, as well as how often a task should be completed. Further, this study expands on prior work in that it utilizes the input of private practice defense counsel.

To determine workload standards, a multi-step process was used that first analyzed the current, “actual” state of affairs as a starting point. After an introduction of the definitions and key terms utilized throughout this study, the methodology can best be explained as the performance of the following steps:

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<sup>37</sup> NORMAN LEFSTEIN, AMERICAN BAR ASSOCIATION, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE, *supra* note 1, at 146.

<sup>38</sup> *Id.* at 149.

<sup>39</sup> See National Center for State Courts’ (“NCSC”) reports: MATTHEW KLEIMAN & CYNTHIA G. LEE, VIRGINIA INDIGENT DEFENSE COMMISSION ATTORNEY AND SUPPORT STAFF WORKLOAD ASSESSMENT – FINAL REPORT (2010); NATIONAL CENTER FOR STATE COURTS, A WORKLOAD ASSESSMENT STUDY FOR THE NEW MEXICO TRIAL COURT JUDICIARY, NEW MEXICO DISTRICT ATTORNEYS’ OFFICES, AND THE NEW MEXICO PUBLIC DEFENDER DEPARTMENT – FINAL REPORT (2007); NATIONAL CENTER FOR STATE COURTS, MARYLAND ATTORNEY AND STAFF WORKLOAD ASSESSMENT (2005). See *also* ELIZABETH NEELEY, UNIV. NEB. PUB. POLICY CENTER, LANCASTER COUNTY PUBLIC DEFENDER WORKLOAD ASSESSMENT (2008).



- A. System Analysis
- B. Case Type / Case Task Summary
- C. Time Study
- D. Time Sufficiency Survey
- E. Delphi Process

### **Standards, Definitions, and Key Information**

Sufficient time to complete the specific task: the amount of time, on average, reasonably required to complete the task with reasonable effectiveness.

Reasonable effectiveness: effective representation under prevailing professional norms.

Typical case: average, or typical, case considering that each case may have significant variability in the level of complexity (i.e., language, mental health, and other issues).

ABA Criminal Justice Section Standard 4-6.1(b): "Defense counsel may engage in plea discussions with the prosecutor. Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial."

Missouri v. Frye (132 S.Ct. 1399, 2012): "...ninety-four percent of state convictions are the result of guilty pleas."

### **A. System Analysis**

The MSPD provides "direct representation to over 98% of the indigent defendants accused of state crimes."<sup>40</sup> The system is comprised of approximately 585 employees, of which 376 (64%) are attorneys and 209 (36%) are support staff. In other words, there is approximately one support staff resource for every two attorneys. The line defender attorney group consists of 312 public defenders in the trial division, 36.5 public defenders in the Appellate/PCR division, and 17 public defenders in the capital division. The trial and appellate/PCR division support staff group consists of 43 legal assistants, 56.5 investigators, 6.5 paralegals, 3 mitigation specialists, and 67.5 secretaries.

The MSPD maintains a case management system that tracks basic case information such as open date, close date, charge type, disposition type, jurisdiction, and assigned attorney. This study utilized the current 2-year extract of the case management database consisting of over 120,000 cases and over 300 different charge types.

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<sup>40</sup> STATE OF MISSOURI PUBLIC DEFENDER COMMISSION, FISCAL YEAR 2012 ANNUAL REPORT 7 (2012).

Since March of 2013, the MSPD has required that all of its public defenders enter their time in a time log system. This system captures the amount of time across over 50 types of tasks for all MSPD practitioners on each case.

This study linked the case management system with the time log system as a basis for the workload analysis. Based upon MSPD's current systems, cases were grouped by type and attorney time spent on each case was grouped by task.

## **B. Case Type / Case Task Summary**

Working with the MSPD, 11 different Case Types were initially identified to use in the development of new workload standards. The 11 Case Types are:

1. Murder / Homicide
2. Sex Felony
3. AB Felony
4. CD Felony
5. Misdemeanor
6. Juvenile
7. Probation Violation
8. Sexual Predator Proceeding
9. Appeals/PCR
10. Release Petitions
11. Special Writs

From an assessment of current cases, it was determined that Special Writs, Release Petitions, and Sexual Predator Proceedings were highly specialized and infrequent. As a result, these Case Types were excluded from the study. The remaining 8 Case Types<sup>41</sup> are as follows:

1. Murder / Homicide
2. Sex Felony
3. AB Felony
4. CD Felony
5. Misdemeanor
6. Juvenile
7. Probation Violation
8. Appeals/PCR

Case Type is currently the primary way complexity is addressed in this workload study, though it is recognized that case complexity can be impacted by a variety of factors. Language barriers, mental health history, and family issues are just a few examples of factors that can impact case complexity.

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<sup>41</sup> The remaining Case Types capture the vast majority of case specific time in the MSPD time log system. For this study, the "Murder / Homicide" Case Type did not include capital murder cases. Juvenile cases primarily encompass juvenile delinquency cases; however, there are a small percentage of juvenile status offenses. The MSPD does not handle abuse or neglect cases involving juveniles.

All else equal, however, different Case Types generally have different degrees of average complexity. For example, without any prior case specific knowledge, it is reasonable to assume that a Class A felony will be more complex than a misdemeanor. Since both the case management database and the time log system consistently report Case Type, this data was utilized to assess current actual time and resource utilization, which provides the foundation to draw conclusions about time and resource allocation by Case Type. The 8 Case Types form the foundation for the workload standards and are used to identify how MSPD practitioners are actually spending their time under current conditions and practice.

This study was particularly interested in the tasks that are best performed by attorneys (versus support staff), and in those attorney tasks that may be affected by excessive workloads. In other words, this study sought to identify which attorney Case Tasks are impacted by excessive caseloads and time constraints. An attorney typically has more control over the time spent on certain Case Tasks, such as trial preparation, research, interviews, etc. (“Controllable Tasks”) than the time spent on other Case Tasks, such as travel, court, etc. (“Non-Controllable Case Tasks”). Therefore, Case Tasks were segregated into two different categories for purposes of this study:

### **Controllable Case Tasks**

- **Client Communication:**
  1. In Person
  2. Over the Phone
  3. Written
  4. Family/Other Communications
- **Discovery/Investigation:**
  5. State's Discovery Disclosure
  6. Records and Transcripts
  7. Depositions and Witness Interviews
  8. Experts and Technical Research
- **Case Preparation:**
  9. Legal Research
  10. Drafting and Writing
  11. Plea Negotiation
  12. Court Preparation
  13. Case Management
  14. Alternative Sentencing Research

### **Non-Controllable Case Tasks**

15. In Court - Pretrial
16. In Court – Trial
17. In Court – Appellate Argument
18. Travel
19. Miscellaneous Case Administration

Once identified, the Case Type and Case Task classifications were utilized to measure how MSPD attorneys are currently spending their time on case-related work.

### C. Time Study

The Time Study combines MSPD's time entry database with its case management database to present a picture of how much time MSPD practitioners are spending on case-related work. Time data was extracted from the time entry database for a 25-week period beginning March 2013 and ending August 2013. This data showed how much time, in total, MSPD practitioners spent on case-related tasks.

This data was combined with case count information from the MSPD case management database to calculate average time spent per Case Type, shown below.<sup>42</sup>

<b>Case Type</b>	<b>Average Reported Controllable Case Task Hours per Case</b>
Murder/Homicide	84.5
A/B Felony	8.7
C/D Felony	4.4
Sex Felony	25.6
Misdemeanor	2.3
Juvenile	4.6
Appellate/PCR	30.3
Probation Violation	1.4

The calculation first annualized the total case-related time incurred over the 25-week period (by dividing the total time by 25 weeks, and then multiplying the result by the 52 weeks in a year). We then estimated the average time per Case Type by using MSPD's case management database to estimate the average number of cases for which that time is incurred.

Specifically, we determined the average number of open cases between March 31, 2013 and August 31, 2013 (to reflect a workload that is concurrent with the time data), and then annualized that figure by dividing the open workload by the average length of case (based on fiscal year 2012 and fiscal year 2013 case management database). The resulting figure is an estimate of the number of cases per year. The annualized total time incurred divided by the estimated number of cases per year provides the average reported time per case, as shown below.

<sup>42</sup> The chart summarizes current average reported time on case-related tasks by Case Type. Further, the reported average excludes travel, in court, and administrative time. This Delphi study has focused on the Controllable Case Tasks for each of the 8 referenced case types, excluding all Non-Controllable Case Tasks (which account for a significant portion of an attorney's time), because the time required for the Non-Controllable Case Tasks is predominantly dictated by the court's schedule and the geography of the district.

Case Type	Annual Hours		Annual Case Count		Average Reported Controllable Case Task Hours per Case
Murder/Homicide	22,677	÷	269	=	84.5
A/B Felony	53,855	÷	6,196	=	8.7
C/D Felony	113,002	÷	25,910	=	4.4
Sex Felony	26,916	÷	1,051	=	25.6
Misdemeanor	30,127	÷	13,322	=	2.3
Juvenile	7,085	÷	1,554	=	4.6
Appellate/PCR	44,719	÷	1,477	=	30.3
Probation Violation	24,405	÷	16,977	=	1.4

The Time Study quantified how MSPD attorneys are actually spending their time. However, it does not indicate if this actual time is sufficient to provide reasonably effective assistance of counsel.

#### D. Time Sufficiency Survey

A “Time Sufficiency Survey” was conducted on MSPD line defenders.<sup>43</sup> MSPD practitioners were asked what percentage of the time for specific Case Type / Case Task combinations they had sufficient time to complete the task with reasonable effectiveness.

The Time Sufficiency Survey results were utilized to exclude certain Case Type and Case Task combinations from the Delphi process.<sup>44</sup> That is to say, if MSPD practitioners indicated that they often had sufficient time to adequately perform the specified Case Task for the Case Type based on current practices and staffing levels, the particular task was excluded from the Delphi process.

The Time Sufficiency Survey was performed by creating a questionnaire that was distributed via email to all MSPD line defenders by a third-party, professional survey provider. The survey asked respondents in what percentage of cases do they have sufficient time to complete the Case Task with reasonable effectiveness.

<sup>43</sup> The survey excluded operations personnel and senior management, focusing on public defenders currently carrying a case load.

<sup>44</sup> See the attached Exhibit 4 for the list of excluded Case Type and Case Task combinations.

The questions were asked for each Controllable Case Task within each Case Type, and the respondents were able to indicate their response by choosing either 0-20%; 21-40%; 41-60%; 61-80%; or 81-100% of the time. An example of the survey instrument is shown in the illustration below.

**Case Type: Felony CD**

For Felony CD cases, please select the percentage of cases for which you have sufficient time to complete the respective case-related task with reasonable effectiveness.

Please also indicate the amount of time (in minutes) that you feel is typically sufficient to complete the respective task with reasonable effectiveness.

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**\*Do you typically work on the referenced type of case (prior to appeal)? Your answer will determine whether you should proceed with this section of the survey.**

Yes, I work on the referenced type of case and will proceed with this section of the survey (please complete each of the below questions; select not applicable if you do not typically perform the respective task.)

No, I do not work on the referenced type of case and will move on to the next section.

---

	0-20%	21-40%	41-60%	61-80%	81-100%	Not applicable
CL-PHONE - Attorney / client phone conference.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>

Please enter the amount of time (in minutes) needed to complete the above task with reasonable effectiveness for the specific case type.

The Time Study, combined with the Time Sufficiency Survey, described the “current state of affairs.” In other words, these two components of the analysis allowed for 1) the quantification of how MSPD practitioners currently spend their time on cases, broken down by Case Type / Case Task combinations and, 2) the identification of those Case Type / Case Task combinations where MSPD practitioners report that there is not enough time to perform those functions with reasonable effectiveness.

To move from the “current state of affairs” to a “sufficient state” required a methodology to gauge how much time should be allowed for performance of certain Case Type / Case Task combinations. The “Delphi Process” was utilized to obtain this data.

## E. Delphi Process

The Time Sufficiency Survey, in combination with the Time Study, provides critical information about current practice. However, the Time Sufficiency Survey results indicated that the MSPD defenders may be operating under excessive workloads. Thus, current practice may provide very little useable information about how much time attorneys *should be* spending and how often attorneys *should be* performing particular tasks in order to provide reasonably effective assistance of counsel.

The Delphi process used in this study leverages the expertise of both private practice and public defenders to provide a consensus estimate of the amount of time defense counsel *should* expect to spend on a particular case in order to provide reasonably effective assistance of counsel. Further, in providing estimates of the amount of time an attorney should expect to spend on a particular case, the Delphi panel was asked to consider prevailing professional norms and standards of practice. That is to say, the standards resulting from this process should reflect the prevailing professional norms and standards, such as the Missouri Guidelines and the ABA Standards.

As a first step in this process, the time an attorney spends on a particular case can be broken out into two components, time and frequency, as follows:

1. time incurred on the performance of specific Case Tasks (“Task Time”); and
2. the actual performance (or non-performance) of certain Case Tasks (“Task Frequency”).<sup>45</sup>

Then, criminal defense experts (private, as well as public defense practitioners) from across the state of Missouri were identified and asked to participate in an iterative study of the time associated with the Case Tasks and Case Types. The expert panel was asked to provide an estimate of the amount of time that *should be* spent on each Case Task for each Case Type, assuming that the task must be performed. An example of the survey instrument for this step is shown in the illustration below.

### Felony CD Cases

Below, you will be asked to provide your estimate of the amount of time that is reasonably required to perform the respective task with reasonable effectiveness.

Please enter your response in minutes.

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CLIENT COMMUNICATION - IN PERSON - Time for privileged client interviews and consultations conducted face-to-face.

How much time, on average, is reasonably required to perform this task with reasonable effectiveness?

Minutes:

(Optional) Please provide an explanation of your time estimate.

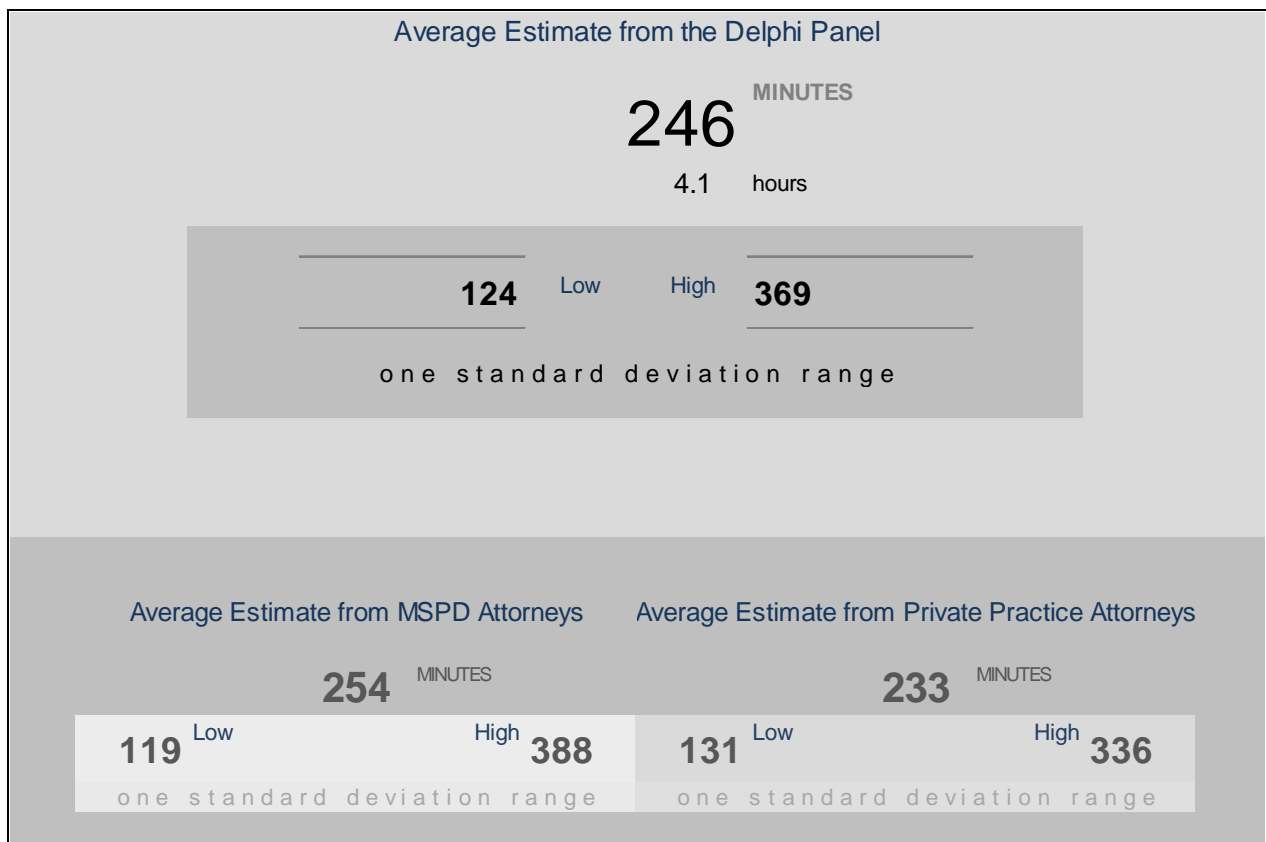
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<sup>45</sup> For example, Task Frequency component seeks to answer: “In how many cases does an attorney speak to a client over the phone?” This is contrasted with the number of phone calls an attorney may make within a particular case, which was not in the scope of this study.

The response estimates of Task Time were then summarized across the entire group of experts. The group was then provided summary statistics on the point estimate and range of time from this first survey. An example of the summary information from the first survey round is shown in the table below.

<b>CD Felony (Estimated Minutes)</b>	<b>Lower</b>	<b>Average</b>	<b>Upper</b>
Client Communication - In person	30	309	606

Using the same survey instrument as the first round, the expert panel was then asked to again provide an estimate of the Task Time, this time taking into account the summary of responses from the first round of the process. Similar to the first iteration, the responses were summarized across all participants for this round as well. This round also presented the summarized responses of the private practice and MSPD attorney groups. An example of the summary from this second round is shown below for the same **CD felony** Case Type and **in person client communication** Case Task.





As a third and final iteration, the expert panel was invited to participate in a live meeting to discuss a summary of the second round of the survey process and to reach a group consensus for each Task Time estimate. The information in the above illustration was presented to the group during the in person discussion. The group was reminded to keep in mind that the time estimate should:

1. assume adequate support staff (and that attorneys would only perform tasks not appropriate for support staff),
2. assume that the task must be performed,
3. apply prevailing professional norms, and
4. provide an estimate of the amount of time defenders should expect to perform the Case Task.

Given the above information, the group was asked to either confirm the time estimate from the second survey round, or provide a new estimate to replace the second round average.

Although this initial survey process provided an estimate of the typical amount of time required for a particular task, it did not provide insight into the frequency with which these tasks should be performed. To collect this data, the Delphi panel was asked to repeat the same process (making the same assumptions as above and applying professional norms) as with the Task Time estimates, only now providing an estimate of the frequency that defenders *should* expect to perform the Case Tasks. Again, the three stage process resulted in a group consensus of the Task Frequency for each Case Type.

As a final step in the Delphi process, the Task Time was combined with the Task Frequency to arrive at an expected time for each Case Task. That is to say, the Task Time was multiplied by the Task Frequency as follows:

$$\textit{Expected Time per Task} = \textit{Task Time} \times \textit{Task Frequency}$$

The expected time per task is interpreted as the amount of time that a public defender *should* expect to spend on any one Case Task and Case Type combination for the typical case. The Delphi panel was then convened for a final meeting for a presentation of the results of the Delphi process to confirm the time expectation resulting from the study. The expected time was then summarized for each Case Type in arriving at the final workload standards.

The Delphi panel's frequency weight was applied to the time estimate to arrive at the estimated amount of time that an attorney can reasonably expect to spend on a particular task for a given Case Type. The resulting workload standards for each Case Type are shown below.<sup>46</sup>

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<sup>46</sup> The reported workload standards include only time for Controllable Case Tasks (i.e. exclude in court, travel, and administrative time). The workload standard total shown in the table is rounded to the nearest 10<sup>th</sup> of an hour.

<b>Case Type</b>	<b>Average Reported Hours</b>		<b>Delphi Panel Adjustment</b>		<b>Workload Standard for Controllable Case Tasks</b>
Murder/Homicide	84.5	+	22.2	=	106.6
A/B Felony	8.7	+	38.9	=	47.6
C/D Felony	4.4	+	20.7	=	25.0
Sex Felony	25.6	+	38.2	=	63.8
Misdemeanor	2.3	+	9.5	=	11.7
Juvenile	4.6	+	15.0	=	19.5
Appellate/PCR	30.3	+	66.2	=	96.5
Probation Violation	1.4	+	8.3	=	9.8

## Attorney Workload Standard Conclusion

The following table shows the Delphi-estimated time required for controllable Case Tasks for an attorney to provide reasonably effective defense by Case Type.<sup>47</sup>

<b>Case Type</b>	<b>Controllable Case Task Hours per Case</b>
Murder/Homicide	106.6
A/B Felony	47.6
C/D Felony	25.0
Sex Felony	63.8
Misdemeanor	11.7
Juvenile	19.5
Appellate/PCR	96.5
Probation Violation	9.8

This study sought to quantify the amount of time a public defender *should* expect to spend on a particular type of case through an application of the Delphi method. In other words, this study sought to quantify what workload standards *should be* in order for a defender to provide reasonably effective assistance of counsel.

<sup>47</sup> The workload standards include only case-related tasks over which an attorney has some control (i.e., exclude in court, travel, training, and administrative time). Further, the workload standards assume adequate support staff and attorney resources are available. Private practice defense counsel reported utilizing 2 support staff resources per attorney, on average. By contrast, the MSPD system currently has approximately 2 attorneys for every 1 support staff resource (0.55 support staff per attorney, or approximately 1/4<sup>th</sup> of the support staff available to private practice defense counsel).

Exhibit 1 (attached to this report) shows the estimated time by both Case Type and Case Task group. The conclusion shown in the above chart reflects the consensus time expectations (under prevailing professional norms and standards) of a group of both private practice and public defender experts from across the state of Missouri.

**Exhibit 1: Concluded Workload Standards by Case Type and Case Task Group**

	Client Communication <sup>1</sup>	Discovery/Investigation <sup>2</sup>	Case Preparation <sup>3</sup>	<b>Total</b>
Murder/Homicide	34.6	33.5	38.5	<b>106.6</b>
AB Felony	13.1	18.3	16.2	<b>47.6</b>
CD Felony	6.3	8.4	10.3	<b>25.0</b>
Sex Felony	22.5	17.8	23.6	<b>63.8</b>
Misdemeanor	3.5	4.1	4.1	<b>11.7</b>
Juvenile	5.4	6.8	7.3	<b>19.5</b>
Appellate/PCR	20.3	31.5	44.7	<b>96.5</b>
Probation Violation	2.9	2.6	4.2	<b>9.8</b>

<sup>1</sup> The client communication Case Task group includes: in person conversations, phone calls, written communication, and communication with family.

<sup>2</sup> The discovery/investigation Case Task group includes: State's discovery disclosures, records and transcripts, depositions and witness interviews, and expert and technical research.

<sup>3</sup> The case preparation Case Task group includes: legal research, drafting and writing, plea negotiations, alternative sentencing research, court preparation, and case management.

**Exhibit 2: Current Average Reported Case-Related Hours by Case Type and Case Task Group**

	Client Communication <sup>1</sup>	Discovery/Investigation <sup>2</sup>	Case Preparation <sup>3</sup>	<b>Total</b>
Murder/Homicide	14.8	33.5	36.2	<b>84.5</b>
AB Felony	3.0	2.1	3.6	<b>8.7</b>
CD Felony	1.8	0.8	1.7	<b>4.4</b>
Sex Felony	6.0	7.3	12.4	<b>25.6</b>
Misdemeanor	0.9	0.4	0.9	<b>2.3</b>
Juvenile	1.4	1.0	2.1	<b>4.6</b>
Appellate/PCR	3.1	7.5	19.6	<b>30.3</b>
Probation Violation	0.7	0.2	0.5	<b>1.4</b>

<sup>1</sup> The client communication Case Task group includes: in person conversations, phone calls, written communication, and communication with family.

<sup>2</sup> The discovery/investigation Case Task group includes: State's discovery disclosures, records and transcripts, depositions and witness interviews, and expert and technical research.

<sup>3</sup> The case preparation Case Task group includes: legal research, drafting and writing, plea negotiations, alternative sentencing research, court preparation, and case management.

**Exhibit 3: Case Task Descriptions**

<b>Case Task</b>	<b>Task Description</b>
<i>Client Communication - In person</i>	Attorney's time for privileged client interviews and consultations conducted face-to-face.
<i>Client Communication - Phone</i>	Attorney's time for privileged client interviews and consultations conducted via phone.
<i>Client Communication - Written</i>	Attorney's time for privileged client interviews and consultations conducted by written correspondence. Includes drafting and reviewing correspondence prepared by others.
<i>Client Communication - Family/other communications</i>	Non-privileged communications with client's family and friends, not including potential witnesses.
<i>Discovery/Investigation - State's discovery disclosure</i>	Attorney's time receiving, organizing and reviewing the state's disclosure to all discovery requests including special discovery by motion.
<i>Discovery/Investigation - Records and transcripts not included in state's discovery</i>	Attorney's time in requesting, acquiring and reviewing records which were not part of the state's disclosure, e.g., client's medical records.
<i>Discovery/Investigation - Depositions and witness interviews</i>	Attorney's time preparing for and conducting depositions or witness interviews where the attorney is investigating the case.
<i>Discovery/Investigation - Experts and technical research</i>	Identifying, contracting, and consulting experts including testimony prep and also attorney's time doing self research on a technical (not legal) subject.
<i>Case Preparation - Legal research</i>	Case related legal research for arguments, motions or briefs.
<i>Case Preparation - Drafting and writing</i>	Attorney's time actually drafting, typing or reviewing legal documents including motions and briefs.
<i>Case Preparation - Plea negotiation</i>	Plea negotiation with the state's attorney or representative whether verbal or written.
<i>Case Preparation - Court preparation</i>	Attorney's time reflecting, analyzing, brainstorming and outlining court case presentation. Also includes subpoenas, writs ad testificandum, and pre-charge representation.
<i>Case Preparation - Case management</i>	Attorney's time for case related office administrative tasks, e.g., time keeping, billing, and docket management tasks.
<i>Case Preparation - Alternative sentencing research</i>	Attorney's time identifying, locating, and engaging alternative sentencing resources, e.g., treatment programs.

**Exhibit 4: List of Tasks Identified as Often Having Sufficient Time to Perform**

	Murder/ Homicide	AB Felony	CD Felony	Sex Felony	Misdemeanor	Juvenile	Appellate/ PCR	Probation Violation
Client Communication								
In person								
Phone	X		X	X		X		
Written								
Family/other communications								
Discovery/Investigation								
State's discovery disclosure	X			X			X	
Records and transcripts	X							
Depositions & interviews	X			X				
Experts and technical research	X							
Case Preparation								
Legal research	X			X		X		
Drafting and writing	X							
Plea Negotiation								
Court Preparation	X	X	X	X	X	X		
Case management	X							
Alternative sentencing research								

The table shows the 22 Case Type and Case Task combinations that MSPD practitioners identified as often having sufficient time to adequately perform based on current practices and staffing levels. If the Case Type and Case Task combination was identified by MSPD practitioners and the practitioner estimated sufficient time was consistent with actual time spent on the particular task (from the time log system), the combination was excluded from the Delphi process. Specifically, if the average survey results were higher than 3.3 (on a scale of 1 to 5, 5 being most often having sufficient time) and the average estimated time needed was at least 75% of the actual time observed the Case Type and Case Task combination was excluded from the Delphi process.

It is important to note that it is anticipated that this study will be the first of many performed by the MSPD. An evaluation should be performed in each subsequent study to determine which Case Type and Case Task combinations should be included, or excluded, based upon the results of the Sufficiency Survey.

# A National Blueprint

*In the following appendices, we set forth additional detail and documents for use by other state and local public defender programs attempting to replicate the work and methodology set forth in The Missouri Project. With appropriate modifications, the additional detail and documents can be used by other public defender programs wishing to replicate The Missouri Project methodology in their respective jurisdictions.*



## Appendix 1: Example Sufficiency Survey Instructions

RE: Public Defender System Workload Study

As you may be aware, the Public Defender System is currently undertaking a study to develop new workload standards to assist in evaluating the Public Defender System resource requirements.

A key step in this process is the completion of a time sufficiency survey by public defenders and the supporting staff. A time sufficiency survey assists researchers in identifying specific areas where, on average, public defenders feel that they either do or do not have sufficient time to complete the specific task (and thus may be impacting their ability to provide effective assistance to clients). This survey will also provide valuable insight from public defenders on how long various tasks should take.

Your participation in this survey is critical to the process of developing new workload standards specific to the public defender system. You are being asked to complete the electronic time sufficiency survey that will be sent as an email link from a survey provider.

The survey asks a series of questions by type of case (“Case Type”) and the specific case-related tasks (“Case Task”). You will be asked in what percentage of those specific cases do you feel that you have sufficient time to complete the Case Task with reasonable effectiveness. Each question has a related question which asks how much time, on average, you feel is necessary to perform the specific Case Task with reasonable effectiveness.

In completing the survey please consider the following:

- Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
- While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the “typical” case. In other words, please consider the average case.
- "Sufficient time" to complete the specific task means the amount of time, on average, reasonably required to complete the task with reasonable effectiveness. "Reasonable effectiveness" means effective representation under prevailing professional norms.
- The questions are segregated along “n” Case Types:
  - Case Type 1
  - Case Type 2
  - Case Type n

If you do not work on the respective type of case, please select “No” for that section of the survey and proceed to the next page. If you do work on the respective type of case, please select “Yes” and answer each Case Task question, selecting or entering “Not applicable” if you do not perform the specified task for that Case Type.

- The Case Tasks are the same tasks that you utilize for time entry in your Time Log system.
- The time sufficiency survey will ask you to indicate in what percentage of cases DO YOU HAVE sufficient time to complete the indicated case-related task (we are not asking in what percentage of cases you don’t have sufficient time to complete the indicated task).

We know you face many demands of your time. It is estimated that this survey will take approximately 1 – 3 hours to complete, and your progress will be saved for each section as you click “Next” so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is a critical part of the process in developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

## Appendix 2: Example Sufficiency Survey

### Case Type: Felony CD

For Felony CD cases, please select the percentage of cases for which you have sufficient time to complete the respective case-related task with reasonable effectiveness.

Please also indicate the amount of time (in minutes) that you feel is typically sufficient to complete the respective task with reasonable effectiveness.

**\*Do you typically work on the referenced type of case (prior to appeal)? Your answer will determine whether you should proceed with this section of the survey.**

- Yes, I work on the referenced type of case and will proceed with this section of the survey (please complete each of the below questions; select not applicable if you do not typically perform the respective task.)
- No, I do not work on the referenced type of case and will move on to the next section.

	0-20%	21-40%	41-60%	61-80%	81-100%	Not applicable
CL-PHONE - Attorney / client phone conference.	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>
Please enter the amount of time (in minutes) needed to complete the above task with reasonable effectiveness for the specific case type.						
<input type="text"/>						

### Appendix 3: The Delphi Methodology Employed in The Missouri Project

#### Assembling the Delphi Panel

During the initial phases of the Delphi process, a list of over 50 private practice attorneys and 50 public defenders was compiled by a steering committee of experts led by MSPD management. Experience, reputation, and location were all considered when compiling this list of over 100 attorneys. Each attorney on the list was extended an invitation to participate in a study to develop workload standards for state of Missouri (see Appendix 4 for example invitation language). Of the over 100 invitations, 32 private practice attorneys and 35 public defenders expressed interest and availability to participate in the study.

#### Designing the Survey

The general survey content was heavily influenced by MSPD's time entry system and the Case Types and Case Tasks included in the survey were modeled after the MSPD system. An initial survey instrument was built and sent to 5 randomly selected Delphi panel members to elicit comments and feedback that would then be used to develop the final survey structure prior to surveying the entire Delphi group. In order to facilitate a more effective survey, the time component (i.e., how long a task would take, assuming that the task is performed) was broken out from the frequency component (i.e., how often the task is performed). Specifically, isolating the research variables (i.e., time and frequency) facilitates a more robust structured feedback process by providing clarity and allowing the survey participants to avoid having to weight responses.

#### The Survey Process

Using the Time Survey process as an example, the initial survey round was anonymously administered to all 67 Delphi attorneys (see Appendix 5 for example instructions). It should also be noted that throughout the process, attention was paid to maintaining a balance of public defenders and private practice attorneys (see Appendix 11 for example response rates for the groups). The survey responses were compiled anonymously and summarized into an average response with an upper and lower bound (based on 1 standard deviation from the mean). The summarized responses were provided back to the Delphi panel and they were asked to complete the same anonymous survey again, after reviewing the summary statistics from round 1. The survey responses from round 2 were again summarized into an average response with an upper and lower bound (based on 1 standard deviation from the mean).

#### Survey Conclusions

Again using the Time Survey process as an example, those completing the second round of the survey were asked to participate in a live meeting to discuss survey results and develop final workload standard recommendations. 24 Delphi panel attorneys participated in the final live round, representing over 495 years of criminal defense and over 55 years of prosecution experience. The results from round 2 of the anonymous survey were presented during the in person meeting (as shown on page 19 of the Missouri Report). Each survey question was addressed individually and the participants were asked to comment, confirm, or recommend a final workload standard for the particular Case Type and Case Task combination before moving onto the next question. By the end of the approximately 8 hour meeting, all Time Survey questions were confirmed or updated by the Delphi panel.

#### Appendix 4: Example Delphi Panel Invitation

The Public Defender System ("PD") is currently undertaking a study to develop new workload standards to assist in evaluating PD resource requirements. You have been identified as a luminary within the field of criminal defense and have graciously agreed to participate in this Delphi study. We understand that there are many demands of your time and we greatly appreciate your agreement to participate. Although it is difficult to estimate the exact timing of the 'iterations' of this process at this point, we anticipate completing the first two (online) surveys over the next two to three weeks. Further, we anticipate following the survey portion of the process with a meeting (dependent upon coordinating the schedules of the various panel participants).

As a first step in this process, you will be receiving a (separate) follow-up email with a link to the first survey. (If you have not received the link to this survey by Monday (July 15), we ask that you please check your email spam folder to ensure that the message was not blocked by the email system.) We ask that you please carefully review the instructions and, if possible, complete the survey by July 19, 2013. If you have a conflict with this timing, please let us know and we will work hard to try to accommodate alternative timing.

We recognize that this is likely going to be a challenging endeavor and we are glad to be of assistance to you in any way that we can as you work through this process.

## Appendix 5: Example Delphi Time Survey Instructions

RE: Public Defender System Workload Study

Thank you for your participation in this process. As you are aware, the Public Defender System is currently undertaking a study to develop new workload standards to assist in evaluating Public Defender System resource requirements.

A key step in this process is the completion of a Delphi study of criminal defense experts in the state of Missouri. The Delphi study will assist the public defender system in creating recommendations for workload standards. This process will provide valuable insight from criminal defense attorneys on the time reasonably required to perform various tasks.

The Delphi study will be structured into iterative phases. It is anticipated that the first 2-3 phases will consist of time sufficiency surveys that will ask participants how much time, on average, is reasonably required to perform a specific task for a specific case type. After compiling the results of the first survey, we anticipate reporting back to you summary statistics from the first round of the survey and submitting to you the second round survey, similar in format to the first round, asking you to update (or leave unchanged) your estimate based upon your review of the results of the first survey. In order to facilitate a consensus of the necessary time for the specific tasks, it is anticipated that there will be an in person (or conference call) panel discussion which will include the expert panel and representatives from the Public Defender System.

Your participation in this survey is critical to the process of developing new workload standards specific to the public defender system. You are being asked to complete the electronic time sufficiency survey that will be sent as an email link.

To start, you will be asked two questions regarding the support staff utilized for case work. Then, the survey asks a series of questions by the specific case-related tasks (“Case Task”). You will be asked how much time, on average, you believe is reasonably required to perform the Case Task for a typical case with reasonable effectiveness (for both attorneys and support staff).

In completing the survey please consider the following:

1. Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
2. While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the “typical” case. In other words, please consider the average case.

3. "Sufficient time" to complete the specific task means the amount of time, on average, reasonably required to perform the task with reasonable effectiveness. "Reasonable effectiveness" means effective representation under prevailing professional norms.
4. The Case Tasks are similar to the tasks utilized by the Public Defender system for time entry in its Time Log system.
5. The questions are segregated along "n" Case Types:
  - a. Case Type 1
  - b. Case Type 2
  - ⋮
  - c. Case Type n
6. Your time estimate should reflect the cumulative time reasonably required to perform the task for the entire case. That is to say, if the task takes 10 minutes per instance and a typical case requires 5 instances, the appropriate response would be 50 minutes.
7. We will be available to assist with any questions you have regarding the survey or the Delphi study as you participate in the process.

We know you face many demands of your time. It is estimated that each survey will take approximately 1 – 3 hours to complete, and your progress will be saved as you click "Next" so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is a critical part of the process in developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

**Appendix 6: Example Time Survey Questions****Felony CD Cases**

Below, you will be asked to provide your estimate of the amount of time that is reasonably required to perform the respective task with reasonable effectiveness.

Please enter your response in minutes.

---

CLIENT COMMUNICATION - IN PERSON: Time for privileged client interviews and consultations conducted face-to-face.

How much time, on average, is reasonably required to perform this task with reasonable effectiveness?

Minutes:

(Optional) Please provide an explanation of your time estimate.

---

CLIENT COMMUNICATION - PHONE: Same as above only by phone.

How much time, on average, is reasonably required to perform this task with reasonable effectiveness?

Minutes:

(Optional) Please provide an explanation of your time estimate.



## Appendix 7: Example Delphi Time Survey Instructions for Successive Surveys

RE: Public Defender System Workload Study

Thank you again for your participation in this process and the completion of the phase 1 survey. We are now ready to begin phase 2 of the iterative Delphi process and appreciate your continuing participation.

In phase 1, we asked participants how much time, on average, is reasonably required to perform a specific task for a specific case type. We have compiled the results of the first survey, and will be reporting back to you summary statistics from that survey. In addition, we will be submitting to you the second round survey, similar in format to the first round, asking you to reenter your estimate based upon your review of the results of the first survey. The results of this second round survey will be used to facilitate the in person panel discussion which will include the expert panel and representatives from the Public Defender System.

Your continued participation in this survey is critical to the process of developing new workload standards specific to the public defender system. As in the first round, you are being asked to complete the electronic time sufficiency survey that will be sent as an email link.

To start, we would like to highlight the primary change from the first round:

1. You will be presented with summary statistics (explained in more detail below) from the first survey. These are intended to assist in informing your responses to the second round.

Other than this change, the second round survey will be very similar in format to the first round survey. The Case Types are the same, and the Case Tasks are the same as well. The survey itself will provide two response areas per question: one for your time estimate in minutes (which will be restricted to numeric responses only) and an additional *optional* comment box which will provide an opportunity to comment on your estimate if you feel it is necessary.

We will be providing you with two data points for each Case Type / Case Task combination – the average time estimate for each combination, and a range of time estimates for each combination. Please review this data prior to and during your completion of the phase 2 survey. In reviewing this data, please keep in mind that:

1. The average time estimate is a single point estimate showing the average response of all phase 1 participants.
2. The range that we present contains approximately 2/3<sup>rd</sup>s of all phase 1 participant estimates. In other words, the range we present is not the entire range of estimates received, but is approximately limited to the central 2/3<sup>rd</sup>s of responses.

In completing the survey please consider the following:

- Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
- While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the “typical” case. In other words, please consider the average case.
- "Sufficient time" to complete the specific task means the amount of time, on average, reasonably required to perform the task with reasonable effectiveness. "Reasonable effectiveness" means effective representation under prevailing professional norms.
- Your time estimate should reflect the cumulative time reasonably required to perform the task for the entire case. That is to say, if the task takes 10 minutes per instance and a typical case requires 5 instances, the appropriate response would be 50 minutes.
- We will be available to assist with any questions you have regarding the survey or the Delphi study as you participate in the process.

We know you face many demands of your time. It is estimated that this survey will take approximately 1 – 3 hours to complete, and your progress will be saved as you click “Next” so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is a critical part of the process in developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

## Appendix 8: Example Delphi Frequency Survey Instructions

RE: Public Defender System Workload Study

Thank you again for your participation in this process. In the initial phases of the Delphi process, you were asked to provide an estimate of reasonable time required to perform a specific task for a specific case type. We are now seeking information regarding the frequency of performance of specific tasks for specific case types and appreciate your continuing participation.

We will be sending you a survey, similar in format to the last survey, asking you to enter your estimate of the percentage of cases that defenders should perform the specific task. Specifically, you will be asked to “Provide your estimate of the percentage of cases that attorneys *should* perform the specific task to provide reasonably effective representation.” Also similar to the last survey, we anticipate completing two iterations of this frequency survey:

**Iteration 1:** You will be asked to provide an estimate of the percentage of cases that attorneys should perform the specific task.

**Iteration 2:** You will be asked to provide an estimate of the percentage of cases that attorneys should perform the specific task, *after you review a summary of Iteration 1 responses.*

Your continued participation in this survey is critical to developing new workload standards specific to the public defender system. Similar to prior surveys, you are being asked to complete the electronic survey that will be sent to you as an email link.

The survey itself will provide two response areas per question: one for your frequency estimate—in percentage form— (which will be restricted to numeric responses only); and an *optional* comment box which will provide you an opportunity to comment on your estimate, as necessary.

In completing the survey please consider the following:

1. Your responses will be kept confidential and any reporting of the results of the sufficiency survey will be done anonymously.
2. While each case has significant variability in the level of complexity (i.e., language, mental health, and other issues), the survey is meant to capture responses for the “typical” case. In other words, please consider the average case.
3. Your frequency estimate should be in percentage form (i.e. enter “25” for 25% of cases).
4. Your response should reflect the frequency that attorneys (not support staff) *should* perform the specific task to provide reasonably effective representation.

5. Your frequency estimate should reflect the typical case (or average case), assuming adequate support staff.
6. For example, if you enter “25” for the task question, your response will be interpreted as: On average, 25% of cases require performance of that particular task in order to provide reasonably effective representation.
7. "Reasonably effective" means effective representation under prevailing professional norms.
8. In responding, please consider the ABA Criminal Justice Standards (found here: [ABA Standards](#)) and the State guidelines for representation (found here: [PD Guidelines](#)).
9. We will be available to assist you with any questions you may have regarding the survey or the Delphi study as you participate in the process.

We know you face many demands of your time. It is estimated that this survey will take approximately 1 to 3 hours to complete, and your progress will be saved as you click “Next” so the survey can be completed over multiple sessions. You can access your saved survey via the original survey link in the email. Your participation in this process is critical to developing accurate and defensible workload standards.

Thank you for your time and attention to this very important matter.

**Appendix 9: Example Frequency Survey Questions****Felony CD Cases**

Below, you will be asked to provide your estimate of the percentage of cases, on average, that attorneys should perform the specific task to provide reasonably effective representation.

Please enter your response as a percentage (for example, please enter 25 for 25%)

---

CLIENT COMMUNICATION - IN PERSON: Time for privileged client interviews and consultations conducted face-to-face.

Please enter an estimate of the percentage of cases, on average, that attorneys should perform the above task to provide reasonably effective representation.

Percent of cases:

(Optional) Please provide an explanation of your percentage estimate.

---

CLIENT COMMUNICATION - PHONE: Same as above only by phone.

Please enter an estimate of the percentage of cases, on average, that attorneys should perform the above task to provide reasonably effective representation.

Percent of cases:

(Optional) Please provide an explanation of your percentage estimate.

## Appendix 10: Example Structure and Layout of Response Summary

### CD Felony

#### (Lower Limit, Average, and Upper Limit of Survey Responses)

	<u>Lower</u>	<u>Average</u>	<u>Upper</u>
Client Communication - In person			
Client Communication - Phone			
Client Communication - Written			
Client Communication - Family/other communications			
Discovery/Investigation - State's discovery disclosure			
Discovery/Investigation - Records and transcripts not included in state's discovery			
Discovery/Investigation - Depositions and witness interviews			
Discovery/Investigation - Experts and technical research			
Case Preparation - Legal research			
Case Preparation - Drafting and writing			
Case Preparation - Plea Negotiation			
Case Preparation - Court Preparation			
Case Preparation - Case management			
Case Preparation - Alternative sentencing research			

**Appendix 11: Example Response Rates from the Time Survey**

Delphi Time Survey Stats	Private	Public <sup>1</sup>	Total
<b>Total Number of Surveys Sent</b>	<b>32</b>	<b>35</b>	<b>67</b>
Round 1 Response Rate	94%	91%	92%
Round 2 Response Rate	41%	74%	58%
Round 3 Response Rate	31%	40%	36%

<sup>1</sup>. The "Round 1 Response Rate" for public defenders represents 226 responses from the 247 surveys sent out to MSPD line defenders. The subsequent survey rounds represent the 35 Delphi panel participants chosen from all MSPD line defenders.

## Appendix 12: Estimated Response Rates from the Time Sufficiency Survey

	Murder/ Homicide	AB Felony	CD Felony	Sex Felony	Misdemeanor	Juvenile	Appellate/ PCR	Probation Violation	Average
Response Count <sup>1</sup>	103	163	175	132	129	42	25	134	113
Attorneys <sup>2</sup>	123	266	298	181	187	46	40	213	169
Response Rate	84%	61%	59%	73%	69%	91%	63%	63%	70%

<sup>1.</sup> The average response count for all survey questions by Case Type.

<sup>2.</sup> The number of attorneys consistently recording time (averaging at least 1.0 hour per week) to the particular Case Type in the MSPD time log system.



## Appendix 13: A Note on Public Defender System Requirements

### Time Entry System

The public defender system should have a time entry (or time log) system meeting the following minimum requirements:

- Ability to track:
  - Attorneys' case related time by Case Type and Case Task
  - Attorneys' non-case related time
  - Time in increments no greater than a quarter of an hour
- Case Type and Case Task classification consisting of:
  - 15 – 25 case-related (attorney controllable) tasks
  - Case-related (uncontrollable) tasks
  - Non-case related tasks
  - At least 10 unique Case Types
- Time entry system should be:
  - Mandatory system-wide
  - Consistent across public defender system's offices
  - Able to track all attorney time
  - Fully deployed for at least six-months prior to commencement of study
  - Consistent with the Case Management System

### Case Management System

The public defender system's case management system should meet the following minimum requirements:

- Case Management System Case Types are identical to Time Log System Case Types
- Consist of at least twelve-months of system-wide case information
- Have a case identifier also used in Time Log System
- Consistent across public defender system's offices

In addition, it would be beneficial (but not part of the minimum requirements) if other factors such as language barriers, mental health issues, and other complexity factors can be captured in the case management system.

### Commitment to Permanent Time Keeping

Permanent time keeping is a critical component to the implementation, ongoing study, and refinement of attorney workload standards. In addition, it can be an invaluable management and analysis tool for a public defender system independent of the need for workload standards. Therefore, we believe it is critical that the public defender system commits to continuous time keeping.

## Appendix 14: Example Engagement Letter Language

This letter of engagement (“Letter”) sets forth the services that RubinBrown LLP (“RubinBrown”) will provide for \_\_\_\_\_ (“Client”). In order to better understand each party’s obligations, the terms “we”, “us” and “our” refer to RubinBrown and the terms “you”, “your” and “management” refer to the Client. Your engagement of RubinBrown shall be governed by the terms of this Letter and the attached RubinBrown Engagement Terms.

### Scope of Services

RubinBrown will provide you with consulting services designed to assess and calculate caseload standards for the \_\_\_\_\_ Public Defender system (“PD”). We will coordinate our efforts with \_\_\_\_\_, who is engaged on behalf of the PD, to perform our services and provide our deliverable. Based upon our understanding of the proposed project, we anticipate performing the work in the following phases:

1. **Overview of the PD system:** In Phase 1 of the project, we anticipate receiving (from PD) the following data for analysis:
  - a. Annual case load (measured by new cases by year, type, and location) over an agreed upon number of years; and
  - b. Personnel overview of PD (measured by number, type, location, part time / full time status, and years of experience of PD staff) over an agreed upon number of years.

We will utilize this data to gain an understanding of the current state of the PD and to create and present to the PD summary data tables that provide a basic overview of the current caseload and structure of PD.

2. **PD Time Study:** Phase 2 of the project will involve commenting on, and ultimately the receipt of data from, the in-process time study (the “Time Study”). It is our understanding the PD has begun tracking personnel time on a system wide basis. We anticipate communicating and collaborating with the PD to obtain a clear understanding of how time is being tracked and categorized. It is our understanding that time is being captured along two (2) dimensions: Case Type (a broad designation of the type of case, such as Class B Felony or traffic related, for example) and Case Task (a field to capture the specific tasks and functions that are performed by PD personnel for each Case Type, such as meetings with client or preliminary motions, for example).

We will utilize this data to measure and present the current case load mix and initial case weights (i.e., how are PD personnel currently spending their time). Based upon similar studies performed in other states, we anticipate that the **minimum** time required for the Time Study is six (6) weeks.

3. **PD Time Sufficiency Survey:** Phase 3 of the project will utilize an already completed survey of PD personnel (the “Time Sufficiency Survey”) to obtain their perspective on whether the current time spent (by Case Task) is sufficient to fulfill their obligations.

We anticipate that specific objectives of Phase 3 will involve:

- a. Receiving the raw, underlying data from the Time Sufficiency Survey;
- b. Analyzing the data from the Time Sufficiency Survey;
- c. Creating summary data tables to provide a basic overview of the Time Sufficiency Survey;
- d. Presenting preliminary summary tables to PD for review; and
- e. Comparing preliminary conclusions from the Time Sufficiency Survey to the preliminary conclusions from the Time Study.

We will utilize this data to identify the Case Tasks that PD personnel have indicated they currently do not have sufficient time to complete.

4. **PD Interviews:** In Phase 4, we anticipate interviewing three to five experienced PD personnel in order to discuss the results of, and our takeaways from, the Time Study and Time Sufficiency Survey. These interviews will help provide assurance that we are interpreting the data correctly as well as provide PD an opportunity to provide additional insight into the data and the overall process.
5. **Delphi Method:** Phase 5 will involve coordinating with an expert panel assembled by \_\_\_\_\_ to obtain estimates of time allocations for those Case Type / Case Task categories that were deemed to have deficiencies in current practice. This panel will be comprised of both experienced PD public defenders and experienced criminal defense practitioners who have experience with the kinds of cases typically handled by the PD.

We expect that this phase will include two distinct survey processes consisting of a time survey and a frequency survey. By the end of Phase 5, we will have the set of final recommended case weights based upon the results of the Time Study, Time Sufficiency Survey, and panel input from applying the Delphi Method. These final case weights will form the basis for the recommended caseload standards.

6. **Final Report:** Our final deliverable will consist of a written report that will:
  - a. Present the final results of our analysis;
  - b. Document and describe all the steps taken and work performed in Phases 1 through 5; and
  - c. Present the caseload standards and the underlying data and results in summary form through the use of tables, figures, and graphs.

We anticipate that writing the Final Report will not actually be a final, distinct phase, but will actually be drafted throughout the process and performance of Phases 1 through 5. We will present \_\_\_\_\_ with an initial draft report for comments and feedback. The Final Report will be issued once that feedback has been received and considered.

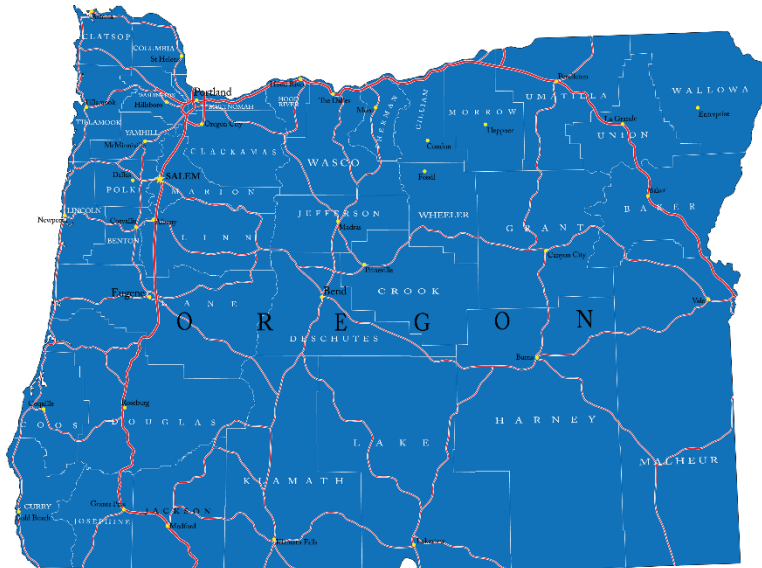


**ABA**  
Defending Liberty  
Pursuing Justice

# **EXHIBIT C**

# THE OREGON PROJECT

An Analysis of the Oregon Public Defense System  
and  
Attorney Workload Standards



PREPARED BY:



AMERICAN **BAR** ASSOCIATION  
Standing Committee on Legal  
Aid and Indigent Defense



MOSS ADAMS



# **THE OREGON PROJECT**

An Analysis of the  
Oregon Public Defense System  
and  
Attorney Workload Standards

January 2022



## **Acknowledgements**

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The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) engaged Moss Adams LLP (Moss Adams) to collaboratively conduct an Oregon-specific attorney workload study, utilizing the Delphi method and historical caseloads, for the Oregon public defense system. This study was assisted by the Oregon Office of Public Defense Services (OPDS).

The Oregon Project was conducted under the leadership of Stephen F. Hanlon, J.D., Project Director for ABA SCLAID, Malia N. Brink, J.D., Counsel for Public Defense for ABA SCLAID and Deputy Director for the Public Defender Workload Study Projects, along with Scott Simpson, CPA, Partner at Moss Adams and Moss Adams colleagues Jenna McRae, CPA, Senior Manager and Emily Hayes, CIA, Manager.

ABA SCLAID and Moss Adams would like to thank OPDS for their cooperation throughout this project, particularly Eric J. Deitrick, J.D, General Counsel, Erica Herb, J.D., Deputy General Counsel, and Kimber Sexton, Senior Policy Analyst. Their leadership and engagement were critical to making this report possible.

We would like to thank the members of the Selection Panels for reviewing the individuals proposed to participate in the Delphi process. Finally, we would like to thank the participants for their significant contributions of time, expertise, and service on the Delphi panels for the Oregon Project.

# Table of Contents

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	PAGE
<b>Introduction</b>	1–2
<b>Executive Summary</b>	3–6
<b>Background</b>	
i. Applicable Standards	7–12
ii. Overview of the Oregon Public Defense System	12–14
<b>Historical Staffing and Caseload Analysis</b>	
i. Historical Staffing	15–16
ii. Historical Caseload	16–17
<b>Delphi Analysis</b>	
i. The Delphi Method	18–19
ii. Methodology Framework	20
iii. Survey Participants	20
iv. Case Types and Case Tasks	20–22
v. Delphi Surveys	22–24
vi. Survey Results	25
<b>Deficiency Analysis</b>	
i. Adult Criminal and Juvenile	26–28
<b>Data Limitations and Assessment of Data Needs</b>	29–34
<b>Conclusion</b>	35–36
<b>Appendices</b>	
A – The Delphi Method	37–40
B – Survey Examples	41–44
C – Case Types and Task Definitions	45–51
D – Delphi Panel Characteristics	52
E – Example Open and Closing Forms	53–66

## Table of Contents (continued)

---

	PAGE
<b>Exhibits</b>	
1 – Statewide Cases Represented by Court Appointed Attorneys by Type and Estimated Caseload	67–68
2 – Workload Analysis	69
3 – Allocated Cases	70
4.1 – Analysis of the Delphi Survey Results – Adult Criminal	71–74
4.2 – Analysis of the Delphi Survey Results – Juvenile	75–82

### INTRODUCTION

The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLCID) and Moss Adams LLP (Moss Adams) conducted this study on behalf of the Oregon Office of Public Defense Services (OPDS) to analyze public defense historical caseloads for the State of Oregon, to calculate the average amount of time public defenders *should* spend on specific case types to meet the minimum standards for representation, and then to compare the two to determine whether a deficiency of resources exists. This study is referred to as the Oregon Project.

The Oregon Project consisted of two main phases: (1) an analysis of the Oregon public defense system's historical staffing and caseloads; and (2) the application of the Delphi method.

The analysis of the public defense system looks at historical caseloads to determine precisely how many cases are being represented by the public defense system. When possible, caseloads are broken down by case type. Similarly, the analysis of attorney time endeavors to quantify time spent by public defense attorneys on client representation. Importantly, this analysis seeks to quantify only case work – leaving out administrative time, travel time, supervisory time, etc. This is best accomplished through timekeeping. Where a system lacks comprehensive, reliable timekeeping data, the analysis instead reviews full time equivalents (FTE) to estimate attorney time spent on casework. Using an FTE analysis, however, usually results in a conservative estimate because, absent data on time needed for work other than client representation, it assumes all attorney time is used for client representation.

The Delphi method is an iterative process used in this study to identify how much time an attorney *should* spend, on average, in providing representation in certain types of criminal and juvenile cases. In determining the amount of time an attorney *should* spend to meet the minimum standards for representation we are guided by the legal standard set out in *Strickland v. Washington*: “reasonably effective assistance of counsel pursuant to prevailing professional norms.”<sup>1</sup> The prevailing professional norms, which anchor the Delphi process, are the Rules of Professional Conduct, the ABA Criminal Justice Standards, and the applicable national and local attorney performance standards.

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 688, 688 (1984).

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop consensus on a specific question. The Oregon Project consisted of two different Delphi panels: Adult Criminal and Juvenile. The Juvenile panel addressed both juvenile delinquency and dependency cases. Participants in each panel were selected based on their substantive expertise and experience in these areas. Participants included public defenders and private defense practitioners. They were then approved by independent Selection Panels, made up of individuals with extensive knowledge of the relevant areas of practice in Oregon.

Each Delphi area was sub-divided into Case Types and Case Tasks, and further divided by Resolution (e.g. plea/otherwise resolve v. go to trial). For each Case Task in each Case Type, participants were surveyed about the amount of time the task takes and the frequency with which it occurs.

The Delphi process in Oregon consisted of two rounds of online surveys, taken independently. The second-round survey was completed only by those who participated in the first round and included a summary of the responses from the first round for second round participants to consider. A third survey was then conducted in a live group setting only by those who had completed the first and second survey rounds. These participants met over a series of days to review the results of the second survey and developed a professional consensus regarding the appropriate amount of time an attorney *should* spend on a series of case tasks for each case type<sup>2</sup> to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Oregon.

The result of the Delphi process is the consensus of the expert panel on the Frequency and Time needed to complete each Case Task in compliance with applicable standards, as well as Resolution – the percentage of cases that should plead/otherwise resolve v. go to trial. These consensus decisions are then used to calculate the Delphi result, the time needed for a public defense attorney to provide reasonably effective assistance of counsel to a client in an average case of this Case Type.

These standards, when applied to historical caseloads, are then used to determine the total number of hours of public defense attorney time needed in the jurisdiction. Comparing the hours needed to the hours of attorney time currently available in the jurisdiction's public defense system allows us to determine if the current system has a deficiency or excess of attorney time, and the amount of that deficiency or excess.

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<sup>2</sup> See Appendix D for Case Type and Case Task definitions.

## EXECUTIVE SUMMARY

Across the country, criminal courts are failing to meet the promise of equal justice under the law. As these failings are examined, increased attention is being paid to the obligation to provide effective assistance of counsel to all those accused of crimes and facing imprisonment who cannot afford private lawyers. For far too long, public defenders have raised concerns that their caseloads do not permit them to give appropriate time and attention to each client.

Overwhelming caseloads force even excellent public defenders to cut corners.<sup>3</sup> They must either triage, focusing on a select group of clients at the expense of the others, or they must spend less time than they should on every client's case. They cannot conduct full investigations, consult experts when appropriate, or adequately prepare motions and arguments. These conditions create a heightened risk of error.



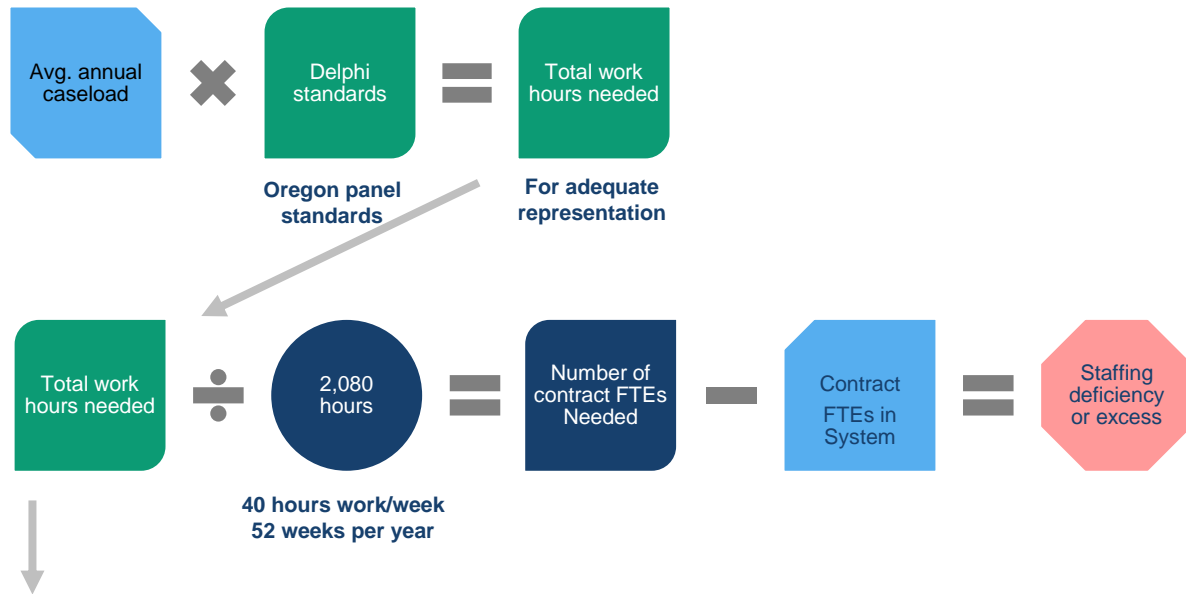
Caseload issues raise critical questions necessary for ensuring an efficient and adequate public defense system, including: How many public defense attorneys does our system need and for which types of cases? Questions about accurately projecting staffing needs have led jurisdictions to put increased emphasis on the importance of reliable data and data analysis.

The report of the Oregon Project is the product of more than two years of study and analysis – of Oregon's current staffing and caseloads, as well as applying the Delphi method to arrive at standards reflecting the average amount of time an attorney *should* spend to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The standards developed by the Oregon Delphi panels were then applied to the historical staffing and caseloads to calculate whether the system has too many (excess) or too few (deficiency) FTE attorneys.

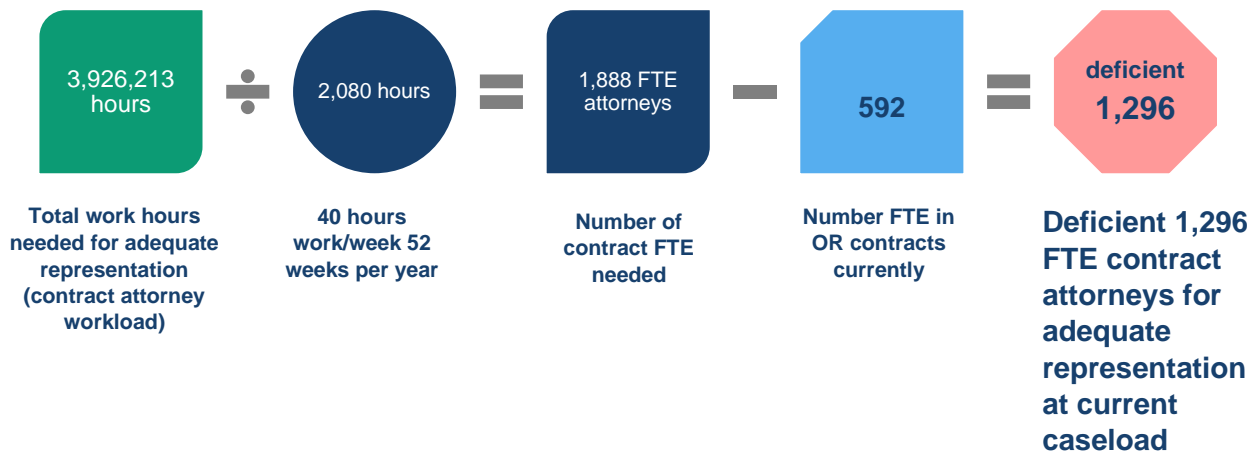
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<sup>3</sup> Guidelines 1, ABA Eight Guidelines of Public Defense Related to Excessive Workloads (ABA Eight Guidelines) (2009), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_eight\\_guidelines\\_of\\_public\\_defense.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf), notes the many adverse impacts of excessive workloads on the ability of attorneys to effectuate core public defense objectives for clients, including establishing a relationship of trust by promptly interviewing and communicating with clients, seeking pretrial release, adequately investigating the case and researching the applicable law, preparing for hearings, etc.

## Systemic deficiency



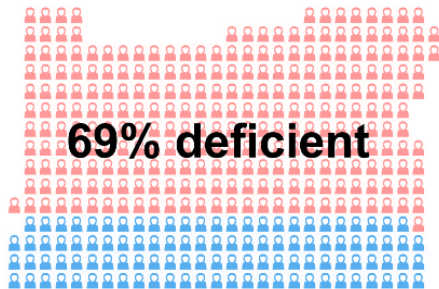
### Oregon:



At current caseloads<sup>4</sup> OPDS has a substantial deficiency of FTE public defense attorneys.

<sup>4</sup> This deficiency calculation reflects the current caseload for Adult Criminal and Juvenile cases and the contract FTEs handling those cases. It determines the FTEs needed to provide reasonably effective assistance of counsel to clients in Adult Criminal and Juvenile (dependency and delinquency) cases only.

## At current caseloads, OPDS simply is unable to adequately represent individuals in adult criminal and juvenile cases



- Based on the Delphi study, OPDS is deficient 1,296 contract attorney FTEs for its adult criminal and juvenile caseloads.
- To provide effective assistance of counsel currently, *all* 592 contract public defense attorneys in Oregon would:
  - Need to spend 6,632 hours per year working on case specific public defense work (26.6 hours per working day<sup>5</sup> during a calendar year)
  - Represent 156 cases per year, regardless of whether those cases are low-level misdemeanor cases or serious felony cases, equating to just over **13 hours per case**, be it dependency, burglary or homicide.

## OPDS needs a centralized data system to capture basic, critical public defense information

There are significant data deficiencies (inconsistency and inaccuracies) in the OPDS Contract Database, and OPDS heavily relies on the Oregon Judicial System court statistics data for basic case information. The OPDS contracting system, which includes over 100 contractors that vary significantly in both size and organizational structure, imposes challenges to building and implementing a unified case management system and other data collection mechanisms. Nonetheless, OPDS should implement systems to reliably collect basic data from all contractors on qualifications, case assignments, caseloads and work completed in public defense cases.<sup>6</sup>



- OPDS should be able to track which individual attorney is assigned to which cases to verify both qualifications and caseloads.<sup>7</sup>

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<sup>5</sup> Working days is defined as 249 days per year (removing weekends and public holidays).

<sup>6</sup> See NLADA, Basic Data Every Defender Program Needs to Track (2014), available at <https://www.nlada.org/tools-technical-assistance/defender-resources/research/basic-data-toolkit>. This toolkit on data collection for public defense providers identifies information that should be collected and recommends strategies for public defense providers of all types on how best to collect the data.

<sup>7</sup> Guideline 2 of the ABA Eight Guidelines, *supra* n. 3, provides that a public defense organization should “continuously monitor the workloads of its lawyers to assure that all essential tasks on behalf of clients . . . are performed.”



- OPDS should implement improved monitoring of work completed on public defense cases. This should include timekeeping on all public defense cases to permit improved fiscal and substantive oversight, including auditing and a regular attorney review process. Further, OPDS should have basic information on the private caseload, if any, for each attorney paid under its contracts to fully monitor caseloads.
- OPDS should also adopt standardized case opening and case closing forms (specific to case types) to routinely, centrally and consistently capture important case data. These forms should be integrated into a case management system to allow for aggregation of the data collected.

## BACKGROUND

### Applicable Standards

The relevant legal rules and standards pertaining to effective assistance of counsel are critical components to understand both attorney workloads and our analysis of caseloads in this study. The duty of the State of Oregon to provide representation in criminal cases for those accused individuals unable to afford counsel derives from the Sixth Amendment to the United States Constitution, as interpreted by the United States Supreme Court, and from Article 1, Section 11 of the Oregon Constitution.

In 1963, the United States Supreme Court held in the Gideon case that defendants charged with a felony in state criminal court are entitled to a lawyer the state's expense if they were unable to afford counsel.<sup>8</sup> In 1972, the United States Supreme Court extended the right to counsel to misdemeanor cases that could result in a defendant's loss of liberty.<sup>9</sup>

In 1984, the United States Supreme Court held that the Sixth Amendment's requirement of counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice."<sup>10</sup> In 2010, the Supreme Court noted in *Padilla v. Kentucky*: "We have long recognized that 'prevailing norms of practice as reflected in American Bar Association Standards and the like are guides to determining what is reasonable.' Although they are 'only guides' and not 'inexorable commands,' these standards may be valuable measures of the prevailing professional norms of effective representation[.]"<sup>11</sup>

Relevant prevailing professional norms in Oregon include:

- Oregon Rules of Professional Conduct
- ABA Criminal Justice Standards for the Defense Function
- IJA-ABA Juvenile Standards
- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases
- Oregon State Bar Performance Standards for Representation in Criminal, Juvenile Delinquency, and Juvenile Dependency Cases

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<sup>8</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>9</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972); see also *Alabama v. Shelton*, 535 U.S. 654 (2002).

<sup>10</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>11</sup> *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010) (citations omitted). The Court went on to review the ABA Standards for Criminal Justice.

### ***Oregon Rules of Professional Conduct***

All lawyers in Oregon are required to abide by the Oregon Rules of Professional Conduct.<sup>12</sup> The Rules not only address the responsibilities of lawyers in representing a particular client, but also concern when a lawyer is not permitted to represent a client or must withdraw. Pertinent and identical rules in the Oregon Rules of Professional Conduct and the ABA's Model Rules of Professional Conduct<sup>13</sup> applicable to this study include the following:

- Rule 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- Rule 1.3 Diligence: A lawyer shall not neglect a legal matter entrusted to the lawyer.
- Rule 1.7 Conflict of Interest: Current Clients: (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client[.]
- Rule 1.16 Declining or Terminating Representation: Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law... Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests...<sup>14</sup>

An ABA Ethics Opinion interprets these ethical rules to require public defenders to limit workloads to ensure that they can represent each client with the competence and diligence required.<sup>15</sup>

The Rules of Professional Conduct also place responsibility on supervising attorneys to ensure that the rules are followed within their organization.

Rule 5-1: Responsibilities of partners, managers and supervisory lawyers.

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<sup>12</sup> Oregon Rules of Professional Conduct, *available at* [https://www.osbar.org/\\_docs/rulesregs/orpc.pdf](https://www.osbar.org/_docs/rulesregs/orpc.pdf).

<sup>13</sup> Oregon first adopted the ABA Model Rules of Professional Conduct in 2005.

<sup>14</sup> Guideline 6 of the ABA Eight Guidelines, *supra* n. 3, provides in pertinent part that in such cases, in addition to moving to withdraw from representation in certain cases, a lawyer should also move to suspend new case assignments and request that charges against those clients the lawyer can no longer represent be dismissed due to the failure of the government to provide effective assistance of counsel as required by federal and state law.

<sup>15</sup> ABA Ethics Committee, Formal Ethics Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ethics\\_opinion\\_defender\\_caseloads\\_06\\_441.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf).

A lawyer shall be responsible for another lawyer's violation of these Rules of Professional Conduct if: . . . (b) the lawyer is a partner or has comparable managerial authority in the law firm in which the lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at the time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

### ***ABA Criminal Justice Standards for the Defense Function***

The ABA Standards for Criminal Justice are the result of a lengthy process that began in 1964, and most recently culminated with the fourth edition of these standards approved and published by the ABA in 2015. The ABA Standards “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process.”<sup>16</sup>

The standards cover, among other things:

- Establishing client trust (Standard 4-3.1),
- Advocacy on pretrial detention and conditions of release (Standard 4-3.2),
- Interviewing the client (Standard 4-3.3),
- Duty to keep the client informed (4-3.9),
- Duty to investigate (Standard 4-4.1),
- Court appearances (Standard 4-4.6), and
- Sentencing responsibility (Standard 4-8.3).

Today, most state-level criminal cases are resolved without a trial. In 2012, the United States Supreme Court, in *Missouri v. Frye*, citing to the Department of Justice, Bureau of Justice Statistics, noted that “ninety-four percent of state convictions are the result of guilty pleas.”<sup>17</sup> In that case, the United States Supreme Court quoted with approval the following statement from a Yale Law Journal article: “[P]lea bargaining . . . is not some adjunct to the criminal justice system; it is the criminal justice system.”<sup>18</sup>

The ABA Criminal Justice Standard related to the Defense Function, 4-6.1(b), “Duty to Explore Disposition Without Trial (Plea),” provides as follows:

In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed.

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<sup>16</sup> Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. 10 (2009), available at [https://www.americanbar.org/groups/criminal\\_justice/standards/](https://www.americanbar.org/groups/criminal_justice/standards/).

<sup>17</sup> *Missouri v. Frye*, 132 S.Ct.1399, 1407 (2012).

<sup>18</sup> *Id.* See also R. E. Scott & W. J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L. J. 1909, 1912 (1992).

Such study should include:

- discussion with the client,
- analysis of relevant law,
- analysis of the prosecution's evidence,
- analysis of potential dispositions, and
- analysis of relevant potential consequences.

Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.

### ***IJA-ABA Juvenile Standards***

In coordination with the Institute of Judicial Administration (IJA), the ABA drafted comprehensive standards for all aspects of juvenile proceedings.<sup>19</sup> Though not exclusively applicable to defense attorneys, these standards contain certain core principles that influence the nature of considerations and arguments to be made by defense counsel. For example, the Standards provide that before a juvenile may accept a plea, it must be determined that the respondent "has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of such a plea."<sup>20</sup> This Standard requires that before permitting a juvenile to plead, a defense attorney must have conducted a social history review, including understanding the juvenile's school history, as well as any records pertaining to intellectual disability or mental illness.

### ***ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases***

The ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases<sup>21</sup> cover the special nature of abuse and neglect proceedings, as well as the duties of parental counsel. These duties include:

- Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.<sup>22</sup>
- Conduct a thorough and independent investigation at every stage of the proceeding.<sup>23</sup>

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<sup>19</sup> IJA-ABA Standards for Juvenile Justice (1996), *available at* [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/JJ/JJ\\_Standards\\_Adjudication.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/JJ/JJ_Standards_Adjudication.pdf).

<sup>20</sup> *Id.* at Adjudication, Standard 3.1(A).

<sup>21</sup> ABA Standards of Practice of Attorneys Representing Parents in Abuse and Neglect Cases (2006), *available at* [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/aba-parent-rep-stds.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-parent-rep-stds.pdf).

<sup>22</sup> *Id.* at Standard 11.

<sup>23</sup> *Id.* at Standard 19.

- Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.<sup>24</sup>

### ***Oregon State Bar Standards***

The Oregon State Bar has adopted principles and standards for counsel in criminal, delinquency, dependency and civil commitment cases.<sup>25</sup>

#### *Standards of Representation in Criminal and Juvenile Delinquency Cases*<sup>26</sup>

These standards cover not only the general role and obligations of defense counsel (Standard 1.1) but provide specific detailed guidance on how to comply with the duties of the defense attorney in every case, including:

- Client contact and communication (Standard 2.2),
- Pretrial release advocacy (Standard 2.3),
- Investigation (Standard 3),
- Discovery (Standard 4.1),
- Motions (Standard 5.1; 5.2 and 5.4),
- Plea exploration and negotiations (Standards 6.1 and 6.2), and
- Sentencing and disposition advocacy (Standards 8.1).

Further, in appropriate cases, the standards require defense counsel to undertake comprehensive trial preparation (Standard 7.1).

#### ***Standards of Representation in Juvenile Dependency Cases***<sup>27</sup>

These standards include guidance on how to comply with the duties of the defense attorney in dependency cases. The guidance is separated between attorneys representing children and attorneys representing parents (with the same standard numbers). The standards cover:

- Governing conduct of the case (Standard 4),
- Prepetition (Standard 5),
- Investigation (Standard 6),
- Court preparation (Standard 7), and
- Hearings and post hearings (Standards 8 and 9).

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<sup>24</sup> *Id.* at Standard 26.

<sup>25</sup> Oregon State Bar Standards are *available at* [https://www.osbar.org/surveys\\_research/performancestandard/index.html](https://www.osbar.org/surveys_research/performancestandard/index.html).

<sup>26</sup> Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases, *available at* [https://www.osbar.org/\\_docs/resources/juveniletaskforce/JTFR2.pdf](https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR2.pdf).

<sup>27</sup> Specific Standards for Representation in Juvenile Dependency Cases, *available at* [https://www.osbar.org/\\_docs/resources/juveniletaskforce/JTFR3.pdf](https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf).

### Overview of the Oregon Public Defense System

The Oregon Public Defense Services Commission (the Commission) is an independent body that governs the Office of the Public Defense Services (OPDS). The Commission is responsible for establishing and maintaining the public defense system for the Oregon state courts' system for all 27 judicial districts of public defenders in the State of Oregon. The Commission and OPDS were formed in 2001 and began operations in 2003.<sup>28</sup>

The Commission, through OPDS, provides counsel to individuals in adult criminal, juvenile delinquency, juvenile dependency,<sup>29</sup> and civil commitment proceedings at the trial level, as well as in direct appeals from these cases. Historically, OPDS has contracted with providers of different types – public defender offices, law firms, consortia, non-profit organizations and individual attorneys – to provide public defense services. Oregon is the only state that provides trial level counsel primarily through a contracting system.<sup>30</sup>

Prior to 2020, OPDS used a service delivery model known as the case-credit model for trial level public defense services. The Commission entered into two-year contracts with various entities, including public defender offices, consortia, non-profit organizations, law firms, and individual attorneys (collectively known as contractors). The contractors received funding to cover a projected number of cases over the course of the contract, with differing case or hearing types being worth different case credits, and therefore amounts of money. There were no limits on the number of cases an attorney or contractor could be assigned and OPDS paid contractors based on the projected caseload. At the end of the biennium, contractors and OPDS engaged in a reconciliation process. A contractor could owe OPDS money back on the contract (if the contractor provided legal services for fewer cases than the projected caseload in the contract), or OPDS could owe the contractor money (if the contractor provided legal services in more cases than projected in the contract).

In January 2021, OPDS moved away from the case credit model and implemented a contract model based upon Full Time Equivalent (FTE) attorneys. Upon the execution of the Public Defense Legal Services Contract Terms agreement in 2021, OPDS funded a specific number of

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<sup>28</sup> See Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services (6AC Report on Oregon)* (Jan. 2019), at 13-14, *available at* <https://sixthamendment.org/oregon-report/>

<sup>29</sup> OPDS is responsible for representation of both children and parents in juvenile dependency proceedings. This arrangement is somewhat unusual and prone to creating administrative challenges, as attorneys from the same organization or law firm generally are prohibited by the Rules of Professional Responsibility from representing two parties in the same case. As a result, a dependency case in which there is one child and two parents may require lawyers from three different contracting entities. For more on models of representation in dependency proceedings and suggestions for best practices, see Mimi Laver and Cathy Krebs, *The Case for a Centralized Office of Legal Representation in Child Welfare Cases*, *ABA Child Law Practice Today* (Dec. 2020), *available at* [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/).

<sup>30</sup> By contrast, appellate services in Oregon are provided primarily through the Appellate Division of OPDS. Attorneys in this office are full time employees of OPDS. Contract services are used for appeals only when the appellate division is not able to accept a case or client due to conflict or lack of capacity.

FTE attorneys in each contract. Section 4.2 of the Public Defense Legal Services Contract includes various clauses regarding court appointments outside the contract. For example, attorneys funded as a 1.0 FTE are not permitted to accept any other paid legal work, including legal advocacy work and/or act as a municipal or justice court public defense attorney, prosecutor, or judge.<sup>31</sup>

In this new model, there are limits on the number of cases an attorney can be assigned. The Commission established caseload limits based on 115% of the 1973 National Advisory Commission on Criminal Justice Standards and Goals<sup>32</sup> (NAC caseload standards): 173 felonies, or 460 misdemeanors, or 230 juvenile cases. OPDS uses these caseload limits to determine how many FTE attorneys are needed. OPDS monitors caseloads throughout the year to determine if more or fewer FTE attorneys are needed in each jurisdiction.

During the last contract cycle, OPDS executed more than 100 contracts with various provider types including public defender offices, consortia, law firms, non-profit organizations and individual attorneys. In total, OPDS contracted for more than 600 FTE attorneys, of whom 592 FTE represent individuals in the adult criminal and juvenile delinquency and dependency cases.<sup>33</sup> Under the FTE model, OPDS pays approximately \$190,000 - \$210,000 per FTE attorney, which is intended to cover not only attorney salary and benefits, but also overhead and support staff costs. OPDS estimates this amount to cover .5 support staff for each 1 FTE attorney.

OPDS does not pay any additional amounts to public defender offices or individual attorneys for administration, supervision or training, regardless of the size of the contractor. Some consortia and law firms receive contract administrative costs, but this cost does not cover attorney supervision or training. Accordingly, a public defender office, consortium or other contractor wishing to provide supervision for its lawyers or a professional training program must pay for these services out of the allotted FTE amount, reducing funds available for attorney salary, overhead and support staff, or raise additional funds to do so.<sup>34</sup>

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<sup>31</sup> It does allow them to engage in pro bono legal services.

<sup>32</sup> National Advisory Commission on Criminal Justice Standards and Goals (1973) at Standard 13.12-Workload of Public Defenders, available at <http://www.nlada.org/defender-standards/national-advisory-commission>. The NAC standards provide that an individual defender's annual caseloads should not exceed 150 felonies, 400 misdemeanors (excluding traffic cases), 200 juvenile cases, 200 mental health cases, or 25 appeals, or a proportional combination thereof.

<sup>33</sup> FTE contracted to provide public defense services in appellate, habeas and Psychiatric Security Review Board cases were excluded from this total.

<sup>34</sup> The ABA's Ten Principles of a Public Defense Delivery System require both adequate supervision (Principle 10) and appropriate training (Principle 8). ABA Ten Principles of a Public Defense Delivery System (ABA Ten Principles) (2002), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.auth\\_checkdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.auth_checkdam.pdf).



Contractors report an FTE percentage for each attorney to OPDS. At present, while OPDS can limit case assignments in proportion to the total FTEs reported by a contractor, OPDS cannot verify the accuracy of the reported percentages or effectively monitor the work performed under its contracts. OPDS does not require attorneys providing public defense services to keep and report time spent by case. OPDS also does not require contractors to report information on the private practice caseload or other legal work performed by the attorneys who are providing public defense services under an OPDS contract.

OPDS currently does not collect basic event data on public defense cases. OPDS cannot reliably report which attorney at a contracting entity has which cases to verify qualifications, although this capacity is improving under the new FTE contracting program. Similarly, OPDS does not collect data on case milestones, such as whether the client was released pretrial and conditions of release, whether an investigator was utilized, whether an expert was consulted, whether motions were filed, plea offers received, etc.<sup>35</sup>

Under both the case credit and FTE contracting models, additional non-contract attorneys, are needed to represent clients who cannot be represented by contractors. Non-contract attorneys are assigned cases when a conflict of interest exists for contractors; when the contractor has met its contractual caseload obligations or limits; or when the existing contractors lack attorneys with the requisite qualifications to handle a particular type of case. These attorneys are compensated at an hourly rate for their legal services.<sup>36</sup>

For the purposes of this report, public defenders/public defense attorneys include attorneys at public defender offices, consortia, non-profit organizations, law firms with public defense contracts with OPDS, as well as individual attorneys who have public defense contracts with OPDS. Private practice attorneys include those criminal and juvenile attorneys who do some minimal non-contract public defense work.

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<sup>35</sup> As noted above, such oversight is a critical component of a public defense system, see, e.g., Guideline 2, ABA Eight Guidelines, *supra* n. 3. The ABA Ten Principles of a Public Defense Delivery System similarly provide that all public defense attorneys should be "supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards." Principle 10, ABA Ten Principles, *supra* n. 34.

<sup>36</sup> OPDS staff estimate that non-contract attorneys are required in 2-3% of public defense cases in Oregon.

## **HISTORICAL STAFFING AND CASELOAD ANALYSIS**

The historical staffing and caseload analyses are comprehensive reviews of the available current and historical workload of the public defense system in Oregon. They seek to accurately describe the current state of public defense in the jurisdiction and are integral to understand the “world of is”<sup>37</sup> to compare it to the requirements generated through the Delphi study.

### **Historical Staffing**

#### ***Timekeeping***

When attorney time can be captured to a high degree of consistency and quality, timekeeping is the best way to understand how many attorneys are spending how much time on current public defense cases. Though there are significant challenges in instituting timekeeping for a study, if there is not already timekeeping in place, this is the preferable way to gather data as long as the data is entered consistently and with a high degree of detail. In Oregon, timekeeping was not implemented for this study, for a variety of reasons, including the agency’s limited data collection capacity, contracting model, and changes in court behavior arising from COVID-19. Therefore, the alternative FTE method was used for the purposes of this analysis.

#### ***FTE Method***

An alternative method to timekeeping is to review historical and current personnel employment data for attorneys and convert the attorney personnel to full-time equivalents (FTEs). This allows for a comparison of total attorney time available, based on FTE and caseloads, to total attorney time needed at the system level, based on the Delphi Panel results and caseloads. Calculating FTEs for contract attorneys is inherently complex. Attorneys in contract systems often work less than full-time, engaging in private practice or other legal work. OPDS contracts are with a range of entities, in terms of size and method of operation. Some have employees who spend all their time on public defense work; others have contracts with OPDS and also engage in private practice or other legal work. The percentage of time each attorney at a contracting entity or each individual attorney with a contract devotes to public defense work may vary year to year, or even quarter to quarter. Absent timekeeping or a detailed manner of collecting and verifying information on complete contractor caseloads (including private practice cases), an FTE calculation in contracting systems can only be estimated, and it often relies on self-reported percentages.

OPDS provided a list of the FTEs the agency believes it is funding statewide via contracts as of November 2021. This list included public defenders at public defender offices, attorneys at law firms, non-profit organizations or consortia that have public defense contracts with OPDS, and individual attorneys with contracts with OPDS. The information provided included detailed

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<sup>37</sup> This stands in contrast to the Delphi study which describes “the world of should.”

information by contractor, such as attorney name, bar number and role, and is based on contract information.

As of November 2021, there were 592 attorney FTEs contracted to provide public defense services in adult criminal or juvenile cases.<sup>38</sup> Because this excludes cases represented by non-contractor attorneys, these FTEs are estimated to represent 97-98% of the trial level cases in the public defense system.<sup>39</sup>

### **Historical Caseload**

Historical case data was obtained primarily from the Oregon Judicial Department's (OJD) case management system, Odyssey, which captures information in the courts at the time of filing, and therefore does not include data on items that happen outside of courts (jails, detention centers) or confidential or sealed cases, which would not be material to this analysis. The datasets provided from OJD included representation status. This report only includes data that was assigned a "Court Appointed" status.<sup>40</sup>

A limited amount of data used in this analysis was from the OPDS Contractor database, which is populated based on monthly reports from contractors based on appointed cases on case number and filing date. Under the case credits model that was in place for calendar years 2017-2019, if contractors failed to report a case, they did not receive credit or paid for that case. For calendar year 2020, contracts were extended for 2 six-month periods, and the credits were removed from the contract. This analysis assumes that contractors continued to report all cases consistent with prior practices. In 2021, under the new FTE model, every case counts towards FTE, which has been monitored since the new contract went into place on January 1, 2021.

This study analyzed all new public defense cases filed from January 1, 2017 through March 31, 2021 (see Exhibit 1). Additionally, the study analyzed Adult Criminal data for all case types except for Probation Violation data from April 1, 2021 through October 10, 2021. Notably, this analysis does not consider the impact of cases that remain open for more than one year, nor the impacts of the COVID-19 pandemic. As of December 31, 2020, based on the total number of active pending adult criminal and juvenile cases, 23.6% and 58.4% of those cases were over 12 months old.<sup>41</sup>

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<sup>38</sup> This study does not endeavor to calculate current appellate caseloads or appellate attorney FTE. Accordingly, FTE assigned to provide appellate public defense services under a contract were excluded from this total.

<sup>39</sup> As noted above, non-contract attorneys are utilized when contractors have a conflict of interest, have met caseload obligations under their contract or hit caseload limits, or do not have an attorney with the requisite qualifications to accept a case. Percentage of cases assigned to non-contract attorneys was estimated by OPDS personnel involved in contract oversight.

<sup>40</sup> Court appointed is the court's designation for any attorney being provided at public expense. It includes both OPDS contract and non-contract attorneys.

<sup>41</sup> Oregon Judicial Department 2020 Circuit Court Case Statistics, Age of Active Pending Caseload as of December 31, 2020, available at <https://www.courts.oregon.gov/about/Documents/2020CasesPendingAndAgeOfActivePendingCases.pdf>

## The Oregon Project Historical Staffing and Caseload Analysis

A summary of new public defense cases represented by a court appointed attorney by type is below. See Exhibit 1 for breakout by type and estimated annual caseload.

<b>STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD</b>					
<b>Adult Criminal</b>					
<b>Case Type</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Jan 1 - October 10, 2021</b>
Adult Criminal	76,371	76,929	74,573	67,738	44,710
<b>Juvenile</b>					
<b>Case Type</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Q1 2021</b>
Dependency	15,429	12,781	12,034	9,076	1,756
Termination of Parental Rights	3,747	3,645	3,367	2,269	882
Delinquency	2,865	3,032	2,857	2,224	350
<b>Total Juvenile</b>	<b>22,041</b>	<b>19,458</b>	<b>18,258</b>	<b>13,569</b>	<b>2,988</b>
<b>GRAND TOTAL</b>	<b>98,412</b>	<b>96,387</b>	<b>92,831</b>	<b>81,307</b>	<b>47,698</b>

*Note: Within the table above, as noted in Exhibit 1, the Probation Violation data within the Adult Criminal case type represents the period January 1, 2021 through March 31, 2021 as opposed to October 10.*

## DELPHI ANALYSIS

### The Delphi Method

The workload study applied the Delphi method, an iterative survey process developed by the RAND Corporation and used in a range of industries and professions. Within the legal system, examples of use of the Delphi method can be traced back decades, and the Delphi method is considered an appropriate methodology for a caseload study.<sup>42</sup> Examples of these uses of Delphi were conducted by both the National Association of Court Management and the National Center for State Courts.<sup>43</sup> These efforts were principally focused on assessing judicial and court support staff needs.<sup>44</sup> Additionally, the Delphi method has been implemented by ABA SCLAID and partner accounting and consulting firms in similar public defense workload studies of public defense systems in other states, including Missouri,<sup>45</sup> Louisiana,<sup>46</sup> Colorado,<sup>47</sup> Rhode Island,<sup>48</sup> Indiana,<sup>49</sup> and New Mexico.<sup>50</sup> An overview of the Delphi method, including use of the method in determining appropriate caseloads for public defense attorneys, is summarized below and further described in Appendix A.<sup>51</sup>

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<sup>42</sup> Norman Lefstein, Securing Reasonable Caseloads: Ethics And Law Of Public Defense 140-51 (ABA 2011), *available at* [https://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads\\_supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf)

<sup>43</sup> National Center for State Courts' reports, *available at* <http://www.ncsc.org>.

<sup>44</sup> Matthew Kleiman, Cythia Lee and Brian Ostrom, Workload Assessment: A Data-driven Management Tool for the Judicial Branch (National Center for State Courts 2013).

<sup>45</sup> RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, The Missouri Project, A Study of the Missouri Public Defender System and Attorney Workload Standards (2014), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_pub\\_def\\_mo\\_workstudies\\_rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_pub_def_mo_workstudies_rept.pdf).

<sup>46</sup> Postlethwaite & Netterville, APAC on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, The Louisiana Project, A Study of the Louisiana Defender System and Attorney Workload Standards (2017), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_louisiana\\_project\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf).

<sup>47</sup> RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, The Colorado Project, A Study of the Colorado Public Defender System and Attorney Workload Standards (2017), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_co\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf).

<sup>48</sup> Blum, Shapiro & Company, P.C. on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants and The National Association of Criminal Defense Lawyers, The Rhode Island Project, A Study of the Rhode Island Public Defender System and Attorney Workload Standards (2017), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ri\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf).

<sup>49</sup> Crowe LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, The Indiana Project, A Study of the Indiana Public Defense System and Attorney Workload Standards (2020), *available at* [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_public\\_defense\\_indiana\\_project\\_report\\_july\\_2020.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls_sclaid_public_defense_indiana_project_report_july_2020.pdf).

<sup>50</sup> Moss Adams LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, The New Mexico Project, An Analysis of the New Mexico Public Defense System and Attorney Workload Standards (2022), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf).

<sup>51</sup> See also Use of the Delphi method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned (2021), *available at* [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf).

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop a reliable consensus on a specific issue. As a methodological strategy, the Delphi method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at set intervals. The surveying practices applied can be either interviews or surveys that focus on fundamental questions of significance to the group participating.

To initiate the Delphi method, a group of experts provides individual, anonymous responses on a given topic based on their expertise and experience. Next, the professionals that responded to the initial survey are provided the same survey with peer response data from the initial round. This iterative process of alternating participants' independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

In the Oregon Project, as in prior ABA SCLAIID workload studies, the Delphi method was used to provide a reliable consensus of professional judgment on the time that *should be* required for a public defense attorney in Oregon to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The Delphi process used in Oregon relied upon the expertise of attorneys from various types of contractors, as well private practice attorneys to develop a reliable consensus professional judgment of the amount of time that attorneys *should* expect to spend on a particular Case Task in particular Case Types considering both the Strickland standard (reasonably effective assistance of counsel) and the applicable ethical and substantive professional standards discussed earlier in this report (prevailing professional norms).

In consultation with OPDS, ABA SCLAIID determined that two separate Delphi panels were needed in Oregon covering the two major areas of practice in which public defense providers are utilized: (1) Adult Criminal; and (2) Juvenile.<sup>52</sup> These two panels correspond to the areas of specialization most often practiced by defense attorneys in Oregon.<sup>53</sup>

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<sup>52</sup> The juvenile survey covered both juvenile delinquency and dependency Case Types. The Case Types in dependency in turn covered both parent and child representation. These Case Types were grouped in a single survey and addressed by a single Delphi panel because Oregon juvenile attorneys often represent individuals in both dependency and delinquency cases.

<sup>53</sup> Initial workload studies, such as the ones completed in Missouri and Louisiana, utilized a single Delphi panel. In later studies, it was noted that a single Delphi panel did not reflect the specialization that had developed in public defense practice. While the same attorney may represent clients in misdemeanor and felony cases, it is relatively rare that a trial defense attorney also takes cases in juvenile courts. As a result, many juvenile attorneys participating in the single Delphi panel could only answer questions regarding one Case Type, e.g., juvenile delinquency. Additionally, having only one or two Case Types in specialist areas, such as juvenile cases, did not reflect the complexity of these specialty practices. For example, a juvenile defender's caseload may range from status violations to serious assaults and even murder. Over the several ABA SCLAIID public defense workload studies, this recognition resulted in the number of Case Types increasing. For example, in the Colorado workload study, there were 18 Case Types, including three juvenile Case Types. This number of Case Types became difficult to manage. To address this problem, the use of specialty Delphi panels, with separate surveys, was first utilized in Texas and proved not only more manageable, but also more reflective of current public defense practice.

### **Methodology Framework**

The Delphi method, as used in the Oregon Project, was a series of three survey rounds. The first and second rounds were conducted as anonymous online surveys, and the third round was conducted as a live discussion. In responding to the surveys, participants were asked to consider the ABA and OPDS standards and rules<sup>54</sup> applicable to defense representation, as well as their own expertise and experience in providing defense representation in Oregon. The survey participants, surveys, and results are discussed below.

### **Survey Participants**

The attorneys selected to participate in each of the Delphi panels were initially proposed by OPDS staff, public defenders, private practitioners, and court officers around the state. Consideration was given to geographic diversity within Oregon, as well as including a mix of attorneys from a variety of contractor types, as well as private practice attorneys. If an attorney practiced in both areas of substantive expertise (Adult Criminal and Juvenile), he or she was permitted to serve on both Delphi panels.

Attorneys proposed to participate in each of the Delphi panels were reviewed and approved by independent Selection Panels of highly regarded individuals in the legal community who have extensive practical experience in the area. There was one Selection Panel for each substantive area (Adult Criminal and Juvenile). The Selection Panel members reviewed the list of potential participants and removed any proposed participants they believed lacked the expertise, experience and respect and added participants they considered qualified to participate. Once approved by the relevant Selection Panel, the list of participants on each Delphi panel was finalized.

### **Case Types and Case Tasks**

The first step in developing the survey tool used in the Delphi process was to determine the relevant Case Types and Case Tasks to be surveyed. Case Types and Case Tasks were developed by Consulting Panels of between eight and ten contract attorneys and private practitioners in the state. A Consulting Panel was convened in each of the two Delphi areas: Adult Criminal and Juvenile. The Consulting Panels were asked to break down their practice area into Case Types that they would naturally group together. Then they broke down attorney work in these cases into Case Tasks that fairly encompassed all the work that defense attorneys should perform.

The Consulting Panels defined each Case Type and each Case Task<sup>55</sup> to ensure that there was minimal overlap and that it was clear where time spent on common tasks should be allocated. The process of identifying Case Types and Case Tasks is crucial as it forms the basis for the subsequent surveys.

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<sup>54</sup> See Background, *supra*.

<sup>55</sup> See Appendix D for definitions.

## The Oregon Project Delphi Analysis

The Delphi panels considered the following Case Types and Case Tasks (see Appendix C for detailed definitions), as determined by the Consulting Panels.

Adult Criminal	
Case Type	Case Task
Low-Level Misdemeanor	Client Communication
Complex Misdemeanor	Client Support Services
Low-Level Felony	Discovery / Case Preparation
Mid-Level Felony	Attorney Investigation / Attorney Interviews
High-Level Felony	Experts
Homicide and Sex Cases	Legal Research, Motions Practice, Other Writing
Probation Violations	Negotiations
	Court Preparation
	Court Time
	Sentencing/Mitigation
	Post Judgment

Juvenile - Dependency	
Case Type	Initial Jurisdiction Case Tasks
Parent Representation	Client Communication
Child Representation	Client Advocacy and Support
	Discovery / Case Analysis
	Experts
	Legal Research, Motions Practice, Other Writing
	Court Preparation
	Court Time
	Appeal Preparation
	<b>Case Tasks Following Initial Disposition on Jurisdiction</b>
	Post-Jurisdiction Client Communication
	Post-Jurisdiction Client Advocacy and Support
	Post-Jurisdiction Hearing Preparation
	Post-Jurisdiction Court Time

Juvenile - Termination of Parental Rights	
Case Type	Case Task
Parent Representation	Client Communication
Child Representation	Client Advocacy and Support
	Discovery / Case Analysis
	Experts
	Legal Research, Motions Practice, Other Writing
	Court Preparation
	Court Time
	Appeal Preparation
	Post-Judgment Work



<b>Juvenile - Delinquency</b>	
<b>Case Type</b>	<b>Case Task</b>
Misdemeanor / Other	Client Communication
Minor Felonies	Parent / Guardian / Custodian Communication
Major Felonies	Client Advocacy and Support
Waiver/Measure 11 Cases	Discovery / Case Analysis
Probation Violation / Contempt	Attorney Investigation / Attorney Interviews
	Experts
	Legal Research, Motions Practice, Other Writing
	Negotiations
	Court Preparation
	Court Time
	Post-Disposition

### **Delphi Surveys**

The surveys were designed by ABA SCLAID and Moss Adams and produced and administered by Moss Adams. For Rounds One and Two, Moss Adams used an online surveying tool. Round Three was conducted virtually by Moss Adams. ABA SCLAID personnel were present throughout the Round Three meetings to provide guidance and clarifications on the professional norms and standards of practice anchoring the Delphi process.

#### ***Round 1 Online Surveys***

In the Round One survey, participants were directed to consider the following when responding:

- ABA and Oregon State Bar standards for defense representation,
- Oregon Rules of Professional Conduct,
- their expertise and experience in the Oregon defense field.

The participants were initially asked whether they had sufficient experience with a particular Case Type to respond to questions about preparing a defense for an individual charged with a crime of that Case Type. If a participant responded that he/she did not have sufficient experience with a certain Case Type, the survey would automatically redirect to the next Case Type. If the participant had sufficient experience with the Case Type, the survey proceeded to ask the participant the relevant questions for each Case Task for that Case Type.

The surveys were designed to identify the following for each Case Type:

- Resolution Percentage: The percentage of each Case Type that should Plead Guilty/Otherwise Resolve vs. Go to Trial (Resolution Type).
- Frequency: In what percentage cases of that Case Type should each Case Task be performed (disaggregated by Resolution Type).
- Time: In the cases that the Case Task should be performed, how much cumulative time should an attorney spend on each Case Task to perform the task with reasonable

effective assistance of counsel pursuant to professional norms (disaggregated by Resolution Type).

In the context of answering the questions outlined above, participants were also provided the following instructions:

- account for the cumulative time required to complete a Case Task over the life of a case,
- assume adequate investigative, secretarial, and other support services, and
- define the time required for each Case Task in terms of the average or typical case of the Case Type, not the exceptional case.

### ***Round 2 Online Surveys***

The Round Two surveys were identical to the Round One surveys, except that the summary statistics of peer responses from the Round One survey were provided for the participants' reference.<sup>56</sup> Additionally, Round Two was only administered to those who completed the Round One survey.

The data collected from Round One was trimmed to eliminate outliers from both the upper and lower ends of the responses. The trimmed peer range and peer means from Round One were provided in the Round Two survey to assist in informing the participants' responses. Providing anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion. The summary statistics provided to Round Two participants were the middle 60% of responses from Round One (the trim percentage was unknown to the participants). The peer mean is a single data point showing the average responses of the peer range.

### ***Round 3 Live Surveys***

The meeting of each Delphi panel was the final iteration of the Delphi survey process in this study. In the Round Three live survey, participants were requested to use the following information for guidance:

- ABA and Oregon State Bar standards for defense representation,
- Oregon Rules of Professional Conduct,
- their expertise and experience in the Oregon defense field,
- the summary statistics from peer responses from the Round Two survey, and
- collaboration and discussion with their Delphi panel peer participants.

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<sup>56</sup> See Appendix C for example surveys.

During the live Round Three survey, for each Case Type, Resolution Type, and Case Task the participants were asked to come to a consensus on the Resolution, Time and Frequency discussed above. The Round Three survey was conducted via the Zoom platform, due to the COVID-19 pandemic restrictions. For each Case Task presented, applicable standards and Case Type and Case Task definitions were provided in writing in advance, and the summary statistics for Round Two were discussed during the session.

Anonymous polls were conducted based on an offered value, which generally started with the Round Two trimmed mean for the question.<sup>57</sup> The poll included responses of “Agree”, “Too High” or “Too Low”. If there was disparity in responses, discussion was held. Participants were encouraged to provide their rationale based on their best professional judgement and experience. As necessary, the relevant standards were revisited and discussed. After discussion, a new value was offered, and a new poll was conducted. This cycle of poll, group discussion, poll, group discussion, continued until a consensus was reached.<sup>58</sup>

### ***Participation Attrition***

Because participation in each round requires participation in all previous rounds, attrition occurs throughout the Delphi process. The below chart shows the number of participants in each round for each of the Oregon Delphi panels:

	<b>Adult Criminal</b>	<b>Juvenile</b>
Invited to Participate	143	103
Completed Round 1	65	43
Completed Round 2	46	28
Completed Round 3	30	28

See Appendix D for summary characteristics of the Round Three participants (the Delphi panels).

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<sup>57</sup> While the Round Two peer mean was often the starting point, the group was not constrained in seeking a consensus value. If the group determined, following discussion, that the value should be higher or lower than the Round Two peer range, the consensus of the Round Three group governed.

<sup>58</sup> Considered a consensus if approximately 66% of polled participants “Agreed” on the presented value.

**Survey Results**

The consensus results for each Case Task on Time and Frequency were combined to arrive at an expected time, on average, that should be spent on each Case Task. The final expected times were then totaled and allocated to Resolution Type (e.g., plea/otherwise resolve vs. trial) to calculate the final Delphi result for each Case Type. The Delphi result is a measure of the total number of hours, on average, that a typical case of that Case Type should take an attorney providing reasonably effective assistance of counsel pursuant to professional norms.

The Delphi results for each case grouping are presented below. See Exhibits 4.1 and 4.2 for additional detail.

Delphi Panel Results - Adult Criminal	
Case Type	Hours Per Case
Low-Level Misdemeanor	22.26
Complex Misdemeanor	36.98
Low-Level Felony	39.78
Mid-Level Felony	47.73
High-Level Felony	148.95
Homicide and Sex Cases	552.46
Probation Violations	8.33

Delphi Panel Results - Juvenile - Dependency	
Case Type	Hours Per Case
Parent Representation	115.62
Child Representation	117.07

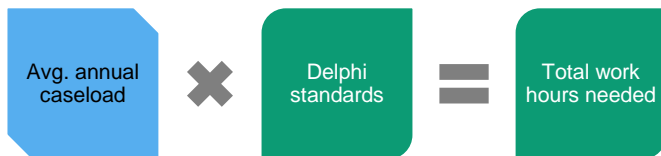
Delphi Panel Results - Juvenile - Termination of Parental Rights	
Case Type	Hours Per Case
Parent Representation	104.92
Child Representation	76.83

Delphi Panel Results - Juvenile - Delinquency	
Case Type	Hours Per Case
Misdemeanor / Other	35.65
Minor Felonies	43.79
Major Felonies	68.50
Waiver/Measure 11 Cases	261.48
Probation Violation / Contempt	14.07

**DEFICIENCY ANALYSIS**

**Adult Criminal and Juvenile**

To perform the deficiency analysis, the projected caseload (obtained by analysis of the historical caseloads) is multiplied by the time needed by Case Type (as determined by the Delphi panels), to produce the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.



The hours needed can then be translated into FTEs and compared to the number of FTEs currently available to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.



At a consistent annual workload, OPDS is deficient 1,296 contract attorney FTE, for its Adult Criminal and Juvenile caseloads. In other words, OPDS has only 31% of the FTE contract attorneys needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Oregon to its Adult Criminal and Juvenile clients.



## The Oregon Project Deficiency Analysis

A Delphi workload analysis of attorney time needed, consisting of an estimate of Oregon’s public defense annual workload multiplied by the Delphi panel’s consensus opinions, is presented in the table below, disaggregated by attorney type for the Adult Criminal and Juvenile defense areas. See Exhibit 2 for detailed calculations of the estimated workload.

DEFICIENCY ANALYSIS		
	[1]	[2]
Area	Estimated Annual Caseload	Total Hours
Adult Criminal	75,588	2,166,606
Juvenile	19,885	1,881,036
<b>Total</b>	<b>95,473</b>	<b>4,047,642</b>
<b>Hours needed by Contract Attorneys [4]</b>		<b>3,926,213</b>
<b>FTEs needed [4]</b>		<b>1,888</b>
<b>Contract Attorney FTEs have [5]</b>		<b>592</b>
<b>Contract Attorney FTE deficiency</b>		<b>1,296</b>
<b>Deficiency %</b>		<b>69%</b>

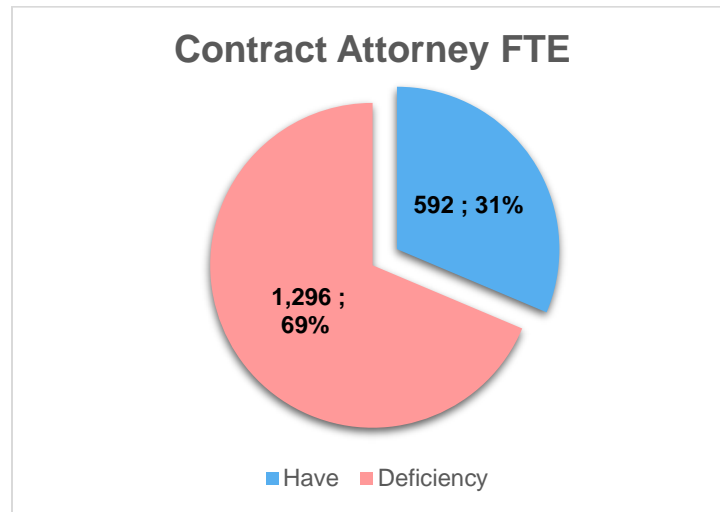
[1] Based on the average opened cases per year for the respective case grouping and attorney type (see Exhibit 1)

[2] Represents the Delphi Panel Results x Estimated Annual Caseload Totals (see Exhibit 2 for detailed calculations)

[3] The caseload data – because it was pulled from the courts – did not exclude cases taken by non-contract attorneys. It included all "court appointments." To address this imbalance, the caseload numbers were reduced by the amount (best estimate) that could be attributed to non-contract attorneys by reducing the total hours needed to provide adequate representation based on current caseloads. We reduced the needed hours by 3% (meaning 97% of the needed hours were estimated to be covered by contract FTEs), because OPDS staff estimated that 2-3% of cases are handled by non-contract attorneys.

[4] Hours divided by 2,080

[5] Total FTE as of November 2021.



For the purposes of this report, 2,080 hours was used to calculate needed FTE (40 hours/week; 52 weeks/year). The hours allotment assumes **all** hours are allocated to client representation, without consideration for administrative tasks, such as general meetings, work-related travel time, or wait time. It also does not reduce time for continuing legal education requirements and other training, nor does it reduce time during the workday to allow for bathroom breaks, lunch breaks, etc. Similarly, analysis assumes that public defense attorneys work every week of the year, without taking any time off for vacation, sick leave etc. The resulting total of 2080 hours per year of case work is very conservative and would, in reality, require time far exceeding eight hours per days and five days per week to accomplish.<sup>59</sup> Indeed, the total time allotted for case time in ABA Delphi workload studies generally exceeds the billable hours targets of commercial law firms in major urban areas like New York City and Washington, DC.<sup>60</sup>

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<sup>59</sup> See Yale Law School Career Development Office, The Truth About the Billable Hour, *available at* [https://law.yale.edu/sites/default/files/area/department/cdo/document/billable\\_hour.pdf](https://law.yale.edu/sites/default/files/area/department/cdo/document/billable_hour.pdf) (noting that to “bill” 1,832 hours, you are likely at work for 2,420 hours).

<sup>60</sup> PracticePanther, a legal time keeping application, notes that “the average number of billable hours required for first-year associates at firms with more than 700 attorneys is 1,930 hours, *available at* <https://www.practicepanther.com/blog/first-year-associates-billable-hours/>. See also Update on Associate Hours Worked, NALP Bulletin, 2016, *available at* <https://www.nalp.org/0516research> (noting that the data from 2014 shows that law firm associates worked, on average, 2,081 hours per year, which was up from an average of 2,067 hours worked in 2013).

## **DATA LIMITATIONS AND ASSESSMENT OF DATA NEEDS**

As noted throughout this report, where confirmable data could not be obtained, the assumptions made were conservative. This section outlines most of these assumptions.

### ***FTE Data Deficiencies***

The number of FTE attorneys and percentages utilized in this analysis is taken directly from self-reported data submitted by contractors to OPDS. The process of reporting FTE to OPDS is relatively new, and OPDS has little ability to confirm the percentages provided. In other words, OPDS is not currently equipped to assess whether an attorney reported as a .9 FTE in fact limits their private practice caseload to only .1 FTE. OPDS does not solicit or receive confirmatory information on the private practice caseloads of public defense attorneys, nor does it currently require timekeeping on public defense cases to confirm .9 FTE in time is devoted to those cases.

Additionally, as noted in detail above, the FTE analysis assumes that each FTE attorney can spend 2,080 hours each year on representation of clients. In other words, it assumes that a public defense attorney works 8 hours per day, with no breaks from case work for clients. It does not subtract any hours for administrative work, training, work-related travel time or wait time. It also assumes that an attorney works all 5 days per week, 52 weeks of the year, without subtracting time for holidays, vacation, sick leave, etc. In reality, working 2080 hours on case time would require a public defense attorney to spend considerably more time at work. In essence, this calculation assumes that public defense attorneys are working well-beyond a standard workday.

### ***Caseload Data Deficiencies***

The Case Types selected by the Consulting Panel for use in the Adult Criminal survey differentiated cases by sentencing scheme:

- The low-level felony Case Type was defined to include presumptive probation and prison grid felonies that do not trigger mandatory minimum sentences.
- The mid-level felony Case Type was defined to include property and drug felonies that include possible mandatory minimum sentences, Measure 57 cases,<sup>61</sup> and Level 10 drug crimes.

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<sup>61</sup> Ballot Measure 57 established mandatory minimum sentences for individuals convicted of certain drug and property crimes under certain circumstances, e.g. repeat offenders. It was approved in 2008. ORS 137.717 (2008).



## The Oregon Project

### Data Limitations and Assessment of Data Needs

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- The high-level felony Case Type was defined to include Measure 11 felonies (excluding homicide cases),<sup>62</sup> sex cases (excluding sex cases with the potential for 25+ years) and gun minimum cases.
- The homicide and sex cases (25+years) Case Type was defined to include all homicide cases (excluding death penalty cases), Jessica's law cases,<sup>63</sup> 3<sup>rd</sup> strike sex cases<sup>64</sup> and Measure 73 sex cases.<sup>65</sup>

Unfortunately, OPDS does not currently collect detailed charging data indicating the sentencing scheme applicable in each case, nor is it available in court data. As a default, cases were categorized in the lowest applicable Case Type. Cases were only reallocated to a higher Case Type when reliable data justified the higher allocation.<sup>66</sup> For example, cases where the highest charge was a sex crime were categorized as high-level felony cases. Because OPDS lacked data on what portion of these cases were Jessica's law cases, 3<sup>rd</sup> strike cases or Measure 73 cases, no sex cases were allocated to the homicide and sex cases (25+ years) Case Type.

This report does not include consideration to any new regulations that would impact the Oregon public defense system, including Senate Bill 578 (2021),<sup>67</sup> which will require courts to appoint legal counsel for guardianship cases in certain counties beginning in 2022. Inevitably this will increase the public defense workload.

#### ***OPDS Should Continue to Improve Data Collection Mechanisms and Oversight***

Historically, OPDS has collected and maintained little data on public defense in Oregon and has had little role in overseeing attorneys engaged in public defense work beyond the contracting renewal process. Recently, data collection efforts have expanded. Beginning in 2021, OPDS has endeavored to better understand the attorneys who are taking public defense case work under its contracts and ensure some degree of caseload control. This is a good start, but far from sufficient.

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<sup>62</sup> Ballot Measure 11 originally passed in 1994. It required mandatory minimum prison sentences for 16 offenses. It has since been amended to apply to additional offenses. See Bill Taylor, Background Brief on Measure 11 (May 2004), *available at* [https://www.oregonlegislature.gov/citizen\\_engagement/Reports/2004IG\\_Measure\\_11.pdf](https://www.oregonlegislature.gov/citizen_engagement/Reports/2004IG_Measure_11.pdf).

<sup>63</sup> Jessica's law requires the imposition of a 25 year mandatory minimum for a defendant convicted of committing a first-degree sex offense against a child under the age of 12.

<sup>64</sup> ORS 137.319 (presumptive life sentence for certain sex offenders upon third conviction).

<sup>65</sup> Ballot measure 73 increased the mandatory minimum prison sentence to 25 years for repeat offenders of any four felony sex crimes. It passed in 2010.

<sup>66</sup> See Exhibit #3 explaining the use of prosecutorial data to allocate between low-level and complex misdemeanors, as well as identify Measure 57 cases.

<sup>67</sup> 81<sup>st</sup> Oregon Legislative Assembly – 2021 Regular Session - Senate Bill 578, *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB578>

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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OPDS' contract system creates inherent data collection and oversight challenges. OPDS administers more than 100 contracts with providers who differ massively in size and administrative capacity. By contrast, a centralized public defense system in a state like Oregon would likely have, at most, one office in each judicial district (27 offices), and possibly far fewer.

These challenges are not impossible to overcome. The Committee for Public Counsel Services in Massachusetts (CPCS) for example oversees a mixed system of public defender offices and hundreds of individuals who accept public defense appointments. CPCS has extensive oversight mechanisms, as well as robust financial monitoring and auditing.<sup>68</sup> However, providing adequate substantive and financial oversight in a more decentralized system likely requires more extensive data collection and oversight staffing resources.

OPDS should collect comprehensive data on public defense work from its providers.<sup>69</sup> Doing so will likely require OPDS to adopt a single, unified case management system for all public defense attorneys. Using a unified case management system would enable OPDS to have accurate and reliable data on public defense cases throughout Oregon.<sup>70</sup>

#### ***Timekeeping***

As noted above, FTE calculations for contract attorneys are inherently complex. In Oregon, because the contractor may be non-profit public defense offices, law firms, consortium or individual lawyers, gathering accurate FTE data is even more complex. The only way to get accurate, reliable information on public defense work performed across various contracting entities that include full-time public defense attorneys, part-time public defense attorneys and occasional public defense attorneys is to require timekeeping for all attorneys for public defense cases. Oregon should therefore consider implementing timekeeping for all public defense attorneys. If implemented, this should be a contractually required part of onboarding, training and review processes.

Timekeeping need not be complex. Timekeeping categories can and should be streamlined and simple to ensure that each type of lawyer – Adult Criminal and Juvenile – needs to use only a small number of codes to enter time (ideally less than 10). It may be useful to compare timekeeping codes to Case Tasks categories in this report.

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<sup>68</sup> The CPCS assigned counsel manual, *available at* <https://www.publiccounsel.net/assigned-counsel-manual/>, details the qualification, training, performance requirements, billing process and evaluation procedures applicable to individual attorneys representing public defense clients.

<sup>69</sup> See NLADA, Basic Data Every Defender Program Needs to Track (2014), *available at* <https://www.nlada.org/tools-technical-assistance/defender-resources/research/basic-data-toolkit>. This toolkit on data collection for public defense providers identifies information that should be collected and recommends strategies for public defense providers of all types on how best to collect the data.

<sup>70</sup> These measures should also apply to non-contract attorneys.

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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#### ***Case Opening and Closing Forms***

Beyond timekeeping, there is critical information on each accused individual and each case that should be gathered by every public defense organization. These data points include basic demographic data on the client, initial charge(s), pretrial release/detention decisions, motions filed, experts consulted, pleas offered, disposition, and sentencing. These data points are often best gathered through use of standardized case opening and case closing forms, differentiated by type of cases. The forms, which should be part of the case management system, should be entered online and designed to allow the aggregation of entered data.<sup>71</sup> For example, a check box regarding use of expert should allow OPDS to determine the percentage of cases, by case type, in which experts are consulted. Similarly, disposition information would allow OPDS to determine, by Case Type or even charge, the percentage of cases that go to trial, plea or are dismissed.

Use of comprehensive case opening and closing forms could also help to simplify the necessary timekeeping by relocating critical, case-specific information gathering to forms that must be filled out only once, rather than within ongoing timekeeping. For example, rather than have a timekeeping code specific for motions, the timekeeping code can be general, e.g. research/writing, and the case closing form can ask whether motions were filed and have check boxes for types of motions.

Case opening and case closing forms can and should be customized to gather jurisdiction-specific information that drives time. For example, adult criminal defenders in Oregon chose to differentiate cases based on sentencing, indicating that the sentencing nature of the case is an important data point that drives time. For property felonies, those that are subject to Ballot Measure 57 sentencing were placed in a separate Case Type from property felonies not subjected to this sentencing. Accordingly, it is critical for OPDS to know whether Measure 57 sentencing is sought. Such information is impossible to ascertain from initial charging, court data or even simple timekeeping, but can and should be indicated on a case closing form. Similarly, initial domestic violence misdemeanors that are assigned to the Domestic Violence and Multi-Disciplinary Team units should be categorized as Complex Misdemeanors, as opposed to low-level misdemeanors. Case closing forms in Oregon are likely the best place to capture these data points.

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<sup>71</sup> Examples of these forms for both juvenile and adult criminal from a public defense program in Los Angeles, California are included in Appendix G. For another example, see CPCS Disposition Form, *available at* [https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/sample\\_dispositional\\_report\\_form.pdf](https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/sample_dispositional_report_form.pdf).

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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#### ***Additional Information on Part-Time Public Defense Contractors or Attorneys***

To adequately control workloads and prevent conflicts in accordance with ethical obligations, OPDS should also understand the contract entities and attorneys' practice of law outside of the contract.<sup>72</sup> Under the FTE contracting model, OPDS now requires contracting entities report what portion of an attorney's workload is public defense cases vs. other work. A contract attorney asserting that he/she is spending 50% of his/her time on public defense work is now limited to receiving assignments equating to 50% of an allowable caseload. However, OPDS does not have an hours expectation that defines full-time, nor, as noted above, does it have any way of verifying either OPDS work or private practice work. OPDS should require contractors to report the nature and amount of other legal work performed by public defense attorneys to assist OPDS in monitoring and verifying overall caseloads. This could be accomplished by requiring contract attorneys/entities to report appearances in private cases in regular reports to OPDS.

#### ***Data Assessment Conclusion***

At present, OPDS lacks the ability to gather basic data on public defense cases and public defender work in Oregon.<sup>73</sup> As a result, the Commission cannot provide appropriate substantive or financial oversight.<sup>74</sup> These data gaps and resulting lack of oversight were also highlighted in a January 2019 report by the Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services*.<sup>75</sup> In part due to this report, the 2021 Public Defense Services Commissions budget bill<sup>76</sup> included a holdback of funding in the amount of \$100 million. The release of the holdback is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.

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<sup>72</sup> ABA Criminal Justice Standards, Providing Defense Services, Standard 5-3.3(b)(vii).

<sup>73</sup> Standard 5-3.3 of ABA Criminal Justice Standards on Providing Defense Services (1990), *available at* [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_defsvcs\\_blk/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk/), enumerates the essential elements of a contract in a public defense contracting system. It provides that contracting entities provide for, among other things, a system of case management and report.

<sup>74</sup> Standard 5-3.3 of Providing Defense Services further provides that contracts should establish processes for supervision, evaluation, training and professional development, as well as ensure appropriate qualifications for lawyers, limit caseloads, and provide access to support services, including investigative and expert services.

<sup>75</sup> 6AC Report on Oregon, *supra* n. 28.

<sup>76</sup> House Bill 5030 (2021) Regular Session details *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB5030>. Subcommittee recommendation with explanatory notes *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/245165>. The recommendation includes, among other things in-sourcing information technology services and directing an independent financial and performance audit of the agency, including reviews of agency operations, procurement, human resources, information technology, accounting, budget, performance management, and auditing.

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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Improving OPDS' data collection and oversight capacity will likely require ongoing financial investment by the Legislature. It also may require structural changes in how the state provides trial level public defense services, etc. At a minimum, OPDS will require additional staffing and resources to establish and administer substantive and financial oversight processes. OPDS should also reconsider staffing administrative and oversight positions for contractors, which could provide a critical layer of substantive oversight and enable greater data collection and financial reporting to OPDS. More broadly, as noted above, the contracting system creates inherent challenges for data collection and oversight. While such challenges can be overcome, the Commission may wish to consider whether alternative delivery structures would permit more efficient oversight.<sup>77</sup>

The Commission and OPDS have already demonstrated an important willingness and capacity to undertake critical review processes and implement improvements despite challenges. It is critical that OPDS continue on this path and receive the necessary support from the Legislature to achieve these ends.

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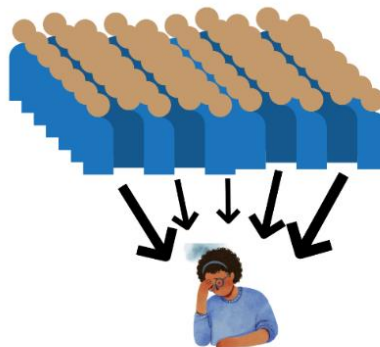
<sup>77</sup> The ABA Criminal Justice Standards on Providing Defense Services, Standard 5-1.2 provides: "The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization."

## CONCLUSION

At current caseloads, OPDS has a significant deficiency of FTE attorneys to provide public defense services in Adult Criminal and Juvenile cases. OPDS needs an additional 1,296 full-time attorneys – more than three times its current level – to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment. Limiting caseloads is critical to a functional public defense system. For this reason, ABA policy urges public defense systems to address excessive caseloads. The ABA Ten Principles of a Public Defense Delivery System require caseload limits, and further state that when a caseload “interferes with quality representation or [could] lead to the breach of ethical obligations [,] counsel is obligated to decline appointments.”<sup>78</sup>

This type of public defense attorney deficiency risks costly errors. It also erodes public trust in Oregon’s justice system. And it strains the individuals who are working so hard to keep the system functional despite these deficiencies. Excessive caseloads harm public defense attorneys – psychologically and physically.<sup>79</sup> When combined with the pandemic and the backlogs it has created, individual attorneys may be close to a breaking point. With so many existing deficiencies, additional staffing issues could jeopardize the public defense system’s basic ability to function.<sup>80</sup>

**The single most important conclusion from this report is that Oregon has a massive gulf between the number of cases currently in the public defense system and the number of attorneys available.**



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<sup>78</sup> Principle 5, ABA Ten Principles, *supra*, n. 34; see also Guideline 5, ABA Eight Guidelines, *supra* n. 3 (describing steps a public defense organization should take to address excessive workloads).

<sup>79</sup> See, e.g., Passport Health, How Does Overworking Affect Physical and Mental Health, *available at* <https://www.passporthealthusa.com/employer-solutions/blog/2019-2-overworking-affect-physical-and-mental-health/>.

<sup>80</sup> This is happening in numerous jurisdictions across the country, including Minnesota. See John Croman, Stressed public defenders ask lawmakers for help, KARE 11 St. Paul (Jan 12, 2022), *available at* <https://www.kare11.com/article/news/politics/stressed-public-defenders-lawmakers-help/89-8122802b-94c3-4401-9dff-21de7f4bc5a6>.

A deficiency in public defense attorney time can be addressed either by adding FTEs or by reducing the public defense caseload.<sup>81</sup> OPDS must consider immediate steps to begin to improve this situation.<sup>82</sup>

The deficiency quantified in this report was not created overnight; it was built over decades. Similarly, there will not be an immediate, single-source solution to resolve this deficiency. Even if funding and a sufficient number of qualified attorneys were readily available, the Commission and OPDS lack the infrastructure and capacities to triple the number of FTE attorneys for which they contract. But the Commission and OPDS should take immediate steps to begin to address the deficiency – for the clients, whose liberty is at stake, for the public defense attorneys, who for too long have done their very best under unworkable conditions, and for the people of Oregon, who rely on the accuracy of the justice system to ensure public safety.

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<sup>81</sup> *Id.* The data gathered in this report can assist OPDS in more accurately assessing the impact of other changes in criminal justice policy on its caseloads and therefore its FTE attorney needs.

<sup>82</sup> Guideline 5 of the ABA Eight Guidelines, *supra* n. 3, lists steps a public defense organization could take to address excessive workloads including reassigning cases, requesting a stay of further appointments, working with prosecutors to limit new filings, and seeking emergency resources.

## Appendices

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### **Delphi Method<sup>83</sup>**

The Delphi method was introduced in 1962 by researchers at the RAND Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.<sup>84</sup> The Delphi method requires that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on some fundamental question of significance to the group of experts convened for feedback.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”<sup>85</sup> At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming well-thought-out opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”<sup>86</sup> Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, e.g., a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by the expert, or of factors and considerations suggested as potentially relevant by one or another respondent.”<sup>39</sup>

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<sup>83</sup> This literature review on the Delphi method is derived from *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the ABA’s Standing Committee on Legal Aid and Indigent Defendants. The Missouri Project provided a national blueprint for workload studies such as this one. Available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_pub\\_def\\_mo\\_workstudies\\_rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_pub_def_mo_workstudies_rept.pdf).

<sup>84</sup> Norman Dalkey and Olaf Helmer, An Experimental Application of the Delphi Method to the Use of Experts, 1962, available at [http://www.rand.org/content/dam/rand/pubs/research\\_memoranda/2009/RM727.1.pdf](http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf).

<sup>85</sup> Gene Rowe and George Wright, The Delphi Technique as a Forecasting Tool: Issues and Analysis, 15 INT’L J. FORECASTING 35354 (1999) (hereafter Rowe and Wright, *The Delphi Technique*).

<sup>86</sup> Olaf Helmer and Nicholas Rescer, On the Epistemology of the Inexact Sciences P-1513 42 (The RAND Corporation 1958), available at <http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf>.

The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not have previously considered.<sup>87</sup>

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.<sup>88</sup> In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved, however it has been found that three to four iterations is usually all that is required to reach consensus.<sup>89</sup>

Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques utilized for similar purposes, the Delphi method was found to "lead to improved judgments over staticized groups and unstructured interacting groups."<sup>90</sup>

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.<sup>91</sup> In addition to its use in forecasting, the Delphi method has been used for "program planning, needs assessment, policy determination, and resource utilization."<sup>92</sup> Within the legal system, early examples of use of the Delphi method can be traced back a couple of decades. Examples of these attempts were sponsored by both the National Association of Court Management ("NACM") and the National Center for State Courts ("NCSC"). These efforts were principally charged with assessing judicial and court support staff needs.<sup>93</sup>

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<sup>87</sup> *Id.*

<sup>88</sup> Rowe and Wright, *The Delphi Technique*, *supra* note 85.

<sup>89</sup> Chia-Chien Hsu and Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus* (2007) (hereafter Hsu and Sandford, *The Delphi Technique*), available at <https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1177&context=pars>.

<sup>90</sup> Rowe and Wright, *The Delphi Technique*, *supra* note 85, at 353-54.

<sup>91</sup> Harold Linstone and Murray Turoff, *The Delphi Method: Techniques and Applications* (2002); Rowe and Wright, *The Delphi Technique*, *supra* note 85, at 353-54.

<sup>92</sup> Hsu and Sandford, *The Delphi Technique*, *supra* note 89.

<sup>93</sup> See, e.g., Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts 1996).

## The Oregon Project

### Appendix A: The Delphi Method

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In seeking to undertake a public defender caseload study in Missouri, ABA SCLAID partnered with RubinBrown to both select a methodology and execute an analysis that would, using data and analytics, result in reliable caseload standards. After an exhaustive literature review, RubinBrown concluded that the Delphi method was a reliable research tool to determine the appropriate workload for a public defender office because it was capable of generating a reliable consensus of expert opinion. The experts in a public defender workload Delphi study are experienced defense attorneys, both private practitioners and public defenders, with in depth knowledge of practice in the jurisdiction. These individuals serve as panelists in the Delphi process.

RubinBrown and ABA SCLAID utilized the Delphi method to complete The Missouri Project, a public defender workload study, which included a National Blueprint for conducting future workload studies.<sup>94</sup> In these studies, the Delphi process is driven, not by actual time data provided to the Delphi panel participants, but by the Standards applicable to public defense practice discussed above – the ABA Criminal Justice Standards and the state Rules of Professional Responsibility.<sup>95</sup>

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<sup>94</sup> *The Missouri Project*, *supra* note 45.

<sup>95</sup> These standards are included in the Delphi surveys and are also discussed at length prior to the start of the live meeting of the Delphi panel.

## The Oregon Project

### Appendix A: The Delphi Methodology

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In the years since The Missouri Project, ABA SCLAID has conducted four additional public defender workload studies in collaboration with three additional accounting and consulting firms:

- Louisiana (Postlewaithe and Netteville, APAC)<sup>96</sup>
- Colorado (RubinBrown)<sup>97</sup>
- Rhode Island (Blum Shapiro)<sup>98</sup>
- Indiana (Crowe LLP)<sup>99</sup>
- New Mexico (Moss Adams LLP)<sup>100</sup>

In each instance, the accounting and consulting firm reviewed and approved the use of the Delphi process, and conducted their services in accordance with the Standards for Consulting Services, as established by the American Institute of Certified Public Accountants.

In 2020, ABA SCLAID published a report on its use of the Delphi method to conduct public defense workload studies. That report, *Use of the Delphi Method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned*, is available on the ABA SCLAID website.<sup>101</sup>

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<sup>96</sup> Postlethwaite & Netteville, APAC on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Louisiana Project, A Study of the Louisiana Defender System and Attorney Workload Standards (2017)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_louisiana\\_project\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf).

<sup>97</sup> RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Colorado Project, A Study of the Colorado Public Defender System and Attorney Workload Standards (2017)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_co\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf).

<sup>98</sup> Blum, Shapiro & Company, P.C. on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants and The National Association of Criminal Defense Lawyers, *The Rhode Island Project, A Study of the Rhode Island Public Defender System and Attorney Workload Standards (2017)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ri\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf).

<sup>99</sup> Crowe LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Indiana Project, A Study of the Indiana Public Defense System and Attorney Workload Standards (2020)*, available at [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_public\\_defense\\_indiana\\_project\\_report\\_july\\_2020.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls_sclaid_public_defense_indiana_project_report_july_2020.pdf).

<sup>100</sup> Moss Adams LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The New Mexico Project, An Analysis of the New Mexico Public Defense System and Attorney Workload Standards (2022)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf).

<sup>101</sup> Available at [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf).

**Round 1 Survey Example**

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

What percentage of **Juvenile Dependency - Parent Representation** cases do you believe **SHOULD** resolve by:  
(total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	<input type="text" value="0"/>	%
Contested Jurisdiction / Fact-Finding (Trial)	<input type="text" value="0"/>	%
Total	<input type="text" value="0"/>	%

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Dependency - Parent Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

**Round 1 Survey Example**

**Juvenile Dependency - Parent Representation - ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Round 1 Survey Example**

**Juvenile Dependency - Parent Representation - CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

Round 2 Survey Example

Juvenile Dependency - Parent Representation

	<u>Time Needed</u>	Peer Mean	Peer Range	<u>% Cases Performed</u>	Peer Mean	Peer Range
<b>ADMISSION / DISMISSAL PRIOR TO CONTESTED JUDGEMENT</b>						
Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Discovery/Case Analysis	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Experts	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Legal Research, Motions Practice, Other Writing	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Appeal Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Hearing Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
<b>CONTESTED JURISDICTION / FACT FINDING (TRIAL)</b>						
Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Discovery/Case Analysis	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Experts	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Legal Research, Motions Practice, Other Writing	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Appeal Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Hearing Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%



## The Oregon Project

### Appendix C: Case Types and Task Definitions

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#### Case Type Definitions – Adult Criminal

Case Type	Description
Low-Level Misdemeanor	All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.
Complex Misdemeanor	Misdemeanors related to DUIs, domestic violence, sexual abuse, and animals (abuse of animals and game violations charged as misdemeanors).
Low-Level Felony	Presumptive probation and prison grid felonies that do not include mandatory minimums.
Mid-Level Felony	Property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.
High-Level Felony	Measure 11 felonies (excluding homicide cases), sex cases (excluding sex cases with potential for 25+ years), and gun minimum cases.
Homicide and Sex Cases	All homicide cases (excluding death penalty cases), Jessica's law cases, 3rd strike sex cases and Measure 73 sex cases.
Probation Violations	Probation violation cases.

#### Case Task Definitions – Adult Criminal

Case Task	Description
Client Communication	All attorney communication with the client (mail, phone, in-person, etc.) as well as communication with client family members related to the criminal case including communications regarding plea and sentencing (Excluding communication of an investigatory nature, which falls under Attorney Investigation/Attorney Interviews and Post-Judgment communication, which falls under Post-Judgment).
Client Support Services	Working with pretrial release services, social services, interpreters, treatment providers or outside agencies on behalf of clients; referrals for legal aid or other services; handling medical/family/other issues affecting client during criminal case; attending other proceedings related to or potentially impacting criminal charges.
Discovery / Case Prep	Ordering, obtaining and litigating discovery. Obtaining documents and materials through records requests, motions, subpoenas and other mechanisms. Reviewing, analyzing or organizing case-related materials/evidence including any digital evidence, social media evidence, jail communications, etc.; working with investigators; writing/editing case related-memos; defense team meetings (except in preparation for Court, which falls under Court Preparation); documenting case file.
Attorney Investigation / Interviews	Case-related investigation activities, including viewing the scene and physical evidence, canvassing for and interviewing witnesses, preparing subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney. Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Preparation).

**The Oregon Project**  
**Appendix C: Case Types and Task Definitions**

**Case Task Definitions – Adult Criminal (continued)**

<b>Case Task</b>	<b>Description</b>
Experts	Locating, obtaining funding approval for, corresponding and consulting with and reviewing reports of experts for the defense.
Legal Research, Motions Practice	Researching, drafting, editing, serving and filing of motions, notices, pleadings, briefs, jury instructions, etc. related to pretrial hearings other hearings or trial (except research, writing and motions exclusively related to Discovery, Negotiations or Sentencing/Mitigation which falls under Discovery, Negotiations and Sentencing/Mitigation respectively).
Negotiations	Discussions with a prosecutor in an effort to resolve a case; Preparing for settlement; Preparing any written submission to the prosecutor or settlement judge related to negotiations; attending judicial settlement conference(s).
Court Prep	Preparing for any and all pretrial hearings, other hearings or trial including defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, voir dire etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, preparing witnesses, including expert witnesses, for testimony, moot arguments, and other elements of trials and court hearings (except preparation for hearings exclusively related to Discovery or Sentencing/Mitigation which falls under Discovery and Sentencing/Mitigation respectively).
Court Time	In court at pretrial hearings, other hearings or trial (bench or jury) (except hearings related to Sentencing/Mitigation which falls under Sentencing/Mitigation).
Sentencing / Mitigation	Legal research and writing related to sentencing. Sentencing motions practice. Developing or collecting evidence to be used in sentencing, consulting with witnesses regarding sentencing, preparing for sentencing including review and rebuttal of prosecutorial sentencing materials, preparing for and attending sentencing hearings.
Post Judgment	Work performed post-disposition by the trial defender including litigating restitution, referring the case to OPDS for appeal, preparing file for appeal/transition to appellate attorney, and all appropriate post-sentence motions, e.g. motions to terminate or modify probation, motions for reductions, motions for relief from sex offender registration, motions to reconsider or to correct judgments, expungements, sentencing modifications, troubleshooting lingering case-related matters, and closing the file. Communicating with the client on post-judgment issues. Reviewing collateral consequence notices with client.

# The Oregon Project

## Appendix C: Case Types and Task Definitions

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### Case Type Definitions – Juvenile – Dependency

Case Type	Description
Parent Representation	Any case in which you represent a parent in a child welfare proceeding other than a Termination of Parental rights case.
Child Representation	Any case in which you represent a child in a child welfare proceeding other than a Termination of Parental rights case.

### Case Task Definitions – Juvenile – Dependency

Case Task	Description
<b>Initial Jurisdiction Case Tasks</b>	
Client Communication	All client communication through initial disposition on jurisdiction (mail, email, phone, in-person, home visit etc.) (does not include Post-Jurisdiction communication, which falls under Post-Jurisdiction).
Client Advocacy and Support	Working with child welfare, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/educational/other issues affecting client; attending meetings or proceedings related to or potentially impacting the case (excluding Post- Jurisdiction Client Advocacy and Support, which falls under Post-Jurisdiction Client Advocacy and Support).
Discovery / Case Analysis	All discovery and case analysis conducted through initial disposition, except for court prep, including, but not limited to: <ol style="list-style-type: none"> <li>a. Ordering and obtaining discovery materials and other case-related documents, such as medical records, mental health records, criminal records, educational records, treatment records, etc.;</li> <li>b. Talking to service providers, including foster parents;</li> <li>c. Reviewing, analyzing or organizing case-related materials/evidence including DHS materials;</li> <li>d. Working with investigators and social workers;</li> <li>e. Writing/editing case related-memos;</li> <li>f. Negotiations to resolve the petition;</li> <li>g. Attorney conducted investigation, including reviewing photos, videos, physical evidence, and social media;</li> <li>h. Attorney conducted interviews of witnesses; and</li> <li>i. Documenting case file.</li> </ol>
Experts	Locating, obtaining funding approval for, corresponding, consulting with and reviewing reports of experts for the defense, and preparing experts for hearings (except Experts exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Legal Research, Motions Practice, Other Writing	Researching, drafting and filing of motions, pleadings, briefs, and pre-jurisdiction report (except research and writing exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Court Preparation	Preparing for all hearings through initial disposition on jurisdiction including preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of court preparation (excluding preparation for Post-Disposition Hearing, which falls under Post-Disposition).

## The Oregon Project

### Appendix C: Case Types and Task Definitions

#### Case Task Definitions – Juvenile – Dependency (continued)

Case Task	Description
<b>Initial Jurisdiction Case Tasks</b>	
Court Time	In court time all hearings through initial disposition on jurisdiction, including shelter hearings, pretrial conferences, status conferences, motions hearings, settlement conferences, jurisdictional hearings and/or disposition.
Appeal Preparation	Filing notice of appeal and appellate referral, filing appropriate motions, preparing the case file for appeal; meeting with appellate attorney; drafting transition memo.
<b>Case Tasks Following Initial Disposition on Jurisdiction</b>	
Post-Jurisdiction Client Communication	All client communication after initial disposition on jurisdiction (mail, email, phone, in-person, home visits etc.).
Post-Jurisdiction Client Advocacy and Support	After initial disposition on jurisdiction: Working with child welfare, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/ educational/other issues affecting client; attending meetings or proceedings related to or potentially impacting the case.
Post-Jurisdiction Hearing Preparation	After initial disposition on jurisdiction: Obtaining and reviewing provider reports; conducting post jurisdiction discovery; legal research and writing for post-jurisdiction hearings; preparation of post-jurisdiction motions; hiring and consulting with post-jurisdiction experts; preparing for post-jurisdiction hearings.
Post-Jurisdiction Court Time	Attending hearings after initial disposition on jurisdiction, including Citizen Review Board hearings (CRBs).

#### Case Type Definitions – Juvenile – Termination of Parental Rights

Case Type	Description
Parent Representation	Any Termination of Parental rights case in which you represent a parent in a child welfare proceeding.
Child Representation	Any Termination of Parental rights case in which you represent a child in a child welfare proceeding.

## The Oregon Project

### Appendix C: Case Types and Task Definitions

#### Case Task Definitions – Juvenile – Termination of Parental Rights

Case Task	Description
Client Communication	All client communication through initial disposition on jurisdiction (mail, email, phone, in-person, home visit etc.) (does not include Post-Jurisdiction communication, which falls under Post-Jurisdiction).
Client Advocacy and Support	Working with child welfare, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/educational/other issues affecting client; attending meetings or proceedings related to or potentially impacting the case(excluding Post-Jurisdiction Client Advocacy and Support, which falls under Post-Jurisdiction Client Advocacy and Support).
Discovery / Case Analysis	All discovery and case analysis conducted through initial disposition, except for court prep, including, but not limited to: <ul style="list-style-type: none"> <li>a. Ordering and obtaining discovery materials and other case-related documents, such as medical records, mental health records, criminal records, educational records, treatment records, etc.;</li> <li>b. Talking to service providers, including foster parents;</li> <li>c. Reviewing, analyzing or organizing case-related materials/evidence including DHS materials;</li> <li>d. Working with investigators and social workers;</li> <li>e. Writing/editing case related-memos;</li> <li>f. Negotiations to resolve the petition;</li> <li>g. Attorney conducted investigation, including reviewing photos, videos, physical evidence, and social media;</li> <li>h. Attorney conducted interviews of witnesses; and</li> <li>i. Documenting case file.</li> </ul>
Experts	Locating, obtaining funding approval for, corresponding, consulting with and reviewing reports of experts for the defense, and preparing experts for hearings (except Experts exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Legal Research, Motions Practice, Other Writing	Researching, drafting and filing of motions, pleadings, briefs, and pre-jurisdiction report (except research and writing exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Court Preparation	Preparing for all hearings through initial disposition on jurisdiction including preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of court preparation (excluding preparation for Post-Disposition Hearing, which falls under Post-Disposition).
Court Time	In court time all hearings through initial disposition on jurisdiction, including shelter hearings, pretrial conferences, status conferences, motions hearings, settlement conferences, jurisdictional hearings and/or disposition.

## The Oregon Project

### Appendix C: Case Types and Task Definitions

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#### Case Task Definitions – Juvenile – Termination of Parental Rights (continued)

Case Task	Description
Appeal Preparation	Filing notice of appeal and appellate referral, filing appropriate motions, preparing the case file for appeal; meeting with appellate attorney; drafting transition memo.
Post-Judgment Work	All work performed post-judgment including client communication, assistance with and consulting about mediation, and troubleshooting lingering case-related matters (except Appeal Preparation, which falls under Appeal Preparation).

#### Case Type Definitions – Juvenile – Delinquency

Case Type	Description
Misdemeanor / Other	Defined to include violations, but not probation violations, Status Offenses, Expungements, etc.
Minor Felonies	Defined to include Class C felonies other than sex crimes.
Major Felonies	Defined as all other felonies originating in juvenile court in which waiver is not sought.
Waiver / Measure 11 Cases <sup>102</sup>	Defined as all cases in which waiver is sought and all Measure 11 cases.
Probation Violation / Contempt	Probation violation cases.

#### Case Task Definitions – Juvenile – Delinquency

Case Task	Description
Client Communication	All client communication (mail, email, phone, in-person, etc.).
Parent / Guardian / Custodian Communication	All communications with the client's parent(s)/ guardian(s)/custodian(s) (except communication of an investigatory nature, which falls under Attorney Investigation/Interviews).
Client Advocacy and Support	Working with social services, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/educational/other issues affecting client during juvenile delinquency case; attending other meetings or proceedings related to or potentially impacting juvenile delinquency charges (excluding preparation for court hearings, which falls under preparation and excluding post-disposition, which falls under post-disposition).
Discovery / Case Analysis	Ordering and obtaining discovery materials and other case-related documents, including medical records, educational records, treatment records, public records requests and nonparty record production. Reviewing, analyzing or organizing case-related materials/evidence including any court-ordered evaluations, video evidence, social media evidence, etc.; working with investigators; writing/editing case related-memos; defense team meetings related to discovery or case analysis; documenting case file.

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<sup>102</sup> In 2019, the Legislature passed a law eliminating the applicability of Measure 11 to juveniles, which ended the automatic transfer of juveniles (ages 15017) charged with certain offenses to adult court.

**The Oregon Project**  
**Appendix C: Case Types and Task Definitions**

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**Case Task Definitions – Juvenile – Delinquency (continued)**

<b>Case Task</b>	<b>Description</b>
Attorney Investigation / Attorney Interviews	Case-related investigation activities, including social history investigations, viewing the scene and physical evidence, canvassing for and interviewing witnesses, serving subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney. Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Analysis).
Experts	Locating, obtaining funding approval for, corresponding, consulting with and reviewing reports of experts for the defense, and preparing experts for hearings.
Legal Research, Motions Practice, Other Writing	Researching, drafting and filing of motions, pleadings, briefs, etc. related to pretrial, motions, or jurisdiction hearing.
Negotiations	Communications and discussions with prosecutor/Juvenile Department/Oregon Youth Authority in an effort to resolve a case.
Court Preparation	Preparing for any and all pre-jurisdiction, jurisdictional and dispositional hearings including defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., preparing for rebuttal of prosecutorial materials and addressing restitution, subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of trials and pre-adjudication hearings.
Court Time	Any and all in court time at hearings or conferences (e.g. Including shelter hearings, detention reviews, review hearings, status conference, motions hearings, settlement conferences, jurisdictional hearings and/or disposition, including restitution hearing).
Post-Disposition	All work performed post-disposition including client communication; client advocacy and support work post-disposition; preparing for and arguing post-disposition hearings, including sex offender registration hearings; preparing file for appeal/transition to appellate attorney; assisting with compliance with conditions; meeting participation; ensuring appropriate release; property returns; petitions for modification; and troubleshooting lingering case-related matters.

**The Oregon Project**  
**Appendix D: Delphi Panel Characteristics**

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**Delphi Panel Characteristics**

The below charts summarizes the experience of the Round Three participants (the Delphi panels):

<b>Years as Practicing Attorney</b>	<b>Adult Criminal</b>	<b>Juvenile</b>
Less than 5 years	1	3
5 to 15 years	12	6
16 to 25 years	10	12
More than 25 years	7	7

<b>Category</b>	<b>Adult Criminal</b>	<b>Juvenile</b>
Public defender at a non-profit public defender contract office	14	12
Attorney at a law firm or consortium that has a public defense contract with OPDS	10	16
Private practice criminal defense attorney who does some minimal public defense work	6	0



Adult Criminal Case Intake Form – Los Angeles, California County Bar Association

Effective as of 07/27/21

INDIGENT CRIMINAL DEFENSE | LOS ANGELES COUNTY  
APPOINTMENT | BAR ASSOCIATION

CLIENT INTAKE SHEET

Attorney Name: \_\_\_\_\_

Duty Date: \_\_\_\_\_ / Non-Duty Day Pick-Up Date: \_\_\_\_\_

Case #: \_\_\_\_\_ Court: \_\_\_\_\_ Court Dept #: \_\_\_\_\_

Client Information

Name: \_\_\_\_\_ AKA/Booked as: \_\_\_\_\_

DOB: \_\_\_\_\_ / Age: \_\_\_\_ Gender:  M  F Race/ Ethnic Origin Please select: 

Client's Place of Birth (City, Country): \_\_\_\_\_

Whether or not your client is impacted by US immigration policy, please check this box affirming that you have considered their eligibility for expulsion/citizenship and documented this in their file.

Contact Information

Client Address: \_\_\_\_\_

Client Phone Number: (\_\_\_\_) \_\_\_\_\_

Name of Family Contact: \_\_\_\_\_

Please indicate this person's relationship to client: \_\_\_\_\_

Family Number: (\_\_\_\_) \_\_\_\_\_

Interpreter Required:  Yes  No Preferred Language: \_\_\_\_\_

Charging Document

Complaint/Information Status:  New  PV

Complaint Date: \_\_\_\_\_, and/or Next Hearing Date: \_\_\_\_\_

**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

**Adult Criminal Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

Next Hearing Type: \_\_\_\_\_ Filing Date: \_\_\_\_\_

Case Information

Was this an instance of witness representation?  Yes  No  
If yes, you may skip the Detention Status and Charges sections.

What stage were you appointed? \_\_\_\_\_

DCFS or Dependency Court/Mental Health Court Involvement?  Yes  No

If yes,

Name/ Contact of service provider: \_\_\_\_\_

Name/ Contact of service-related Attorney: \_\_\_\_\_

Charges (Code Section):	Indicate Felony (F) or Misdemeanor (M):	Enhancements:
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____

Max Exposure: \_\_\_\_\_

Detention Status

My client is currently detained:  Yes  No  
If no, please enter NA for the following fields.

If Detained After Arraignment:  House Arrest (CDP)  County Jail: Please select:

Other: \_\_\_\_\_ Detention Location: \_\_\_\_\_

Bail Review Date: \_\_\_\_\_ Preliminary Hearing Date: \_\_\_\_\_ Other: \_\_\_\_\_

**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

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**Adult Criminal Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

Co-Defendant Information

If there was no co-defendant involvement, please enter NA

Names of Co-Defendant(s):	Case Number	Co-Attorneys of Co-Defendants
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other Open Cases

Charges:

Case Numbers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney: \_\_\_\_\_

Probation Officer: \_\_\_\_\_

Next Court Date: \_\_\_\_\_

Court/ Judge: \_\_\_\_\_

Notes

**INFORMATION MUST BE SUBMITTED TO OFFICE WITHIN 48 HOURS OF APPOINTMENT**

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association**

Effective as of 07/30/21

INDIGENT CRIMINAL DEFENSE APPOINTMENT | LOS ANGELES COUNTY BAR ASSOCIATION

**CASE RESOLUTION FORM**

Date of Resolution: \_\_\_\_\_ Attorney Name: \_\_\_\_\_  
Client Name: \_\_\_\_\_ Case Number: \_\_\_\_\_  
Court: \_\_\_\_\_ Department: \_\_\_\_\_  
Judicial Officer: \_\_\_\_\_

Ancillary Resources Used:

ICDA Team: \_\_\_\_\_ Investigator: \_\_\_\_\_  
Social Worker: \_\_\_\_\_ Expert Witness: \_\_\_\_\_  
Additional Names: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is this a Prop 57 or a Transfer Case?  Yes  No

Case Status: Please select:   
Result: Please select:   
Sustained Max:  
Length: \_\_\_\_\_ Period: Please select:   
Client's Location: Please select:   
Facility: \_\_\_\_\_

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

<p><b>INDIGENT CRIMINAL DEFENSE</b>   <b>LOS ANGELES COUNTY</b>  <b>APPOINTMENT</b>   <b>BAR ASSOCIATION</b></p>	
<b>Charges</b>	
<p>1. Count 1:                  _____                  Enhancements: _____                  Notes:</p>	<p>Charge(s) Sustained:                  _____                  Disposition: Please select: _____                  Dispo. Date:                  Sentence: Please select: _____                  Sentence Date:                  Alleged Max:           Period: Please select: _____</p>
<p>2. Count 2:                  _____                  Enhancements: _____                  Notes:</p>	<p>Charge(s) Sustained:                  _____                  Disposition: Please select: _____                  Dispo. Date:                  Sentence: Please select: _____                  Sentence Date:                  Alleged Max:           Period: Please select: _____</p>
<p>3. Count 3:                  _____                  Enhancements: Please select: _____                  Notes:</p>	<p>Charge(s) Sustained:                  _____                  Disposition: Please select: _____                  Dispo. Date:                  Sentence: Please select: _____                  Sentence Date:                  Alleged Max:           Period: Please select: _____</p>
2	

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

<p><b>INDIGENT CRIMINAL DEFENSE</b>  <b>APPOINTMENT</b></p>	<p><b>LOS ANGELES COUNTY</b>  <b>BAR ASSOCIATION</b></p>
<b>Charges</b>	
<p>4. Count 1:          _____          Enhancements: Please select: <input type="button" value="v"/>          Notes:</p>	<p>Charge(s) Sustained:          _____          Disposition: Please select: <input type="button" value="v"/>          Dispo. Date:          Sentence: Please select: <input type="button" value="v"/>          Sentence Date:          Alleged Max:      Period: Please select <input type="button" value="v"/></p>
<p>5. Count 2:          _____          Enhancements: Please select: <input type="button" value="v"/>          Notes:</p>	<p>Charge(s) Sustained:          _____          Disposition: Please select: <input type="button" value="v"/>          Dispo. Date:          Sentence: Please select: <input type="button" value="v"/>          Sentence Date:          Alleged Max:      Period: Please select <input type="button" value="v"/></p>
<p>6. Count 3:          _____          Enhancements: Please select: <input type="button" value="v"/>          Notes:</p>	<p>Charge(s) Sustained:          _____          Disposition: Please select: <input type="button" value="v"/>          Dispo. Date:          Sentence: Please select: <input type="button" value="v"/>          Sentence Date:          Alleged Max:      Period: Please select <input type="button" value="v"/></p>
3	

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

<p><b>INDIGENT CRIMINAL DEFENSE APPOINTMENT</b></p>	<p><b>LOS ANGELES COUNTY BAR ASSOCIATION</b></p>																				
<p><b>Schedule</b></p> <p>Contested Hearings Conducted:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;">Description</th> <th style="width: 50%; text-align: center;">Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> </tbody> </table> <p style="margin-top: 20px;">*Please indicate results or any other notable information in the Notes section below.</p>			Description	Date	1.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____	2.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____	3.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____	4.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____					
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<p>4</p>																					

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

INDIGENT CRIMINAL DEFENSE | LOS ANGELES COUNTY  
APPOINTMENT | BAR ASSOCIATION

Notes

Please indicate any notable effort put into the case, not covered elsewhere on this form:



**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

**Juvenile Case Intake Form – Los Angeles, California County Bar Association**

Effective as of 09/01/18

**INDEPENDENT JUVENILE DEFENDER PROGRAM** | LOS ANGELES COUNTY BAR ASSOCIATION

**CLIENT INTAKE SHEET**

Attorney Name: \_\_\_\_\_

Duty Date: \_\_\_\_\_ / Non-Duty Pick-Up Date: \_\_\_\_\_

Case #: \_\_\_\_\_ Court: \_\_\_\_\_ Court Dept. #: \_\_\_\_\_

<b>EMAIL TO:</b>	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
	Bethany Judson (213) 896-6472 <a href="mailto:bjudson@lacba.org">bjudson@lacba.org</a>	Tracy Andrade (213) 896-6505 <a href="mailto:tandrade@lacba.org">tandrade@lacba.org</a>	Shanice Hawthorne (213) 833-6706 <a href="mailto:shawthorne@lacba.org">shawthorne@lacba.org</a>	Sarah Fiskin (213) 896-6430 <a href="mailto:sfiskin@lacba.org">sfiskin@lacba.org</a>

**Client Information**

Name: \_\_\_\_\_ AKA/Booked as: \_\_\_\_\_

DOB: \_\_\_\_\_ / AGE: \_\_\_\_ Gender:  M  F Race/ Ethnic Origin: Select: ▼

Minor's Place of Birth (City, Country): \_\_\_\_\_

Whether or not your client is a potential candidate, please check this box affirming that you have considered their eligibility for SIJS and that this is sufficiently documented in their file.

**Contact Information**

Client Phone Number: (\_\_\_\_) \_\_\_\_\_

Address/ Placement Location: \_\_\_\_\_

Name of Parent/ Legal Guardian/ DCFS Placement: \_\_\_\_\_

Please indicate this person's relationship to client: \_\_\_\_\_

Parent/ Guardian/ Placement Phone Number: (\_\_\_\_) \_\_\_\_\_

Interpreter Required? (Including Parents) :  Yes  No Preferred Language: \_\_\_\_\_

**Petition Information**

Petition Status:  New  Active Petition Type:  Detained  Non-Detained

Petition Date: \_\_\_\_\_ Next Hearing Date: \_\_\_\_\_ Next Hearing Type: \_\_\_\_\_

**Juvenile Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

**Case Information**

Was this an instance of witness representation?  Yes  No  
If yes, you may skip the Detention Status and Charges sections.

WIC 450/ AB12/212 appointment?  Yes  No  
If yes, you may skip the Detention Status section.

Were you appointed post-disposition?  Yes  No

Is this a 601 status offense?  Yes  No

Is your client facing a transfer motion to adult court?  Yes  No

Is this a Prop 57 return case?  Yes  No

Was there any DCFS or Dependency Court Involvement?  Yes  No

If yes,

Name/ Contact of Social Worker: \_\_\_\_\_

Name/ Contact of Dependency Court Attorney: \_\_\_\_\_

Charges (Code Section):	Indicate Felony (F) or Misdemeanor (M):	Enhancements:
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____

Max Exposure: \_\_\_\_\_

**Detention Status**

My client is currently detained:  Yes  No  
If no, please enter NA for the following fields.

If Detained After Arraignment:

House Arrest (CDP)  Juvenile Hall/ Camp  Jail  Other: \_\_\_\_\_

Detention Location: \_\_\_\_\_  
Please provide full name.

Dennis "H" Hearing Date: \_\_\_\_\_ William "M" Hearing Date: \_\_\_\_\_ Other: \_\_\_\_\_

Juvenile Case Intake Form – Los Angeles, California County Bar Association  
(continued)

**Co-Minor Information**

If there was no co-minor involvement, please enter NA.

Names of Co-Minor(s):	Case Number:	Co-Attorney for Co-Minors:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Other Open Petitions/ Probation**

If there are no other open petitions, please enter NA.

Charges:	Petition Date:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

Attorney: \_\_\_\_\_ Probation Officer: \_\_\_\_\_  
Next Court Date: \_\_\_\_\_ Court/ Judge: \_\_\_\_\_

**Notes**

INFORMATION MUST BE SUBMITTED TO OFFICE WITHIN 48 HOURS OF APPOINTMENT

Juvenile Case Resolution Form – Los Angeles, California County Bar Association

Effective as of 05/01/18

**INDEPENDENT JUVENILE DEFENDER PROGRAM** | LOS ANGELES COUNTY BAR ASSOCIATION

**CASE RESOLUTION FORM**

Date of Resolution: \_\_\_\_\_ Attorney Name: \_\_\_\_\_

Client Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Court: \_\_\_\_\_ Department: \_\_\_\_\_

Judicial Officer: \_\_\_\_\_ Petition Date: \_\_\_\_\_

Ancillary Resources Used:

Investigator  Social Worker  Writ Attorney  Resource Attorney

Expert Witnesses Appointed: \_\_\_\_\_

Charges in Petition: \_\_\_\_\_ Charges Sustained: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MAX: \_\_\_\_\_ MAX: \_\_\_\_\_

Basis of Charges Sustained:

Admission

Adjudication

If your client admitted the charges, check this box if you have sufficiently documented your rationale for admission as opposed to adjudicating the matter.

Juvenile Case Resolution Form – Los Angeles, California County Bar Association  
(continued)

Disposition at time of Admission/Resolution:

- |                              |   |                                       |
|------------------------------|---|---------------------------------------|
| <input type="checkbox"/> 654 | <input type="checkbox"/> Suitable Placement | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> 725 | <input type="checkbox"/> CCP Term: _____    | <input type="checkbox"/> Transferred  |
| <input type="checkbox"/> 790 | <input type="checkbox"/> DJF Term: _____    | Dept: _____                           |
| <input type="checkbox"/> HOP | <input type="checkbox"/> Dismissed          | Attorney: _____                       |

Contested Hearings Conducted:

- William M.  
Witnesses Called: \_\_\_\_\_
- Dennis H.  
Witnesses Called: \_\_\_\_\_
- Motion to Suppress  
Witnesses Called: \_\_\_\_\_
- Adjudication  
Witnesses Called: \_\_\_\_\_
- Disposition  
Witnesses Called: \_\_\_\_\_
- Other: \_\_\_\_\_

Did you file a notice of appeal?

- Yes    No    No Contested Issue of Law or Fact

**Juvenile Case Resolution Form – Los Angeles, California County Bar Association  
(continued)**

Written Motions Filed

700.1 (WIC analog to PC 1538.5)

Other: \_\_\_\_\_

Oral Motions Argued

701.1

Other: \_\_\_\_\_

How many times did you meet with the client outside of court appearances? \_\_\_\_\_

Please indicate any notable effort put into the case, not covered elsewhere on this form:

## **Exhibits**

---

Statewide Cases Represented by Court Appointed Attorneys by Type and Estimated Caseload

STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD

Adult Criminal						
Case Type	2017	2018	2019	2020	Jan 1 - October 10, 2021	Estimated Caseload
Low-Level Misdemeanor	26,908	30,604	28,533	24,942	12,398	25,407
Complex Misdemeanor	9,610	10,413	9,328	8,787	5,622	9,083
Low-Level Felony	23,828	19,303	19,461	17,641	10,395	18,738
Mid-Level Felony	2,043	2,002	1,855	1,754	1,238	1,851
High-Level Felony	1,651	1,724	1,571	1,548	1,352	1,649
Homicide and Sex Cases	55	58	55	30	51	53
Probation Violations <sup>103</sup>	25,227	25,145	24,567	15,092	3,095	18,807
<b>Total Adult Criminal<sup>103</sup></b>	<b>89,322</b>	<b>89,249</b>	<b>85,370</b>	<b>69,794</b>	<b>34,151</b>	<b>75,588</b>

<sup>103</sup> Probation Violation Data within the Adult Criminal data above is stated for the period January 1 – March 31, 2021.



# The Oregon Project

## Exhibit #1

### Statewide Cases Represented by Court Appointed Attorneys by Type and Estimated Caseload

#### STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD

Juvenile						Estimated Caseload
Juvenile - Dependency						
Case Type	2017	2018	2019	2020	Q1 2021	
Parent Representation	10,094	8,380	7,920	5,980	1,148	7,888
Child Representation	5,335	4,401	4,114	3,096	608	4,130
<b>Total Juvenile - Dependency</b>	<b>15,429</b>	<b>12,781</b>	<b>12,034</b>	<b>9,076</b>	<b>1,756</b>	<b>12,018</b>

Juvenile - Termination of Parental Rights						Estimated Caseload
Case Type	2017	2018	2019	2020	Q1 2021	
Parent Representation	2,313	2,268	2,117	1,423	560	2,043
Child Representation	1,434	1,377	1,250	846	322	1,230
<b>Total Juvenile - Termination of Parental Rights</b>	<b>3,747</b>	<b>3,645</b>	<b>3,367</b>	<b>2,269</b>	<b>882</b>	<b>3,273</b>

Juvenile - Delinquency						Estimated Caseload
Case Type	2017	2018	2019	2020	Q1 2021	
Misdemeanor / Other	1,632	1,783	1,641	1,069	159	1,479
Minor Felonies	902	912	884	728	117	834
Major Felonies	175	167	155	118	18	149
Waiver / Measure 11 Cases	144	140	166	306	56	191
Probation Violation / Contempt	2,368	2,443	2,251	1,033	159	1,942
<b>Total Juvenile - Delinquency</b>	<b>5,221</b>	<b>5,445</b>	<b>5,097</b>	<b>3,254</b>	<b>509</b>	<b>4,594</b>

<b>Total Juvenile</b>	<b>24,397</b>	<b>21,871</b>	<b>20,498</b>	<b>14,599</b>	<b>3,147</b>	<b>19,885</b>
-----------------------	---------------	---------------	---------------	---------------	--------------	---------------

<b>GRAND TOTAL</b>	<b>113,719</b>	<b>111,120</b>	<b>105,868</b>	<b>84,393</b>	<b>37,298</b>	<b>95,473</b>
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For Adult Criminal cases, in comparing the data provided to Published Annual Cases Filed reports, which can be found at <https://www.courts.oregon.gov/about/Pages/reports-measures.aspx>, the data above, excluding Probation Violations / Contempt cases was extracted from files that were within 0.5% and 9% of the total datasets. Certain violation cases, that are classified as felony or misdemeanors in the published reports were excluded from the tables above, as those cases are not eligible for court appointed attorneys. In total, the case counts above are less than referenced published reports.

#### Sources:

- Adult Criminal Probation Violations: *OPDS Contractor database, populated by monthly reports from Contractors based on appointed cases by case number and filing date.*
- Adult Criminal - All Other Case Types: *Sourced from Oregon Judicial Department dashboard data, based on case filed date for cases and clients represented by court appointed attorneys. This data was pulled through October 10, 2021 for 2021 presented above. See Exhibit 3 for certain allocations of Case Types.*
- Juvenile - Probation Violations: *OPDS Contractor database, populated by monthly reports from Contractors based on appointed cases by case number and filing date. For Parent Child Representation Program counties, the data is sourced from the Oregon Judicial Department Pre-trial dashboard, which are based on disposed date, and represent 29, 48, 79, 66, and 38 cases respectively for the periods presented above from 2017-Q1 2021.*
- Juvenile - All Other Case Types: *Sourced from Oregon Judicial Department dashboard data, based on case filed date for cases and clients represented by court appointed attorneys.*

**The Oregon Project**  
**Exhibit #2**  
**Workload Analysis**

**WORKLOAD ANALYSIS**

**ADULT CRIMINAL**

	[2]	[1]	
<b>Case Type</b>	<b>Delphi Hours Per Case</b>	<b>Estimated Annual Caseload</b>	<b>Total Hours</b>
Low-Level Misdemeanor	22.26	25,407	565,556
Complex Misdemeanor	36.98	9,083	335,887
Low-Level Felony	39.78	18,738	745,378
Mid-Level Felony	47.73	1,851	88,362
High-Level Felony	148.95	1,649	245,587
Homicide and Sex Cases	552.46	53	29,170
Probation Violations	8.33	18,807	156,666
<b>Total Adult Criminal</b>		<b>75,588</b>	<b>2,166,606</b>

**JUVENILE**

	[3]	[1]	
<b>Case Type</b>	<b>Delphi Hours Per Case</b>	<b>Estimated Annual Caseload</b>	<b>Total Hours</b>
<i>Dependency</i>			
Dependency - Parent Representation	115.62	7,888	911,956
Dependency - Child Representation	117.07	4,130	483,540
<i>Termination of Parental Rights</i>			
TPR - Parent Representation	104.92	2,043	214,309
TPR - Child Representation	76.83	1,230	94,528
<i>Delinquency</i>			
Misdemeanor / Other	35.65	1,479	52,712
Minor Felonies	43.79	834	36,506
Major Felonies	68.50	149	10,202
Waiver / Measure 11 Cases	261.48	191	49,958
Probation Violation / Contempt	14.07	1,942	27,326
<b>Total Juvenile</b>		<b>19,885</b>	<b>1,881,036</b>
<b>GRAND TOTAL</b>		<b>95,473</b>	<b>4,047,642</b>
<b>Hours needed by Contract Attorneys [4]</b>			<b>3,926,213</b>

[1] Based on the average opened cases per year for the respective case grouping and attorney type (see Exhibit 1)

[2] Per the Adult Criminal Delphi panel results (see Exhibit 4.1)

[3] Per the Juvenile Delphi panel results (see Exhibit 4.2)

[4] The caseload data – because it was pulled from the courts – did not exclude cases taken by non-contract attorneys. It included all "court appointments." To address this imbalance, the caseload numbers were reduced by the amount (best estimate) that could be attributed to non-contract attorneys by reducing the total hours needed to provide adequate representation based on current caseloads. We reduced the needed hours by 3% (meaning 97% of the needed hours were estimated to be covered by contract FTEs), because OPDS staff estimated that 2-3% of cases are handled by non-contract attorneys.

**The Oregon Project**  
**Exhibit #3**  
**Allocated Cases**

**ALLOCATIONS**

<b>Low-Felony to Mid-Level Felony</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021 partial</b>
<i>Initial Property, Person and Motor Vehicle Felonies within Low-Level Felony</i>	6,998	6,841	6,369	6,009	4,246
BM57 Cases allocated to Mid-Level Felony @ 29%	2,029	1,984	1,847	1,743	1,231
Remain within Low-Level Felony	4,969	4,857	4,522	4,266	3,015

*Based on information from the Multnomah County District Attorneys office, it was noted that 29% of Multnomah County's property felonies were subject to Ballot Measure 57 (data from September 2017-August 2019).*

*This Multnomah County rate was applied to the initial property, person, and motor vehicle felony cases within the statewide dataset to the Mid-Level Felony category, where BM57 cases are charged.*

<b>Low-Level Misdemeanor to Complex Misdemeanors</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021 partial</b>
<i>Initial Domestic Violence Misdemeanors within Low-Level Misdemeanor Category</i>	5,145	5,738	4,833	4,832	3,235
DV and MDT cases allocated to Complex Misdemeanors @ 50%	2,573	2,869	2,417	2,416	1,617
Remain within Low-Level Misdemeanor	2,572	2,869	2,416	2,416	1,618

*Based on information from the Multnomah County District Attorneys office, we were provided historical information (based on data from September 2017-August 2019) on issued cases, showing the percentage of all assault IV, harrasment and menacing charges that were assigned to the Domestic Violence and Multi-Disciplinary Team units. Cases assigned to these units should be cateogrizd as Complex Misdemeanors.*

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### Low-Level Misdemeanors

	Frequency	Total
% Should Plea / Otherwise Resolve	69%	8.28
% Should Go To Trial	31%	13.98
<b>Total:</b>		<b>22.26</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	3.20	100%	3.20	6.00	100%	6.00
Client Support Services	1.00	75%	0.75	1.70	75%	1.28
Discovery / Case Prep	1.80	100%	1.80	5.50	100%	5.50
Attorney Investigation / Interviews	1.20	40%	0.48	2.40	84%	2.02
Experts	1.80	24%	0.43	2.70	26%	0.70
Legal Research, Motions Practice	2.10	40%	0.84	4.10	100%	4.10
Negotiations	0.75	100%	0.75	1.00	100%	1.00
Court Prep	1.00	100%	1.00	10.00	100%	10.00
Court Time	1.50	100%	1.50	12.50	100%	12.50
Sentencing / Mitigation	0.75	100%	0.75	1.20	100%	1.20
Post Judgment	0.50	100%	0.50	0.80	100%	0.80
			<b>12.00</b>			<b>45.10</b>

#### Complex Misdemeanors

	Frequency	Total
% Should Plea / Otherwise Resolve	55%	9.49
% Should Go To Trial	45%	27.49
<b>Total:</b>		<b>36.98</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	3.00	100%	3.00	6.00	100%	6.00
Client Support Services	1.30	75%	0.98	2.00	75%	1.50
Discovery / Case Prep	3.00	100%	3.00	8.00	100%	8.00
Attorney Investigation / Interviews	1.75	50%	0.88	3.00	90%	2.70
Experts	2.50	50%	1.25	3.50	75%	2.63
Legal Research, Motions Practice	2.00	75%	1.50	6.00	100%	6.00
Negotiations	1.00	90%	0.90	1.25	100%	1.25
Court Prep	1.50	100%	1.50	12.00	100%	12.00
Court Time	1.50	100%	1.50	18.00	100%	18.00
Sentencing / Mitigation	2.00	100%	2.00	2.00	100%	2.00
Post Judgment	0.75	100%	0.75	1.00	100%	1.00
			<b>17.26</b>			<b>61.08</b>

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### Low-Level Felony

	Frequency	Total
% Should Plea / Otherwise Resolve	70%	16.88
% Should Go To Trial	30%	22.90
<b>Total:</b>		<b>39.78</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	4.00	100%	4.00	7.00	100%	7.00
Client Support Services	1.75	75%	1.31	2.50	80%	2.00
Discovery / Case Prep	4.50	100%	4.50	10.00	100%	10.00
Attorney Investigation / Interviews	2.00	80%	1.60	3.50	90%	3.15
Experts	2.50	45%	1.13	3.50	55%	1.93
Legal Research, Motions Practice	4.50	85%	3.83	8.00	100%	8.00
Negotiations	1.50	100%	1.50	1.50	100%	1.50
Court Prep	1.50	100%	1.50	15.00	100%	15.00
Court Time	1.50	100%	1.50	24.00	100%	24.00
Sentencing / Mitigation	2.50	100%	2.50	2.50	100%	2.50
Post Judgment	0.75	100%	0.75	1.25	100%	1.25
			<b>24.12</b>			<b>76.33</b>

#### Mid-Level Felony

	Frequency	Total
% Should Plea / Otherwise Resolve	80%	28.70
% Should Go To Trial	20%	19.03
<b>Total:</b>		<b>47.73</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	5.00	100%	5.00	9.00	100%	9.00
Client Support Services	2.50	75%	1.88	3.00	80%	2.40
Discovery / Case Prep	8.00	100%	8.00	12.00	100%	12.00
Attorney Investigation / Interviews	3.00	90%	2.70	4.50	100%	4.50
Experts	3.00	60%	1.80	5.00	70%	3.50
Legal Research, Motions Practice	5.00	100%	5.00	13.00	100%	13.00
Negotiations	2.50	100%	2.50	3.00	100%	3.00
Court Prep	2.50	100%	2.50	20.00	100%	20.00
Court Time	3.00	100%	3.00	24.00	100%	24.00
Sentencing / Mitigation	2.50	100%	2.50	2.50	100%	2.50
Post Judgment	1.00	100%	1.00	1.25	100%	1.25
			<b>35.88</b>			<b>95.15</b>

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### High-Level Felony

	Frequency	Total
% Should Plea / Otherwise Resolve	75%	81.64
% Should Go To Trial	25%	67.31
<b>Total:</b>		<b>148.95</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	14.00	100%	14.00	30.00	100%	30.00
Client Support Services	5.00	95%	4.75	7.00	100%	7.00
Discovery / Case Prep	24.00	100%	24.00	60.00	100%	60.00
Attorney Investigation / Interviews	10.00	100%	10.00	16.00	100%	16.00
Experts	9.00	90%	8.10	15.00	95%	14.25
Legal Research, Motions Practice	22.00	100%	22.00	35.00	100%	35.00
Negotiations	4.00	100%	4.00	6.00	100%	6.00
Court Prep	8.00	100%	8.00	50.00	100%	50.00
Court Time	7.00	100%	7.00	40.00	100%	40.00
Sentencing / Mitigation	5.00	100%	5.00	8.00	100%	8.00
Post Judgment	2.00	100%	2.00	3.00	100%	3.00
			<b>108.85</b>			<b>269.25</b>

#### Homicide and Sex Cases

	Frequency	Total
% Should Plea / Otherwise Resolve	67%	268.00
% Should Go To Trial	33%	284.46
<b>Total:</b>		<b>552.46</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	60.00	100%	60.00	80.00	100%	80.00
Client Support Services	13.00	100%	13.00	20.00	100%	20.00
Discovery / Case Prep	100.00	100%	100.00	180.00	100%	180.00
Attorney Investigation / Interviews	27.00	100%	27.00	40.00	100%	40.00
Experts	30.00	100%	30.00	45.00	100%	45.00
Legal Research, Motions Practice	80.00	100%	80.00	120.00	100%	120.00
Negotiations	12.00	100%	12.00	16.00	100%	16.00
Court Prep	25.00	100%	25.00	180.00	100%	180.00
Court Time	23.00	100%	23.00	140.00	100%	140.00
Sentencing / Mitigation	25.00	100%	25.00	35.00	100%	35.00
Post Judgment	5.00	100%	5.00	6.00	100%	6.00
			<b>400.00</b>			<b>862.00</b>

The Oregon Project

Exhibit #4.1

Analysis of the Delphi Survey Results – Adult Criminal

**Probation Violations**

	<b>Frequency</b>	<b>Total</b>
<i>% Should Resolve by Stipulation, Admission or Dismissal, etc.</i>	70%	4.89
<i>% Should Go To Contested Hearing</i>	30%	3.44
<b>Total:</b>		<b>8.33</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	1.40	100%	1.40	1.90	100%	1.90
<i>Client Support Services</i>	0.80	75%	0.60	1.00	90%	0.90
<i>Discovery / Case Prep</i>	1.00	100%	1.00	1.50	100%	1.50
<i>Attorney Investigation / Interviews</i>	0.75	55%	0.41	1.10	75%	0.83
<i>Experts</i>	1.00	13%	0.13	1.00	25%	0.25
<i>Legal Research, Motions Practice</i>	0.75	25%	0.19	1.00	85%	0.85
<i>Negotiations</i>	0.50	100%	0.50	0.75	100%	0.75
<i>Court Prep</i>	0.75	100%	0.75	1.50	100%	1.50
<i>Court Time</i>	0.75	100%	0.75	1.75	100%	1.75
<i>Sentencing / Mitigation</i>	0.75	100%	0.75	0.75	100%	0.75
<i>Post Judgment</i>	0.50	100%	0.50	0.50	100%	0.50
			<b>6.98</b>			<b>11.48</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Juvenile Dependency**

**Dependency - Parent Representation**

	Frequency	Total
% Should Resolve by Admission / Other Resolution	78%	83.98
% Should Go To Contested Hearing / Trial	22%	31.64
<b>Total:</b>		<b>115.62</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	5.50	100%	5.50	9.00	100%	9.00
Client Advocacy and Support	3.50	100%	3.50	5.00	100%	5.00
Discovery / Case Analysis	8.00	100%	8.00	12.50	100%	12.50
Experts	3.50	20%	0.70	6.00	35%	2.10
Legal Research, Motions Practice, Other Writing	2.50	100%	2.50	5.00	100%	5.00
Court Preparation	4.00	100%	4.00	12.00	100%	12.00
Court Time	4.00	100%	4.00	22.00	100%	22.00
Appeal Preparation	0.50	5%	0.03	0.50	40%	0.20
Post-Jurisdiction Client Communication	26.00	99%	25.74	26.00	95%	24.70
Post-Jurisdiction Client Advocacy and Support	24.00	100%	24.00	24.00	95%	22.80
Post-Jurisdiction Hearing Preparation	15.00	99%	14.85	15.00	95%	14.25
Post-Jurisdiction Court Time	15.00	99%	14.85	15.00	95%	14.25
			<b>107.67</b>			<b>143.80</b>



The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Dependency - Child Representation**

	<b>Frequency</b>	<b>Total</b>
% Should Resolve by Admission / Other Resolution	78%	85.33
% Should Go To Contested Hearing / Trial	22%	31.74
<b>Total:</b>		<b>117.07</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	4.00	100%	4.00	5.00	100%	5.00
<i>Client Advocacy and Support</i>	5.00	100%	5.00	6.50	100%	6.50
<i>Discovery / Case Analysis</i>	8.00	100%	8.00	12.50	100%	12.50
<i>Experts</i>	3.50	20%	0.70	6.00	35%	2.10
<i>Legal Research, Motions Practice, Other Writing</i>	2.50	100%	2.50	5.00	100%	5.00
<i>Court Preparation</i>	3.00	100%	3.00	12.00	100%	12.00
<i>Court Time</i>	4.00	100%	4.00	22.00	100%	22.00
<i>Appeal Preparation</i>	0.50	5%	0.03	1.00	30%	0.30
<i>Post-Jurisdiction Client Communication</i>	26.00	99%	25.74	26.00	95%	24.70
<i>Post-Jurisdiction Client Advocacy and Support</i>	24.00	99%	23.76	24.00	95%	22.80
<i>Post-Jurisdiction Hearing Preparation</i>	15.00	99%	14.85	15.00	95%	14.25
<i>Post-Jurisdiction Court Time</i>	18.00	99%	17.82	18.00	95%	17.10
			<b>109.40</b>			<b>144.25</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Juvenile Termination of Parental Rights

##### Termination of Parental Rights - Parent Representation

	Frequency	Total
% Should Resolve by Admission / Other Resolution	70%	60.70
% Should Go To Contested Hearing / Trial	30%	44.22
<b>Total:</b>		<b>104.92</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	16.00	100%	16.00	20.00	100%	20.00
Client Advocacy and Support	15.00	100%	15.00	15.00	100%	15.00
Discovery / Case Analysis	25.00	100%	25.00	25.00	100%	25.00
Experts	8.00	90%	7.20	10.00	90%	9.00
Legal Research, Motions Practice, Other Writing	5.00	100%	5.00	10.00	100%	10.00
Court Preparation	12.00	100%	12.00	30.00	100%	30.00
Court Time	4.50	100%	4.50	35.00	100%	35.00
Appeal Preparation	0.50	1%	0.01	1.00	70%	0.70
Post-Judgment Work	2.00	100%	2.00	2.70	100%	2.70
			<b>86.71</b>			<b>147.40</b>

##### Termination of Parental Rights - Child Representation

	Frequency	Total
% Should Resolve by Admission / Other Resolution	70%	42.92
% Should Go To Contested Hearing / Trial	30%	33.91
<b>Total:</b>		<b>76.83</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	8.00	100%	8.00	9.00	100%	9.00
Client Advocacy and Support	10.00	100%	10.00	12.00	100%	12.00
Discovery / Case Analysis	25.00	100%	25.00	25.00	100%	25.00
Experts	3.00	65%	1.95	4.50	65%	2.93
Legal Research, Motions Practice, Other Writing	2.00	100%	2.00	10.00	100%	10.00
Court Preparation	8.00	100%	8.00	17.00	100%	17.00
Court Time	5.00	100%	5.00	35.00	100%	35.00
Appeal Preparation	0.50	1%	0.01	1.00	30%	0.30
Post-Judgment Work	1.50	90%	1.35	2.00	90%	1.80
			<b>61.31</b>			<b>113.03</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Juvenile Delinquency**

**Misdemeanors**

	Frequency	Total
% Should Resolve by Admission / Other Resolution	75%	23.78
% Should Go To Contested Hearing / Trial	25%	11.87
<b>Total:</b>		<b>35.65</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	5.00	100%	5.00	7.00	100%	7.00
Parent / Guardian / Custodian Communication	1.00	90%	0.90	1.30	90%	1.17
Client Advocacy and Support	2.50	100%	2.50	3.00	100%	3.00
Discovery / Case Analysis	5.00	100%	5.00	7.00	100%	7.00
Attorney Investigations / Attorney Interviews	2.00	85%	1.70	3.50	100%	3.50
Experts	4.00	40%	1.60	4.00	45%	1.80
Legal Research, Motions Practice, Other Writing	2.50	100%	2.50	3.50	100%	3.50
Negotiations	2.00	100%	2.00	2.00	100%	2.00
Court Preparation	3.00	100%	3.00	8.00	100%	8.00
Court Time	3.00	100%	3.00	6.00	100%	6.00
Post Disposition	4.50	100%	4.50	4.50	100%	4.50
			<b>31.70</b>			<b>47.47</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Minor Felonies

	<b>Frequency</b>	<b>Total</b>
<i>% Should Resolve by Admission / Other Resolution</i>	60%	21.50
<i>% Should Go To Contested Hearing / Trial</i>	40%	22.29
<b>Total:</b>		<b>43.79</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	4.50	100%	4.50	7.00	100%	7.00
<i>Parent / Guardian / Custodian Communication</i>	1.50	93%	1.40	2.50	93%	2.33
<i>Client Advocacy and Support</i>	4.00	100%	4.00	5.00	100%	5.00
<i>Discovery / Case Analysis</i>	5.00	100%	5.00	7.00	100%	7.00
<i>Attorney Investigations / Attorney Interviews</i>	2.70	90%	2.43	4.00	100%	4.00
<i>Experts</i>	4.00	50%	2.00	4.00	60%	2.40
<i>Legal Research, Motions Practice, Other Writing</i>	3.00	100%	3.00	4.00	100%	4.00
<i>Negotiations</i>	2.00	100%	2.00	2.00	100%	2.00
<i>Court Preparation</i>	4.00	100%	4.00	8.00	100%	8.00
<i>Court Time</i>	2.50	100%	2.50	9.00	100%	9.00
<i>Post Disposition</i>	5.00	100%	5.00	5.00	100%	5.00
			<b>35.83</b>			<b>55.73</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Major Felonies**

	<b>Frequency</b>	<b>Total</b>
<i>% Should Resolve by Admission / Other Resolution</i>	70%	40.13
<i>% Should Go To Contested Hearing / Trial</i>	30%	28.37
<b>Total:</b>		<b>68.50</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	8.00	100%	8.00	12.00	100%	12.00
<i>Parent / Guardian / Custodian Communication</i>	2.50	93%	2.33	3.00	92%	2.76
<i>Client Advocacy and Support</i>	6.00	100%	6.00	7.00	100%	7.00
<i>Discovery / Case Analysis</i>	10.00	100%	10.00	12.00	100%	12.00
<i>Attorney Investigations / Attorney Interviews</i>	4.00	100%	4.00	7.00	100%	7.00
<i>Experts</i>	5.00	70%	3.50	6.00	80%	4.80
<i>Legal Research, Motions Practice, Other Writing</i>	5.00	100%	5.00	7.00	100%	7.00
<i>Negotiations</i>	3.00	100%	3.00	4.00	100%	4.00
<i>Court Preparation</i>	4.50	100%	4.50	16.00	100%	16.00
<i>Court Time</i>	6.00	100%	6.00	16.00	100%	16.00
<i>Post Disposition</i>	5.00	100%	5.00	6.00	100%	6.00
			<b>57.33</b>			<b>94.56</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Measure 11 / Waiver**

	<b>Frequency</b>	<b>Total</b>
<i>% Should Resolve by Admission / Other Resolution</i>	80%	168.08
<i>% Should Go To Contested Hearing / Trial</i>	20%	93.40
<b>Total:</b>		<b>261.48</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	25.00	100%	25.00	45.00	100%	45.00
<i>Parent / Guardian / Custodian Communication</i>	10.00	100%	10.00	15.00	100%	15.00
<i>Client Advocacy and Support</i>	12.00	100%	12.00	20.00	100%	20.00
<i>Discovery / Case Analysis</i>	50.00	100%	50.00	75.00	100%	75.00
<i>Attorney Investigations / Attorney Interviews</i>	12.00	100%	12.00	20.00	100%	20.00
<i>Experts</i>	16.50	100%	16.50	23.00	100%	23.00
<i>Legal Research, Motions Practice, Other Writing</i>	14.00	90%	12.60	30.00	100%	30.00
<i>Negotiations</i>	7.00	100%	7.00	9.00	100%	9.00
<i>Court Preparation</i>	20.00	100%	20.00	135.00	100%	135.00
<i>Court Time</i>	30.00	100%	30.00	80.00	100%	80.00
<i>Post Disposition</i>	15.00	100%	15.00	15.00	100%	15.00
			<b>210.10</b>			<b>467.00</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Probation Violation / Contempt

	Frequency	Total
% Should Resolve by Admission / Other Resolution	80%	9.68
% Should Go To Contested Hearing / Trial	20%	4.39
<b>Total:</b>		<b>14.07</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
<i>Client Communication</i>	1.60	100%	1.60	2.50	100%	2.50
<i>Parent / Guardian / Custodian Communication</i>	0.60	83%	0.50	0.90	86%	0.77
<i>Client Advocacy and Support</i>	1.40	100%	1.40	1.90	100%	1.90
<i>Discovery / Case Analysis</i>	1.10	100%	1.10	2.20	100%	2.20
<i>Attorney Investigations / Attorney Interviews</i>	1.00	80%	0.80	2.00	100%	2.00
<i>Experts</i>	3.00	20%	0.60	3.00	30%	0.90
<i>Legal Research, Motions Practice, Other Writing</i>	1.10	100%	1.10	1.70	100%	1.70
<i>Negotiations</i>	0.70	100%	0.70	1.00	100%	1.00
<i>Court Preparation</i>	2.00	100%	2.00	4.00	100%	4.00
<i>Court Time</i>	1.10	100%	1.10	3.00	100%	3.00
<i>Post Disposition</i>	1.20	100%	1.20	2.00	100%	2.00
			<b>12.10</b>			<b>21.97</b>

# **EXHIBIT D**



**An Analysis of the Workloads of  
Public Defender of Marion County**

PREPARED BY:



Data gathering and analysis services performed by Moss Adams LLP (Moss Adams) are conducted in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants, and Moss Adams' deliverables and other work product are based on underlying assumptions and other information determined by Moss Adams' Client, Public Defender of Marion County. No legal opinion from Moss Adams is intended or implied in this report. Moss Adams' services, deliverables and other work product are intended solely for the use of Moss Adams' Client.

**An Analysis of the  
Workloads of  
Public Defender of Marion County  
March 2023**

# Table of Contents

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	PAGE
<b>Introduction</b>	1
<b>Executive Summary</b>	2 – 3
<b>Background</b>	
i. Applicable Standards	4
ii. Overview of the Oregon Public Defense System	5 – 6
<b>Historical Staffing and Caseload Analysis</b>	
i. Historical Staffing	7
ii. Historical Caseload	8
<b>The Delphi Method</b>	9 – 10
<b>Deficiency Analysis</b>	11 – 14
<b>Conclusion</b>	14
<b>Appendices</b>	
A – Key Definitions and Results from The Oregon Project	15 – 17
B – Allocations	18

# An Analysis of the Workloads of Public Defender of Marion County

## Introduction

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### INTRODUCTION

Moss Adams LLP (Moss Adams) conducted this study for Holland & Knight on behalf of the Public Defender of Marion County (“PDMC”) to compare the historical caseload for PDMC with the number of public defenders contracted by PDMC, in order to determine if there is an excess or deficiency of resources available to adequately represent the adult criminal caseload.<sup>1</sup>

The work performed in this study relied upon the report we prepared for the Oregon Project,<sup>2</sup> which we issued in January 2022 with the American Bar Association. The Oregon Project consisted of two main components: (1) an analysis of the Oregon public defense system’s historical staffing and caseloads; and (2) the application of the Delphi method. The Delphi method determined how much time an attorney *should* spend, on average, in providing representation in certain types of criminal and juvenile cases. In determining the amount of time an attorney *should* spend to meet the minimum standards for representation, we were guided by the legal standard set out in *Strickland v. Washington*: “reasonably effective assistance of counsel pursuant to prevailing professional norms.”<sup>3</sup> The prevailing professional norms, which anchor the Delphi process, are the Rules of Professional Conduct, the ABA Criminal Justice Standards, and the applicable national and local attorney performance standards.

The current study consists of three parts:

- (1) We obtained the historical caseload data of cases assigned to PDMC, stratified that data into the categories used in the Oregon Project, and calculated the number of public defenders needed for adequate representation at current caseloads using the methodologies used in the Oregon Project.
- (2) We obtained the number of fulltime equivalent (“FTE”) public defenders that Oregon Public Defense Services (“OPDS”) contracts for with the PDMC.
- (3) We compared the number of attorneys needed by PDMC against the number of FTE attorneys available at PDMC to determine if there was an excess or deficiency in the number of public defenders available to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

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<sup>1</sup> PDMC does not handle juvenile cases.

<sup>2</sup> Moss Adams LLP, on behalf of ABA’s Standing Committee on Legal Aid and Indigent Defendants, wrote a report entitled *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards (2022)*, available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/indigent\\_defense\\_systems\\_improvement/publications/or-project/](https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/publications/or-project/).

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 688, 688 (1984).

# An Analysis of the Workloads of Public Defender of Marion County Executive Summary

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## EXECUTIVE SUMMARY

Across the country, criminal courts are failing to meet the promise of equal justice under the law. As these failings are continually examined, increased attention is being paid to the obligation to provide effective assistance of counsel to all those accused of crimes and facing imprisonment who cannot afford private lawyers. For far too long, public defenders have raised concerns that their caseloads do not permit them to give appropriate time and attention to each client<sup>4</sup>.

The State of Oregon is no different. The Oregon Project report, issued in January 2022, was the product of more than two years of study and analysis of Oregon's current staffing and caseloads, and applied the Delphi method to arrive at standards reflecting the average amount of time an attorney should spend to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

The Oregon Project was a foundational building block to this report, which itself is focused on PDMC. When the standards developed by the Oregon Delphi panels were applied to the historical staffing and caseloads to calculate whether PDMC has too many (excess) or too few (deficiency) FTE attorneys, the results were consistent with the Statewide issue.

As shown below, PDMC has a 37% deficiency in attorney FTE to provide reasonably effective assistance of counsel. This means that the current PDMC public defenders must spend over 13 hours of every working day<sup>5</sup> during a calendar year, working on case specific public defense work. Though this deficiency is less than the State of Oregon, which on average has a 69% deficiency, PDMC's deficiency is not sustainable, and has a significant impact on the citizens of Marion County, Oregon.

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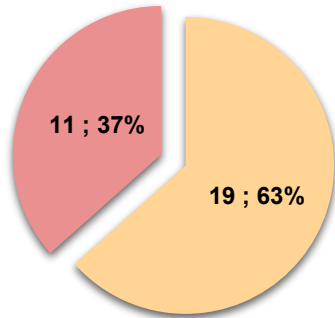
<sup>4</sup> The Oregon Project, Executive Summary

<sup>5</sup> Working days is defined as 249 days per year (removing weekends and public holidays).

# An Analysis of the Workloads of Public Defender of Marion County Executive Summary

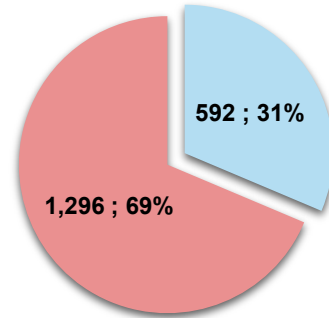
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Public Defender of Marion County  
Public Defender FTE



Available FTE Deficiency FTE

State of Oregon  
Public Defender FTE



Available FTE Deficiency FTE

# An Analysis of the Workloads of Public Defender of Marion County Background

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## BACKGROUND

### Applicable Standards

The relevant legal rules and standards pertaining to effective assistance of counsel are critical components to understand both attorney workloads and our analysis of caseloads in this study. The duty of the State of Oregon to provide representation in criminal cases for those accused individuals unable to afford counsel derives from the Sixth Amendment to the United States Constitution, as interpreted by the United States Supreme Court, and from Article 1, Section 11 of the Oregon Constitution.

In 1963, the United States Supreme Court held in the *Gideon* case that defendants charged with a felony in state criminal court are entitled to a lawyer at the state's expense if they were unable to afford counsel.<sup>6</sup> In 1972, the United States Supreme Court extended the right to counsel to misdemeanor cases that could result in a defendant's loss of liberty.<sup>7</sup>

In 1984, the United States Supreme Court held that the Sixth Amendment's requirement of counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice."<sup>8</sup> In 2010, the Supreme Court noted in *Padilla v. Kentucky* that "[w]e have long recognized that 'prevailing norms of practice as reflected in American Bar Association Standards and the like are guides to determining what is reasonable.' Although they are 'only guides' and not 'inexorable commands,' these standards may be valuable measures of the prevailing professional norms of effective representation[.]"<sup>9</sup>

Relevant prevailing professional norms in Oregon include the following, which are further described in detail in The Oregon Project:

- Oregon Rules of Professional Conduct
- ABA Criminal Justice Standards for the Defense Function
- IJA-ABA Juvenile Standards
- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases
- Oregon State Bar Performance Standards for Representation in Criminal, Juvenile Delinquency, and Juvenile Dependency Cases

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<sup>6</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>7</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972); see also *Alabama v. Shelton*, 535 U.S. 654 (2002).

<sup>8</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>9</sup> *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010) (citations omitted). In that case, the Court discussed the ABA Standards for Criminal Justice.



# An Analysis of the Workloads of Public Defender of Marion County Background

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## Overview of the Oregon Public Defense System

The Oregon Public Defense Services Commission (the “Commission”) is an independent body that governs the OPDS. The Commission is responsible for establishing and maintaining the public defense system for the Oregon state courts’ system for all 27 judicial districts of public defenders in the State of Oregon. The Commission, through OPDS, provides counsel to individuals in adult criminal, juvenile delinquency, juvenile dependency, and civil commitment proceedings at the trial level, as well as in direct appeals from these cases. Historically, OPDS has contracted with providers of different types – public defender offices, law firms, consortia, non-profit organizations and individual attorneys – to provide public defense services. Oregon is the only state that provides trial level counsel primarily through a contracting system.<sup>10</sup>

In January 2021, OPDS implemented a contract model based upon FTE attorneys. Upon the execution of the Public Defense Legal Services Contract Terms agreement in 2021, OPDS funded a specific number of FTE attorneys in each contract. Section 4.2 of the Public Defense Legal Services Contract includes various clauses regarding court appointments outside the contract. For example, attorneys funded as a 1.0 FTE are not permitted to accept any other paid legal work, including legal advocacy work and/or act as a municipal or justice court public defense attorney, prosecutor, or judge.<sup>11</sup>

In this new model, there are limits on the number of cases an attorney can be assigned. The Commission established caseload limits based on 115% of the 1973 National Advisory Commission on Criminal Justice Standards and Goals<sup>12</sup> (NAC caseload standards): 173 felonies, or 460 misdemeanors, or 230 juvenile cases. OPDS uses these caseload limits to determine how many FTE attorneys are needed. OPDS monitors caseloads throughout the year to determine if more or fewer FTE attorneys are needed in each jurisdiction.

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<sup>10</sup> By contrast, appellate services in Oregon are provided primarily through the Appellate Division of OPDS. Attorneys in this office are full time employees of OPDS. Contract services are used for appeals only when the appellate division is not able to accept a case or client due to conflict or lack of capacity.

<sup>11</sup> It does allow them to engage in pro bono legal services.

<sup>12</sup> National Advisory Commission on Criminal Justice Standards and Goals (1973) at Standard 13.12-Workload of Public Defenders, available at <http://www.nlada.org/defender-standards/national-advisory-commission>. The NAC standards provide that an individual defender’s annual caseloads should not exceed 150 felonies, 400 misdemeanors (excluding traffic cases), 200 juvenile cases, 200 mental health cases, or 25 appeals, or a proportional combination thereof.

## An Analysis of the Workloads of Public Defender of Marion County Background

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During the last contract cycle, OPDS executed more than 100 contracts with various provider types, including public defender offices, consortia, law firms, non-profit organizations and individual attorneys. In total, OPDS contracted for more than 600 FTE attorneys.<sup>13</sup> Under the FTE model, OPDS pays approximately \$190,000 to \$210,000 per FTE attorney, which is intended to cover not only attorney salary and benefits, but also overhead and support staff costs. OPDS estimates this amount to cover .5 support staff for each 1 FTE attorney.

OPDS does not pay any additional amounts to public defender offices or individual attorneys for administration, supervision or training, regardless of the size of the contractor. Some consortia and law firms receive contract administrative costs, but this cost does not cover attorney supervision or training. Accordingly, a public defender office, consortium or other contractor wishing to provide supervision for its lawyers or a professional training program must pay for these services out of the allotted FTE amount, reducing funds available for attorney salary, overhead and support staff, or raise additional funds to do so.<sup>14</sup>

Contractors report an FTE percentage for each attorney to OPDS. At present, while OPDS can limit case assignments in proportion to the total FTEs reported by a contractor, OPDS cannot verify the accuracy of the reported percentages or effectively monitor the work performed under its contracts.

Non-contract attorneys are used to represent clients who cannot be represented by contractors. Non-contract attorneys are assigned cases when a conflict of interest exists for contractors; when the contractor has met its contractual caseload obligations or limits; or when the existing contractors lack attorneys with the requisite qualifications to handle a particular type of case. These attorneys are compensated at an hourly rate for their legal services.<sup>15</sup>

For the purposes of this report, public defenders/public defense attorneys include attorneys at public defender offices, consortia, non-profit organizations, law firms with public defense contracts with OPDS, and individual attorneys who have public defense contracts with OPDS. Private practice attorneys include those criminal and juvenile attorneys who do some minimal non-contract public defense work.

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<sup>13</sup> FTE contracted to provide public defense services in appellate, habeas and Psychiatric Security Review Board cases were excluded from this total.

<sup>14</sup> The ABA's Ten Principles of a Public Defense Delivery System require both adequate supervision (Principle 10) and appropriate training (Principle 8). ABA Ten Principles of a Public Defense Delivery System (ABA Ten Principles) (2002), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.auth\\_checkdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.auth_checkdam.pdf).

<sup>15</sup> OPDS staff estimate that non-contract attorneys are used in 2-3% of public defense cases in Oregon.

# An Analysis of the Workloads of Public Defender of Marion County Historical Staffing and Caseload Analysis

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## HISTORICAL STAFFING AND CASELOAD ANALYSIS

The historical staffing and caseload analyses are comprehensive reviews of the available current and historical workload of PDMC. They seek to accurately describe the current state of public defense for that office and are integral in understanding the “world of is”<sup>16</sup> to compare it to the requirements generated through the Delphi study.

### Historical Staffing

#### *FTE Method*

The FTE method reviews historical and current personnel employment data for attorneys, and converts the attorney personnel to full-time equivalents (FTEs). This allows for a comparison of total attorney time available, based on FTE and caseloads, to total attorney time needed at the system level, based on the Delphi Panel results and caseloads. Calculating FTEs for contract attorneys is inherently complex. Attorneys in contract systems often work less than full-time, engaging in private practice or other legal work.

OPDS provided the number of FTEs the agency believes it is funding in Marion County for the adult criminal caseload, which included public defenders at public defender offices, attorneys at law firms, non-profit organizations or consortia that have public defense contracts with OPDS, and individual attorneys with contracts with OPDS.

Similarly, PDMC provided FTE information from their office, which was consistent with the data provided by OPDS. As of December 31, 2022, OPDS was funding 44.44 FTE in Marion County, and PDMC had 18.5 public defender FTE for adult criminal defense, as PDMC does not perform juvenile representation or appellate representation.

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<sup>16</sup> This stands in contrast to the Delphi study, which describes “the world of should.”

# An Analysis of the Workloads of Public Defender of Marion County Historical Staffing and Caseload Analysis

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## Historical Caseload

Historical case data was obtained primarily from the Oregon Judicial Department’s (“OJD”) case management system, Odyssey, which captures information in the courts at the time of filing, and therefore does not include data on items that happen outside of courts (jails, detention centers) or confidential or sealed cases, which would not be material to this analysis. The datasets provided from OJD included representation status. This report only includes data that was assigned a “Court Appointed” status.

A limited amount of data used in this analysis was from the OPDS Contractor database, which is populated based on monthly reports from contractors based on appointed cases on case number and filing date. Under the case credits model that was in place for calendar years 2017-2019, if contractors failed to report a case, they did not receive credit or get paid for that case. For calendar year 2020, contracts were extended for two six-month periods, and the credits were removed from the contract. This analysis assumes that contractors continued to report all cases consistent with prior practices. In 2021, under the new FTE model, every case counts towards FTE, which has been monitored since the new contract went into place on January 1, 2021.

### *Public Defender of Marion County*

Historical case data was obtained from PDMC’s case management system MyCase, which PDMC fully transitioned to on January 1, 2022. Historical data continues to be loaded into from PDMC’s old system, CaseBase, but 2021 and 2022 case data had been captured as of this analysis, and therefore the estimated caseload is calculated on the average of the 2021 and 2022 caseload based on case assigned date.

A table of assigned public defense cases to PDMC is detailed below.

PUBLIC DEFENDER OF MARION COUNTY CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD				
Adult Criminal				
Case Type	2020	2021	2022	Estimated Caseload (Average of 2021 and 2022)
Low-Level Misdemeanor	562	557	748	653
Complex Misdemeanor	205	261	260	261
Low-Level Felony	258	373	413	393
Mid-Level Felony	42	49	52	51
High-Level Felony	82	111	83	97
Homicide and Sex Cases	6	5	7	6
Probation Violations	92	131	64	98
<b>Total Adult Criminal</b>	<b>1,247</b>	<b>1,487</b>	<b>1,627</b>	<b>1,557</b>

**Sources:**

Sourced from PDMC’s case management system MyCase based on the date the case was assigned to PDMC. See Appendix B for allocations of certain case types.

# An Analysis of the Workloads of Public Defender of Marion County The Delphi Method

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## THE DELPHI METHOD

The workload study in The Oregon Project applied the Delphi method, which is an iterative survey process developed by the RAND Corporation and used in a range of industries and professions. Within the legal system, examples of use of the Delphi method can be traced back decades, and the Delphi method is considered an appropriate methodology for a caseload study.<sup>17</sup> Examples of these uses of the Delphi method are studies that were conducted by both the National Association of Court Management and the National Center for State Courts.<sup>18</sup> These efforts were principally focused on assessing judicial and court support staff needs.<sup>19</sup> Additionally, the Delphi method has been implemented by ABA SCLAID and partner accounting and consulting firms in similar public defense workload studies of public defense systems in other states. An overview of the Delphi method,<sup>20</sup> including use of the method in determining appropriate caseloads for public defense attorneys, is detailed in Appendix A of The Oregon Project.

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop a reliable consensus on a specific issue. As a methodological strategy, the Delphi method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at set intervals. The surveying practices applied can be either interviews or surveys that focus on fundamental questions of significance to the group participating.

To initiate the Delphi method, a group of experts provides individual, anonymous responses on a given topic based on their expertise and experience. Next, the professionals that responded to the initial survey are provided the same survey with peer response data from the initial round. This iterative process of alternating participants' independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

In the Oregon Project, as in prior ABA SCLAID workload studies, the Delphi method was used to provide a reliable consensus of professional judgment on the time that *should be* expended for a public defense attorney in Oregon to provide reasonably effective assistance of counsel

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<sup>17</sup> Norman Lefstein, Securing Reasonable Caseloads: Ethics And Law Of Public Defense 140-51 (ABA 2011), *available at* [https://www.americanbar.org/content/dam/aba/publications/books/lis\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads\\_supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/books/lis_sclaid_def_securing_reasonable_caseloads_supplement.pdf)

<sup>18</sup> National Center for State Courts' reports, *available at* <http://www.ncsc.org>.

<sup>19</sup> Matthew Kleiman, Cythia Lee and Brian Ostrom, Workload Assessment: A Data-driven Management Tool for the Judicial Branch (National Center for State Courts 2013).

<sup>20</sup> See also Use of the Delphi method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned (2021), *available at* [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/lis-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/lis-sclaid-indef-delphi-method-lessons.pdf).

## **An Analysis of the Workloads of Public Defender of Marion County The Delphi Method**

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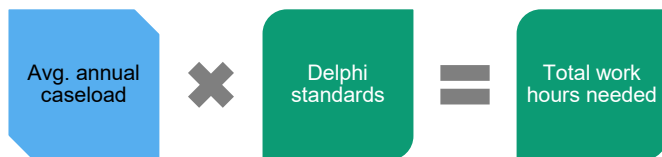
pursuant to prevailing professional norms. The Delphi process used in Oregon relied upon the expertise of attorneys from various types of contractors, as well private practice attorneys, to develop a reliable consensus of professional judgment of the amount of time that attorneys should be spending on a particular Case Task in particular Case Types, considering both the *Strickland* standard (reasonably effective assistance of counsel) and the applicable ethical and substantive professional standards (prevailing professional norms).

For additional details regarding the methodology framework, survey participants, and specific details regarding this process as used in the Oregon Project can be found in the report resulting from that project. Pertinent results from that study used in the deficiency analysis in the next section are detailed in Appendix A.

# An Analysis of the Workloads of Public Defender of Marion County Deficiency Analysis

## DEFICIENCY ANALYSIS

To perform the deficiency analysis, the projected caseload (obtained by an analysis of the historical caseloads) is multiplied by the time needed by Case Type (as determined by the Delphi panels), to produce the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.



The hours needed can then be translated into FTEs and compared to the number of FTEs currently available to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.



As noted in the formula above, we have assumed that an FTE public defender works 2,080 hours per year. That reflects 40 hours/week for 52 weeks, which is obviously not achievable. The hours allotment assumes **all** hours are allocated to client representation, without consideration for administrative tasks, such as general meetings, work-related travel time, or wait time. It also does not reduce time for continuing legal education requirements and other training, nor does it reduce time during the workday to allow for bathroom breaks, lunch breaks, etc. Similarly, this assumption assumes that public defense attorneys work every week of the year, without taking any time off for vacation, sick leave etc. As such, the resulting total of 2,080 hours per year of case work is very conservative and would, in reality, require time far exceeding eight hours per days and five days per week to accomplish.<sup>21</sup>

<sup>21</sup> See Yale Law School Career Development Office, The Truth About the Billable Hour, *available at* [https://law.yale.edu/sites/default/files/area/departments/cdo/document/billable\\_hour.pdf](https://law.yale.edu/sites/default/files/area/departments/cdo/document/billable_hour.pdf) (noting that to "bill" 1,832 hours, you are likely at work for 2,420 hours).

## An Analysis of the Workloads of Public Defender of Marion County Deficiency Analysis

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Indeed, the total time allotted for case time in ABA Delphi workload studies generally exceeds the billable hours targets of commercial law firms in major urban areas like New York City and Washington, DC.<sup>22</sup>

Nevertheless, using that assumption we engaged in the following analysis.

First, a Delphi workload analysis of the attorney time needed to handle PDMC's estimated annual caseload was performed. We used the estimated annual caseload by case type and applied the Delphi Hours per Case as developed in The Oregon Project (totaling 60,777 hours per year).

Second, that number was divided by 2,080 hours which, as noted above, is the assumed number of hours that a FTE PDMC attorney will work in a given year. That math showed that the total of FTE lawyers needed at PDMC to provide reasonable effective assistance of counsel under prevailing professional norms, based on historic workloads, is 29.22.

Third, that number was compared against the number of FTE attorneys actually available at PDMC (18.5) to reveal a deficit of 10.72 FTE attorneys, or 37%.

The formula and table reflecting this analysis are below:



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<sup>22</sup> PracticePanther, a legal time keeping application, notes that "the average number of billable hours required for first-year associates at firms with more than 700 attorneys is 1,930 hours, *available at* <https://www.practicepanther.com/blog/first-year-associates-billable-hours/>. See also Update on Associate Hours Worked, NALP Bulletin, 2016, *available at* <https://www.nalp.org/0516research> (noting that the data from 2014 shows that law firm associates worked, on average, 2,081 hours per year, which was up from an average of 2,067 hours worked in 2013).



# An Analysis of the Workloads of Public Defender of Marion County Deficiency Analysis

## PUBLIC DEFENDER OF MARION COUNTY WORKLOAD ANALYSIS

### ADULT CRIMINAL

	[1]	[2]	[3]
Case Type	Delphi Hours Per Case	Estimated Annual Caseload	Total Hours
Low-Level Misdemeanor	22.26	653	14,525
Complex Misdemeanor	36.98	261	9,633
Low-Level Felony	39.78	393	15,634
Mid-Level Felony	47.73	51	2,410
High-Level Felony	148.95	97	14,448
Homicide and Sex Cases	552.46	6	3,315
Probation Violations	8.33	98	812
<b>Total PDMC Caseload</b>		<b>1,557</b>	<b>60,777</b>
		<b>FTEs needed [4]</b>	<b>29.22</b>
		<b>FTEs have [5]</b>	<b>18.50</b>
		<b>Attorney FTE deficiency</b>	<b>10.72</b>
		<b>Deficiency %</b>	<b>37%</b>

[1] Per the Adult Criminal Panel Results from The Oregon Project

[2] Average opened cases per year for the respective case grouping and attorney type for PDMC for 2021 and 2022

[3] Represents the Delphi Panel Results x Estimated Annual Caseload Totals

[4] Hours divided by 2,080

[5] Total FTE as of December 31, 2022

**An Analysis of the Workloads of  
Public Defender of Marion County  
Deficiency Analysis**

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**CONCLUSION**

At current caseloads, PDMC has a significant deficiency in the number of FTE attorneys that are necessary to provide reasonably effective assistance of counsel under prevailing professional norms. That office needs almost 11 additional full-time attorneys to meet that standard, or 37% more FTE lawyers than the office currently employs.

**SIGNED**

A handwritten signature in cursive script, appearing to read "Scott Simpson".

SCOTT SIMPSON, PARTNER at MOSS ADAMS LLP

## **Appendices**

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# An Analysis of the Workloads of Public Defender of Marion County

## Appendix A: Key Definitions and Results from The Oregon Project

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### Case Type Definitions

Case Type	Description
Low-Level Misdemeanor	All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.
Complex Misdemeanor	Misdemeanors related to DUIs, domestic violence, sexual abuse, and animals (abuse of animals and game violations charged as misdemeanors).
Low-Level Felony	Presumptive probation and prison grid felonies that do not include mandatory minimums.
Mid-Level Felony	Property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.
High-Level Felony	Measure 11 felonies (excluding homicide cases), sex cases (excluding sex cases with potential for 25+ years), and gun minimum cases.
Homicide and Sex Cases	All homicide cases (excluding death penalty cases), Jessica's law cases, 3rd strike sex cases and Measure 73 sex cases.
Probation Violations	Probation violation cases.

### Adult Criminal Delphi Panel Results by Case Type

Delphi Panel Results - Adult Criminal	
Case Type	Hours Per Case
Low-Level Misdemeanor	22.26
Complex Misdemeanor	36.98
Low-Level Felony	39.78
Mid-Level Felony	47.73
High-Level Felony	148.95
Homicide and Sex Cases	552.46
Probation Violations	8.33

# An Analysis of the Workloads of Public Defender of Marion County

## Appendix A: Key Definitions and Results from The Oregon Project

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### **Data Limitations and Assessment of Data Needs**

The following detail is from The Oregon Project and is pertinent to the report herein. Certain detail related to the following items were not summarized herein but are detailed in The Oregon Project.

- Data Collection Mechanisms and Oversight
- Timekeeping
- Case Opening and Closing Forms
- Additional Information on Part-Time Public Defense Contractors or Attorneys

### ***FTE Data Deficiencies***

The number of FTE attorneys and percentages utilized in this analysis is taken directly from self-reported data submitted by contractors to OPDS. The process of reporting FTE to OPDS is relatively new, and OPDS has little ability to confirm the percentages provided. In other words, OPDS is not currently equipped to assess whether an attorney reported as a .9 FTE in fact limits their private practice caseload to only .1 FTE. OPDS does not solicit or receive confirmatory information on the private practice caseloads of public defense attorneys, nor does it currently require timekeeping on public defense cases to confirm .9 FTE in time is devoted to those cases.

Additionally, the FTE analysis assumes that each FTE attorney can spend 2,080 hours each year on representation of clients. In other words, it assumes that a public defense attorney works 8 hours per day, with no breaks from case work for clients. It does not subtract any hours for administrative work, training, work-related travel time or wait time. It also assumes that an attorney works all 5 days per week, 52 weeks of the year, without subtracting time for holidays, vacation, sick leave, etc. In reality, working 2,080 hours on case time would require a public defense attorney to spend considerably more time at work. In essence, this calculation assumes that public defense attorneys are working well-beyond a standard workday.

### ***Caseload Data Deficiencies***

The Case Types selected by the Consulting Panel for use in the Adult Criminal survey differentiated cases by sentencing scheme:

- The low-level felony Case Type was defined to include presumptive probation and prison grid felonies that do not trigger mandatory minimum sentences.

# An Analysis of the Workloads of Public Defender of Marion County

## Appendix A: Key Definitions and Results from The Oregon Project

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- The mid-level felony Case Type was defined to include property and drug felonies that include possible mandatory minimum sentences, Measure 57 cases,<sup>23</sup> and Level 10 drug crimes.
- The high-level felony Case Type was defined to include Measure 11 felonies (excluding homicide cases),<sup>24</sup> sex cases (excluding sex cases with the potential for 25+ years) and gun minimum cases.
- The homicide and sex cases (25+years) Case Type was defined to include all homicide cases (excluding death penalty cases), Jessica's law cases,<sup>25</sup> 3<sup>rd</sup> strike sex cases<sup>26</sup> and Measure 73 sex cases.<sup>27</sup>

Unfortunately, OPDS does not currently collect detailed charging data indicating the sentencing scheme applicable in each case, nor is it available in court data. As a default, cases were categorized in the lowest applicable Case Type. Cases were only reallocated to a higher Case Type when reliable data justified the higher allocation.<sup>28</sup> For example, cases where the highest charge was a sex crime were categorized as high-level felony cases. Because OPDS lacked data on what portion of these cases were Jessica's law cases, 3<sup>rd</sup> strike cases or Measure 73 cases, no sex cases were allocated to the homicide and sex cases (25+ years) Case Type. This differs from PDMC, as they do capture this type of data in MyCase, and therefore those cases were included in the appropriate category as the data was available.

This report does not include consideration to any new regulations that would impact the Oregon public defense system, including Senate Bill 578 (2021),<sup>29</sup> which will require courts to appoint legal counsel for guardianship cases in certain counties beginning in 2022. Inevitably this will increase the public defense workload.

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<sup>23</sup> Ballot Measure 57 established mandatory minimum sentences for individuals convicted of certain drug and property crimes under certain circumstances, e.g. repeat offenders. It was approved in 2008. ORS 137.717 (2008).

<sup>24</sup> Ballot Measure 11 originally passed in 1994. It required mandatory minimum prison sentences for 16 offenses. It has since been amended to apply to additional offenses. See Bill Taylor, Background Brief on Measure 11 (May 2004), *available at* [https://www.oregonlegislature.gov/citizen\\_engagement/Reports/2004IG\\_Measure\\_11.pdf](https://www.oregonlegislature.gov/citizen_engagement/Reports/2004IG_Measure_11.pdf).

<sup>25</sup> Jessica's law requires the imposition of a 25 year mandatory minimum for a defendant convicted of committing a first-degree sex offense against a child under the age of 12.

<sup>26</sup> ORS 137.319 (presumptive life sentence for certain sex offenders upon third conviction).

<sup>27</sup> Ballot measure 73 increased the mandatory minimum prison sentence to 25 years for repeat offenders of any four felony sex crimes. It passed in 2010.

<sup>28</sup> See Exhibit #3 explaining the use of prosecutorial data to allocate between low-level and complex misdemeanors, as well as identify Measure 57 cases.

<sup>29</sup> 81<sup>st</sup> Oregon Legislative Assembly – 2021 Regular Session - Senate Bill 578, *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB578>

**An Analysis of the Workloads of  
Public Defender of Marion County  
Appendix B: Allocations**

**ALLOCATIONS**

<b>Low-Felony to Mid-Level Felony</b>			
	<b>2020</b>	<b>2021</b>	<b>2022</b>
<i>Initial Property, Person and Motor Vehicle Felonies within Low-Level Felony</i>	146	169	180
BM57 Cases allocated to Mid-Level Felony @ 29%	42	49	52
Remain within Low-Level Felony	104	120	128

*Based on information from the Oregon Project, it was noted that 29% of Multnomah County's property felonies were subject to Ballot Measure 57 (data from September 2017-August 2019).*

*This Multnomah County rate was applied to the initial property, person, and motor vehicle felony cases within the PDMC dataset to the Mid-Level Felony category, where BM57 cases are charged.*

<b>Low-Level Misdemeanor to Complex Misdemeanors</b>			
	<b>2020</b>	<b>2021</b>	<b>2022</b>
<i>Initial Domestic Violence Misdemeanors within Low-Level Misdemeanor Category</i>	107	130	168
DV and MDT cases allocated to Complex Misdemeanors @ 50%	53	65	84
Remain within Low-Level Misdemeanor	54	65	84

*Based on information from the Oregon Project, we were provided historical information (based on data from September 2017-August 2019) on issued cases, showing the percentage of all assault IV, harrassment and menacing charges that were assigned to the Domestic Violence and Multi-Disciplinary Team units. Cases assigned to these units should be cateogrizd as Complex Misdemeanors. This rate was applied to the PDMC dataset.*

# **EXHIBIT E1**



## Introduction

# ABA Workload Study - Round One- Adult Criminal

## General Instructions

Thank you for participating in this study on public defender workloads. As noted in the email, this study uses the Delphi Method. This Delphi study consists of three survey rounds. The first and second rounds are distributed online, and the third is conducted as an in-person meeting. You are now participating in the FIRST survey round. A full description of the process used in this study is found in the Description of the Public Defender Workload Process ([link](#)).

## Standards Applicable to Survey

In answering the survey questions, you must consider how long the task SHOULD take and the percentage of cases in which the task SHOULD occur. The key standard to keep in mind is providing reasonably effective assistance pursuant to prevailing professional norms. In thinking about prevailing professional norms, draw on the [ABA Criminal Justice Standards: Defense Function](#) and [Oregon Rules of Professional Conduct](#), as well as your own knowledge and experience as a practitioner. These standards cover: [Client Interviews](#) | [Establishing Client Trust](#) | [the Duty to Keep the Client Informed](#) | [the Duty to Investigate](#) | [Court Appearances](#) | [Sentencing Responsibilities](#).

Today, most state-level criminal cases are resolved without a trial. In *Missouri v. Frye*, 132 S.Ct. 1399 (2012), the Supreme Court noted that "ninety-four percent of state convictions are the result of guilty pleas." For cases in which a plea of guilty is expected, you should keep in mind: ABA Criminal Justice Standard 4-6.1(b) (*emphasis below added*):

**In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been *completed*. Such study should include:**

- discussion with the client; and
- an analysis of relevant law; and
- an analysis of the prosecution's evidence; and
- an analysis of potential dispositions; and
- an analysis of relevant collateral consequences.

**Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.**

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## Save and Return

You can close this browser at any point, and use the link you received in the email to return to the survey with your previous answers saved.

## Deadline

We would ask that you complete this survey by end of day **Friday, August 21st**.



How many years have you been a practicing attorney?

- Less than 5 years
- 5 to 15 years
- 16 to 25 years
- More than 25 years

In which Oregon county or counties do you practice?  
(select at least one and all that apply)

- |                                    |                                     |                                     |
|------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Baker     | <input type="checkbox"/> Harney     | <input type="checkbox"/> Morrow     |
| <input type="checkbox"/> Benton    | <input type="checkbox"/> Hood River | <input type="checkbox"/> Multnomah  |
| <input type="checkbox"/> Clackamas | <input type="checkbox"/> Jackson    | <input type="checkbox"/> Polk       |
| <input type="checkbox"/> Clatsop   | <input type="checkbox"/> Jefferson  | <input type="checkbox"/> Sherman    |
| <input type="checkbox"/> Columbia  | <input type="checkbox"/> Josephine  | <input type="checkbox"/> Tillamook  |
| <input type="checkbox"/> Coos      | <input type="checkbox"/> Klamath    | <input type="checkbox"/> Umatilla   |
| <input type="checkbox"/> Crook     | <input type="checkbox"/> Lake       | <input type="checkbox"/> Union      |
| <input type="checkbox"/> Curry     | <input type="checkbox"/> Lane       | <input type="checkbox"/> Wallowa    |
| <input type="checkbox"/> Deschutes | <input type="checkbox"/> Lincoln    | <input type="checkbox"/> Wasco      |
| <input type="checkbox"/> Douglas   | <input type="checkbox"/> Linn       | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Gilliam   | <input type="checkbox"/> Malheur    | <input type="checkbox"/> Wheeler    |
| <input type="checkbox"/> Grant     | <input type="checkbox"/> Marion     | <input type="checkbox"/> Yamhill    |

Which category best describes you?

- Private Practice Attorney – criminal defense attorney who does no state public defense work
- Private Practice Attorney – criminal defense attorney who does some minimal public defense work
- Attorney at a law firm or consortium that has a public defense contract with OPDS
- Public defender at a non-profit public defender contract office

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Criminal Defense

%

Other Work  %

Total  %

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

% Public Defense Cases

In what type of organization do you practice?

- Solo Practice
- Law Firm

How many lawyers are in your firm?

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Public Defense Cases  %

Private Practice Criminal Defense Cases  %

Other Types of Cases  %

Total  %

What percentage of your practice is ADULT CRIMINAL DEFENSE in Oregon?

% percent of total practice

What percentage of your Oregon Adult Criminal Defense Practice falls into each of the below categories ?  
(*must total 100%*)

Low-Level Misdemeanor  %

Complex Misdemeanor (e.g. DUI/DV Misdemeanors)  %

Low-Level Felony (e.g. Grid Felonies, Felonies with No Mandatory Minimums)  %

Mid-Level Felony (e.g. Measure 57 Cases; Level 10 Drug Crimes)  %

High Level Felony (Measure 11 Cases excluding Homicides)  %

Homicide and Serious Sex Cases (potential for 25+ years)	0	%
Probation Violations	0	%
<b>Total</b>	<b>0</b>	<b>%</b>

How many of the following staff do you have available to you in your practice setting?

	Full-Time Employees	Contracted
Legal Assistants/Secretaries	<input type="text"/>	<input type="text"/>
Paralegals	<input type="text"/>	<input type="text"/>
Investigators	<input type="text"/>	<input type="text"/>
Social Workers	<input type="text"/>	<input type="text"/>
Interpreters	<input type="text"/>	<input type="text"/>
Others (please describe): <input type="text"/>	<input type="text"/>	<input type="text"/>

**Workload Survey**

You will now begin the workload study section of the survey. First you will be asked whether have sufficient experience to respond to questions about preparing a defense for a particular Case Type.

- Please respond "Yes" if you have sufficient experience to answer questions regarding what is required to reasonably represent individuals facing such charges in Oregon.
- Please respond "No" if you do not think you have had enough experience to answer questions for this Case Type.

*If you answer "Yes," you will be directed to answer questions about the Case Type. If you answer "No," your survey will automatically advance to the next Case Type.*

**Low-Level Misdemeanors**

**LOW-LEVEL MISDEMEANORS**

*All types of low-level misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **low-level misdemeanor** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

### LOW-LEVEL MISDEMEANORS

*All types of low-level misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.*

What percentage of **Low-Level Misdemeanor** cases do you believe *SHOULD*:

% Go to Trial

% Plead Guilty or Otherwise Resolve

### LOW-LEVEL MISDEMEANORS

*All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.*

Below, you will be asked to complete two charts about specific tasks in **Low-Level Misdemeanor** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but *NOT* 1 hour and 30 minutes.

**Low-Level Misdemeanors - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Low-Level Misdemeanors - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Complex Misdemeanors**

### COMPLEX MISDEMEANORS

*COMPLEX MISDEMEANORS have been defined as misdemeanors related to DUIs, domestic violence, sexual abuse, and animals [abuse of animals and game violations charged as misdemeanors].*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **complex misdemeanor** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

### COMPLEX MISDEMEANORS

*COMPLEX MISDEMEANORS have been defined as misdemeanors related to DUIs, domestic violence, sexual abuse, and animals [abuse of animals and game violations charged as misdemeanors].*

What percentage of **Complex Misdemeanor** cases do you believe *SHOULD*:

% Go to Trial

% Plead Guilty or Otherwise Resolve

### COMPLEX MISDEMEANORS

*COMPLEX MISDEMEANORS have been defined as misdemeanors related to DUIs, domestic violence, sexual abuse, and animals [abuse of animals and game violations charged as misdemeanors].*

Below, you will be asked to complete two charts about specific tasks in **Complex Misdemeanor** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Complex Misdemeanors - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Complex Misdemeanors - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>



	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

### Low-Level Felonies

#### LOW-LEVEL FELONIES

*LOW-LEVEL FELONIES have been defined as presumptive probation and prison grid felonies that do not include mandatory minimums.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **low-level felony** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

#### LOW-LEVEL FELONIES

*LOW-LEVEL FELONIES have been defined as presumptive probation and prison grid felonies that do not include mandatory minimums.*

What percentage of **Low-Level Felony** cases do you believe should:

% Go to Trial

% Plead Guilty or Otherwise Resolve

#### LOW-LEVEL FELONIES

*LOW-LEVEL FELONIES have been defined as presumptive probation and prison grid felonies that do not include mandatory minimums.*

Below, you will be asked to complete two charts about specific tasks in **Low-Level Felony** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Low-Level Felonies - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Low-Level Felonies - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Mid-Level Felonies**

**MID-LEVEL FELONIES**

*MID-LEVEL FELONIES have been defined as property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **mid-level felony** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**MID-LEVEL FELONIES**

*MID-LEVEL FELONIES have been defined as property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.*

What percentage of **Mid-Level Felony** cases do you believe should:

% Go to Trial

### MID-LEVEL FELONIES

*MID-LEVEL FELONIES have been defined as property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.*

Below, you will be asked to complete two charts about specific tasks in **Mid-Level Felony** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

#### **Mid-Level Felonies - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Mid-Level Felonies - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**High-Level Felonies**

**HIGH-LEVEL FELONIES**

*HIGH-LEVEL FELONIES have been defined as measure 11 [excluding homicide]; sex cases [excluding sex cases with potential for 25+ years]; and gun minimums.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **high-level felony** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

## HIGH-LEVEL FELONIES

*HIGH-LEVEL FELONIES have been defined as measure 11 [excluding homicide]; sex cases [excluding sex cases with potential for 25+ years]; and gun minimums.*

What percentage of **High-Level Felony** cases do you believe should:

% Go to Trial

% Plead Guilty or Otherwise Resolve

## HIGH-LEVEL FELONIES

*HIGH-LEVEL FELONIES have been defined as measure 11 [excluding homicide]; sex cases [excluding sex cases with potential for 25+ years]; and gun minimums.*

Below, you will be asked to complete two charts about specific tasks in **High-Level Felony** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**High-Level Felonies - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**High-Level Felonies - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Homicide and Sex Cases with Potential 25 years+**

**HOMICIDE AND SEX CASES (POTENTIAL 25 YEARS+)**

*HOMICIDE AND SEX CASES have been defined as homicide [excluding Death Penalty]; Jessica's*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **homicide and sex (potential 25+ years)** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

### **HOMICIDE AND SEX CASES (POTENTIAL 25 YEARS+)**

*HOMICIDE AND SEX CASES have been defined as homicide [excluding Death Penalty]; Jessica's Law; 3rd Strike sex cases; and Measure 73 sex cases.*

What percentage of **Homicide and Sex Cases (25+ years)** cases do you believe should:

% Go to Trial

% Plead Guilty or Otherwise Resolve

### **HOMICIDE AND SEX CASES (POTENTIAL 25 YEARS+)**

*Homicide [excluding Death Penalty]; Jessica's Law; 3rd Strike Sex Cases; Measure 73 Sex Cases*

Below, you will be asked to complete two charts about specific tasks in **Homicide and Sex Cases (potential 25 years+)**. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the "typical" case. In other words, please consider the AVERAGE or TYPICAL case.



- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Homicide and Sex Cases (potential 25+ years) - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY				% Cases Performed
	Time Needed	Minutes	Hours	Days	
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Homicide and Sex Cases (potential 25+ years) - Go to Trial**

	GO TO TRIAL				% Cases Performed
	Time Needed	Minutes	Hours	Days	
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

### Probation Violation

### PROBATION VIOLATIONS

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **probation violation** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the end of the survey.*

- Yes  
 No

### PROBATION VIOLATIONS

What percentage of **probation violation** cases do you believe should:

% Go to a contested hearing

% Resolved by stipulation, admission or dismissal, etc.

### PROBATION VIOLATIONS

Below, you will be asked to complete two charts about specific tasks in **Probation Violation** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Probation Violations - Resolved by Stipulation, Admission, or Dismissal**

*Includes all cases that resolve by stipulation, admission, or dismissal, etc.*

	RESOLVED	RESOLVED			RESOLVED
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Probation Violations - Go to Trial**

	CONTESTED HEARING	CONTESTED HEARING			CONTESTED HEARING
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED HEARING	CONTESTED HEARING			CONTESTED HEARING
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Finish**

Please click "Finish Survey" below to submit your answers.

# **EXHIBIT E2**

## Introduction

# ABA Workload Study - Round One- Juvenile Delinquency and Dependency

## General Instructions

Thank you for participating in this study on public defender workloads. This part of the study covers juvenile delinquency and dependencies cases in Oregon courts. As noted in the introductory email, this study uses the Delphi Method. This Delphi study consists of three survey rounds. The first and second rounds are distributed online, and the third is conducted as an "in-person" meeting, though this will likely take place online. You are now participating in the FIRST survey round. A full description of the process used in this study is found in the Description of the Public Defender Workload Process ([link](#)).

## Standards Applicable to Survey

In answering the survey questions, you must consider how long the task SHOULD take and the percentage of cases in which the task SHOULD occur. The key standard to keep in mind is providing reasonably effective assistance pursuant to prevailing professional norms. In thinking about prevailing professional norms, draw on

- the [ABA Criminal Justice Standards: Defense Function](#);
- the [IJA-ABA Juvenile Justice Standards](#);
- [ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases](#);
- Oregon State Bar's [Specific Standards for Representation in Juvenile Dependency Cases](#);
- Oregon State Bar's [Specific Standards for Representation in Criminal and Juvenile Delinquency Cases](#); and
- [Oregon Rules of Professional Conduct](#), as well as your own knowledge and experience as a practitioner.

These standards cover: [Client Interviews](#) | [Establishing Client Trust](#) | [the Duty to Keep the Client Informed](#) | [the Duty to Investigate](#) | [Court Appearances](#) | [Sentencing Responsibilities](#), among other tasks.

Today, most state-level juvenile cases are resolved without a trial (or contested resolution). In *Missouri v. Frye*, 132 S.Ct. 1399 (2012), the Supreme Court noted that "ninety-four percent of state convictions are the result of guilty pleas." Particularly for delinquency cases, you should keep in mind: ABA Criminal Justice Standard 4-6.1(b) (*emphasis below added*):

**In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been *completed*. Such study should include:**

- **discussion with the client; and**
- **an analysis of relevant law; and**
- **an analysis of the prosecution's evidence; and**
- **an analysis of potential dispositions; and**
- **an analysis of relevant collateral consequences.**

**Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.**

### **Save and Return**

You can close this browser at any point, and use the link you received in the email to return to the survey with your previous answers saved.

How many years have you been a practicing attorney?

- Less than 5 years
- 5 to 15 years
- 16 to 25 years
- More than 25 years

In which Oregon county or counties do you practice?  
(select at least one and all that apply)

- |                                    |                                     |                                     |
|------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Baker     | <input type="checkbox"/> Harney     | <input type="checkbox"/> Morrow     |
| <input type="checkbox"/> Benton    | <input type="checkbox"/> Hood River | <input type="checkbox"/> Multnomah  |
| <input type="checkbox"/> Clackamas | <input type="checkbox"/> Jackson    | <input type="checkbox"/> Polk       |
| <input type="checkbox"/> Clatsop   | <input type="checkbox"/> Jefferson  | <input type="checkbox"/> Sherman    |
| <input type="checkbox"/> Columbia  | <input type="checkbox"/> Josephine  | <input type="checkbox"/> Tillamook  |
| <input type="checkbox"/> Coos      | <input type="checkbox"/> Klamath    | <input type="checkbox"/> Umatilla   |
| <input type="checkbox"/> Crook     | <input type="checkbox"/> Lake       | <input type="checkbox"/> Union      |
| <input type="checkbox"/> Curry     | <input type="checkbox"/> Lane       | <input type="checkbox"/> Wallowa    |
| <input type="checkbox"/> Deschutes | <input type="checkbox"/> Lincoln    | <input type="checkbox"/> Wasco      |
| <input type="checkbox"/> Douglas   | <input type="checkbox"/> Linn       | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Gilliam   | <input type="checkbox"/> Malheur    | <input type="checkbox"/> Wheeler    |
| <input type="checkbox"/> Grant     | <input type="checkbox"/> Marion     | <input type="checkbox"/> Yamhill    |

Which category best describes you?

- Private Practice Attorney – lawyer in private practice who does **no** state-funded public defense or dependency work
- Private Practice Attorney – lawyer in private practice who does **no or some** minimal state-funded public defense or dependency work
- Attorney at a law firm or consortium that has a public defense (and/or dependency) contract with OPDS
- Public defender at a non-profit public defender contract office
- Other (please describe):

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Juvenile delinquency	<input style="width: 40px; text-align: center;" type="text"/> %
Juvenile dependency	<input style="width: 40px; text-align: center;" type="text"/> %
Other Work	<input style="width: 40px; text-align: center;" type="text"/> %
<b>Total</b>	<b><input style="width: 40px; text-align: center;" type="text"/> %</b>

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Public Defense Cases (including juvenile dependency and delinquency)	<input style="width: 40px; text-align: center;" type="text"/> %
Other Work	<input style="width: 40px; text-align: center;" type="text"/> %
<b>Total</b>	<b><input style="width: 40px; text-align: center;" type="text"/> %</b>

In what type of organization do you practice?

- Solo Practice
- Law Firm

How many lawyers are in your firm?  
(*enter whole number*)

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Public Defense Cases (including juvenile dependency and delinquency)	<input style="width: 40px; text-align: center;" type="text"/> %
--	---



Private Practice Defense Cases (including criminal defense, juvenile dependency, and delinquency)  %

Other Types of Cases  %

Total  %

What percentage of your practice is **Juvenile Dependency and Delinquency** in Oregon?  
(must be between 1 and 100)

%

percent of total practice from juvenile dependency and delinquency cases in Oregon

What percentage of your Oregon Juvenile Dependency and Delinquency Practice falls into each of the below categories ?

(must total 100%)

Juvenile Dependency - Parent Representation  %

Juvenile Dependency - Child Representation  %

Termination of Parental Rights - Parent Representation  %

Termination of Parental Rights - Child Representation  %

Juvenile Delinquency - Misdemeanor/Other  %

Juvenile Delinquency - Minor Felonies  %

Juvenile Delinquency - Major Felonies  %

Juvenile Waiver/ Measure 11 Cases  %

Juvenile Probation Violation/Contempt  %

Total  %

How many of the following staff do you have available to you in your practice setting?

	Full-Time Employees	Contracted
Legal Assistants/Secretaries	<input type="text"/>	<input type="text"/>
Paralegals	<input type="text"/>	<input type="text"/>
Investigators	<input type="text"/>	<input type="text"/>
Social Workers	<input type="text"/>	<input type="text"/>
Interpreters	<input type="text"/>	<input type="text"/>
Others (please describe): <input type="text"/>	<input type="text"/>	<input type="text"/>

## **Workload Survey**

You will now begin the workload study section of the survey. First you will be asked whether you have sufficient experience to respond to questions about representing an individual in a particular Case Type.

- Please respond "Yes" if you have sufficient experience to answer questions regarding what is required to reasonably represent individuals facing such charges in Oregon.
- Please respond "No" if you do not think you have had enough experience to answer questions for this Case Type.

*If you answer "Yes," you will be directed to answer questions about the Case Type. If you answer "No," your survey will automatically advance to the next Case Type.*

The **Dependency portion** of this survey is divided into the following Case Types:

- Dependency - Parent Representation
- Dependency - Child Representation
- Termination of Parental Rights - Parent Representation
- Termination of Parental Rights - Child Representation

The **Delinquency portion** of this survey is divided into the following Case Types:

- Misdemeanor/Other
- Minor Felonies
- Major Felonies
- Waiver/ Measure 11 Cases
- Probation Violation/Contempt

The Case Types and the relevant Case Tasks for each are defined in the survey. For the Case Task definitions, simply hover over the Case Task name and a definition will appear.

### **JUV DEP - Dependency Parent Rep**

#### **JUVENILE DEPENDENCY Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Dependency - Parent Representation** case in Oregon? *If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**JUVENILE DEPENDENCY**  
**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

What percentage of **Juvenile Dependency - Parent Representation** cases do you believe **SHOULD** resolve by:  
 (total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	0	%
Contested Jurisdiction / Fact-Finding (Trial)	0	%
Total	0	%

**JUVENILE DEPENDENCY**  
**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Dependency - Parent Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10

minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.

- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Parent Representation - ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Parent Representation - CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DEP - Dependency Child Rep**

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Child Representation**

*Defined as any case in which you represent a child in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Dependency - Child Representation** case in Oregon?  
 If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes
- No

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Child Representation**

*Defined as any case in which you represent a child in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

What percentage of **Juvenile Dependency - Child Representation** cases do you believe SHOULD resolve by:  
 (total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction  %

Contested Jurisdiction / Fact-Finding (Trial)  %

**JUVENILE DEPENDENCY**  
**Juvenile Dependency - Child Representation**

*Defined as any case in which you represent a child in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Dependency - Child Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Child Representation - ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Child Representation - CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DEP - Termination of Parental Rights - Parent**

**JUVENILE DEPENDENCY**  
**Termination of Parental Rights Cases - Parent Representation**

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Termination of Parental Rights - Parent Representation** case in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

**JUVENILE DEPENDENCY**  
**Termination of Parental Rights Cases - Parent Representation**

What percentage of **Termination of Parental Rights - Parent Representation** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	<input type="text" value="0"/> %
Contested Jurisdiction / Fact-Finding (Trial)	<input type="text" value="0"/> %
Total	<input type="text" value="0"/> %

**JUVENILE DEPENDENCY**  
**Termination of Parental Rights Cases - Parent Representation**

Below, you will be asked to complete two charts about specific tasks in **Termination of Parental Rights - Parent Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.



- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Termination of Parental Rights - Parent Representation  
ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Termination of Parental Rights - Parent Representation  
CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DEP- Termination of Parental Rights - Child**

**JUVENILE DEPENDENCY  
Termination of Parental Rights - Child Representation**

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Termination of Parental Rights - Child Representation** case in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**JUVENILE DEPENDENCY  
Termination of Parental Rights - Child Representation**

What percentage of **Termination of Parental Rights - Child Representation** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	<input type="text" value="0"/> %
Contested Jurisdiction / Fact-Finding (Trial)	<input type="text" value="0"/> %
Total	<input type="text" value="0"/> %

**JUVENILE DEPENDENCY  
Termination of Parental Rights - Child Representation**

Below, you will be asked to complete two charts about specific tasks in **Termination of Parental Rights - Child Representation** cases. The first chart is about cases that have ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION. The second chart is about cases that have CONTESTED JURISDICTION / FACT-FINDING (TRIAL). For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Termination of Parental Rights - Child Representation**  
**ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Termination of Parental Rights - Child Representation**  
**CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Misdemeanors**

**JUVENILE DELINQUENCY**  
**Misdemeanor / Other Cases**

*Defined as Misdemeanor Cases including Violations (but not Probation Violations, which are their own case type), Status Offenses, Expungements, etc.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Misdemeanor / Other** case in Oregon?  
*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

**JUVENILE DELINQUENCY**

### Misdemeanor / Other Cases

Defined as Misdemeanor Cases including Violations (but not Probation Violations, which are their own case type), Status Offenses, Expungements, etc.

What percentage of **Juvenile Delinquency - Misdemeanor / Other** cases do you believe **SHOULD**:

(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/>	%
Contested Jurisdiction (trial)	<input type="text" value="0"/>	%
Total	<input type="text" value="0"/>	%

### JUVENILE DELINQUENCY

#### Misdemeanor / Other Cases

Defined as Misdemeanor Cases including Violations (but not Probation Violations, which are their own case type), Status Offenses, Expungements, etc.

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Misdemeanor / Other** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.)**. The second chart is about cases that go to **CONTESTED JURISDICTION (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Misdemeanor / Other Cases - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Misdemeanor / Other Cases - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Minor Felonies**

**JUVENILE DELINQUENCY  
Minor Felony Cases**

*Defined as Class C Felonies other than Sex Crimes.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Minor Felony** case in Oregon?  
If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes
- No

**JUVENILE DELINQUENCY  
Minor Felony Cases**

*Defined as Class C Felonies other than Sex Crimes.*

What percentage of **Juvenile Delinquency - Minor Felony** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/>	%
Contested Jurisdiction (trial)	<input type="text" value="0"/>	%
<b>Total</b>	<input type="text" value="0"/>	%

**JUVENILE DELINQUENCY  
Minor Felony Cases**

*Defined as Class C Felonies other than Sex Crimes.*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Minor Felony** cases. The first chart is about cases that are **ADMISSION**

(PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.).

The second chart is about cases that go to CONTESTED JURISDICTION (TRIAL). For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Minor Felonies - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>



	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Minor Felonies - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Major Felonies**

**JUVENILE DELINQUENCY  
Major Felony Cases**

*Defined as all other felonies originating in juvenile court in which waiver is not sought.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Major Felony** case in Oregon?  
*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

## JUVENILE DELINQUENCY

### Major Felony Cases

*Defined as all other felonies originating in juvenile court in which waiver is not sought.*

What percentage of **Juvenile Delinquency - Major Felony** cases do you believe *SHOULD* resolve by:

*(total must equal 100%)*

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)  %

Contested Jurisdiction (trial)  %

Total  %

## JUVENILE DELINQUENCY

### Major Felony Cases

*Defined as all other felonies originating in juvenile court in which waiver is not sought.*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Major Felony** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.)**. The second chart is about cases that go to **CONTESTED JURISDICTION (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Major Felonies - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Major Felonies - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Disposition	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

## JUV DELQ - Waiver / Measure 11 Cases

### JUVENILE DELINQUENCY Waiver / Measure 11 Cases

*Defined as all cases in which Waiver is sought and all Measure 11 cases.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Waiver / Measure 11** case in Oregon?  
If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes  
 No

### JUVENILE DELINQUENCY Waiver / Measure 11 Cases

*Defined as all cases in which Waiver is sought and all Measure 11 cases.*

What percentage of **Juvenile Delinquency - Waiver / Measure 11** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/> %
Contested Jurisdiction (trial)	<input type="text" value="0"/> %
Total	<input type="text" value="0"/> %

### JUVENILE DELINQUENCY Waiver / Measure 11 Cases

*Defined as all cases in which Waiver is sought and all Measure 11 cases.*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Waiver / Measure 11** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE**

DISPOSITIONS, ETC.). The second chart is about cases that go to CONTESTED JURISDICTION (TRIAL). For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Waiver / Measure 11 - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Waiver / Measure 11 - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Probation Violation / Contempt**

**JUVENILE DELINQUENCY  
Probation Violation / Contempt Cases**

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Probation Violation / Contempt** case in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**JUVENILE DELINQUENCY**  
**Probation Violation / Contempt Cases**

What percentage of **Juvenile Delinquency - Probation Violation / Contempt** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/>	%
Contested Jurisdiction (trial)	<input type="text" value="0"/>	%
Total	<input type="text" value="0"/>	%

**JUVENILE DELINQUENCY**  
**Probation Violation / Contempt Cases**

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Probation Violation / Contempt** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.)**. The second chart is about cases that go to **CONTESTED JURISDICTION (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Probation Violation / Contempt - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Probation Violation / Contempt - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>



	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Finish**

Please click "Finish Survey" below to submit your answers.

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1  
2  
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IN THE CIRCUIT COURT OF THE STATE OF FOR OREGON  
FOR THE COUNTY OF MARION

STATE OF OREGON;  
  
Plaintiff,  
  
v.  
  
KERTEN SALLE;  
  
Defendant.

Case No.: 23CR00153  
  
DECLARATION OF SCOTT SIMPSON IN  
SUPPORT OF EXECUTIVE DIRECTOR  
SHANNON WILSON'S MOTION TO  
WITHDRAW FROM CURRENT  
APPOINTMENTS AND TO DECLINE  
FUTURE APPOINTMENTS

I, Scott Simpson, declare as follows:

1. I am a partner at Moss Adams LLP (“Moss Adams”), a professional accounting and consulting firm. Founded in 1913, Moss Adams is the largest accounting and consulting firm headquartered west of the Mississippi. I make this declaration in support of the Motion to Withdraw from Current Appointments and to Decline Future Appointments that I understand is being filed contemporaneously with this Declaration.

2. I am a Certified Public Accountant (“CPA”) and a member of the American Institute of Certified Public Accountants and the Oregon Society of Certified Public Accountants. I have worked in public accounting since 1997, focusing on audits of governmental entities, higher education institutions, research institutes, utility and insurance companies, and not-for-profit organizations. I have an undergraduate degree in business administration, with an accounting emphasis, from Norwich University.

3. I was retained by Holland & Knight on behalf of Shannon Wilson in their capacity as Executive Director of the Public Defender of Marion County, Oregon. The scope of the

1 engagement was to perform an analysis of the workloads and capacity of the attorneys at Public  
2 Defender Marion County (“PDMC”) consistent with the methodology used in the Oregon  
3 Project, which was published by the American Bar Association (“ABA”) and Moss Adams in  
4 January, 2022, and is discussed further below.

5 4. The analysis contained herein is more fully set forth in my Report of Public  
6 Defender Marion County Workloads and Capacity (the “Marion County Report”), a copy of  
7 which is attached hereto at Exhibit A.

8 **I. The Delphi Method.**

9 5. The Marion County Report drew upon a study that I conducted in 2020 and 2021  
10 and completed in 2022, which was commissioned by the Oregon Office of Public Defense  
11 Services (“OPDS”) to analyze statewide workloads and capacity for public defense services (the  
12 “Oregon Project”), a copy of which is attached hereto at Exhibit B.

13 6. In December 2019, OPDS engaged the American Bar Association Standing  
14 Committee on Legal Aid and Indigent Defense (“ABA SCLAID”) and Moss Adams to analyze  
15 the historical caseloads of public defense cases in Oregon, determine how many attorneys were  
16 necessary to handle that caseload, and compare that number to the actual number of full-time  
17 attorneys then employed in Oregon’s public defense system.

18 7. The Oregon Project consisted of two main phases: (1) the application of the  
19 Delphi method to measure the amount of time that various types of public defense cases require;  
20 and (2) an analysis of the Oregon public defense system’s historical staffing and caseloads. This  
21 data then permitted us to analyze the discrepancy, if any, between the amount of time needed for  
22 public defense attorneys to provide an adequate representation and the amount of time public  
23 defense attorneys are currently able to provide.

24 8. The Delphi method was first created by the RAND Corporation (“RAND”) in  
25 the 1950s at the direction of the United States Air Force. RAND is an organization formed just  
26 after World War II in order to provide research and development to the military. In 1948, the

1 RAND Corporation transitioned to nonprofit corporation status. Its articles of incorporation  
2 state that the corporation’s purpose is “[t]o further and promote scientific, educational, and  
3 charitable purposes, all for the public welfare and security of the United States of America.”<sup>1</sup>

4 9. I have reviewed all of the ABA/SCLAID public defender workload studies  
5 conducted with other major accounting firms in five states: (1) Postlethwaite & Netterville in  
6 Louisiana; (2) BlumShapiro in Rhode Island; (3) RubinBrown in Missouri and Colorado; (4)  
7 Crowe LLP in Indiana. I have also reviewed the Texas study in which Mr. Hanlon was a  
8 consultant. Furthermore, I have read the literature review on pages nine to ten of the Missouri  
9 Report. I also conferred extensively with Mr. Hanlon regarding the reliability of the Delphi  
10 Method for the purpose of determining appropriate public defender workloads. My team has  
11 spent hundreds of hours applying the Delphi Method to public defenders’ workload in New  
12 Mexico and Oregon, including hundreds of hours working with public and private criminal  
13 defense experts associated with the Delphi panel sessions in both those states.

14 10. Based on my research regarding the Delphi Method, as well as my experience  
15 applying that method to public defender workloads in New Mexico and Oregon, it is my  
16 professional opinion that the Delphi Method, properly applied to an analysis of the workload of  
17 a public defender, had provided a reliable consensus of professional judgment of the time that  
18 should be required of a public defender to provide reasonably effective assistance of counsel  
19 pursuant to prevailing professional norms to each client.

20 11. The Delphi method has been reliably used in a range of industries and  
21 professions. Its original purpose was to forecast the effect of technology on warfare, and it has  
22 since been applied to healthcare, education, environmental science, and management. For  
23 example, the Delphi method was used to predict probable targets that the Russian government  
24 might choose to bomb in the event that it attacked the United States. More recently, the Delphi  
25

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26 <sup>1</sup> *A Brief History of RAND*, RAND Corp., <https://www.rand.org/about/history.html>.

1 method has been used to determine military women’s health priorities; develop a strategy for  
2 military emergency nursing; and study neonatal abstinence syndrome, neonatal opioid  
3 withdrawal syndrome, and clinical pain management.

4 12. The Delphi Method has also been used in program planning, needs assessments,  
5 policy determinations and resource utilization studies.<sup>2</sup> The Oregon Project, like the New  
6 Mexico Project and all other ABA/SCLAID studies, was primarily a needs assessment study.

7 13. The Delphi method employs a multi-round survey process designed to “obtain  
8 the most reliable consensus of opinion in a group of experts.”<sup>3</sup> In particular, the Delphi method  
9 was developed to build consensus among experts where other forms of objective data are not  
10 available.

## 11 **II. The Oregon Project.**

12 14. Moss Adams’s analysis of the Oregon public defense system’s historic caseloads  
13 and staffing resulted in five fundamental conclusions as of November 2021, discussed more fully  
14 below. First, the Oregon public defense system had an estimated annual workload of  
15 approximately 95,473 cases per year. Oregon Report, Ex. B, at 27. Second, the Oregon public  
16 defense system employed 592 full-time equivalent (“FTE”) public defender attorneys. *Id.* at 13.  
17 Third, the Oregon public defense system required 4,047,642 hours to be worked per year to  
18 provide indigent defendants with an adequate defense. *Id.* at 27. Fourth, the total number of  
19 full-time attorneys needed to perform that work was, conservatively, 1,888 attorneys. *Id.* Fifth,  
20 subtracting the resources currently in the system showed that the system was deficient by 1,296  
21 full-time attorneys. *Id.* In other words, to meet even minimal levels of adequate representation  
22 under the caseloads as they existed at that time, the Oregon system needed roughly three times

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23 <sup>2</sup> See RubinBrown, *The Missouri Project: A Study of the Missouri Public Defender System and*  
24 *Attorney Workloads with a National Blueprint* 10 (June 2014),  
25 [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/l\\_sclaid\\_pub\\_def\\_mo\\_workstudies\\_rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/l_sclaid_pub_def_mo_workstudies_rept.pdf).

26 <sup>3</sup> Norman Dalkey & Olaf Helmer, *An Experimental Application of the Delphi Method to the Use of Experts* 1, 1 (July 1962).

1 as many attorneys as it had. The details and bases for those conclusions follow.

2 **A. The System’s Current Staffing Resources**

3 15. Oregon’s public defense system uses a combination of state-employed attorneys,  
4 attorneys appointed on a case-by-case basis, and contracts with various groups of attorneys (such  
5 as consortia or solo practitioners). The vast majority of trial-level public defense representation  
6 is through these contracts.

7 16. Not all attorneys contracting with OPDS work on public defense matters full-  
8 time. The contracting system thus uses a model based on full-time employees, or FTEs. Under  
9 this system, an attorney can contract to use only a portion of their time representing public  
10 defense clients. Thus, an attorney might spend 40% of their time on public defense work, so  
11 would represent 0.4 of an FTE in the public defense system. If another attorney constitutes 0.6  
12 of an FTE, the total of those two attorneys’ public defense time is 1.0 FTE.

13 17. During the last contract cycle, OPDS executed more than 100 contracts with  
14 various providers, including public defender offices, consortia, law firms, non-profit  
15 organizations, and individual attorneys. Using contract data provided by OPDS that listed all  
16 such contract attorneys and their FTE equivalent, we calculated that the present contract cycle  
17 comprises 592 FTEs. Oregon Report, Ex. B, at 13. Put differently, this contract cycle’s total  
18 resources are equal to 592 FTEs. To get to the 592 value, we received a spreadsheet from OPDS  
19 that listed out all contract attorneys (as reported to and in contract with OPDS). That list included  
20 approximate 715 attorneys. After reviewing the list and accounting for attorneys that were less  
21 than one FTE, we calculated a total of 592 FTE attorneys are currently employed by OPDS.

22 **B. Analysis of the Oregon Public Defense System’s Historical Staffing and  
23 Caseloads**

24 18. Determining the Oregon public defense system’s workload also required an  
25 analysis of the system’s historical staffing and caseloads.

26 19. We collected most of the data for this analysis from the Oregon Judicial

1 Department's case management system, Odyssey. We also captured some data from the OPDS  
2 Contractor database.

3 20. This data was limited, however, in that it did not consider: (1) the impact of cases  
4 open for more than one year; or (2) the impacts of the global pandemic. The impact of multi-  
5 year cases is substantial: As of the end of 2020, 23.6% of pending adult criminal cases, and  
6 58.4% of pending juvenile cases, were over one year old. But in calculating total cases for a  
7 given year, we assumed that all cases ended in that year. As a result, the workload data we  
8 collected is very conservative; it does not account for a significant amount of the load on the  
9 system.

10 21. Based on the foregoing, we found the following public defense cases were filed  
11 for the indicated year:

Year	Number of Cases Filed
2017	98,412
2018	96,387
2019	92,831
2020	81,307
2021 <sup>4</sup>	47,698

18 Oregon Report, Ex. B, at 17.

19 **C. Determining the Total Hours Required Per Year**

20 22. I discuss below how we applied the Delphi method to determine how many hours  
21 were needed for the existing caseload to provide an adequate representation for those clients and  
22 cases.

23 **1. Selecting the Respondents**

24 23. As noted above, the purpose of the Delphi method is to identify experts in the

25 \_\_\_\_\_  
26 <sup>4</sup> 2021 is not a full year of data. Due to data limitations, adult criminal cases cover from  
January 1, 2021 to October 10, 2021 and juvenile cases from the first quarter of 2021.

1 field to be studied and enable them to build consensus regarding the questions posed. In this  
2 case, we sought to determine, for a range of case types and tasks required for those case types,  
3 how many hours would typically be required to provide those clients with reasonably effective  
4 assistance of counsel pursuant to prevailing professional norms in the State of Oregon.

5 24. Before administering the Delphi method's surveys, however, OPDS  
6 management first had to select experts to respond to the surveys and had to design the surveys  
7 themselves.

8 25. Also, because Oregon's public defense system handles both Adult Criminal and  
9 Juvenile matters, and because these two types of cases are substantively and procedurally  
10 different from one another, the project studied the two fields separately. Although we used the  
11 same methods to study both, we created separate surveys and panels for each field.<sup>5</sup>

12 26. OPDS management created a process to select survey respondents with sufficient  
13 experience and expertise in Oregon public defense. My understanding is that the OPDS  
14 management's goals included achieving a respondent population with geographic diversity and  
15 with representation from different types of contract attorneys and private practice attorneys.

## 16 2. Creating the Surveys

17 27. I understand that OPDS management also created Consulting Panels to draft the  
18 surveys to be administered. For these Consulting Panels, OPDS management gathered  
19 experienced contract attorneys and private practitioners from across the state for each panel –  
20 one panel of eight for Adult Criminal and one panel of ten for Juvenile.

21 28. I further understand that the Consulting Panels were responsible for determining  
22 which Case Types and Case Tasks would be included on the Delphi method surveys. Case Types  
23 are groupings of different kinds of cases. Examples of Case Types are "Low-Level  
24 Misdemeanor" and "Homicide and Sex Cases." By contrast, Case Tasks are sub-categories –

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25 <sup>5</sup> If a potential respondent was experienced in both Adult Criminal and Juvenile, that  
26 respondent was permitted to serve as a respondent on both panels.



1 groupings of different kinds of tasks within each case type. Examples of Case Tasks are “Court  
2 Preparation” and “Client Communication.” Dividing the practice of public defense  
3 representation into Case Types and Case Tasks allowed greater precision in the survey process.

4 29. Once the Consulting Panels had determined the different Case Types and Case  
5 Tasks that make up public defense representation in Oregon, Moss Adams and ABA SCLAID  
6 used this information to create the surveys themselves.

### 7 3. The First Two Rounds of Online Surveys

#### 8 (a) The Surveys Generally

9 30. The first two steps of the Delphi method as used with the Oregon Project  
10 comprised of two rounds of surveys. In these two rounds, we administered the surveys  
11 developed by Moss Adams and ABA SCLAID in conjunction with the Consulting Panels  
12 described above.

13 31. Both rounds of surveys were administered online by Moss Adams. The two  
14 surveys were identical, except that, before administering the second-round survey, Moss Adams  
15 provided respondents with a summary of the results of the first round, described in greater detail  
16 *infra*.

17 32. A true and correct copy of both surveys is attached hereto as Exhibit C. As with  
18 the rest of the analysis, there were two surveys: one survey sought information on the Adult  
19 Criminal field, while the other sought information on the Juvenile field.

20 33. Broadly speaking, the surveys sought information on three topics: (1) resolution,  
21 (2) frequency, and (3) time required. With regard to resolution, we asked respondents, for each  
22 Case Type, what percentage of cases typically go to trial, as opposed to another type of resolution  
23 (such as a plea deal). With regard to frequency, we asked respondents, for each Case Task within  
24 each Case Type, which Case Tasks needed to be conducted for each Case Type, and how often  
25 they needed to be conducted. This second category was asked twice: once for cases that went to  
26 trial, and once for cases that reached another resolution. Finally, for time required, we asked he

1 respondents how much cumulative time an attorney would need to perform each Case Task –  
2 again, for each Case Type, and for each resolution type.

3 34. Before the surveys were administered, we instructed respondents to keep three  
4 broad categories of information in mind while responding to the surveys: (1) the ABA and  
5 Oregon State Bar standards for defense representation; (2) the Oregon Rules of Professional  
6 Conduct (the “Oregon RPCs” or the “RPCs”); and (3) the respondents’ expertise and experience.  
7 In particular, when determining how much time a given Case Task required, respondents were  
8 to consider what these standards and rules required, as well as respondents’ experience and  
9 expertise.

10 35. We also directed respondents to assume that they had adequate investigative,  
11 secretarial, and other support services when considering the survey questions, even if that was  
12 not the case with their actual practices. I note that this assumption built conservatism into the  
13 analysis, because the Oregon public defense system often lacks adequate support and  
14 investigative services.

15 36. The surveys were designed such that respondents could skip questions that the  
16 respondents felt they lacked sufficient experience to answer. Specifically, the surveys were  
17 divided into Case Types. Before respondents answered questions about a particular Case Type,  
18 respondents were asked whether they had sufficient experience in that Case Type to respond to  
19 questions about it. If respondents replied no, the survey would automatically move on to the  
20 next Case Type.

21 **(b) The First Round of Surveys**

22 37. For the first round of responses, as contemplated by the Delphi method,  
23 respondents did not communicate with each other at all. The purpose of this first round was to  
24 obtain a baseline understanding of the responses from the various respondents before they had  
25 the opportunity to determine if a consensus could be formed on the questions posed.

26 38. The survey results from this first round ultimately provided data regarding how

1 much time each respondent believed was required, on average, for each Case Task for each Case  
2 Type, in what percentage of cases the respondent believed that Case Task would arise, and what  
3 percentage of each Case Type would go to trial.

4 39. Moss Adams then applied statistical analysis to these survey results to determine  
5 the trimmed peer range and the peer mean. The trimmed peer range was trimmed to leave only  
6 the middle 60% of responses. The purpose of trimming the outlying 40% of responses was to  
7 eliminate outliers that could skew the peer mean. The trimmed peer mean was a single data  
8 point showing the mean response.

9 40. This trimming identified tasks that could quickly form a consensus and those that  
10 had large differentiation and required further deliberation. Specifically, tasks with a large  
11 difference in low to high hour estimates required further consensus (e.g., Homicide and Sex  
12 Cases below) and those with a small difference in low to high hour estimates were less likely to  
13 require substantial further deliberation.<sup>6</sup> A selection of some such statistics for Adult Criminal  
14 cases are below:

Case Type	Resolution Type	Case Task	Low	High	Mean
Homicide and Sex Cases	Plead Guilty	Discovery/ Case Preparation	20.00	120.00	55.48
Homicide and Sex Cases	Go to Trial	Client Communication	25.00	100.00	58.70
Homicide and Sex Cases	Plead Guilty	Client Communication	20.00	75.00	41.41
Low-Level Misdemeanor	Go to Trial	Court Time	8.00	20.00	2.36
Low-Level Misdemeanor	Plead Guilty	Negotiations	0.50	1.00	0.80
Probation Violations	Resolved	Court Preparation	0.50	1.00	0.64

22 (c) The Second Round of Surveys

23 41. After we calculated the trimmed peer range and the peer mean from the first round  
24 of surveys, we administered the second round of surveys.

25 \_\_\_\_\_  
26 <sup>6</sup> Low and high ranges are calculated after the 40% trimming of responses.

1           42.     As noted above, the surveys themselves – i.e., the questions asked of respondents  
2     – were identical between the two rounds.  However, there were two procedural differences  
3     between the two rounds: (1) any respondent who did not complete the first round could not  
4     participate in the second round; and (2) we provided the second-round respondents with the  
5     trimmed peer range and the peer mean from the first-round results.  Of the 246 surveys sent to  
6     respondents for the first round, 108 responded.  Those respondents received the survey this  
7     second time.

8           43.     The reason behind providing respondents with these statistics goes to the heart of  
9     the Delphi method.  The goal of the Delphi method is to allow experts in a given field to  
10    collaborate to build consensus between them.  So, for example, a seminal application of the  
11    Delphi method narrowed expert opinions on the number of atomic bombs required, from the  
12    perspective of the U.S.S.R., to reduce U.S. munitions output to a certain level.<sup>7</sup>  Where the range  
13    began as 50 to 5,000 bombs, it ended as 167 to 360 bombs.  Here, by conveying to the panel in  
14    an anonymous fashion the results of fellow respondents, the respondents could start the process  
15    of building consensus, if consensus could be established.

16          44.     I will note that consensus cannot be achieved in all circumstances.  We defined  
17    consensus as two-third of the panel reaching agreement.  However, I note that our panelists  
18    frequently reached much higher rates of agreement on data points, including 100% agreement  
19    on multiple occasions.  If no consensus can be reached on a particular topic, then the Delphi  
20    method requires that the administrator report that result.  Although the Delphi method generally  
21    produces consensus, where it does not, respondents generally “polarize around two distinct  
22    values, so that two schools of thought regarding a particular issue seem[] to emerge.”<sup>8</sup>

23          45.     This second round, however, was still conducted without any collaboration or  
24    communication between or among the respondents.  The only new information that each

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26    <sup>7</sup> Dalkey & Helmer, *supra* note 3, at 5.

<sup>8</sup> Olaf Helmer, *Analysis of the Future: The Delphi Method* 1, 9 (1967).

1 possessed was the trimmed down results of the other respondents.

2 46. Moss Adams again analyzed the data from the results of the second round of  
3 surveys to determine the trimmed peer mean and the peer range. In order to reach the trimmed  
4 peer mean, Moss Adams again trimmed the outlying 40% of responses.

5 47. Seventy-four attorneys responded to the second round of surveys. As is typical  
6 with the Delphi method, the information regarding responses resulted in changes in prior  
7 answers.

#### 8 4. Live Discussion Panels and the Third Round

9 48. Following the two rounds of surveys, we conducted live discussion panels,  
10 consisting of respondents who responded to both rounds of surveys. Due to pandemic  
11 restrictions, we conducted the live discussion panels over Zoom. For Adult Criminal, we  
12 convened four sessions that each lasted approximately three hours. For Juvenile, we convened  
13 four sessions of approximately three hours each in addition to two sessions that each lasted  
14 approximately one and a half hours. I led each session, accompanied by a Moss Adams colleague  
15 who conducted the polling described *infra*.

16 49. Before conducting the live discussion panels, we first gave an overview of the  
17 Delphi method and its iterative process to respondents.<sup>9</sup> We then instructed respondents to rely  
18 on the ABA and Oregon State Bar standards for defense representation and the Oregon RPCs.  
19 In addition, we provided respondents with Case Type definitions and Case Task definitions. We  
20 further reminded respondents of the number of professionals in each session and the total years  
21 of experience present within the Zoom session.<sup>10</sup>

22 50. At the beginning of the live discussion panels, we also provided respondents with  
23 the trimmed peer range and the peer mean from the second-round survey results. In connection  
24

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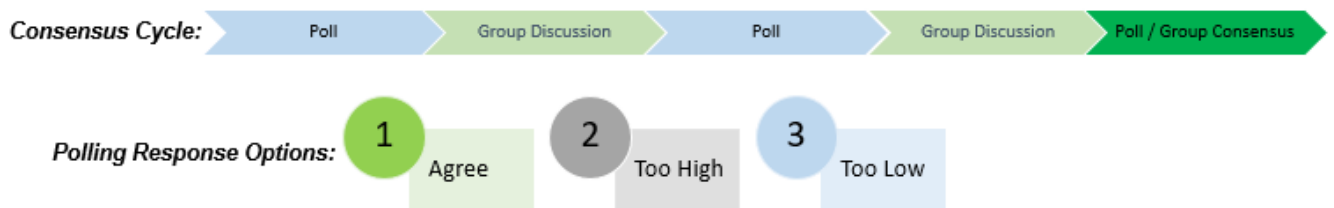
25 <sup>9</sup> The overview we provided for respondents in the Oregon Report is attached to this  
26 Declaration as Exhibit D at 3.

<sup>10</sup> Ex. D at 5.

1 with the discussions that they would be having, we also instructed respondents to keep in mind:  
2 (1) the ABA and Oregon State Bar standards for defense representation; (2) the Oregon RPCs;  
3 (3) their expertise and experience; (4) the results previously mentioned; and (5) the thoughts  
4 provided by their fellow panel members during those discussions. Respondents were instructed  
5 that if they lacked experience with a certain case type, they should not to respond for that specific  
6 section.<sup>11</sup>

7 51. We then the respondents to attempt through discussion to reach consensus on the  
8 resolution, frequency, and time required for each Case Task and Case Type. Before proceeding  
9 to that discussion, however, we began by providing respondents with the round-two trimmed  
10 mean and conducting an anonymous poll. In the poll, respondents were asked either to agree  
11 with the trimmed mean or to respond that the value was too high or too low. Respondents were  
12 further reminded to focus on the total time a task should take to perform in providing their  
13 estimates.<sup>12</sup>

14 52. To the extent that any disparity existed in the panelists' responses, we had the  
15 panelists discuss their differences among themselves. After the discussion, we conducted  
16 another poll, and repeated the cycle until the respondents reached consensus. This process is  
17 illustrated in the following diagram:



22  
23 53. I note that at the live-discussion stage, some data that was trimmed during the  
24 first and second phases had an opportunity to reemerge if supported by legitimate experience

25  
26 <sup>11</sup> *Id.*

<sup>12</sup> *See, e.g., id.* at 7.

1 and/or argument. For instance, a response to a written survey may have been such an outlier that  
 2 it was trimmed. However, a respondent had the opportunity to raise that in the panels and, if the  
 3 respondent could provide convincing support for that outlier, the group could decide to agree  
 4 and shift their responses towards what had previously been an outlier.

5 54. At the end of the process, respondents were able to reach consensus, as I defined  
 6 that term above, on how much time was required, on average, for each Case Task for each Case  
 7 Type, in what percentage of cases the respondent believed that Case Task would arise, and what  
 8 percentage of each Case Type would go to trial. Those results can be found at Oregon Report,  
 9 Ex. B, at 31, Exs. 4.1, 4.2.

10 55. For example, for the six statistics identified above in Round 1, participants were  
 11 able to reach consensus on estimates for all case tasks. This final consensus is shown in the  
 12 below table in the “Final” column, along with the low and high ranges determined from Round  
 13 1.

Case Type	Resolution Type	Case Task	Low	High	Final
Homicide and Sex Cases	Plead Guilty	Discovery/ Case Preparation	20.00	120.00	100
Homicide and Sex Cases	Go to Trial	Client Communication	25.00	100.00	80
Homicide and Sex Cases	Plead Guilty	Client Communication	20.00	75.00	60
Low-Level Misdemeanor	Go to Trial	Court Time	8.00	20.00	12.50
Low-Level Misdemeanor	Plead Guilty	Negotiations	0.50	1.00	0.75
Probation Violations	Resolved	Court Preparation	0.50	1.00	0.75

21 56. From the consensus responses, we were able to total the Case Task hours –  
 22 weighted by the frequency by which those Case Tasks would be required, and in turn weighted  
 23 by the resolution types – in order to reach the average number of hours required per case. For  
 24 example, respondents concluded that, on average, Low-Level Misdemeanors required 22.26  
 25 hours per case and High-Level Felonies required, on average, 148.95 hours per case. Oregon  
 26 Report, Ex. B, at 69.

1           57. In order to determine the total work hours needed per year per Case Type, we  
2 multiplied the average annual caseload by the Delphi method's consensus of how many hours  
3 are required for each Case Type. This calculation is the "Total Hours" per individual Case Type.

4           58. In order to determine the system-wide total hours required per year, we first  
5 identified all unique Case Types within (1) Adult Criminal Workload and (2) Juvenile Workload,  
6 for the reasons discussed above. For each Case Type within these Workload types, we  
7 aggregated their Total Hours. This final number provided a total hour estimate for Adult  
8 Criminal Workload and Juvenile Workload overall. To determine the grand total of hours  
9 needed, we added the sums of Total Adult Criminal Workload and Total Juvenile Workload.

10          59. We thus determined that the Oregon public defense system – before accounting  
11 for the resources already in the system – requires 4,047,642 hours per year. Oregon Report, Ex.  
12 B, at 69. In order to account for attorneys appointed outside of the contracting system, we  
13 reduced this total number by 3%. We determined that 3% was the appropriate reduction because  
14 that is the most conservative estimate provided by OPDS staff of the amount of work handled  
15 by these appointed attorneys. Reducing the total by 3% resulted in 3,926,213 hours. That  
16 number represents the total number of hours needed by contract attorneys per year.

17           **D. Determining the Total Number of FTEs Needed**

18          60. We then needed to determine how many attorneys were needed to perform the  
19 hours.

20          61. In calculating that number, we were very conservative. Specifically, we assumed  
21 that a full-time attorney works forty hours per week, fifty-two weeks per year, without vacation  
22 or holidays, and that all of that forty hours per week are devoted to case work, and not  
23 administrative work, continuing education or travel time, for example. Based on those numbers,  
24 a full-time attorney works 2,080 hours per year.

25          62. Dividing the total amount of work in the system for contract attorneys – 3,926,213  
26 hours – by 2,080 hours tells us the total number of FTEs required by the system. The total



1 number of full-time attorneys needed by the system, based on that math, is 1,888 FTEs.

2 **E. The Deficiency in the Statewide System**

3 63. To determine whether any deficiency existed in the statewide system, we  
4 compared the number of available FTEs to the number of FTEs needed, i.e. 1,888 FTEs needed  
5 compared to the 592 FTEs available.

6 64. We subtracted the number of FTEs already in the system to determine the  
7 deficiency. We concluded that the deficiency is equal to 1,296 FTEs. This means that the system  
8 is only providing 31% of the required legal capacity – i.e. it is 69% deficient.

9 65. Due to the multiple conservative assumptions in our methodology, 1,296 FTEs is  
10 a conservative total. That is because: (1) respondents were asked to assume adequate support  
11 and investigative services; (2) our count of caseload does not account for cases that last for more  
12 than one year; and (3) we assumed that attorneys would dedicate 2,080 hours per year to client  
13 representation. In fact, public defenders and contract attorneys often lack sufficient support and  
14 investigative services; many cases last more than one year before resolution; and attorneys  
15 require time for vacation, sick leave, administrative tasks, and other non-representation work.

16 **III. The Marion County Project.**

17 66. In 2023, I was engaged to perform an analogous analysis on the PDMC’s  
18 workload and capacity.

19 67. For this analysis, I began with the Oregon Project’s Delphi results, which  
20 provided the average hours required for each Case Type.

21 68. To determine the discrepancy, if any, between the amount of FTEs available and  
22 the amount required for the PDMC, however, I collected PDMC-specific data.

23 69. In order to determine the system’s demands, I gathered data regarding the  
24 PDMC’s historical caseload, including which types of cases arose. I primarily gathered this data  
25 from PDMC’s case management system, MyCase. I also obtained data from the OPDS  
26 Contractor database and from the Oregon Judicial Department’s case management system,

1 Odyssey.

2 70. Based on the foregoing, we found the following public defense cases were filed  
3 for Adult Criminal charges in Marion County for the indicated year:

Year	Number of Cases Filed
2020	1,247
2021	1,487
2022	1,627

8 Marion County Report, Ex. A, at 8.

9 71. In order to determine the FTEs currently available in the system, I gathered  
10 staffing data from PDMC. As of December 31, 2022, PDMC had 18.5 public defender FTE for  
11 adult criminal defense. PDMC does not perform juvenile representation or appellate  
12 representation.

13 72. Applying the same mathematical formula as used in the Oregon Project, and as  
14 explained above, we determined that the total number of FTE attorneys needed at PDMC to  
15 provide reasonably effective assistance of counsel under prevailing professional norms, based  
16 on historic workloads, is 29.22 FTE.

17 73. Comparing the figure of 29.22 FTE to the number of FTE attorneys actually  
18 available – 18.5 – reveals a deficiency of 10.72 FTE attorneys, or a deficiency of 37 percent.

19 74. This calculation is depicted in the following diagram:

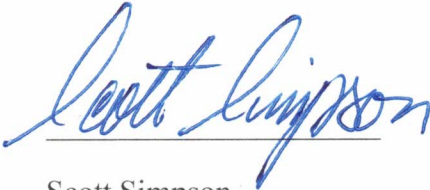


24 75. Due to the multiple conservative assumptions in our methodology, this is a  
25 conservative total. That is because: (1) Oregon Project respondents were asked to assume  
26 adequate support and investigative services; (2) our count of caseload does not account for cases

1 that last for more than one year; and (3) we assumed that attorneys would dedicate 2,080 hours  
2 per year to client representation. In fact, public defenders and contract attorneys often lack  
3 sufficient support and investigative services; many cases last more than one year before  
4 resolution; and attorneys require time for vacation, sick leave, administrative tasks, and other  
5 non-representation work.

6 I hereby declare that the above statement is true to the best of my knowledge and belief,  
7 and that I understand that it is made for use as evidence in court and is subject to penalty for  
8 perjury.

9 DATED this 14 day of March, 2023.

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13 Scott Simpson  
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# **EXHIBIT A**

**An Analysis of the Workloads of  
Public Defender of Marion County**

PREPARED BY:



Data gathering and analysis services performed by Moss Adams LLP (Moss Adams) are conducted in accordance with the Standards for Consulting Services established by the American Institute of Certified Public Accountants, and Moss Adams' deliverables and other work product are based on underlying assumptions and other information determined by Moss Adams' Client, Public Defender of Marion County. No legal opinion from Moss Adams is intended or implied in this report. Moss Adams' services, deliverables and other work product are intended solely for the use of Moss Adams' Client.

**An Analysis of the  
Workloads of  
Public Defender of Marion County  
March 2023**

# Table of Contents

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	PAGE
<b>Introduction</b>	1
<b>Executive Summary</b>	2 – 3
<b>Background</b>	
i. Applicable Standards	4
ii. Overview of the Oregon Public Defense System	5 – 6
<b>Historical Staffing and Caseload Analysis</b>	
i. Historical Staffing	7
ii. Historical Caseload	8
<b>The Delphi Method</b>	9 – 10
<b>Deficiency Analysis</b>	11 – 14
<b>Conclusion</b>	14
<b>Appendices</b>	
A – Key Definitions and Results from The Oregon Project	15 – 17
B – Allocations	18



# An Analysis of the Workloads of Public Defender of Marion County

## Introduction

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### INTRODUCTION

Moss Adams LLP (Moss Adams) conducted this study for Holland & Knight on behalf of the Public Defender of Marion County (“PDMC”) to compare the historical caseload for PDMC with the number of public defenders contracted by PDMC, in order to determine if there is an excess or deficiency of resources available to adequately represent the adult criminal caseload.<sup>1</sup>

The work performed in this study relied upon the report we prepared for the Oregon Project,<sup>2</sup> which we issued in January 2022 with the American Bar Association. The Oregon Project consisted of two main components: (1) an analysis of the Oregon public defense system’s historical staffing and caseloads; and (2) the application of the Delphi method. The Delphi method determined how much time an attorney *should* spend, on average, in providing representation in certain types of criminal and juvenile cases. In determining the amount of time an attorney *should* spend to meet the minimum standards for representation, we were guided by the legal standard set out in *Strickland v. Washington*: “reasonably effective assistance of counsel pursuant to prevailing professional norms.”<sup>3</sup> The prevailing professional norms, which anchor the Delphi process, are the Rules of Professional Conduct, the ABA Criminal Justice Standards, and the applicable national and local attorney performance standards.

The current study consists of three parts:

- (1) We obtained the historical caseload data of cases assigned to PDMC, stratified that data into the categories used in the Oregon Project, and calculated the number of public defenders needed for adequate representation at current caseloads using the methodologies used in the Oregon Project.
- (2) We obtained the number of fulltime equivalent (“FTE”) public defenders that Oregon Public Defense Services (“OPDS”) contracts for with the PDMC.
- (3) We compared the number of attorneys needed by PDMC against the number of FTE attorneys available at PDMC to determine if there was an excess or deficiency in the number of public defenders available to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

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<sup>1</sup> PDMC does not handle juvenile cases.

<sup>2</sup> Moss Adams LLP, on behalf of ABA’s Standing Committee on Legal Aid and Indigent Defendants, wrote a report entitled *The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards (2022)*, available at [https://www.americanbar.org/groups/legal\\_aid\\_indigent\\_defense/indigent\\_defense\\_systems\\_improvement/publications/or-project/](https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/publications/or-project/).

<sup>3</sup> *Strickland v. Washington*, 466 U.S. 688, 688 (1984).

# An Analysis of the Workloads of Public Defender of Marion County Executive Summary

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## EXECUTIVE SUMMARY

Across the country, criminal courts are failing to meet the promise of equal justice under the law. As these failings are continually examined, increased attention is being paid to the obligation to provide effective assistance of counsel to all those accused of crimes and facing imprisonment who cannot afford private lawyers. For far too long, public defenders have raised concerns that their caseloads do not permit them to give appropriate time and attention to each client<sup>4</sup>.

The State of Oregon is no different. The Oregon Project report, issued in January 2022, was the product of more than two years of study and analysis of Oregon's current staffing and caseloads, and applied the Delphi method to arrive at standards reflecting the average amount of time an attorney should spend to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.

The Oregon Project was a foundational building block to this report, which itself is focused on PDMC. When the standards developed by the Oregon Delphi panels were applied to the historical staffing and caseloads to calculate whether PDMC has too many (excess) or too few (deficiency) FTE attorneys, the results were consistent with the Statewide issue.

As shown below, PDMC has a 37% deficiency in attorney FTE to provide reasonably effective assistance of counsel. This means that the current PDMC public defenders must spend over 13 hours of every working day<sup>5</sup> during a calendar year, working on case specific public defense work. Though this deficiency is less than the State of Oregon, which on average has a 69% deficiency, PDMC's deficiency is not sustainable, and has a significant impact on the citizens of Marion County, Oregon.

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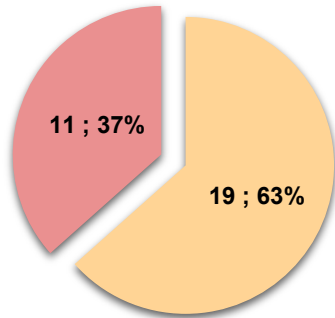
<sup>4</sup> The Oregon Project, Executive Summary

<sup>5</sup> Working days is defined as 249 days per year (removing weekends and public holidays).

# An Analysis of the Workloads of Public Defender of Marion County Executive Summary

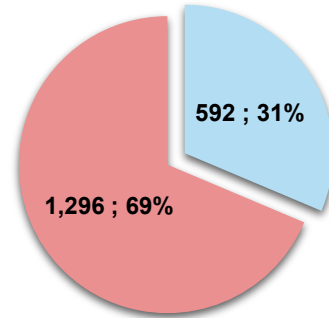
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Public Defender of Marion County  
Public Defender FTE



Available FTE Deficiency FTE

State of Oregon  
Public Defender FTE



Available FTE Deficiency FTE

# An Analysis of the Workloads of Public Defender of Marion County Background

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## BACKGROUND

### Applicable Standards

The relevant legal rules and standards pertaining to effective assistance of counsel are critical components to understand both attorney workloads and our analysis of caseloads in this study. The duty of the State of Oregon to provide representation in criminal cases for those accused individuals unable to afford counsel derives from the Sixth Amendment to the United States Constitution, as interpreted by the United States Supreme Court, and from Article 1, Section 11 of the Oregon Constitution.

In 1963, the United States Supreme Court held in the *Gideon* case that defendants charged with a felony in state criminal court are entitled to a lawyer at the state's expense if they were unable to afford counsel.<sup>6</sup> In 1972, the United States Supreme Court extended the right to counsel to misdemeanor cases that could result in a defendant's loss of liberty.<sup>7</sup>

In 1984, the United States Supreme Court held that the Sixth Amendment's requirement of counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice."<sup>8</sup> In 2010, the Supreme Court noted in *Padilla v. Kentucky* that "[w]e have long recognized that 'prevailing norms of practice as reflected in American Bar Association Standards and the like are guides to determining what is reasonable.' Although they are 'only guides' and not 'inexorable commands,' these standards may be valuable measures of the prevailing professional norms of effective representation[.]"<sup>9</sup>

Relevant prevailing professional norms in Oregon include the following, which are further described in detail in The Oregon Project:

- Oregon Rules of Professional Conduct
- ABA Criminal Justice Standards for the Defense Function
- IJA-ABA Juvenile Standards
- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases
- Oregon State Bar Performance Standards for Representation in Criminal, Juvenile Delinquency, and Juvenile Dependency Cases

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<sup>6</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>7</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972); see also *Alabama v. Shelton*, 535 U.S. 654 (2002).

<sup>8</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>9</sup> *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010) (citations omitted). In that case, the Court discussed the ABA Standards for Criminal Justice.

# An Analysis of the Workloads of Public Defender of Marion County Background

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## Overview of the Oregon Public Defense System

The Oregon Public Defense Services Commission (the “Commission”) is an independent body that governs the OPDS. The Commission is responsible for establishing and maintaining the public defense system for the Oregon state courts’ system for all 27 judicial districts of public defenders in the State of Oregon. The Commission, through OPDS, provides counsel to individuals in adult criminal, juvenile delinquency, juvenile dependency, and civil commitment proceedings at the trial level, as well as in direct appeals from these cases. Historically, OPDS has contracted with providers of different types – public defender offices, law firms, consortia, non-profit organizations and individual attorneys – to provide public defense services. Oregon is the only state that provides trial level counsel primarily through a contracting system.<sup>10</sup>

In January 2021, OPDS implemented a contract model based upon FTE attorneys. Upon the execution of the Public Defense Legal Services Contract Terms agreement in 2021, OPDS funded a specific number of FTE attorneys in each contract. Section 4.2 of the Public Defense Legal Services Contract includes various clauses regarding court appointments outside the contract. For example, attorneys funded as a 1.0 FTE are not permitted to accept any other paid legal work, including legal advocacy work and/or act as a municipal or justice court public defense attorney, prosecutor, or judge.<sup>11</sup>

In this new model, there are limits on the number of cases an attorney can be assigned. The Commission established caseload limits based on 115% of the 1973 National Advisory Commission on Criminal Justice Standards and Goals<sup>12</sup> (NAC caseload standards): 173 felonies, or 460 misdemeanors, or 230 juvenile cases. OPDS uses these caseload limits to determine how many FTE attorneys are needed. OPDS monitors caseloads throughout the year to determine if more or fewer FTE attorneys are needed in each jurisdiction.

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<sup>10</sup> By contrast, appellate services in Oregon are provided primarily through the Appellate Division of OPDS. Attorneys in this office are full time employees of OPDS. Contract services are used for appeals only when the appellate division is not able to accept a case or client due to conflict or lack of capacity.

<sup>11</sup> It does allow them to engage in pro bono legal services.

<sup>12</sup> National Advisory Commission on Criminal Justice Standards and Goals (1973) at Standard 13.12-Workload of Public Defenders, available at <http://www.nlada.org/defender-standards/national-advisory-commission>. The NAC standards provide that an individual defender’s annual caseloads should not exceed 150 felonies, 400 misdemeanors (excluding traffic cases), 200 juvenile cases, 200 mental health cases, or 25 appeals, or a proportional combination thereof.

## An Analysis of the Workloads of Public Defender of Marion County Background

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During the last contract cycle, OPDS executed more than 100 contracts with various provider types, including public defender offices, consortia, law firms, non-profit organizations and individual attorneys. In total, OPDS contracted for more than 600 FTE attorneys.<sup>13</sup> Under the FTE model, OPDS pays approximately \$190,000 to \$210,000 per FTE attorney, which is intended to cover not only attorney salary and benefits, but also overhead and support staff costs. OPDS estimates this amount to cover .5 support staff for each 1 FTE attorney.

OPDS does not pay any additional amounts to public defender offices or individual attorneys for administration, supervision or training, regardless of the size of the contractor. Some consortia and law firms receive contract administrative costs, but this cost does not cover attorney supervision or training. Accordingly, a public defender office, consortium or other contractor wishing to provide supervision for its lawyers or a professional training program must pay for these services out of the allotted FTE amount, reducing funds available for attorney salary, overhead and support staff, or raise additional funds to do so.<sup>14</sup>

Contractors report an FTE percentage for each attorney to OPDS. At present, while OPDS can limit case assignments in proportion to the total FTEs reported by a contractor, OPDS cannot verify the accuracy of the reported percentages or effectively monitor the work performed under its contracts.

Non-contract attorneys are used to represent clients who cannot be represented by contractors. Non-contract attorneys are assigned cases when a conflict of interest exists for contractors; when the contractor has met its contractual caseload obligations or limits; or when the existing contractors lack attorneys with the requisite qualifications to handle a particular type of case. These attorneys are compensated at an hourly rate for their legal services.<sup>15</sup>

For the purposes of this report, public defenders/public defense attorneys include attorneys at public defender offices, consortia, non-profit organizations, law firms with public defense contracts with OPDS, and individual attorneys who have public defense contracts with OPDS. Private practice attorneys include those criminal and juvenile attorneys who do some minimal non-contract public defense work.

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<sup>13</sup> FTE contracted to provide public defense services in appellate, habeas and Psychiatric Security Review Board cases were excluded from this total.

<sup>14</sup> The ABA's Ten Principles of a Public Defense Delivery System require both adequate supervision (Principle 10) and appropriate training (Principle 8). ABA Ten Principles of a Public Defense Delivery System (ABA Ten Principles) (2002), *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.auth\\_checkdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.auth_checkdam.pdf).

<sup>15</sup> OPDS staff estimate that non-contract attorneys are used in 2-3% of public defense cases in Oregon.

# An Analysis of the Workloads of Public Defender of Marion County Historical Staffing and Caseload Analysis

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## HISTORICAL STAFFING AND CASELOAD ANALYSIS

The historical staffing and caseload analyses are comprehensive reviews of the available current and historical workload of PDMC. They seek to accurately describe the current state of public defense for that office and are integral in understanding the “world of is”<sup>16</sup> to compare it to the requirements generated through the Delphi study.

### Historical Staffing

#### *FTE Method*

The FTE method reviews historical and current personnel employment data for attorneys, and converts the attorney personnel to full-time equivalents (FTEs). This allows for a comparison of total attorney time available, based on FTE and caseloads, to total attorney time needed at the system level, based on the Delphi Panel results and caseloads. Calculating FTEs for contract attorneys is inherently complex. Attorneys in contract systems often work less than full-time, engaging in private practice or other legal work.

OPDS provided the number of FTEs the agency believes it is funding in Marion County for the adult criminal caseload, which included public defenders at public defender offices, attorneys at law firms, non-profit organizations or consortia that have public defense contracts with OPDS, and individual attorneys with contracts with OPDS.

Similarly, PDMC provided FTE information from their office, which was consistent with the data provided by OPDS. As of December 31, 2022, OPDS was funding 44.44 FTE in Marion County, and PDMC had 18.5 public defender FTE for adult criminal defense, as PDMC does not perform juvenile representation or appellate representation.

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<sup>16</sup> This stands in contrast to the Delphi study, which describes “the world of should.”

# An Analysis of the Workloads of Public Defender of Marion County Historical Staffing and Caseload Analysis

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## Historical Caseload

Historical case data was obtained primarily from the Oregon Judicial Department’s (“OJD”) case management system, Odyssey, which captures information in the courts at the time of filing, and therefore does not include data on items that happen outside of courts (jails, detention centers) or confidential or sealed cases, which would not be material to this analysis. The datasets provided from OJD included representation status. This report only includes data that was assigned a “Court Appointed” status.

A limited amount of data used in this analysis was from the OPDS Contractor database, which is populated based on monthly reports from contractors based on appointed cases on case number and filing date. Under the case credits model that was in place for calendar years 2017-2019, if contractors failed to report a case, they did not receive credit or get paid for that case. For calendar year 2020, contracts were extended for two six-month periods, and the credits were removed from the contract. This analysis assumes that contractors continued to report all cases consistent with prior practices. In 2021, under the new FTE model, every case counts towards FTE, which has been monitored since the new contract went into place on January 1, 2021.

### *Public Defender of Marion County*

Historical case data was obtained from PDMC’s case management system MyCase, which PDMC fully transitioned to on January 1, 2022. Historical data continues to be loaded into from PDMC’s old system, CaseBase, but 2021 and 2022 case data had been captured as of this analysis, and therefore the estimated caseload is calculated on the average of the 2021 and 2022 caseload based on case assigned date.

A table of assigned public defense cases to PDMC is detailed below.

PUBLIC DEFENDER OF MARION COUNTY CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD				
Adult Criminal				
Case Type	2020	2021	2022	Estimated Caseload (Average of 2021 and 2022)
Low-Level Misdemeanor	562	557	748	653
Complex Misdemeanor	205	261	260	261
Low-Level Felony	258	373	413	393
Mid-Level Felony	42	49	52	51
High-Level Felony	82	111	83	97
Homicide and Sex Cases	6	5	7	6
Probation Violations	92	131	64	98
<b>Total Adult Criminal</b>	<b>1,247</b>	<b>1,487</b>	<b>1,627</b>	<b>1,557</b>

**Sources:**

Sourced from PDMC’s case management system MyCase based on the date the case was assigned to PDMC. See Appendix B for allocations of certain case types.



# An Analysis of the Workloads of Public Defender of Marion County The Delphi Method

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## THE DELPHI METHOD

The workload study in The Oregon Project applied the Delphi method, which is an iterative survey process developed by the RAND Corporation and used in a range of industries and professions. Within the legal system, examples of use of the Delphi method can be traced back decades, and the Delphi method is considered an appropriate methodology for a caseload study.<sup>17</sup> Examples of these uses of the Delphi method are studies that were conducted by both the National Association of Court Management and the National Center for State Courts.<sup>18</sup> These efforts were principally focused on assessing judicial and court support staff needs.<sup>19</sup> Additionally, the Delphi method has been implemented by ABA SCLAID and partner accounting and consulting firms in similar public defense workload studies of public defense systems in other states. An overview of the Delphi method,<sup>20</sup> including use of the method in determining appropriate caseloads for public defense attorneys, is detailed in Appendix A of The Oregon Project.

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop a reliable consensus on a specific issue. As a methodological strategy, the Delphi method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at set intervals. The surveying practices applied can be either interviews or surveys that focus on fundamental questions of significance to the group participating.

To initiate the Delphi method, a group of experts provides individual, anonymous responses on a given topic based on their expertise and experience. Next, the professionals that responded to the initial survey are provided the same survey with peer response data from the initial round. This iterative process of alternating participants' independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

In the Oregon Project, as in prior ABA SCLAID workload studies, the Delphi method was used to provide a reliable consensus of professional judgment on the time that *should be* expended for a public defense attorney in Oregon to provide reasonably effective assistance of counsel

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<sup>17</sup> Norman Lefstein, Securing Reasonable Caseloads: Ethics And Law Of Public Defense 140-51 (ABA 2011), *available at* [https://www.americanbar.org/content/dam/aba/publications/books/lis\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads\\_supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/books/lis_sclaid_def_securing_reasonable_caseloads_supplement.pdf)

<sup>18</sup> National Center for State Courts' reports, *available at* <http://www.ncsc.org>.

<sup>19</sup> Matthew Kleiman, Cythia Lee and Brian Ostrom, Workload Assessment: A Data-driven Management Tool for the Judicial Branch (National Center for State Courts 2013).

<sup>20</sup> See also Use of the Delphi method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned (2021), *available at* [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/lis-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/lis-sclaid-indef-delphi-method-lessons.pdf).

## **An Analysis of the Workloads of Public Defender of Marion County The Delphi Method**

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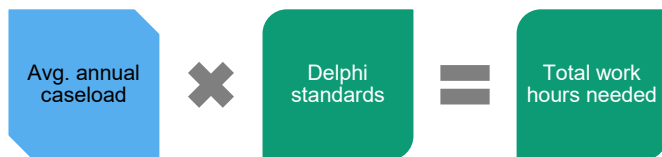
pursuant to prevailing professional norms. The Delphi process used in Oregon relied upon the expertise of attorneys from various types of contractors, as well private practice attorneys, to develop a reliable consensus of professional judgment of the amount of time that attorneys should be spending on a particular Case Task in particular Case Types, considering both the *Strickland* standard (reasonably effective assistance of counsel) and the applicable ethical and substantive professional standards (prevailing professional norms).

For additional details regarding the methodology framework, survey participants, and specific details regarding this process as used in the Oregon Project can be found in the report resulting from that project. Pertinent results from that study used in the deficiency analysis in the next section are detailed in Appendix A.

# An Analysis of the Workloads of Public Defender of Marion County Deficiency Analysis

## DEFICIENCY ANALYSIS

To perform the deficiency analysis, the projected caseload (obtained by an analysis of the historical caseloads) is multiplied by the time needed by Case Type (as determined by the Delphi panels), to produce the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.



The hours needed can then be translated into FTEs and compared to the number of FTEs currently available to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.



As noted in the formula above, we have assumed that an FTE public defender works 2,080 hours per year. That reflects 40 hours/week for 52 weeks, which is obviously not achievable. The hours allotment assumes **all** hours are allocated to client representation, without consideration for administrative tasks, such as general meetings, work-related travel time, or wait time. It also does not reduce time for continuing legal education requirements and other training, nor does it reduce time during the workday to allow for bathroom breaks, lunch breaks, etc. Similarly, this assumption assumes that public defense attorneys work every week of the year, without taking any time off for vacation, sick leave etc. As such, the resulting total of 2,080 hours per year of case work is very conservative and would, in reality, require time far exceeding eight hours per days and five days per week to accomplish.<sup>21</sup>

<sup>21</sup> See Yale Law School Career Development Office, The Truth About the Billable Hour, *available at* [https://law.yale.edu/sites/default/files/area/departments/cdo/document/billable\\_hour.pdf](https://law.yale.edu/sites/default/files/area/departments/cdo/document/billable_hour.pdf) (noting that to "bill" 1,832 hours, you are likely at work for 2,420 hours).

## An Analysis of the Workloads of Public Defender of Marion County Deficiency Analysis

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Indeed, the total time allotted for case time in ABA Delphi workload studies generally exceeds the billable hours targets of commercial law firms in major urban areas like New York City and Washington, DC.<sup>22</sup>

Nevertheless, using that assumption we engaged in the following analysis.

First, a Delphi workload analysis of the attorney time needed to handle PDMC's estimated annual caseload was performed. We used the estimated annual caseload by case type and applied the Delphi Hours per Case as developed in The Oregon Project (totaling 60,777 hours per year).

Second, that number was divided by 2,080 hours which, as noted above, is the assumed number of hours that a FTE PDMC attorney will work in a given year. That math showed that the total of FTE lawyers needed at PDMC to provide reasonable effective assistance of counsel under prevailing professional norms, based on historic workloads, is 29.22.

Third, that number was compared against the number of FTE attorneys actually available at PDMC (18.5) to reveal a deficit of 10.72 FTE attorneys, or 37%.

The formula and table reflecting this analysis are below:



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<sup>22</sup> PracticePanther, a legal time keeping application, notes that “the average number of billable hours required for first-year associates at firms with more than 700 attorneys is 1,930 hours, *available at* <https://www.practicepanther.com/blog/first-year-associates-billable-hours/>. See also Update on Associate Hours Worked, NALP Bulletin, 2016, *available at* <https://www.nalp.org/0516research> (noting that the data from 2014 shows that law firm associates worked, on average, 2,081 hours per year, which was up from an average of 2,067 hours worked in 2013).

# An Analysis of the Workloads of Public Defender of Marion County Deficiency Analysis

## PUBLIC DEFENDER OF MARION COUNTY WORKLOAD ANALYSIS

### ADULT CRIMINAL

	[1]	[2]	[3]
Case Type	Delphi Hours Per Case	Estimated Annual Caseload	Total Hours
Low-Level Misdemeanor	22.26	653	14,525
Complex Misdemeanor	36.98	261	9,633
Low-Level Felony	39.78	393	15,634
Mid-Level Felony	47.73	51	2,410
High-Level Felony	148.95	97	14,448
Homicide and Sex Cases	552.46	6	3,315
Probation Violations	8.33	98	812
<b>Total PDMC Caseload</b>		<b>1,557</b>	<b>60,777</b>
		<b>FTEs needed [4]</b>	<b>29.22</b>
		<b>FTEs have [5]</b>	<b>18.50</b>
		<b>Attorney FTE deficiency</b>	<b>10.72</b>
		<b>Deficiency %</b>	<b>37%</b>

[1] Per the Adult Criminal Panel Results from The Oregon Project

[2] Average opened cases per year for the respective case grouping and attorney type for PDMC for 2021 and 2022

[3] Represents the Delphi Panel Results x Estimated Annual Caseload Totals

[4] Hours divided by 2,080

[5] Total FTE as of December 31, 2022

**An Analysis of the Workloads of  
Public Defender of Marion County  
Deficiency Analysis**

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**CONCLUSION**

At current caseloads, PDMC has a significant deficiency in the number of FTE attorneys that are necessary to provide reasonably effective assistance of counsel under prevailing professional norms. That office needs almost 11 additional full-time attorneys to meet that standard, or 37% more FTE lawyers than the office currently employs.

**SIGNED**

A handwritten signature in black ink, appearing to read "Scott Simpson". The signature is written in a cursive, flowing style.

SCOTT SIMPSON, PARTNER at MOSS ADAMS LLP

## **Appendices**

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# An Analysis of the Workloads of Public Defender of Marion County

## Appendix A: Key Definitions and Results from The Oregon Project

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### Case Type Definitions

Case Type	Description
Low-Level Misdemeanor	All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.
Complex Misdemeanor	Misdemeanors related to DUIs, domestic violence, sexual abuse, and animals (abuse of animals and game violations charged as misdemeanors).
Low-Level Felony	Presumptive probation and prison grid felonies that do not include mandatory minimums.
Mid-Level Felony	Property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.
High-Level Felony	Measure 11 felonies (excluding homicide cases), sex cases (excluding sex cases with potential for 25+ years), and gun minimum cases.
Homicide and Sex Cases	All homicide cases (excluding death penalty cases), Jessica's law cases, 3rd strike sex cases and Measure 73 sex cases.
Probation Violations	Probation violation cases.

### Adult Criminal Delphi Panel Results by Case Type

Delphi Panel Results - Adult Criminal	
Case Type	Hours Per Case
Low-Level Misdemeanor	22.26
Complex Misdemeanor	36.98
Low-Level Felony	39.78
Mid-Level Felony	47.73
High-Level Felony	148.95
Homicide and Sex Cases	552.46
Probation Violations	8.33



# An Analysis of the Workloads of Public Defender of Marion County

## Appendix A: Key Definitions and Results from The Oregon Project

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### **Data Limitations and Assessment of Data Needs**

The following detail is from The Oregon Project and is pertinent to the report herein. Certain detail related to the following items were not summarized herein but are detailed in The Oregon Project.

- Data Collection Mechanisms and Oversight
- Timekeeping
- Case Opening and Closing Forms
- Additional Information on Part-Time Public Defense Contractors or Attorneys

### ***FTE Data Deficiencies***

The number of FTE attorneys and percentages utilized in this analysis is taken directly from self-reported data submitted by contractors to OPDS. The process of reporting FTE to OPDS is relatively new, and OPDS has little ability to confirm the percentages provided. In other words, OPDS is not currently equipped to assess whether an attorney reported as a .9 FTE in fact limits their private practice caseload to only .1 FTE. OPDS does not solicit or receive confirmatory information on the private practice caseloads of public defense attorneys, nor does it currently require timekeeping on public defense cases to confirm .9 FTE in time is devoted to those cases.

Additionally, the FTE analysis assumes that each FTE attorney can spend 2,080 hours each year on representation of clients. In other words, it assumes that a public defense attorney works 8 hours per day, with no breaks from case work for clients. It does not subtract any hours for administrative work, training, work-related travel time or wait time. It also assumes that an attorney works all 5 days per week, 52 weeks of the year, without subtracting time for holidays, vacation, sick leave, etc. In reality, working 2,080 hours on case time would require a public defense attorney to spend considerably more time at work. In essence, this calculation assumes that public defense attorneys are working well-beyond a standard workday.

### ***Caseload Data Deficiencies***

The Case Types selected by the Consulting Panel for use in the Adult Criminal survey differentiated cases by sentencing scheme:

- The low-level felony Case Type was defined to include presumptive probation and prison grid felonies that do not trigger mandatory minimum sentences.

# An Analysis of the Workloads of Public Defender of Marion County

## Appendix A: Key Definitions and Results from The Oregon Project

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- The mid-level felony Case Type was defined to include property and drug felonies that include possible mandatory minimum sentences, Measure 57 cases,<sup>23</sup> and Level 10 drug crimes.
- The high-level felony Case Type was defined to include Measure 11 felonies (excluding homicide cases),<sup>24</sup> sex cases (excluding sex cases with the potential for 25+ years) and gun minimum cases.
- The homicide and sex cases (25+years) Case Type was defined to include all homicide cases (excluding death penalty cases), Jessica's law cases,<sup>25</sup> 3<sup>rd</sup> strike sex cases<sup>26</sup> and Measure 73 sex cases.<sup>27</sup>

Unfortunately, OPDS does not currently collect detailed charging data indicating the sentencing scheme applicable in each case, nor is it available in court data. As a default, cases were categorized in the lowest applicable Case Type. Cases were only reallocated to a higher Case Type when reliable data justified the higher allocation.<sup>28</sup> For example, cases where the highest charge was a sex crime were categorized as high-level felony cases. Because OPDS lacked data on what portion of these cases were Jessica's law cases, 3<sup>rd</sup> strike cases or Measure 73 cases, no sex cases were allocated to the homicide and sex cases (25+ years) Case Type. This differs from PDMC, as they do capture this type of data in MyCase, and therefore those cases were included in the appropriate category as the data was available.

This report does not include consideration to any new regulations that would impact the Oregon public defense system, including Senate Bill 578 (2021),<sup>29</sup> which will require courts to appoint legal counsel for guardianship cases in certain counties beginning in 2022. Inevitably this will increase the public defense workload.

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<sup>23</sup> Ballot Measure 57 established mandatory minimum sentences for individuals convicted of certain drug and property crimes under certain circumstances, e.g. repeat offenders. It was approved in 2008. ORS 137.717 (2008).

<sup>24</sup> Ballot Measure 11 originally passed in 1994. It required mandatory minimum prison sentences for 16 offenses. It has since been amended to apply to additional offenses. See Bill Taylor, Background Brief on Measure 11 (May 2004), *available at* [https://www.oregonlegislature.gov/citizen\\_engagement/Reports/2004IG\\_Measure\\_11.pdf](https://www.oregonlegislature.gov/citizen_engagement/Reports/2004IG_Measure_11.pdf).

<sup>25</sup> Jessica's law requires the imposition of a 25 year mandatory minimum for a defendant convicted of committing a first-degree sex offense against a child under the age of 12.

<sup>26</sup> ORS 137.319 (presumptive life sentence for certain sex offenders upon third conviction).

<sup>27</sup> Ballot measure 73 increased the mandatory minimum prison sentence to 25 years for repeat offenders of any four felony sex crimes. It passed in 2010.

<sup>28</sup> See Exhibit #3 explaining the use of prosecutorial data to allocate between low-level and complex misdemeanors, as well as identify Measure 57 cases.

<sup>29</sup> 81<sup>st</sup> Oregon Legislative Assembly – 2021 Regular Session - Senate Bill 578, *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB578>

**An Analysis of the Workloads of  
Public Defender of Marion County  
Appendix B: Allocations**

**ALLOCATIONS**

<b>Low-Felony to Mid-Level Felony</b>			
	<b>2020</b>	<b>2021</b>	<b>2022</b>
<i>Initial Property, Person and Motor Vehicle Felonies within Low-Level Felony</i>	146	169	180
BM57 Cases allocated to Mid-Level Felony @ 29%	42	49	52
Remain within Low-Level Felony	104	120	128

*Based on information from the Oregon Project, it was noted that 29% of Multnomah County's property felonies were subject to Ballot Measure 57 (data from September 2017-August 2019).*

*This Multnomah County rate was applied to the initial property, person, and motor vehicle felony cases within the PDMC dataset to the Mid-Level Felony category, where BM57 cases are charged.*

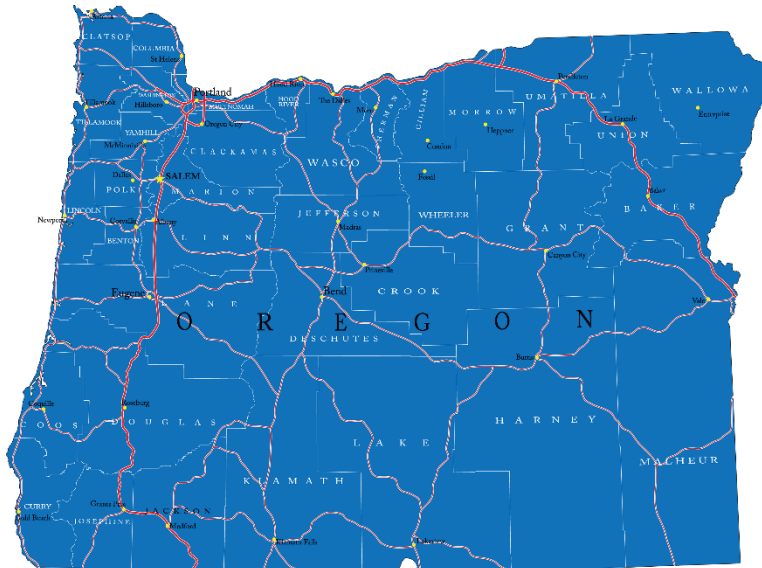
<b>Low-Level Misdemeanor to Complex Misdemeanors</b>			
	<b>2020</b>	<b>2021</b>	<b>2022</b>
<i>Initial Domestic Violence Misdemeanors within Low-Level Misdemeanor Category</i>	107	130	168
DV and MDT cases allocated to Complex Misdemeanors @ 50%	53	65	84
Remain within Low-Level Misdemeanor	54	65	84

*Based on information from the Oregon Project, we were provided historical information (based on data from September 2017-August 2019) on issued cases, showing the percentage of all assault IV, harrassment and menacing charges that were assigned to the Domestic Violence and Multi-Disciplinary Team units. Cases assigned to these units should be cateogrizd as Complex Misdemeanors. This rate was applied to the PDMC dataset.*

# **EXHIBIT B**

# THE OREGON PROJECT

An Analysis of the Oregon Public Defense System  
and  
Attorney Workload Standards



PREPARED BY:



AMERICAN **BAR** ASSOCIATION  
Standing Committee on Legal  
Aid and Indigent Defense



MOSS ADAMS



# **THE OREGON PROJECT**

An Analysis of the  
Oregon Public Defense System  
and  
Attorney Workload Standards

January 2022

## Acknowledgements

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The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID) engaged Moss Adams LLP (Moss Adams) to collaboratively conduct an Oregon-specific attorney workload study, utilizing the Delphi method and historical caseloads, for the Oregon public defense system. This study was assisted by the Oregon Office of Public Defense Services (OPDS).

The Oregon Project was conducted under the leadership of Stephen F. Hanlon, J.D., Project Director for ABA SCLAID, Malia N. Brink, J.D., Counsel for Public Defense for ABA SCLAID and Deputy Director for the Public Defender Workload Study Projects, along with Scott Simpson, CPA, Partner at Moss Adams and Moss Adams colleagues Jenna McRae, CPA, Senior Manager and Emily Hayes, CIA, Manager.

ABA SCLAID and Moss Adams would like to thank OPDS for their cooperation throughout this project, particularly Eric J. Deitrick, J.D, General Counsel, Erica Herb, J.D., Deputy General Counsel, and Kimber Sexton, Senior Policy Analyst. Their leadership and engagement were critical to making this report possible.

We would like to thank the members of the Selection Panels for reviewing the individuals proposed to participate in the Delphi process. Finally, we would like to thank the participants for their significant contributions of time, expertise, and service on the Delphi panels for the Oregon Project.



# Table of Contents

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	PAGE
<b>Introduction</b>	1–2
<b>Executive Summary</b>	3–6
<b>Background</b>	
i. Applicable Standards	7–12
ii. Overview of the Oregon Public Defense System	12–14
<b>Historical Staffing and Caseload Analysis</b>	
i. Historical Staffing	15–16
ii. Historical Caseload	16–17
<b>Delphi Analysis</b>	
i. The Delphi Method	18–19
ii. Methodology Framework	20
iii. Survey Participants	20
iv. Case Types and Case Tasks	20–22
v. Delphi Surveys	22–24
vi. Survey Results	25
<b>Deficiency Analysis</b>	
i. Adult Criminal and Juvenile	26–28
<b>Data Limitations and Assessment of Data Needs</b>	29–34
<b>Conclusion</b>	35–36
<b>Appendices</b>	
A – The Delphi Method	37–40
B – Survey Examples	41–44
C – Case Types and Task Definitions	45–51
D – Delphi Panel Characteristics	52
E – Example Open and Closing Forms	53–66

## Table of Contents (continued)

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	PAGE
<b>Exhibits</b>	
1 – Statewide Cases Represented by Court Appointed Attorneys by Type and Estimated Caseload	67–68
2 – Workload Analysis	69
3 – Allocated Cases	70
4.1 – Analysis of the Delphi Survey Results – Adult Criminal	71–74
4.2 – Analysis of the Delphi Survey Results – Juvenile	75–82

### INTRODUCTION

The American Bar Association Standing Committee on Legal Aid and Indigent Defense (ABA SCLCID) and Moss Adams LLP (Moss Adams) conducted this study on behalf of the Oregon Office of Public Defense Services (OPDS) to analyze public defense historical caseloads for the State of Oregon, to calculate the average amount of time public defenders *should* spend on specific case types to meet the minimum standards for representation, and then to compare the two to determine whether a deficiency of resources exists. This study is referred to as the Oregon Project.

The Oregon Project consisted of two main phases: (1) an analysis of the Oregon public defense system's historical staffing and caseloads; and (2) the application of the Delphi method.

The analysis of the public defense system looks at historical caseloads to determine precisely how many cases are being represented by the public defense system. When possible, caseloads are broken down by case type. Similarly, the analysis of attorney time endeavors to quantify time spent by public defense attorneys on client representation. Importantly, this analysis seeks to quantify only case work – leaving out administrative time, travel time, supervisory time, etc. This is best accomplished through timekeeping. Where a system lacks comprehensive, reliable timekeeping data, the analysis instead reviews full time equivalents (FTE) to estimate attorney time spent on casework. Using an FTE analysis, however, usually results in a conservative estimate because, absent data on time needed for work other than client representation, it assumes all attorney time is used for client representation.

The Delphi method is an iterative process used in this study to identify how much time an attorney *should* spend, on average, in providing representation in certain types of criminal and juvenile cases. In determining the amount of time an attorney *should* spend to meet the minimum standards for representation we are guided by the legal standard set out in *Strickland v. Washington*: “reasonably effective assistance of counsel pursuant to prevailing professional norms.”<sup>1</sup> The prevailing professional norms, which anchor the Delphi process, are the Rules of Professional Conduct, the ABA Criminal Justice Standards, and the applicable national and local attorney performance standards.

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<sup>1</sup> *Strickland v. Washington*, 466 U.S. 688, 688 (1984).

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop consensus on a specific question. The Oregon Project consisted of two different Delphi panels: Adult Criminal and Juvenile. The Juvenile panel addressed both juvenile delinquency and dependency cases. Participants in each panel were selected based on their substantive expertise and experience in these areas. Participants included public defenders and private defense practitioners. They were then approved by independent Selection Panels, made up of individuals with extensive knowledge of the relevant areas of practice in Oregon.

Each Delphi area was sub-divided into Case Types and Case Tasks, and further divided by Resolution (e.g. plea/otherwise resolve v. go to trial). For each Case Task in each Case Type, participants were surveyed about the amount of time the task takes and the frequency with which it occurs.

The Delphi process in Oregon consisted of two rounds of online surveys, taken independently. The second-round survey was completed only by those who participated in the first round and included a summary of the responses from the first round for second round participants to consider. A third survey was then conducted in a live group setting only by those who had completed the first and second survey rounds. These participants met over a series of days to review the results of the second survey and developed a professional consensus regarding the appropriate amount of time an attorney *should* spend on a series of case tasks for each case type<sup>2</sup> to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in the State of Oregon.

The result of the Delphi process is the consensus of the expert panel on the Frequency and Time needed to complete each Case Task in compliance with applicable standards, as well as Resolution – the percentage of cases that should plead/otherwise resolve v. go to trial. These consensus decisions are then used to calculate the Delphi result, the time needed for a public defense attorney to provide reasonably effective assistance of counsel to a client in an average case of this Case Type.

These standards, when applied to historical caseloads, are then used to determine the total number of hours of public defense attorney time needed in the jurisdiction. Comparing the hours needed to the hours of attorney time currently available in the jurisdiction's public defense system allows us to determine if the current system has a deficiency or excess of attorney time, and the amount of that deficiency or excess.

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<sup>2</sup> See Appendix D for Case Type and Case Task definitions.

## EXECUTIVE SUMMARY

Across the country, criminal courts are failing to meet the promise of equal justice under the law. As these failings are examined, increased attention is being paid to the obligation to provide effective assistance of counsel to all those accused of crimes and facing imprisonment who cannot afford private lawyers. For far too long, public defenders have raised concerns that their caseloads do not permit them to give appropriate time and attention to each client.

Overwhelming caseloads force even excellent public defenders to cut corners.<sup>3</sup> They must either triage, focusing on a select group of clients at the expense of the others, or they must spend less time than they should on every client's case. They cannot conduct full investigations, consult experts when appropriate, or adequately prepare motions and arguments. These conditions create a heightened risk of error.



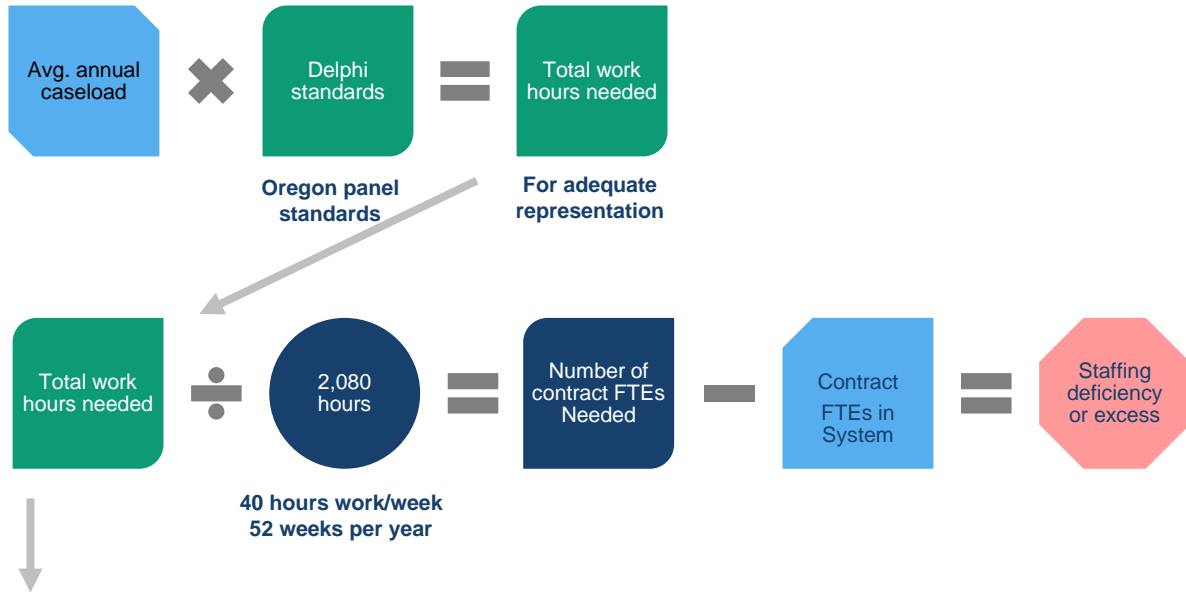
Caseload issues raise critical questions necessary for ensuring an efficient and adequate public defense system, including: How many public defense attorneys does our system need and for which types of cases? Questions about accurately projecting staffing needs have led jurisdictions to put increased emphasis on the importance of reliable data and data analysis.

The report of the Oregon Project is the product of more than two years of study and analysis – of Oregon's current staffing and caseloads, as well as applying the Delphi method to arrive at standards reflecting the average amount of time an attorney *should* spend to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The standards developed by the Oregon Delphi panels were then applied to the historical staffing and caseloads to calculate whether the system has too many (excess) or too few (deficiency) FTE attorneys.

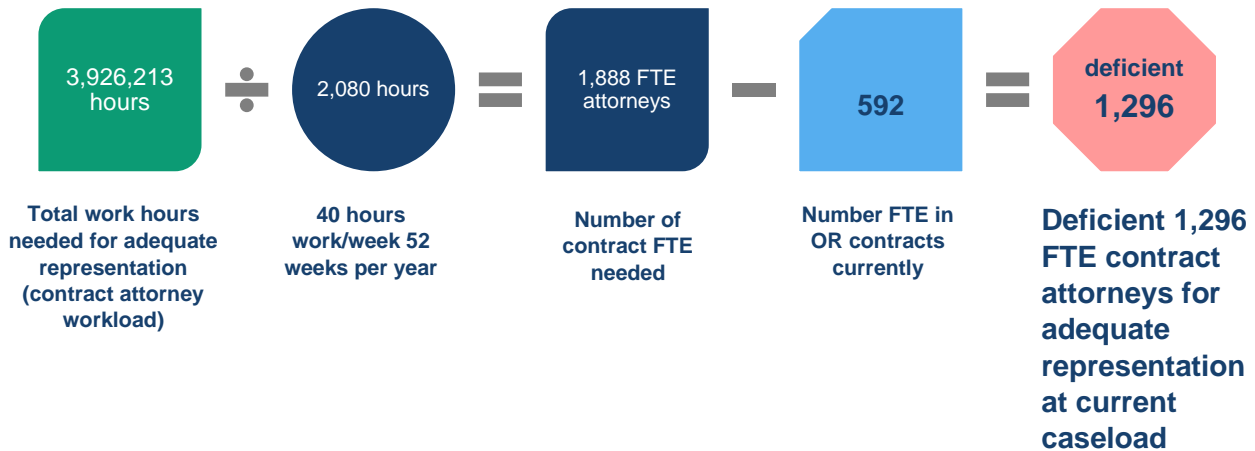
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<sup>3</sup> Guidelines 1, ABA Eight Guidelines of Public Defense Related to Excessive Workloads (ABA Eight Guidelines) (2009), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_eight\\_guidelines\\_of\\_public\\_defense.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_eight_guidelines_of_public_defense.pdf), notes the many adverse impacts of excessive workloads on the ability of attorneys to effectuate core public defense objectives for clients, including establishing a relationship of trust by promptly interviewing and communicating with clients, seeking pretrial release, adequately investigating the case and researching the applicable law, preparing for hearings, etc.

Systemic deficiency



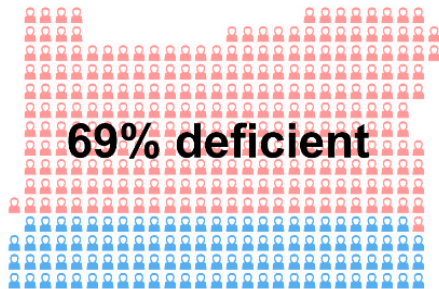
Oregon:



At current caseloads<sup>4</sup> OPDS has a substantial deficiency of FTE public defense attorneys.

<sup>4</sup> This deficiency calculation reflects the current caseload for Adult Criminal and Juvenile cases and the contract FTEs handling those cases. It determines the FTEs needed to provide reasonably effective assistance of counsel to clients in Adult Criminal and Juvenile (dependency and delinquency) cases only.

## At current caseloads, OPDS simply is unable to adequately represent individuals in adult criminal and juvenile cases



- Based on the Delphi study, OPDS is deficient 1,296 contract attorney FTEs for its adult criminal and juvenile caseloads.
- To provide effective assistance of counsel currently, *all* 592 contract public defense attorneys in Oregon would:
  - Need to spend 6,632 hours per year working on case specific public defense work (26.6 hours per working day<sup>5</sup> during a calendar year)
  - Represent 156 cases per year, regardless of whether those cases are low-level misdemeanor cases or serious felony cases, equating to just over **13 hours per case**, be it dependency, burglary or homicide.

## OPDS needs a centralized data system to capture basic, critical public defense information

There are significant data deficiencies (inconsistency and inaccuracies) in the OPDS Contract Database, and OPDS heavily relies on the Oregon Judicial System court statistics data for basic case information. The OPDS contracting system, which includes over 100 contractors that vary significantly in both size and organizational structure, imposes challenges to building and implementing a unified case management system and other data collection mechanisms. Nonetheless, OPDS should implement systems to reliably collect basic data from all contractors on qualifications, case assignments, caseloads and work completed in public defense cases.<sup>6</sup>



- OPDS should be able to track which individual attorney is assigned to which cases to verify both qualifications and caseloads.<sup>7</sup>

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<sup>5</sup> Working days is defined as 249 days per year (removing weekends and public holidays).

<sup>6</sup> See NLADA, Basic Data Every Defender Program Needs to Track (2014), available at <https://www.nlada.org/tools-technical-assistance/defender-resources/research/basic-data-toolkit>. This toolkit on data collection for public defense providers identifies information that should be collected and recommends strategies for public defense providers of all types on how best to collect the data.

<sup>7</sup> Guideline 2 of the ABA Eight Guidelines, *supra* n. 3, provides that a public defense organization should “continuously monitor the workloads of its lawyers to assure that all essential tasks on behalf of clients . . . are performed.”

- OPDS should implement improved monitoring of work completed on public defense cases. This should include timekeeping on all public defense cases to permit improved fiscal and substantive oversight, including auditing and a regular attorney review process. Further, OPDS should have basic information on the private caseload, if any, for each attorney paid under its contracts to fully monitor caseloads.
- OPDS should also adopt standardized case opening and case closing forms (specific to case types) to routinely, centrally and consistently capture important case data. These forms should be integrated into a case management system to allow for aggregation of the data collected.



## BACKGROUND

### Applicable Standards

The relevant legal rules and standards pertaining to effective assistance of counsel are critical components to understand both attorney workloads and our analysis of caseloads in this study. The duty of the State of Oregon to provide representation in criminal cases for those accused individuals unable to afford counsel derives from the Sixth Amendment to the United States Constitution, as interpreted by the United States Supreme Court, and from Article 1, Section 11 of the Oregon Constitution.

In 1963, the United States Supreme Court held in the Gideon case that defendants charged with a felony in state criminal court are entitled to a lawyer the state's expense if they were unable to afford counsel.<sup>8</sup> In 1972, the United States Supreme Court extended the right to counsel to misdemeanor cases that could result in a defendant's loss of liberty.<sup>9</sup>

In 1984, the United States Supreme Court held that the Sixth Amendment's requirement of counsel means the right to "reasonably effective assistance of counsel pursuant to prevailing professional norms of practice."<sup>10</sup> In 2010, the Supreme Court noted in *Padilla v. Kentucky*: "We have long recognized that 'prevailing norms of practice as reflected in American Bar Association Standards and the like are guides to determining what is reasonable.' Although they are 'only guides' and not 'inexorable commands,' these standards may be valuable measures of the prevailing professional norms of effective representation[.]"<sup>11</sup>

Relevant prevailing professional norms in Oregon include:

- Oregon Rules of Professional Conduct
- ABA Criminal Justice Standards for the Defense Function
- IJA-ABA Juvenile Standards
- ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases
- Oregon State Bar Performance Standards for Representation in Criminal, Juvenile Delinquency, and Juvenile Dependency Cases

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<sup>8</sup> *Gideon v. Wainwright*, 372 U.S. 335 (1963).

<sup>9</sup> *Argersinger v. Hamlin*, 407 U.S. 25 (1972); see also *Alabama v. Shelton*, 535 U.S. 654 (2002).

<sup>10</sup> *Strickland v. Washington*, 466 U.S. 668, 688 (1984).

<sup>11</sup> *Padilla v. Kentucky*, 559 U.S. 356, 366-67 (2010) (citations omitted). The Court went on to review the ABA Standards for Criminal Justice.

### ***Oregon Rules of Professional Conduct***

All lawyers in Oregon are required to abide by the Oregon Rules of Professional Conduct.<sup>12</sup> The Rules not only address the responsibilities of lawyers in representing a particular client, but also concern when a lawyer is not permitted to represent a client or must withdraw. Pertinent and identical rules in the Oregon Rules of Professional Conduct and the ABA's Model Rules of Professional Conduct<sup>13</sup> applicable to this study include the following:

- Rule 1.1 Competence: A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation.
- Rule 1.3 Diligence: A lawyer shall not neglect a legal matter entrusted to the lawyer.
- Rule 1.7 Conflict of Interest: Current Clients: (a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a current conflict of interest. A current conflict of interest exists if . . . there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client[.]
- Rule 1.16 Declining or Terminating Representation: Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if: (1) the representation will result in violation of the Rules of Professional Conduct or other law... Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests...<sup>14</sup>

An ABA Ethics Opinion interprets these ethical rules to require public defenders to limit workloads to ensure that they can represent each client with the competence and diligence required.<sup>15</sup>

The Rules of Professional Conduct also place responsibility on supervising attorneys to ensure that the rules are followed within their organization.

Rule 5-1: Responsibilities of partners, managers and supervisory lawyers.

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<sup>12</sup> Oregon Rules of Professional Conduct, *available at* [https://www.osbar.org/\\_docs/rulesregs/orpc.pdf](https://www.osbar.org/_docs/rulesregs/orpc.pdf).

<sup>13</sup> Oregon first adopted the ABA Model Rules of Professional Conduct in 2005.

<sup>14</sup> Guideline 6 of the ABA Eight Guidelines, *supra* n. 3, provides in pertinent part that in such cases, in addition to moving to withdraw from representation in certain cases, a lawyer should also move to suspend new case assignments and request that charges against those clients the lawyer can no longer represent be dismissed due to the failure of the government to provide effective assistance of counsel as required by federal and state law.

<sup>15</sup> ABA Ethics Committee, Formal Ethics Opinion 06-441, Ethical Obligations of Lawyers Who Represent Indigent Criminal Defendants When Excessive Caseloads Interfere with Competent and Diligent Representation, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ethics\\_opinion\\_defender\\_caseloads\\_06\\_441.authcheckdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ethics_opinion_defender_caseloads_06_441.authcheckdam.pdf).

A lawyer shall be responsible for another lawyer's violation of these Rules of Professional Conduct if: . . . (b) the lawyer is a partner or has comparable managerial authority in the law firm in which the lawyer practices, or has direct supervisory authority over the other lawyer, and knows of the conduct at the time when its consequences can be avoided or mitigated but fails to take reasonable remedial action.

### ***ABA Criminal Justice Standards for the Defense Function***

The ABA Standards for Criminal Justice are the result of a lengthy process that began in 1964, and most recently culminated with the fourth edition of these standards approved and published by the ABA in 2015. The ABA Standards “are the result of the considered judgment of prosecutors, defense lawyers, judges, and academics who have been deeply involved in the process.”<sup>16</sup>

The standards cover, among other things:

- Establishing client trust (Standard 4-3.1),
- Advocacy on pretrial detention and conditions of release (Standard 4-3.2),
- Interviewing the client (Standard 4-3.3),
- Duty to keep the client informed (4-3.9),
- Duty to investigate (Standard 4-4.1),
- Court appearances (Standard 4-4.6), and
- Sentencing responsibility (Standard 4-8.3).

Today, most state-level criminal cases are resolved without a trial. In 2012, the United States Supreme Court, in *Missouri v. Frye*, citing to the Department of Justice, Bureau of Justice Statistics, noted that “ninety-four percent of state convictions are the result of guilty pleas.”<sup>17</sup> In that case, the United States Supreme Court quoted with approval the following statement from a Yale Law Journal article: “[P]lea bargaining . . . is not some adjunct to the criminal justice system; it is the criminal justice system.”<sup>18</sup>

The ABA Criminal Justice Standard related to the Defense Function, 4-6.1(b), “Duty to Explore Disposition Without Trial (Plea),” provides as follows:

In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been completed.

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<sup>16</sup> Martin Marcus, *The Making of the ABA Criminal Justice Standards: Forty Years of Excellence*, 23 CRIM. JUST. 10 (2009), available at [https://www.americanbar.org/groups/criminal\\_justice/standards/](https://www.americanbar.org/groups/criminal_justice/standards/).

<sup>17</sup> *Missouri v. Frye*, 132 S.Ct.1399, 1407 (2012).

<sup>18</sup> *Id.* See also R. E. Scott & W. J. Stuntz, *Plea Bargaining as Contract*, 101 YALE L. J. 1909, 1912 (1992).

Such study should include:

- discussion with the client,
- analysis of relevant law,
- analysis of the prosecution's evidence,
- analysis of potential dispositions, and
- analysis of relevant potential consequences.

Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.

### ***IJA-ABA Juvenile Standards***

In coordination with the Institute of Judicial Administration (IJA), the ABA drafted comprehensive standards for all aspects of juvenile proceedings.<sup>19</sup> Though not exclusively applicable to defense attorneys, these standards contain certain core principles that influence the nature of considerations and arguments to be made by defense counsel. For example, the Standards provide that before a juvenile may accept a plea, it must be determined that the respondent "has the mental capacity to understand his or her legal rights in the adjudication proceeding and the significance of such a plea."<sup>20</sup> This Standard requires that before permitting a juvenile to plead, a defense attorney must have conducted a social history review, including understanding the juvenile's school history, as well as any records pertaining to intellectual disability or mental illness.

### ***ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases***

The ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases<sup>21</sup> cover the special nature of abuse and neglect proceedings, as well as the duties of parental counsel. These duties include:

- Meet and communicate regularly with the client well before court proceedings. Counsel the client about all legal matters related to the case, including specific allegations against the client, the service plan, the client's rights in the pending proceeding, any orders entered against the client and the potential consequences of failing to obey court orders or cooperate with service plans.<sup>22</sup>
- Conduct a thorough and independent investigation at every stage of the proceeding.<sup>23</sup>

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<sup>19</sup> IJA-ABA Standards for Juvenile Justice (1996), *available at* [https://www.americanbar.org/content/dam/aba/publications/criminal\\_justice\\_standards/JJ/JJ\\_Standards\\_Adjudication.pdf](https://www.americanbar.org/content/dam/aba/publications/criminal_justice_standards/JJ/JJ_Standards_Adjudication.pdf).

<sup>20</sup> *Id.* at Adjudication, Standard 3.1(A).

<sup>21</sup> ABA Standards of Practice of Attorneys Representing Parents in Abuse and Neglect Cases (2006), *available at* [https://www.americanbar.org/content/dam/aba/administrative/child\\_law/aba-parent-rep-stds.pdf](https://www.americanbar.org/content/dam/aba/administrative/child_law/aba-parent-rep-stds.pdf).

<sup>22</sup> *Id.* at Standard 11.

<sup>23</sup> *Id.* at Standard 19.

- Engage in case planning and advocate for appropriate social services using a multidisciplinary approach to representation when available.<sup>24</sup>

### ***Oregon State Bar Standards***

The Oregon State Bar has adopted principles and standards for counsel in criminal, delinquency, dependency and civil commitment cases.<sup>25</sup>

### ***Standards of Representation in Criminal and Juvenile Delinquency Cases***<sup>26</sup>

These standards cover not only the general role and obligations of defense counsel (Standard 1.1) but provide specific detailed guidance on how to comply with the duties of the defense attorney in every case, including:

- Client contact and communication (Standard 2.2),
- Pretrial release advocacy (Standard 2.3),
- Investigation (Standard 3),
- Discovery (Standard 4.1),
- Motions (Standard 5.1; 5.2 and 5.4),
- Plea exploration and negotiations (Standards 6.1 and 6.2), and
- Sentencing and disposition advocacy (Standards 8.1).

Further, in appropriate cases, the standards require defense counsel to undertake comprehensive trial preparation (Standard 7.1).

### ***Standards of Representation in Juvenile Dependency Cases***<sup>27</sup>

These standards include guidance on how to comply with the duties of the defense attorney in dependency cases. The guidance is separated between attorneys representing children and attorneys representing parents (with the same standard numbers). The standards cover:

- Governing conduct of the case (Standard 4),
- Prepetition (Standard 5),
- Investigation (Standard 6),
- Court preparation (Standard 7), and
- Hearings and post hearings (Standards 8 and 9).

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<sup>24</sup> *Id.* at Standard 26.

<sup>25</sup> Oregon State Bar Standards are *available at* [https://www.osbar.org/surveys\\_research/performancestandard/index.html](https://www.osbar.org/surveys_research/performancestandard/index.html).

<sup>26</sup> Report of the Task Force on Standards of Representation in Criminal and Juvenile Delinquency Cases, *available at* [https://www.osbar.org/\\_docs/resources/juveniletaskforce/JTFR2.pdf](https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR2.pdf).

<sup>27</sup> Specific Standards for Representation in Juvenile Dependency Cases, *available at* [https://www.osbar.org/\\_docs/resources/juveniletaskforce/JTFR3.pdf](https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR3.pdf).

### Overview of the Oregon Public Defense System

The Oregon Public Defense Services Commission (the Commission) is an independent body that governs the Office of the Public Defense Services (OPDS). The Commission is responsible for establishing and maintaining the public defense system for the Oregon state courts' system for all 27 judicial districts of public defenders in the State of Oregon. The Commission and OPDS were formed in 2001 and began operations in 2003.<sup>28</sup>

The Commission, through OPDS, provides counsel to individuals in adult criminal, juvenile delinquency, juvenile dependency,<sup>29</sup> and civil commitment proceedings at the trial level, as well as in direct appeals from these cases. Historically, OPDS has contracted with providers of different types – public defender offices, law firms, consortia, non-profit organizations and individual attorneys – to provide public defense services. Oregon is the only state that provides trial level counsel primarily through a contracting system.<sup>30</sup>

Prior to 2020, OPDS used a service delivery model known as the case-credit model for trial level public defense services. The Commission entered into two-year contracts with various entities, including public defender offices, consortia, non-profit organizations, law firms, and individual attorneys (collectively known as contractors). The contractors received funding to cover a projected number of cases over the course of the contract, with differing case or hearing types being worth different case credits, and therefore amounts of money. There were no limits on the number of cases an attorney or contractor could be assigned and OPDS paid contractors based on the projected caseload. At the end of the biennium, contractors and OPDS engaged in a reconciliation process. A contractor could owe OPDS money back on the contract (if the contractor provided legal services for fewer cases than the projected caseload in the contract), or OPDS could owe the contractor money (if the contractor provided legal services in more cases than projected in the contract).

In January 2021, OPDS moved away from the case credit model and implemented a contract model based upon Full Time Equivalent (FTE) attorneys. Upon the execution of the Public Defense Legal Services Contract Terms agreement in 2021, OPDS funded a specific number of

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<sup>28</sup> See Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services (6AC Report on Oregon)* (Jan. 2019), at 13-14, *available at* <https://sixthamendment.org/oregon-report/>

<sup>29</sup> OPDS is responsible for representation of both children and parents in juvenile dependency proceedings. This arrangement is somewhat unusual and prone to creating administrative challenges, as attorneys from the same organization or law firm generally are prohibited by the Rules of Professional Responsibility from representing two parties in the same case. As a result, a dependency case in which there is one child and two parents may require lawyers from three different contracting entities. For more on models of representation in dependency proceedings and suggestions for best practices, see Mimi Laver and Cathy Krebs, *The Case for a Centralized Office of Legal Representation in Child Welfare Cases*, *ABA Child Law Practice Today* (Dec. 2020), *available at* [https://www.americanbar.org/groups/public\\_interest/child\\_law/resources/child\\_law\\_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/](https://www.americanbar.org/groups/public_interest/child_law/resources/child_law_practiceonline/january---december-2020/the-case-for-a-centralized-office-for-legal-representation-in-ch/).

<sup>30</sup> By contrast, appellate services in Oregon are provided primarily through the Appellate Division of OPDS. Attorneys in this office are full time employees of OPDS. Contract services are used for appeals only when the appellate division is not able to accept a case or client due to conflict or lack of capacity.

FTE attorneys in each contract. Section 4.2 of the Public Defense Legal Services Contract includes various clauses regarding court appointments outside the contract. For example, attorneys funded as a 1.0 FTE are not permitted to accept any other paid legal work, including legal advocacy work and/or act as a municipal or justice court public defense attorney, prosecutor, or judge.<sup>31</sup>

In this new model, there are limits on the number of cases an attorney can be assigned. The Commission established caseload limits based on 115% of the 1973 National Advisory Commission on Criminal Justice Standards and Goals<sup>32</sup> (NAC caseload standards): 173 felonies, or 460 misdemeanors, or 230 juvenile cases. OPDS uses these caseload limits to determine how many FTE attorneys are needed. OPDS monitors caseloads throughout the year to determine if more or fewer FTE attorneys are needed in each jurisdiction.

During the last contract cycle, OPDS executed more than 100 contracts with various provider types including public defender offices, consortia, law firms, non-profit organizations and individual attorneys. In total, OPDS contracted for more than 600 FTE attorneys, of whom 592 FTE represent individuals in the adult criminal and juvenile delinquency and dependency cases.<sup>33</sup> Under the FTE model, OPDS pays approximately \$190,000 - \$210,000 per FTE attorney, which is intended to cover not only attorney salary and benefits, but also overhead and support staff costs. OPDS estimates this amount to cover .5 support staff for each 1 FTE attorney.

OPDS does not pay any additional amounts to public defender offices or individual attorneys for administration, supervision or training, regardless of the size of the contractor. Some consortia and law firms receive contract administrative costs, but this cost does not cover attorney supervision or training. Accordingly, a public defender office, consortium or other contractor wishing to provide supervision for its lawyers or a professional training program must pay for these services out of the allotted FTE amount, reducing funds available for attorney salary, overhead and support staff, or raise additional funds to do so.<sup>34</sup>

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<sup>31</sup> It does allow them to engage in pro bono legal services.

<sup>32</sup> National Advisory Commission on Criminal Justice Standards and Goals (1973) at Standard 13.12-Workload of Public Defenders, available at <http://www.nlada.org/defender-standards/national-advisory-commission>. The NAC standards provide that an individual defender's annual caseloads should not exceed 150 felonies, 400 misdemeanors (excluding traffic cases), 200 juvenile cases, 200 mental health cases, or 25 appeals, or a proportional combination thereof.

<sup>33</sup> FTE contracted to provide public defense services in appellate, habeas and Psychiatric Security Review Board cases were excluded from this total.

<sup>34</sup> The ABA's Ten Principles of a Public Defense Delivery System require both adequate supervision (Principle 10) and appropriate training (Principle 8). ABA Ten Principles of a Public Defense Delivery System (ABA Ten Principles) (2002), available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_tenprinciplesbooklet.auth\\_checkdam.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.auth_checkdam.pdf).

Contractors report an FTE percentage for each attorney to OPDS. At present, while OPDS can limit case assignments in proportion to the total FTEs reported by a contractor, OPDS cannot verify the accuracy of the reported percentages or effectively monitor the work performed under its contracts. OPDS does not require attorneys providing public defense services to keep and report time spent by case. OPDS also does not require contractors to report information on the private practice caseload or other legal work performed by the attorneys who are providing public defense services under an OPDS contract.

OPDS currently does not collect basic event data on public defense cases. OPDS cannot reliably report which attorney at a contracting entity has which cases to verify qualifications, although this capacity is improving under the new FTE contracting program. Similarly, OPDS does not collect data on case milestones, such as whether the client was released pretrial and conditions of release, whether an investigator was utilized, whether an expert was consulted, whether motions were filed, plea offers received, etc.<sup>35</sup>

Under both the case credit and FTE contracting models, additional non-contract attorneys, are needed to represent clients who cannot be represented by contractors. Non-contract attorneys are assigned cases when a conflict of interest exists for contractors; when the contractor has met its contractual caseload obligations or limits; or when the existing contractors lack attorneys with the requisite qualifications to handle a particular type of case. These attorneys are compensated at an hourly rate for their legal services.<sup>36</sup>

For the purposes of this report, public defenders/public defense attorneys include attorneys at public defender offices, consortia, non-profit organizations, law firms with public defense contracts with OPDS, as well as individual attorneys who have public defense contracts with OPDS. Private practice attorneys include those criminal and juvenile attorneys who do some minimal non-contract public defense work.

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<sup>35</sup> As noted above, such oversight is a critical component of a public defense system, see, e.g., Guideline 2, ABA Eight Guidelines, *supra* n. 3. The ABA Ten Principles of a Public Defense Delivery System similarly provide that all public defense attorneys should be "supervised and systematically reviewed for quality and efficiency according to national and locally adopted standards." Principle 10, ABA Ten Principles, *supra* n. 34.

<sup>36</sup> OPDS staff estimate that non-contract attorneys are required in 2-3% of public defense cases in Oregon.



## **HISTORICAL STAFFING AND CASELOAD ANALYSIS**

The historical staffing and caseload analyses are comprehensive reviews of the available current and historical workload of the public defense system in Oregon. They seek to accurately describe the current state of public defense in the jurisdiction and are integral to understand the “world of is”<sup>37</sup> to compare it to the requirements generated through the Delphi study.

### **Historical Staffing**

#### ***Timekeeping***

When attorney time can be captured to a high degree of consistency and quality, timekeeping is the best way to understand how many attorneys are spending how much time on current public defense cases. Though there are significant challenges in instituting timekeeping for a study, if there is not already timekeeping in place, this is the preferable way to gather data as long as the data is entered consistently and with a high degree of detail. In Oregon, timekeeping was not implemented for this study, for a variety of reasons, including the agency’s limited data collection capacity, contracting model, and changes in court behavior arising from COVID-19. Therefore, the alternative FTE method was used for the purposes of this analysis.

#### ***FTE Method***

An alternative method to timekeeping is to review historical and current personnel employment data for attorneys and convert the attorney personnel to full-time equivalents (FTEs). This allows for a comparison of total attorney time available, based on FTE and caseloads, to total attorney time needed at the system level, based on the Delphi Panel results and caseloads. Calculating FTEs for contract attorneys is inherently complex. Attorneys in contract systems often work less than full-time, engaging in private practice or other legal work. OPDS contracts are with a range of entities, in terms of size and method of operation. Some have employees who spend all their time on public defense work; others have contracts with OPDS and also engage in private practice or other legal work. The percentage of time each attorney at a contracting entity or each individual attorney with a contract devotes to public defense work may vary year to year, or even quarter to quarter. Absent timekeeping or a detailed manner of collecting and verifying information on complete contractor caseloads (including private practice cases), an FTE calculation in contracting systems can only be estimated, and it often relies on self-reported percentages.

OPDS provided a list of the FTEs the agency believes it is funding statewide via contracts as of November 2021. This list included public defenders at public defender offices, attorneys at law firms, non-profit organizations or consortia that have public defense contracts with OPDS, and individual attorneys with contracts with OPDS. The information provided included detailed

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<sup>37</sup> This stands in contrast to the Delphi study which describes “the world of should.”

## The Oregon Project Historical Staffing and Caseload Analysis

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information by contractor, such as attorney name, bar number and role, and is based on contract information.

As of November 2021, there were 592 attorney FTEs contracted to provide public defense services in adult criminal or juvenile cases.<sup>38</sup> Because this excludes cases represented by non-contractor attorneys, these FTEs are estimated to represent 97-98% of the trial level cases in the public defense system.<sup>39</sup>

### Historical Caseload

Historical case data was obtained primarily from the Oregon Judicial Department's (OJD) case management system, Odyssey, which captures information in the courts at the time of filing, and therefore does not include data on items that happen outside of courts (jails, detention centers) or confidential or sealed cases, which would not be material to this analysis. The datasets provided from OJD included representation status. This report only includes data that was assigned a "Court Appointed" status.<sup>40</sup>

A limited amount of data used in this analysis was from the OPDS Contractor database, which is populated based on monthly reports from contractors based on appointed cases on case number and filing date. Under the case credits model that was in place for calendar years 2017-2019, if contractors failed to report a case, they did not receive credit or paid for that case. For calendar year 2020, contracts were extended for 2 six-month periods, and the credits were removed from the contract. This analysis assumes that contractors continued to report all cases consistent with prior practices. In 2021, under the new FTE model, every case counts towards FTE, which has been monitored since the new contract went into place on January 1, 2021.

This study analyzed all new public defense cases filed from January 1, 2017 through March 31, 2021 (see Exhibit 1). Additionally, the study analyzed Adult Criminal data for all case types except for Probation Violation data from April 1, 2021 through October 10, 2021. Notably, this analysis does not consider the impact of cases that remain open for more than one year, nor the impacts of the COVID-19 pandemic. As of December 31, 2020, based on the total number of active pending adult criminal and juvenile cases, 23.6% and 58.4% of those cases were over 12 months old.<sup>41</sup>

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<sup>38</sup> This study does not endeavor to calculate current appellate caseloads or appellate attorney FTE. Accordingly, FTE assigned to provide appellate public defense services under a contract were excluded from this total.

<sup>39</sup> As noted above, non-contract attorneys are utilized when contractors have a conflict of interest, have met caseload obligations under their contract or hit caseload limits, or do not have an attorney with the requisite qualifications to accept a case. Percentage of cases assigned to non-contract attorneys was estimated by OPDS personnel involved in contract oversight.

<sup>40</sup> Court appointed is the court's designation for any attorney being provided at public expense. It includes both OPDS contract and non-contract attorneys.

<sup>41</sup> Oregon Judicial Department 2020 Circuit Court Case Statistics, Age of Active Pending Caseload as of December 31, 2020, available at <https://www.courts.oregon.gov/about/Documents/2020CasesPendingAndAgeOfActivePendingCases.pdf>

## The Oregon Project Historical Staffing and Caseload Analysis

A summary of new public defense cases represented by a court appointed attorney by type is below. See Exhibit 1 for breakout by type and estimated annual caseload.

<b>STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD</b>					
<b>Adult Criminal</b>					
<b>Case Type</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Jan 1 - October 10, 2021</b>
Adult Criminal	76,371	76,929	74,573	67,738	44,710
<b>Juvenile</b>					
<b>Case Type</b>	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>Q1 2021</b>
Dependency	15,429	12,781	12,034	9,076	1,756
Termination of Parental Rights	3,747	3,645	3,367	2,269	882
Delinquency	2,865	3,032	2,857	2,224	350
<b>Total Juvenile</b>	<b>22,041</b>	<b>19,458</b>	<b>18,258</b>	<b>13,569</b>	<b>2,988</b>
<b>GRAND TOTAL</b>	<b>98,412</b>	<b>96,387</b>	<b>92,831</b>	<b>81,307</b>	<b>47,698</b>

*Note: Within the table above, as noted in Exhibit 1, the Probation Violation data within the Adult Criminal case type represents the period January 1, 2021 through March 31, 2021 as opposed to October 10.*

## DELPHI ANALYSIS

### The Delphi Method

The workload study applied the Delphi method, an iterative survey process developed by the RAND Corporation and used in a range of industries and professions. Within the legal system, examples of use of the Delphi method can be traced back decades, and the Delphi method is considered an appropriate methodology for a caseload study.<sup>42</sup> Examples of these uses of Delphi were conducted by both the National Association of Court Management and the National Center for State Courts.<sup>43</sup> These efforts were principally focused on assessing judicial and court support staff needs.<sup>44</sup> Additionally, the Delphi method has been implemented by ABA SCLAID and partner accounting and consulting firms in similar public defense workload studies of public defense systems in other states, including Missouri,<sup>45</sup> Louisiana,<sup>46</sup> Colorado,<sup>47</sup> Rhode Island,<sup>48</sup> Indiana,<sup>49</sup> and New Mexico.<sup>50</sup> An overview of the Delphi method, including use of the method in determining appropriate caseloads for public defense attorneys, is summarized below and further described in Appendix A.<sup>51</sup>

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<sup>42</sup> Norman Lefstein, *Securing Reasonable Caseloads: Ethics And Law Of Public Defense 140-51* (ABA 2011), *available at* [https://www.americanbar.org/content/dam/aba/publications/books/ls\\_sclaid\\_def\\_securing\\_reasonable\\_caseloads\\_supplement.pdf](https://www.americanbar.org/content/dam/aba/publications/books/ls_sclaid_def_securing_reasonable_caseloads_supplement.pdf)

<sup>43</sup> National Center for State Courts' reports, *available at* <http://www.ncsc.org>.

<sup>44</sup> Matthew Kleiman, Cythia Lee and Brian Ostrom, *Workload Assessment: A Data-driven Management Tool for the Judicial Branch* (National Center for State Courts 2013).

<sup>45</sup> RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Missouri Project, A Study of the Missouri Public Defender System and Attorney Workload Standards (2014)*, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_pub\\_def\\_mo\\_workstudies\\_rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_pub_def_mo_workstudies_rept.pdf).

<sup>46</sup> Postlethwaite & Netterville, APAC on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Louisiana Project, A Study of the Louisiana Defender System and Attorney Workload Standards (2017)*, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_louisiana\\_project\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf).

<sup>47</sup> RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Colorado Project, A Study of the Colorado Public Defender System and Attorney Workload Standards (2017)*, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_co\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf).

<sup>48</sup> Blum, Shapiro & Company, P.C. on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants and The National Association of Criminal Defense Lawyers, *The Rhode Island Project, A Study of the Rhode Island Public Defender System and Attorney Workload Standards (2017)*, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ri\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf).

<sup>49</sup> Crowe LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Indiana Project, A Study of the Indiana Public Defense System and Attorney Workload Standards (2020)*, *available at* [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_public\\_defense\\_indiana\\_project\\_report\\_july\\_2020.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls_sclaid_public_defense_indiana_project_report_july_2020.pdf).

<sup>50</sup> Moss Adams LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The New Mexico Project, An Analysis of the New Mexico Public Defense System and Attorney Workload Standards (2022)*, *available at* [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf).

<sup>51</sup> See also *Use of the Delphi method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned (2021)*, *available at* [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf).

The Delphi method's structured and reliable technique incorporates the input, feedback, and opinions of highly informed professionals to develop a reliable consensus on a specific issue. As a methodological strategy, the Delphi method is an iterative process of surveys given to a group of professionals, with structured feedback presented to the experts at set intervals. The surveying practices applied can be either interviews or surveys that focus on fundamental questions of significance to the group participating.

To initiate the Delphi method, a group of experts provides individual, anonymous responses on a given topic based on their expertise and experience. Next, the professionals that responded to the initial survey are provided the same survey with peer response data from the initial round. This iterative process of alternating participants' independent assessments with other anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion.

In the Oregon Project, as in prior ABA SCLAIID workload studies, the Delphi method was used to provide a reliable consensus of professional judgment on the time that *should be* required for a public defense attorney in Oregon to provide reasonably effective assistance of counsel pursuant to prevailing professional norms. The Delphi process used in Oregon relied upon the expertise of attorneys from various types of contractors, as well private practice attorneys to develop a reliable consensus professional judgment of the amount of time that attorneys *should* expect to spend on a particular Case Task in particular Case Types considering both the Strickland standard (reasonably effective assistance of counsel) and the applicable ethical and substantive professional standards discussed earlier in this report (prevailing professional norms).

In consultation with OPDS, ABA SCLAIID determined that two separate Delphi panels were needed in Oregon covering the two major areas of practice in which public defense providers are utilized: (1) Adult Criminal; and (2) Juvenile.<sup>52</sup> These two panels correspond to the areas of specialization most often practiced by defense attorneys in Oregon.<sup>53</sup>

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<sup>52</sup> The juvenile survey covered both juvenile delinquency and dependency Case Types. The Case Types in dependency in turn covered both parent and child representation. These Case Types were grouped in a single survey and addressed by a single Delphi panel because Oregon juvenile attorneys often represent individuals in both dependency and delinquency cases.

<sup>53</sup> Initial workload studies, such as the ones completed in Missouri and Louisiana, utilized a single Delphi panel. In later studies, it was noted that a single Delphi panel did not reflect the specialization that had developed in public defense practice. While the same attorney may represent clients in misdemeanor and felony cases, it is relatively rare that a trial defense attorney also takes cases in juvenile courts. As a result, many juvenile attorneys participating in the single Delphi panel could only answer questions regarding one Case Type, e.g., juvenile delinquency. Additionally, having only one or two Case Types in specialist areas, such as juvenile cases, did not reflect the complexity of these specialty practices. For example, a juvenile defender's caseload may range from status violations to serious assaults and even murder. Over the several ABA SCLAIID public defense workload studies, this recognition resulted in the number of Case Types increasing. For example, in the Colorado workload study, there were 18 Case Types, including three juvenile Case Types. This number of Case Types became difficult to manage. To address this problem, the use of specialty Delphi panels, with separate surveys, was first utilized in Texas and proved not only more manageable, but also more reflective of current public defense practice.

### **Methodology Framework**

The Delphi method, as used in the Oregon Project, was a series of three survey rounds. The first and second rounds were conducted as anonymous online surveys, and the third round was conducted as a live discussion. In responding to the surveys, participants were asked to consider the ABA and OPDS standards and rules<sup>54</sup> applicable to defense representation, as well as their own expertise and experience in providing defense representation in Oregon. The survey participants, surveys, and results are discussed below.

### **Survey Participants**

The attorneys selected to participate in each of the Delphi panels were initially proposed by OPDS staff, public defenders, private practitioners, and court officers around the state. Consideration was given to geographic diversity within Oregon, as well as including a mix of attorneys from a variety of contractor types, as well as private practice attorneys. If an attorney practiced in both areas of substantive expertise (Adult Criminal and Juvenile), he or she was permitted to serve on both Delphi panels.

Attorneys proposed to participate in each of the Delphi panels were reviewed and approved by independent Selection Panels of highly regarded individuals in the legal community who have extensive practical experience in the area. There was one Selection Panel for each substantive area (Adult Criminal and Juvenile). The Selection Panel members reviewed the list of potential participants and removed any proposed participants they believed lacked the expertise, experience and respect and added participants they considered qualified to participate. Once approved by the relevant Selection Panel, the list of participants on each Delphi panel was finalized.

### **Case Types and Case Tasks**

The first step in developing the survey tool used in the Delphi process was to determine the relevant Case Types and Case Tasks to be surveyed. Case Types and Case Tasks were developed by Consulting Panels of between eight and ten contract attorneys and private practitioners in the state. A Consulting Panel was convened in each of the two Delphi areas: Adult Criminal and Juvenile. The Consulting Panels were asked to break down their practice area into Case Types that they would naturally group together. Then they broke down attorney work in these cases into Case Tasks that fairly encompassed all the work that defense attorneys should perform.

The Consulting Panels defined each Case Type and each Case Task<sup>55</sup> to ensure that there was minimal overlap and that it was clear where time spent on common tasks should be allocated. The process of identifying Case Types and Case Tasks is crucial as it forms the basis for the subsequent surveys.

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<sup>54</sup> See Background, *supra*.

<sup>55</sup> See Appendix D for definitions.

## The Oregon Project Delphi Analysis

The Delphi panels considered the following Case Types and Case Tasks (see Appendix C for detailed definitions), as determined by the Consulting Panels.

Adult Criminal	
Case Type	Case Task
Low-Level Misdemeanor	Client Communication
Complex Misdemeanor	Client Support Services
Low-Level Felony	Discovery / Case Preparation
Mid-Level Felony	Attorney Investigation / Attorney Interviews
High-Level Felony	Experts
Homicide and Sex Cases	Legal Research, Motions Practice, Other Writing
Probation Violations	Negotiations
	Court Preparation
	Court Time
	Sentencing/Mitigation
	Post Judgment

Juvenile - Dependency	
Case Type	Initial Jurisdiction Case Tasks
Parent Representation	Client Communication
Child Representation	Client Advocacy and Support
	Discovery / Case Analysis
	Experts
	Legal Research, Motions Practice, Other Writing
	Court Preparation
	Court Time
	Appeal Preparation
	<b>Case Tasks Following Initial Disposition on Jurisdiction</b>
	Post-Jurisdiction Client Communication
	Post-Jurisdiction Client Advocacy and Support
	Post-Jurisdiction Hearing Preparation
	Post-Jurisdiction Court Time

Juvenile - Termination of Parental Rights	
Case Type	Case Task
Parent Representation	Client Communication
Child Representation	Client Advocacy and Support
	Discovery / Case Analysis
	Experts
	Legal Research, Motions Practice, Other Writing
	Court Preparation
	Court Time
	Appeal Preparation
	Post-Judgment Work

<b>Juvenile - Delinquency</b>	
<b>Case Type</b>	<b>Case Task</b>
Misdemeanor / Other	Client Communication
Minor Felonies	Parent / Guardian / Custodian Communication
Major Felonies	Client Advocacy and Support
Waiver/Measure 11 Cases	Discovery / Case Analysis
Probation Violation / Contempt	Attorney Investigation / Attorney Interviews
	Experts
	Legal Research, Motions Practice, Other Writing
	Negotiations
	Court Preparation
	Court Time
	Post-Disposition

### **Delphi Surveys**

The surveys were designed by ABA SCLAID and Moss Adams and produced and administered by Moss Adams. For Rounds One and Two, Moss Adams used an online surveying tool. Round Three was conducted virtually by Moss Adams. ABA SCLAID personnel were present throughout the Round Three meetings to provide guidance and clarifications on the professional norms and standards of practice anchoring the Delphi process.

#### ***Round 1 Online Surveys***

In the Round One survey, participants were directed to consider the following when responding:

- ABA and Oregon State Bar standards for defense representation,
- Oregon Rules of Professional Conduct,
- their expertise and experience in the Oregon defense field.

The participants were initially asked whether they had sufficient experience with a particular Case Type to respond to questions about preparing a defense for an individual charged with a crime of that Case Type. If a participant responded that he/she did not have sufficient experience with a certain Case Type, the survey would automatically redirect to the next Case Type. If the participant had sufficient experience with the Case Type, the survey proceeded to ask the participant the relevant questions for each Case Task for that Case Type.

The surveys were designed to identify the following for each Case Type:

- Resolution Percentage: The percentage of each Case Type that should Plead Guilty/Otherwise Resolve vs. Go to Trial (Resolution Type).
- Frequency: In what percentage cases of that Case Type should each Case Task be performed (disaggregated by Resolution Type).
- Time: In the cases that the Case Task should be performed, how much cumulative time should an attorney spend on each Case Task to perform the task with reasonable



effective assistance of counsel pursuant to professional norms (disaggregated by Resolution Type).

In the context of answering the questions outlined above, participants were also provided the following instructions:

- account for the cumulative time required to complete a Case Task over the life of a case,
- assume adequate investigative, secretarial, and other support services, and
- define the time required for each Case Task in terms of the average or typical case of the Case Type, not the exceptional case.

### ***Round 2 Online Surveys***

The Round Two surveys were identical to the Round One surveys, except that the summary statistics of peer responses from the Round One survey were provided for the participants' reference.<sup>56</sup> Additionally, Round Two was only administered to those who completed the Round One survey.

The data collected from Round One was trimmed to eliminate outliers from both the upper and lower ends of the responses. The trimmed peer range and peer means from Round One were provided in the Round Two survey to assist in informing the participants' responses. Providing anonymous aggregated peer response data enables professional opinions to be converted into objective consensus opinion. The summary statistics provided to Round Two participants were the middle 60% of responses from Round One (the trim percentage was unknown to the participants). The peer mean is a single data point showing the average responses of the peer range.

### ***Round 3 Live Surveys***

The meeting of each Delphi panel was the final iteration of the Delphi survey process in this study. In the Round Three live survey, participants were requested to use the following information for guidance:

- ABA and Oregon State Bar standards for defense representation,
- Oregon Rules of Professional Conduct,
- their expertise and experience in the Oregon defense field,
- the summary statistics from peer responses from the Round Two survey, and
- collaboration and discussion with their Delphi panel peer participants.

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<sup>56</sup> See Appendix C for example surveys.

During the live Round Three survey, for each Case Type, Resolution Type, and Case Task the participants were asked to come to a consensus on the Resolution, Time and Frequency discussed above. The Round Three survey was conducted via the Zoom platform, due to the COVID-19 pandemic restrictions. For each Case Task presented, applicable standards and Case Type and Case Task definitions were provided in writing in advance, and the summary statistics for Round Two were discussed during the session.

Anonymous polls were conducted based on an offered value, which generally started with the Round Two trimmed mean for the question.<sup>57</sup> The poll included responses of “Agree”, “Too High” or “Too Low”. If there was disparity in responses, discussion was held. Participants were encouraged to provide their rationale based on their best professional judgement and experience. As necessary, the relevant standards were revisited and discussed. After discussion, a new value was offered, and a new poll was conducted. This cycle of poll, group discussion, poll, group discussion, continued until a consensus was reached.<sup>58</sup>

### ***Participation Attrition***

Because participation in each round requires participation in all previous rounds, attrition occurs throughout the Delphi process. The below chart shows the number of participants in each round for each of the Oregon Delphi panels:

	<b>Adult Criminal</b>	<b>Juvenile</b>
Invited to Participate	143	103
Completed Round 1	65	43
Completed Round 2	46	28
Completed Round 3	30	28

See Appendix D for summary characteristics of the Round Three participants (the Delphi panels).

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<sup>57</sup> While the Round Two peer mean was often the starting point, the group was not constrained in seeking a consensus value. If the group determined, following discussion, that the value should be higher or lower than the Round Two peer range, the consensus of the Round Three group governed.

<sup>58</sup> Considered a consensus if approximately 66% of polled participants “Agreed” on the presented value.

**Survey Results**

The consensus results for each Case Task on Time and Frequency were combined to arrive at an expected time, on average, that should be spent on each Case Task. The final expected times were then totaled and allocated to Resolution Type (e.g., plea/otherwise resolve vs. trial) to calculate the final Delphi result for each Case Type. The Delphi result is a measure of the total number of hours, on average, that a typical case of that Case Type should take an attorney providing reasonably effective assistance of counsel pursuant to professional norms.

The Delphi results for each case grouping are presented below. See Exhibits 4.1 and 4.2 for additional detail.

Delphi Panel Results - Adult Criminal	
Case Type	Hours Per Case
Low-Level Misdemeanor	22.26
Complex Misdemeanor	36.98
Low-Level Felony	39.78
Mid-Level Felony	47.73
High-Level Felony	148.95
Homicide and Sex Cases	552.46
Probation Violations	8.33

Delphi Panel Results - Juvenile - Dependency	
Case Type	Hours Per Case
Parent Representation	115.62
Child Representation	117.07

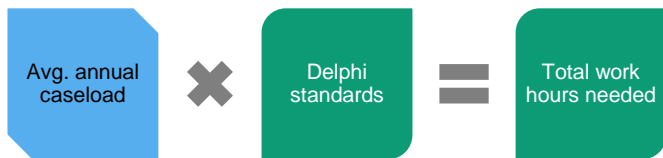
Delphi Panel Results - Juvenile - Termination of Parental Rights	
Case Type	Hours Per Case
Parent Representation	104.92
Child Representation	76.83

Delphi Panel Results - Juvenile - Delinquency	
Case Type	Hours Per Case
Misdemeanor / Other	35.65
Minor Felonies	43.79
Major Felonies	68.50
Waiver/Measure 11 Cases	261.48
Probation Violation / Contempt	14.07

**DEFICIENCY ANALYSIS**

**Adult Criminal and Juvenile**

To perform the deficiency analysis, the projected caseload (obtained by analysis of the historical caseloads) is multiplied by the time needed by Case Type (as determined by the Delphi panels), to produce the hours needed annually to provide reasonably effective assistance of counsel pursuant to prevailing professional norms.



The hours needed can then be translated into FTEs and compared to the number of FTEs currently available to calculate whether an attorney staffing deficit or excess exists and the extent of that deficit or excess.



At a consistent annual workload, OPDS is deficient 1,296 contract attorney FTE, for its Adult Criminal and Juvenile caseloads. In other words, OPDS has only 31% of the FTE contract attorneys needed to provide reasonably effective assistance of counsel pursuant to prevailing professional norms in Oregon to its Adult Criminal and Juvenile clients.



## The Oregon Project Deficiency Analysis

A Delphi workload analysis of attorney time needed, consisting of an estimate of Oregon’s public defense annual workload multiplied by the Delphi panel’s consensus opinions, is presented in the table below, disaggregated by attorney type for the Adult Criminal and Juvenile defense areas. See Exhibit 2 for detailed calculations of the estimated workload.

DEFICIENCY ANALYSIS		
	[1]	[2]
Area	Estimated Annual Caseload	Total Hours
Adult Criminal	75,588	2,166,606
Juvenile	19,885	1,881,036
<b>Total</b>	<b>95,473</b>	<b>4,047,642</b>
<b>Hours needed by Contract Attorneys [4]</b>		<b>3,926,213</b>
<b>FTEs needed [4]</b>		<b>1,888</b>
<b>Contract Attorney FTEs have [5]</b>		<b>592</b>
<b>Contract Attorney FTE deficiency</b>		<b>1,296</b>
<b>Deficiency %</b>		<b>69%</b>

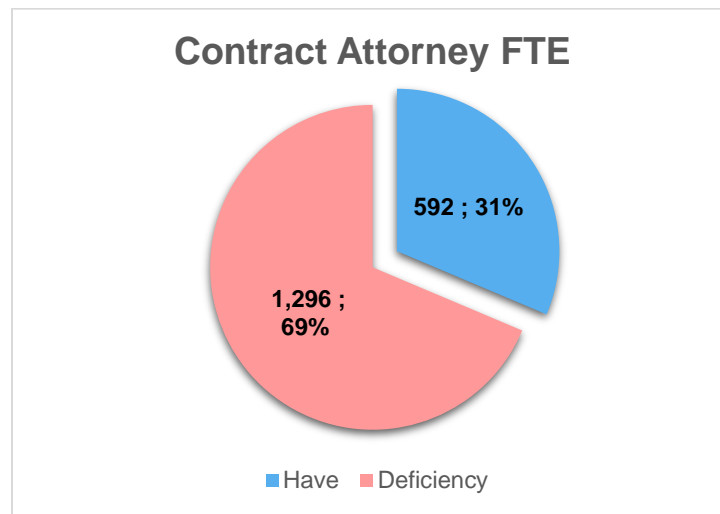
[1] Based on the average opened cases per year for the respective case grouping and attorney type (see Exhibit 1)

[2] Represents the Delphi Panel Results x Estimated Annual Caseload Totals (see Exhibit 2 for detailed calculations)

[3] The caseload data – because it was pulled from the courts – did not exclude cases taken by non-contract attorneys. It included all "court appointments." To address this imbalance, the caseload numbers were reduced by the amount (best estimate) that could be attributed to non-contract attorneys by reducing the total hours needed to provide adequate representation based on current caseloads. We reduced the needed hours by 3% (meaning 97% of the needed hours were estimated to be covered by contract FTEs), because OPDS staff estimated that 2-3% of cases are handled by non-contract attorneys.

[4] Hours divided by 2,080

[5] Total FTE as of November 2021.



For the purposes of this report, 2,080 hours was used to calculate needed FTE (40 hours/week; 52 weeks/year). The hours allotment assumes **all** hours are allocated to client representation, without consideration for administrative tasks, such as general meetings, work-related travel time, or wait time. It also does not reduce time for continuing legal education requirements and other training, nor does it reduce time during the workday to allow for bathroom breaks, lunch breaks, etc. Similarly, analysis assumes that public defense attorneys work every week of the year, without taking any time off for vacation, sick leave etc. The resulting total of 2080 hours per year of case work is very conservative and would, in reality, require time far exceeding eight hours per days and five days per week to accomplish.<sup>59</sup> Indeed, the total time allotted for case time in ABA Delphi workload studies generally exceeds the billable hours targets of commercial law firms in major urban areas like New York City and Washington, DC.<sup>60</sup>

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<sup>59</sup> See Yale Law School Career Development Office, The Truth About the Billable Hour, *available at* [https://law.yale.edu/sites/default/files/area/department/cdo/document/billable\\_hour.pdf](https://law.yale.edu/sites/default/files/area/department/cdo/document/billable_hour.pdf) (noting that to “bill” 1,832 hours, you are likely at work for 2,420 hours).

<sup>60</sup> PracticePanther, a legal time keeping application, notes that “the average number of billable hours required for first-year associates at firms with more than 700 attorneys is 1,930 hours, *available at* <https://www.practicepanther.com/blog/first-year-associates-billable-hours/>. See also Update on Associate Hours Worked, NALP Bulletin, 2016, *available at* <https://www.nalp.org/0516research> (noting that the data from 2014 shows that law firm associates worked, on average, 2,081 hours per year, which was up from an average of 2,067 hours worked in 2013).

## **DATA LIMITATIONS AND ASSESSMENT OF DATA NEEDS**

As noted throughout this report, where confirmable data could not be obtained, the assumptions made were conservative. This section outlines most of these assumptions.

### ***FTE Data Deficiencies***

The number of FTE attorneys and percentages utilized in this analysis is taken directly from self-reported data submitted by contractors to OPDS. The process of reporting FTE to OPDS is relatively new, and OPDS has little ability to confirm the percentages provided. In other words, OPDS is not currently equipped to assess whether an attorney reported as a .9 FTE in fact limits their private practice caseload to only .1 FTE. OPDS does not solicit or receive confirmatory information on the private practice caseloads of public defense attorneys, nor does it currently require timekeeping on public defense cases to confirm .9 FTE in time is devoted to those cases.

Additionally, as noted in detail above, the FTE analysis assumes that each FTE attorney can spend 2,080 hours each year on representation of clients. In other words, it assumes that a public defense attorney works 8 hours per day, with no breaks from case work for clients. It does not subtract any hours for administrative work, training, work-related travel time or wait time. It also assumes that an attorney works all 5 days per week, 52 weeks of the year, without subtracting time for holidays, vacation, sick leave, etc. In reality, working 2080 hours on case time would require a public defense attorney to spend considerably more time at work. In essence, this calculation assumes that public defense attorneys are working well-beyond a standard workday.

### ***Caseload Data Deficiencies***

The Case Types selected by the Consulting Panel for use in the Adult Criminal survey differentiated cases by sentencing scheme:

- The low-level felony Case Type was defined to include presumptive probation and prison grid felonies that do not trigger mandatory minimum sentences.
- The mid-level felony Case Type was defined to include property and drug felonies that include possible mandatory minimum sentences, Measure 57 cases,<sup>61</sup> and Level 10 drug crimes.

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<sup>61</sup> Ballot Measure 57 established mandatory minimum sentences for individuals convicted of certain drug and property crimes under certain circumstances, e.g. repeat offenders. It was approved in 2008. ORS 137.717 (2008).

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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- The high-level felony Case Type was defined to include Measure 11 felonies (excluding homicide cases),<sup>62</sup> sex cases (excluding sex cases with the potential for 25+ years) and gun minimum cases.
- The homicide and sex cases (25+years) Case Type was defined to include all homicide cases (excluding death penalty cases), Jessica's law cases,<sup>63</sup> 3<sup>rd</sup> strike sex cases<sup>64</sup> and Measure 73 sex cases.<sup>65</sup>

Unfortunately, OPDS does not currently collect detailed charging data indicating the sentencing scheme applicable in each case, nor is it available in court data. As a default, cases were categorized in the lowest applicable Case Type. Cases were only reallocated to a higher Case Type when reliable data justified the higher allocation.<sup>66</sup> For example, cases where the highest charge was a sex crime were categorized as high-level felony cases. Because OPDS lacked data on what portion of these cases were Jessica's law cases, 3<sup>rd</sup> strike cases or Measure 73 cases, no sex cases were allocated to the homicide and sex cases (25+ years) Case Type.

This report does not include consideration to any new regulations that would impact the Oregon public defense system, including Senate Bill 578 (2021),<sup>67</sup> which will require courts to appoint legal counsel for guardianship cases in certain counties beginning in 2022. Inevitably this will increase the public defense workload.

#### ***OPDS Should Continue to Improve Data Collection Mechanisms and Oversight***

Historically, OPDS has collected and maintained little data on public defense in Oregon and has had little role in overseeing attorneys engaged in public defense work beyond the contracting renewal process. Recently, data collection efforts have expanded. Beginning in 2021, OPDS has endeavored to better understand the attorneys who are taking public defense case work under its contracts and ensure some degree of caseload control. This is a good start, but far from sufficient.

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<sup>62</sup> Ballot Measure 11 originally passed in 1994. It required mandatory minimum prison sentences for 16 offenses. It has since been amended to apply to additional offenses. See Bill Taylor, Background Brief on Measure 11 (May 2004), *available at* [https://www.oregonlegislature.gov/citizen\\_engagement/Reports/2004IG\\_Measure\\_11.pdf](https://www.oregonlegislature.gov/citizen_engagement/Reports/2004IG_Measure_11.pdf).

<sup>63</sup> Jessica's law requires the imposition of a 25 year mandatory minimum for a defendant convicted of committing a first-degree sex offense against a child under the age of 12.

<sup>64</sup> ORS 137.319 (presumptive life sentence for certain sex offenders upon third conviction).

<sup>65</sup> Ballot measure 73 increased the mandatory minimum prison sentence to 25 years for repeat offenders of any four felony sex crimes. It passed in 2010.

<sup>66</sup> See Exhibit #3 explaining the use of prosecutorial data to allocate between low-level and complex misdemeanors, as well as identify Measure 57 cases.

<sup>67</sup> 81<sup>st</sup> Oregon Legislative Assembly – 2021 Regular Session - Senate Bill 578, *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/MeasureDocument/SB578>



## The Oregon Project

### Data Limitations and Assessment of Data Needs

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OPDS' contract system creates inherent data collection and oversight challenges. OPDS administers more than 100 contracts with providers who differ massively in size and administrative capacity. By contrast, a centralized public defense system in a state like Oregon would likely have, at most, one office in each judicial district (27 offices), and possibly far fewer.

These challenges are not impossible to overcome. The Committee for Public Counsel Services in Massachusetts (CPCS) for example oversees a mixed system of public defender offices and hundreds of individuals who accept public defense appointments. CPCS has extensive oversight mechanisms, as well as robust financial monitoring and auditing.<sup>68</sup> However, providing adequate substantive and financial oversight in a more decentralized system likely requires more extensive data collection and oversight staffing resources.

OPDS should collect comprehensive data on public defense work from its providers.<sup>69</sup> Doing so will likely require OPDS to adopt a single, unified case management system for all public defense attorneys. Using a unified case management system would enable OPDS to have accurate and reliable data on public defense cases throughout Oregon.<sup>70</sup>

#### ***Timekeeping***

As noted above, FTE calculations for contract attorneys are inherently complex. In Oregon, because the contractor may be non-profit public defense offices, law firms, consortium or individual lawyers, gathering accurate FTE data is even more complex. The only way to get accurate, reliable information on public defense work performed across various contracting entities that include full-time public defense attorneys, part-time public defense attorneys and occasional public defense attorneys is to require timekeeping for all attorneys for public defense cases. Oregon should therefore consider implementing timekeeping for all public defense attorneys. If implemented, this should be a contractually required part of onboarding, training and review processes.

Timekeeping need not be complex. Timekeeping categories can and should be streamlined and simple to ensure that each type of lawyer – Adult Criminal and Juvenile – needs to use only a small number of codes to enter time (ideally less than 10). It may be useful to compare timekeeping codes to Case Tasks categories in this report.

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<sup>68</sup> The CPCS assigned counsel manual, *available at* <https://www.publiccounsel.net/assigned-counsel-manual/>, details the qualification, training, performance requirements, billing process and evaluation procedures applicable to individual attorneys representing public defense clients.

<sup>69</sup> See NLADA, Basic Data Every Defender Program Needs to Track (2014), *available at* <https://www.nlada.org/tools-technical-assistance/defender-resources/research/basic-data-toolkit>. This toolkit on data collection for public defense providers identifies information that should be collected and recommends strategies for public defense providers of all types on how best to collect the data.

<sup>70</sup> These measures should also apply to non-contract attorneys.

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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#### ***Case Opening and Closing Forms***

Beyond timekeeping, there is critical information on each accused individual and each case that should be gathered by every public defense organization. These data points include basic demographic data on the client, initial charge(s), pretrial release/detention decisions, motions filed, experts consulted, pleas offered, disposition, and sentencing. These data points are often best gathered through use of standardized case opening and case closing forms, differentiated by type of cases. The forms, which should be part of the case management system, should be entered online and designed to allow the aggregation of entered data.<sup>71</sup> For example, a check box regarding use of expert should allow OPDS to determine the percentage of cases, by case type, in which experts are consulted. Similarly, disposition information would allow OPDS to determine, by Case Type or even charge, the percentage of cases that go to trial, plea or are dismissed.

Use of comprehensive case opening and closing forms could also help to simplify the necessary timekeeping by relocating critical, case-specific information gathering to forms that must be filled out only once, rather than within ongoing timekeeping. For example, rather than have a timekeeping code specific for motions, the timekeeping code can be general, e.g. research/writing, and the case closing form can ask whether motions were filed and have check boxes for types of motions.

Case opening and case closing forms can and should be customized to gather jurisdiction-specific information that drives time. For example, adult criminal defenders in Oregon chose to differentiate cases based on sentencing, indicating that the sentencing nature of the case is an important data point that drives time. For property felonies, those that are subject to Ballot Measure 57 sentencing were placed in a separate Case Type from property felonies not subjected to this sentencing. Accordingly, it is critical for OPDS to know whether Measure 57 sentencing is sought. Such information is impossible to ascertain from initial charging, court data or even simple timekeeping, but can and should be indicated on a case closing form. Similarly, initial domestic violence misdemeanors that are assigned to the Domestic Violence and Multi-Disciplinary Team units should be categorized as Complex Misdemeanors, as opposed to low-level misdemeanors. Case closing forms in Oregon are likely the best place to capture these data points.

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<sup>71</sup> Examples of these forms for both juvenile and adult criminal from a public defense program in Los Angeles, California are included in Appendix G. For another example, see CPCS Disposition Form, *available at* [https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/sample\\_dispositional\\_report\\_form.pdf](https://www.publiccounsel.net/gc/wp-content/uploads/sites/2/sample_dispositional_report_form.pdf).

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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#### ***Additional Information on Part-Time Public Defense Contractors or Attorneys***

To adequately control workloads and prevent conflicts in accordance with ethical obligations, OPDS should also understand the contract entities and attorneys' practice of law outside of the contract.<sup>72</sup> Under the FTE contracting model, OPDS now requires contracting entities report what portion of an attorney's workload is public defense cases vs. other work. A contract attorney asserting that he/she is spending 50% of his/her time on public defense work is now limited to receiving assignments equating to 50% of an allowable caseload. However, OPDS does not have an hours expectation that defines full-time, nor, as noted above, does it have any way of verifying either OPDS work or private practice work. OPDS should require contractors to report the nature and amount of other legal work performed by public defense attorneys to assist OPDS in monitoring and verifying overall caseloads. This could be accomplished by requiring contract attorneys/entities to report appearances in private cases in regular reports to OPDS.

#### ***Data Assessment Conclusion***

At present, OPDS lacks the ability to gather basic data on public defense cases and public defender work in Oregon.<sup>73</sup> As a result, the Commission cannot provide appropriate substantive or financial oversight.<sup>74</sup> These data gaps and resulting lack of oversight were also highlighted in a January 2019 report by the Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services*.<sup>75</sup> In part due to this report, the 2021 Public Defense Services Commissions budget bill<sup>76</sup> included a holdback of funding in the amount of \$100 million. The release of the holdback is contingent upon the Commission's satisfactory progress, as determined by the Legislature and/or the Legislative Emergency Board, in executing Legislative expectations regarding the restructuring, modernization, financial controls, quality management, performance metrics, and governance of the agency.

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<sup>72</sup> ABA Criminal Justice Standards, Providing Defense Services, Standard 5-3.3(b)(vii).

<sup>73</sup> Standard 5-3.3 of ABA Criminal Justice Standards on Providing Defense Services (1990), *available at* [https://www.americanbar.org/groups/criminal\\_justice/publications/criminal\\_justice\\_section\\_archive/crimjust\\_standards\\_defsvcs\\_blk/](https://www.americanbar.org/groups/criminal_justice/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_blk/), enumerates the essential elements of a contract in a public defense contracting system. It provides that contracting entities provide for, among other things, a system of case management and report.

<sup>74</sup> Standard 5-3.3 of Providing Defense Services further provides that contracts should establish processes for supervision, evaluation, training and professional development, as well as ensure appropriate qualifications for lawyers, limit caseloads, and provide access to support services, including investigative and expert services.

<sup>75</sup> 6AC Report on Oregon, *supra* n. 28.

<sup>76</sup> House Bill 5030 (2021) Regular Session details *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Measures/Overview/HB5030>. Subcommittee recommendation with explanatory notes *available at* <https://olis.oregonlegislature.gov/liz/2021R1/Downloads/CommitteeMeetingDocument/245165>. The recommendation includes, among other things in-sourcing information technology services and directing an independent financial and performance audit of the agency, including reviews of agency operations, procurement, human resources, information technology, accounting, budget, performance management, and auditing.

## The Oregon Project

### Data Limitations and Assessment of Data Needs

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Improving OPDS' data collection and oversight capacity will likely require ongoing financial investment by the Legislature. It also may require structural changes in how the state provides trial level public defense services, etc. At a minimum, OPDS will require additional staffing and resources to establish and administer substantive and financial oversight processes. OPDS should also reconsider staffing administrative and oversight positions for contractors, which could provide a critical layer of substantive oversight and enable greater data collection and financial reporting to OPDS. More broadly, as noted above, the contracting system creates inherent challenges for data collection and oversight. While such challenges can be overcome, the Commission may wish to consider whether alternative delivery structures would permit more efficient oversight.<sup>77</sup>

The Commission and OPDS have already demonstrated an important willingness and capacity to undertake critical review processes and implement improvements despite challenges. It is critical that OPDS continue on this path and receive the necessary support from the Legislature to achieve these ends.

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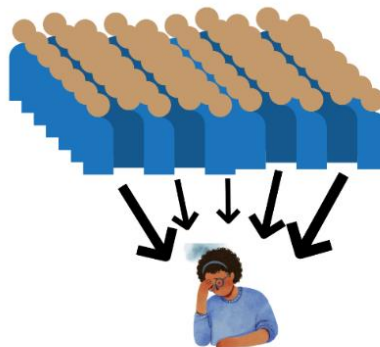
<sup>77</sup> The ABA Criminal Justice Standards on Providing Defense Services, Standard 5-1.2 provides: "The legal representation plan for each jurisdiction should provide for the services of a full-time defender organization when population and caseload are sufficient to support such an organization."

## CONCLUSION

At current caseloads, OPDS has a significant deficiency of FTE attorneys to provide public defense services in Adult Criminal and Juvenile cases. OPDS needs an additional 1,296 full-time attorneys – more than three times its current level – to meet the standard of reasonably effective assistance of counsel guaranteed by the Sixth Amendment. Limiting caseloads is critical to a functional public defense system. For this reason, ABA policy urges public defense systems to address excessive caseloads. The ABA Ten Principles of a Public Defense Delivery System require caseload limits, and further state that when a caseload “interferes with quality representation or [could] lead to the breach of ethical obligations [,] counsel is obligated to decline appointments.”<sup>78</sup>

This type of public defense attorney deficiency risks costly errors. It also erodes public trust in Oregon’s justice system. And it strains the individuals who are working so hard to keep the system functional despite these deficiencies. Excessive caseloads harm public defense attorneys – psychologically and physically.<sup>79</sup> When combined with the pandemic and the backlogs it has created, individual attorneys may be close to a breaking point. With so many existing deficiencies, additional staffing issues could jeopardize the public defense system’s basic ability to function.<sup>80</sup>

**The single most important conclusion from this report is that Oregon has a massive gulf between the number of cases currently in the public defense system and the number of attorneys available.**



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<sup>78</sup> Principle 5, ABA Ten Principles, *supra*, n. 34; see also Guideline 5, ABA Eight Guidelines, *supra* n. 3 (describing steps a public defense organization should take to address excessive workloads).

<sup>79</sup> See, e.g., Passport Health, How Does Overworking Affect Physical and Mental Health, *available at* <https://www.passporthealthusa.com/employer-solutions/blog/2019-2-overworking-affect-physical-and-mental-health/>.

<sup>80</sup> This is happening in numerous jurisdictions across the country, including Minnesota. See John Croman, Stressed public defenders ask lawmakers for help, KARE 11 St. Paul (Jan 12, 2022), *available at* <https://www.kare11.com/article/news/politics/stressed-public-defenders-lawmakers-help/89-8122802b-94c3-4401-9dff-21de7f4bc5a6>.

A deficiency in public defense attorney time can be addressed either by adding FTEs or by reducing the public defense caseload.<sup>81</sup> OPDS must consider immediate steps to begin to improve this situation.<sup>82</sup>

The deficiency quantified in this report was not created overnight; it was built over decades. Similarly, there will not be an immediate, single-source solution to resolve this deficiency. Even if funding and a sufficient number of qualified attorneys were readily available, the Commission and OPDS lack the infrastructure and capacities to triple the number of FTE attorneys for which they contract. But the Commission and OPDS should take immediate steps to begin to address the deficiency – for the clients, whose liberty is at stake, for the public defense attorneys, who for too long have done their very best under unworkable conditions, and for the people of Oregon, who rely on the accuracy of the justice system to ensure public safety.

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<sup>81</sup> *Id.* The data gathered in this report can assist OPDS in more accurately assessing the impact of other changes in criminal justice policy on its caseloads and therefore its FTE attorney needs.

<sup>82</sup> Guideline 5 of the ABA Eight Guidelines, *supra* n. 3, lists steps a public defense organization could take to address excessive workloads including reassigning cases, requesting a stay of further appointments, working with prosecutors to limit new filings, and seeking emergency resources.

## **Appendices**

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### **Delphi Method<sup>83</sup>**

The Delphi method was introduced in 1962 by researchers at the RAND Corporation. The method was described as a “new” research technique utilized by the Air Force in the 1950s to gather expert opinion and generate a reliable consensus.<sup>84</sup> The Delphi method requires that a succession of surveys be given to a group of experts, with structured feedback presented to the experts at each interval stage. The surveying practices applied by the Delphi method could be interviews or questionnaires that focus on some fundamental question of significance to the group of experts convened for feedback.

The features of this method include “anonymity, iteration, controlled feedback, and the statistical aggregation of group response.”<sup>85</sup> At the onset of the process, participants in a Delphi group are largely anonymous from one another. The purpose of anonymity is to ensure that solicited experts are not influenced by the responses of other participants and that the ideas presented are judged on their own merit. This technique is believed to be conducive to the exercise of independent thought on the part of participating experts and to aid experts in forming well-thought-out opinions.

The reliance on expert opinion as data is built on the premise that an expert is “able to select the needed items of background information, determine the character and extent of their relevance, and apply these insights to the formulation of the required personal probability judgments.”<sup>86</sup> Experts typically complete a questionnaire over multiple iterations with the goal of allowing participants to change their opinions and judgments when presented with controlled feedback regarding the opinions and judgments of their fellow participants. This controlled feedback is normally presented as a statistical summation of the group’s responses, e.g., a mean or median. The structured feedback at each successive iteration consists of “available data previously requested by the expert, or of factors and considerations suggested as potentially relevant by one or another respondent.”<sup>39</sup>

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<sup>83</sup> This literature review on the Delphi method is derived from *The Missouri Project: A Study of the Missouri Public Defender System and Attorney Workload Standards*, prepared by RubinBrown on behalf of the ABA’s Standing Committee on Legal Aid and Indigent Defendants. The Missouri Project provided a national blueprint for workload studies such as this one. Available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_pub\\_def\\_mo\\_workstudies\\_rept.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_pub_def_mo_workstudies_rept.pdf).

<sup>84</sup> Norman Dalkey and Olaf Helmer, An Experimental Application of the Delphi Method to the Use of Experts, 1962, available at [http://www.rand.org/content/dam/rand/pubs/research\\_memoranda/2009/RM727.1.pdf](http://www.rand.org/content/dam/rand/pubs/research_memoranda/2009/RM727.1.pdf).

<sup>85</sup> Gene Rowe and George Wright, The Delphi Technique as a Forecasting Tool: Issues and Analysis, 15 INT’L J. FORECASTING 35354 (1999) (hereafter Rowe and Wright, *The Delphi Technique*).

<sup>86</sup> Olaf Helmer and Nicholas Rescer, On the Epistemology of the Inexact Sciences P-1513 42 (The RAND Corporation 1958), available at <http://www.rand.org/content/dam/rand/pubs/papers/2005/P1513.pdf>.



The goal of the feedback at each stage is to assist in limiting mistaken beliefs an expert may have on the question at hand or to increase their awareness of other information they may not have previously considered.<sup>87</sup>

At the conclusion of the final iteration, the final iteration's mean or median response is used as the measure of the group's opinion.<sup>88</sup> In theory, the number of iterations required of the Delphi method can be unlimited until consensus among participants is achieved, however it has been found that three to four iterations is usually all that is required to reach consensus.<sup>89</sup>

Rowe and Wright systematically reviewed studies that explored the effectiveness of the Delphi method. Their focus was on how well the Delphi method worked in producing a consensus of opinions and judgments and to assess how accurate those opinions and judgments were.

Overall, they found that the majority of these evaluative studies showed support for the Delphi method in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved. As for the concern over the accuracy of those opinions and judgments, Rowe and Wright again found that the majority of studies provide compelling evidence in support of the Delphi method. Compared to other methodological techniques utilized for similar purposes, the Delphi method was found to "lead to improved judgments over staticized groups and unstructured interacting groups."<sup>90</sup>

Since its introduction, the Delphi method has been employed across a diverse array of industries, such as health care, education, information systems, transportation, and engineering.<sup>91</sup> In addition to its use in forecasting, the Delphi method has been used for "program planning, needs assessment, policy determination, and resource utilization."<sup>92</sup> Within the legal system, early examples of use of the Delphi method can be traced back a couple of decades. Examples of these attempts were sponsored by both the National Association of Court Management ("NACM") and the National Center for State Courts ("NCSC"). These efforts were principally charged with assessing judicial and court support staff needs.<sup>93</sup>

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<sup>87</sup> *Id.*

<sup>88</sup> Rowe and Wright, *The Delphi Technique*, *supra* note 85.

<sup>89</sup> Chia-Chien Hsu and Brian A. Sandford, *The Delphi Technique: Making Sense of Consensus* (2007) (hereafter Hsu and Sandford, *The Delphi Technique*), available at <https://scholarworks.umass.edu/cgi/viewcontent.cgi?article=1177&context=pape>.

<sup>90</sup> Rowe and Wright, *The Delphi Technique*, *supra* note 85, at 353-54.

<sup>91</sup> Harold Linstone and Murray Turoff, *The Delphi Method: Techniques and Applications* (2002); Rowe and Wright, *The Delphi Technique*, *supra* note 85, at 353-54.

<sup>92</sup> Hsu and Sandford, *The Delphi Technique*, *supra* note 89.

<sup>93</sup> See, e.g., Victor Flango and Brian Ostrom, *Assessing the Need for Judges and Court Support Staff* (National Center for State Courts 1996).

## The Oregon Project

### Appendix A: The Delphi Method

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In seeking to undertake a public defender caseload study in Missouri, ABA SCLAID partnered with RubinBrown to both select a methodology and execute an analysis that would, using data and analytics, result in reliable caseload standards. After an exhaustive literature review, RubinBrown concluded that the Delphi method was a reliable research tool to determine the appropriate workload for a public defender office because it was capable of generating a reliable consensus of expert opinion. The experts in a public defender workload Delphi study are experienced defense attorneys, both private practitioners and public defenders, with in depth knowledge of practice in the jurisdiction. These individuals serve as panelists in the Delphi process.

RubinBrown and ABA SCLAID utilized the Delphi method to complete The Missouri Project, a public defender workload study, which included a National Blueprint for conducting future workload studies.<sup>94</sup> In these studies, the Delphi process is driven, not by actual time data provided to the Delphi panel participants, but by the Standards applicable to public defense practice discussed above – the ABA Criminal Justice Standards and the state Rules of Professional Responsibility.<sup>95</sup>

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<sup>94</sup> *The Missouri Project*, *supra* note 45.

<sup>95</sup> These standards are included in the Delphi surveys and are also discussed at length prior to the start of the live meeting of the Delphi panel.

## The Oregon Project

### Appendix A: The Delphi Methodology

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In the years since The Missouri Project, ABA SCLAID has conducted four additional public defender workload studies in collaboration with three additional accounting and consulting firms:

- Louisiana (Postlewaithe and Netterville, APAC)<sup>96</sup>
- Colorado (RubinBrown)<sup>97</sup>
- Rhode Island (Blum Shapiro)<sup>98</sup>
- Indiana (Crowe LLP)<sup>99</sup>
- New Mexico (Moss Adams LLP)<sup>100</sup>

In each instance, the accounting and consulting firm reviewed and approved the use of the Delphi process, and conducted their services in accordance with the Standards for Consulting Services, as established by the American Institute of Certified Public Accountants.

In 2020, ABA SCLAID published a report on its use of the Delphi method to conduct public defense workload studies. That report, *Use of the Delphi Method in ABA SCLAID Public Defense Workload Studies: A Report on Lessons Learned*, is available on the ABA SCLAID website.<sup>101</sup>

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<sup>96</sup> Postlethwaite & Netterville, APAC on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Louisiana Project, A Study of the Louisiana Defender System and Attorney Workload Standards (2017)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_louisiana\\_project\\_report.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_louisiana_project_report.pdf).

<sup>97</sup> RubinBrown on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Colorado Project, A Study of the Colorado Public Defender System and Attorney Workload Standards (2017)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_co\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf).

<sup>98</sup> Blum, Shapiro & Company, P.C. on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants and The National Association of Criminal Defense Lawyers, *The Rhode Island Project, A Study of the Rhode Island Public Defender System and Attorney Workload Standards (2017)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_def\\_ri\\_project.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ri_project.pdf).

<sup>99</sup> Crowe LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The Indiana Project, A Study of the Indiana Public Defense System and Attorney Workload Standards (2020)*, available at [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls\\_sclaid\\_public\\_defense\\_indiana\\_project\\_report\\_july\\_2020.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls_sclaid_public_defense_indiana_project_report_july_2020.pdf).

<sup>100</sup> Moss Adams LLP on behalf of ABA's Standing Committee on Legal Aid and Indigent Defendants, *The New Mexico Project, An Analysis of the New Mexico Public Defense System and Attorney Workload Standards (2022)*, available at [https://www.americanbar.org/content/dam/aba/administrative/legal\\_aid\\_indigent\\_defendants/ls-sclaid-moss-adams-nm-proj.pdf](https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls-sclaid-moss-adams-nm-proj.pdf).

<sup>101</sup> Available at [https://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/ls-sclaid-indef-delphi-method-lessons.pdf](https://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/ls-sclaid-indef-delphi-method-lessons.pdf).

**Round 1 Survey Example**

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

What percentage of **Juvenile Dependency - Parent Representation** cases do you believe **SHOULD** resolve by:  
(total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	<input type="text" value="0"/>	%
Contested Jurisdiction / Fact-Finding (Trial)	<input type="text" value="0"/>	%
Total	<input type="text" value="0"/>	%

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Dependency - Parent Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

**Round 1 Survey Example**

**Juvenile Dependency - Parent Representation - ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Round 1 Survey Example**

**Juvenile Dependency - Parent Representation - CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

Round 2 Survey Example

Juvenile Dependency - Parent Representation

	<u>Time Needed</u>	Peer Mean	Peer Range	<u>% Cases Performed</u>	Peer Mean	Peer Range
<b>ADMISSION / DISMISSAL PRIOR TO CONTESTED JUDGEMENT</b>						
Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Discovery/Case Analysis	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Experts	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Legal Research, Motions Practice, Other Writing	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Appeal Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Hearing Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
<b>CONTESTED JURISDICTION / FACT FINDING (TRIAL)</b>						
Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Discovery/Case Analysis	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Experts	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Legal Research, Motions Practice, Other Writing	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Court Time	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Appeal Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Communication	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Client Advocacy and Support	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%
Post-Jurisdiction Hearing Preparation	<input type="text"/> hrs	XX hrs	XX - XX hrs	<input type="text"/> %	XX%	XX - XX%

## The Oregon Project

### Appendix C: Case Types and Task Definitions

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#### Case Type Definitions – Adult Criminal

Case Type	Description
Low-Level Misdemeanor	All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.
Complex Misdemeanor	Misdemeanors related to DUIs, domestic violence, sexual abuse, and animals (abuse of animals and game violations charged as misdemeanors).
Low-Level Felony	Presumptive probation and prison grid felonies that do not include mandatory minimums.
Mid-Level Felony	Property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.
High-Level Felony	Measure 11 felonies (excluding homicide cases), sex cases (excluding sex cases with potential for 25+ years), and gun minimum cases.
Homicide and Sex Cases	All homicide cases (excluding death penalty cases), Jessica's law cases, 3rd strike sex cases and Measure 73 sex cases.
Probation Violations	Probation violation cases.

#### Case Task Definitions – Adult Criminal

Case Task	Description
Client Communication	All attorney communication with the client (mail, phone, in-person, etc.) as well as communication with client family members related to the criminal case including communications regarding plea and sentencing (Excluding communication of an investigatory nature, which falls under Attorney Investigation/Attorney Interviews and Post-Judgment communication, which falls under Post-Judgment).
Client Support Services	Working with pretrial release services, social services, interpreters, treatment providers or outside agencies on behalf of clients; referrals for legal aid or other services; handling medical/family/other issues affecting client during criminal case; attending other proceedings related to or potentially impacting criminal charges.
Discovery / Case Prep	Ordering, obtaining and litigating discovery. Obtaining documents and materials through records requests, motions, subpoenas and other mechanisms. Reviewing, analyzing or organizing case-related materials/evidence including any digital evidence, social media evidence, jail communications, etc.; working with investigators; writing/editing case related-memos; defense team meetings (except in preparation for Court, which falls under Court Preparation); documenting case file.
Attorney Investigation / Interviews	Case-related investigation activities, including viewing the scene and physical evidence, canvassing for and interviewing witnesses, preparing subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney. Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Preparation).



**The Oregon Project**  
**Appendix C: Case Types and Task Definitions**

**Case Task Definitions – Adult Criminal (continued)**

<b>Case Task</b>	<b>Description</b>
Experts	Locating, obtaining funding approval for, corresponding and consulting with and reviewing reports of experts for the defense.
Legal Research, Motions Practice	Researching, drafting, editing, serving and filing of motions, notices, pleadings, briefs, jury instructions, etc. related to pretrial hearings other hearings or trial (except research, writing and motions exclusively related to Discovery, Negotiations or Sentencing/Mitigation which falls under Discovery, Negotiations and Sentencing/Mitigation respectively).
Negotiations	Discussions with a prosecutor in an effort to resolve a case; Preparing for settlement; Preparing any written submission to the prosecutor or settlement judge related to negotiations; attending judicial settlement conference(s).
Court Prep	Preparing for any and all pretrial hearings, other hearings or trial including defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, voir dire etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, preparing witnesses, including expert witnesses, for testimony, moot arguments, and other elements of trials and court hearings (except preparation for hearings exclusively related to Discovery or Sentencing/Mitigation which falls under Discovery and Sentencing/Mitigation respectively).
Court Time	In court at pretrial hearings, other hearings or trial (bench or jury) (except hearings related to Sentencing/Mitigation which falls under Sentencing/Mitigation).
Sentencing / Mitigation	Legal research and writing related to sentencing. Sentencing motions practice. Developing or collecting evidence to be used in sentencing, consulting with witnesses regarding sentencing, preparing for sentencing including review and rebuttal of prosecutorial sentencing materials, preparing for and attending sentencing hearings.
Post Judgment	Work performed post-disposition by the trial defender including litigating restitution, referring the case to OPDS for appeal, preparing file for appeal/transition to appellate attorney, and all appropriate post-sentence motions, e.g. motions to terminate or modify probation, motions for reductions, motions for relief from sex offender registration, motions to reconsider or to correct judgments, expungements, sentencing modifications, troubleshooting lingering case-related matters, and closing the file. Communicating with the client on post-judgment issues. Reviewing collateral consequence notices with client.

# The Oregon Project

## Appendix C: Case Types and Task Definitions

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### Case Type Definitions – Juvenile – Dependency

Case Type	Description
Parent Representation	Any case in which you represent a parent in a child welfare proceeding other than a Termination of Parental rights case.
Child Representation	Any case in which you represent a child in a child welfare proceeding other than a Termination of Parental rights case.

### Case Task Definitions – Juvenile – Dependency

Case Task	Description
<b>Initial Jurisdiction Case Tasks</b>	
Client Communication	All client communication through initial disposition on jurisdiction (mail, email, phone, in-person, home visit etc.) (does not include Post-Jurisdiction communication, which falls under Post-Jurisdiction).
Client Advocacy and Support	Working with child welfare, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/educational/other issues affecting client; attending meetings or proceedings related to or potentially impacting the case (excluding Post- Jurisdiction Client Advocacy and Support, which falls under Post-Jurisdiction Client Advocacy and Support).
Discovery / Case Analysis	All discovery and case analysis conducted through initial disposition, except for court prep, including, but not limited to: <ol style="list-style-type: none"> <li>a. Ordering and obtaining discovery materials and other case-related documents, such as medical records, mental health records, criminal records, educational records, treatment records, etc.;</li> <li>b. Talking to service providers, including foster parents;</li> <li>c. Reviewing, analyzing or organizing case-related materials/evidence including DHS materials;</li> <li>d. Working with investigators and social workers;</li> <li>e. Writing/editing case related-memos;</li> <li>f. Negotiations to resolve the petition;</li> <li>g. Attorney conducted investigation, including reviewing photos, videos, physical evidence, and social media;</li> <li>h. Attorney conducted interviews of witnesses; and</li> <li>i. Documenting case file.</li> </ol>
Experts	Locating, obtaining funding approval for, corresponding, consulting with and reviewing reports of experts for the defense, and preparing experts for hearings (except Experts exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Legal Research, Motions Practice, Other Writing	Researching, drafting and filing of motions, pleadings, briefs, and pre-jurisdiction report (except research and writing exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Court Preparation	Preparing for all hearings through initial disposition on jurisdiction including preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of court preparation (excluding preparation for Post-Disposition Hearing, which falls under Post-Disposition).

## The Oregon Project

### Appendix C: Case Types and Task Definitions

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#### Case Task Definitions – Juvenile – Dependency (continued)

Case Task	Description
<b>Initial Jurisdiction Case Tasks</b>	
Court Time	In court time all hearings through initial disposition on jurisdiction, including shelter hearings, pretrial conferences, status conferences, motions hearings, settlement conferences, jurisdictional hearings and/or disposition.
Appeal Preparation	Filing notice of appeal and appellate referral, filing appropriate motions, preparing the case file for appeal; meeting with appellate attorney; drafting transition memo.
<b>Case Tasks Following Initial Disposition on Jurisdiction</b>	
Post-Jurisdiction Client Communication	All client communication after initial disposition on jurisdiction (mail, email, phone, in-person, home visits etc.).
Post-Jurisdiction Client Advocacy and Support	After initial disposition on jurisdiction: Working with child welfare, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/ educational/other issues affecting client; attending meetings or proceedings related to or potentially impacting the case.
Post-Jurisdiction Hearing Preparation	After initial disposition on jurisdiction: Obtaining and reviewing provider reports; conducting post jurisdiction discovery; legal research and writing for post-jurisdiction hearings; preparation of post-jurisdiction motions; hiring and consulting with post-jurisdiction experts; preparing for post-jurisdiction hearings.
Post-Jurisdiction Court Time	Attending hearings after initial disposition on jurisdiction, including Citizen Review Board hearings (CRBs).

#### Case Type Definitions – Juvenile – Termination of Parental Rights

Case Type	Description
Parent Representation	Any Termination of Parental rights case in which you represent a parent in a child welfare proceeding.
Child Representation	Any Termination of Parental rights case in which you represent a child in a child welfare proceeding.

## The Oregon Project

### Appendix C: Case Types and Task Definitions

#### Case Task Definitions – Juvenile – Termination of Parental Rights

Case Task	Description
Client Communication	All client communication through initial disposition on jurisdiction (mail, email, phone, in-person, home visit etc.) (does not include Post-Jurisdiction communication, which falls under Post-Jurisdiction).
Client Advocacy and Support	Working with child welfare, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/educational/other issues affecting client; attending meetings or proceedings related to or potentially impacting the case(excluding Post-Jurisdiction Client Advocacy and Support, which falls under Post-Jurisdiction Client Advocacy and Support).
Discovery / Case Analysis	All discovery and case analysis conducted through initial disposition, except for court prep, including, but not limited to: <ul style="list-style-type: none"> <li>a. Ordering and obtaining discovery materials and other case-related documents, such as medical records, mental health records, criminal records, educational records, treatment records, etc.;</li> <li>b. Talking to service providers, including foster parents;</li> <li>c. Reviewing, analyzing or organizing case-related materials/evidence including DHS materials;</li> <li>d. Working with investigators and social workers;</li> <li>e. Writing/editing case related-memos;</li> <li>f. Negotiations to resolve the petition;</li> <li>g. Attorney conducted investigation, including reviewing photos, videos, physical evidence, and social media;</li> <li>h. Attorney conducted interviews of witnesses; and</li> <li>i. Documenting case file.</li> </ul>
Experts	Locating, obtaining funding approval for, corresponding, consulting with and reviewing reports of experts for the defense, and preparing experts for hearings (except Experts exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Legal Research, Motions Practice, Other Writing	Researching, drafting and filing of motions, pleadings, briefs, and pre-jurisdiction report (except research and writing exclusively related to Post-Jurisdiction which fall under Post-Jurisdiction).
Court Preparation	Preparing for all hearings through initial disposition on jurisdiction including preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of court preparation (excluding preparation for Post-Disposition Hearing, which falls under Post-Disposition).
Court Time	In court time all hearings through initial disposition on jurisdiction, including shelter hearings, pretrial conferences, status conferences, motions hearings, settlement conferences, jurisdictional hearings and/or disposition.

## The Oregon Project

### Appendix C: Case Types and Task Definitions

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#### Case Task Definitions – Juvenile – Termination of Parental Rights (continued)

Case Task	Description
Appeal Preparation	Filing notice of appeal and appellate referral, filing appropriate motions, preparing the case file for appeal; meeting with appellate attorney; drafting transition memo.
Post-Judgment Work	All work performed post-judgment including client communication, assistance with and consulting about mediation, and troubleshooting lingering case-related matters (except Appeal Preparation, which falls under Appeal Preparation).

#### Case Type Definitions – Juvenile – Delinquency

Case Type	Description
Misdemeanor / Other	Defined to include violations, but not probation violations, Status Offenses, Expungements, etc.
Minor Felonies	Defined to include Class C felonies other than sex crimes.
Major Felonies	Defined as all other felonies originating in juvenile court in which waiver is not sought.
Waiver / Measure 11 Cases <sup>102</sup>	Defined as all cases in which waiver is sought and all Measure 11 cases.
Probation Violation / Contempt	Probation violation cases.

#### Case Task Definitions – Juvenile – Delinquency

Case Task	Description
Client Communication	All client communication (mail, email, phone, in-person, etc.).
Parent / Guardian / Custodian Communication	All communications with the client's parent(s)/ guardian(s)/custodian(s) (except communication of an investigatory nature, which falls under Attorney Investigation/Interviews).
Client Advocacy and Support	Working with social services, treatment providers or outside agencies on behalf of clients; handling medical/mental health/family/educational/other issues affecting client during juvenile delinquency case; attending other meetings or proceedings related to or potentially impacting juvenile delinquency charges (excluding preparation for court hearings, which falls under preparation and excluding post-disposition, which falls under post-disposition).
Discovery / Case Analysis	Ordering and obtaining discovery materials and other case-related documents, including medical records, educational records, treatment records, public records requests and nonparty record production. Reviewing, analyzing or organizing case-related materials/evidence including any court-ordered evaluations, video evidence, social media evidence, etc.; working with investigators; writing/editing case related-memos; defense team meetings related to discovery or case analysis; documenting case file.

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<sup>102</sup> In 2019, the Legislature passed a law eliminating the applicability of Measure 11 to juveniles, which ended the automatic transfer of juveniles (ages 15017) charged with certain offenses to adult court.

**The Oregon Project**  
**Appendix C: Case Types and Task Definitions**

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**Case Task Definitions – Juvenile – Delinquency (continued)**

<b>Case Task</b>	<b>Description</b>
Attorney Investigation / Attorney Interviews	Case-related investigation activities, including social history investigations, viewing the scene and physical evidence, canvassing for and interviewing witnesses, serving subpoenas; taking photos/videos, etc. (Note: this is all work conducted by the attorney. Communications with investigators or others related to their interviews/investigations fall under Discovery/Case Analysis).
Experts	Locating, obtaining funding approval for, corresponding, consulting with and reviewing reports of experts for the defense, and preparing experts for hearings.
Legal Research, Motions Practice, Other Writing	Researching, drafting and filing of motions, pleadings, briefs, etc. related to pretrial, motions, or jurisdiction hearing.
Negotiations	Communications and discussions with prosecutor/Juvenile Department/Oregon Youth Authority in an effort to resolve a case.
Court Preparation	Preparing for any and all pre-jurisdiction, jurisdictional and dispositional hearings including defense team meetings in preparation for court, time spent prepping for direct exams, cross-exams, arguments etc., preparing for rebuttal of prosecutorial materials and addressing restitution, subpoenaing witnesses, preparing materials for courts including exhibits and presentations, moot arguments, and other elements of trials and pre-adjudication hearings.
Court Time	Any and all in court time at hearings or conferences (e.g. Including shelter hearings, detention reviews, review hearings, status conference, motions hearings, settlement conferences, jurisdictional hearings and/or disposition, including restitution hearing).
Post-Disposition	All work performed post-disposition including client communication; client advocacy and support work post-disposition; preparing for and arguing post-disposition hearings, including sex offender registration hearings; preparing file for appeal/transition to appellate attorney; assisting with compliance with conditions; meeting participation; ensuring appropriate release; property returns; petitions for modification; and troubleshooting lingering case-related matters.

**The Oregon Project**  
**Appendix D: Delphi Panel Characteristics**

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**Delphi Panel Characteristics**

The below charts summarizes the experience of the Round Three participants (the Delphi panels):

<b>Years as Practicing Attorney</b>	<b>Adult Criminal</b>	<b>Juvenile</b>
Less than 5 years	1	3
5 to 15 years	12	6
16 to 25 years	10	12
More than 25 years	7	7

<b>Category</b>	<b>Adult Criminal</b>	<b>Juvenile</b>
Public defender at a non-profit public defender contract office	14	12
Attorney at a law firm or consortium that has a public defense contract with OPDS	10	16
Private practice criminal defense attorney who does some minimal public defense work	6	0

Adult Criminal Case Intake Form – Los Angeles, California County Bar Association

Effective as of 07/27/21

INDIGENT CRIMINAL DEFENSE | LOS ANGELES COUNTY  
APPOINTMENT | BAR ASSOCIATION

CLIENT INTAKE SHEET

Attorney Name: \_\_\_\_\_

Duty Date: \_\_\_\_\_ / Non-Duty Day Pick-Up Date: \_\_\_\_\_

Case #: \_\_\_\_\_ Court: \_\_\_\_\_ Court Dept #: \_\_\_\_\_

Client Information

Name: \_\_\_\_\_ AKA/Booked as: \_\_\_\_\_

DOB: \_\_\_\_\_ / Age: \_\_\_\_ Gender:  M  F Race/ Ethnic Origin Please select: 

Client's Place of Birth (City, Country): \_\_\_\_\_

Whether or not your client is impacted by US immigration policy, please check this box affirming that you have considered their eligibility for expulsion/citizenship and documented this in their file.

Contact Information

Client Address: \_\_\_\_\_

Client Phone Number: (\_\_\_\_) \_\_\_\_\_

Name of Family Contact: \_\_\_\_\_

Please indicate this person's relationship to client: \_\_\_\_\_

Family Number: (\_\_\_\_) \_\_\_\_\_

Interpreter Required:  Yes  No Preferred Language: \_\_\_\_\_

Charging Document

Complaint/Information Status:  New  PV

Complaint Date: \_\_\_\_\_, and/or Next Hearing Date: \_\_\_\_\_



**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

**Adult Criminal Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

Next Hearing Type: \_\_\_\_\_ Filing Date: \_\_\_\_\_

**Case Information**

Was this an instance of witness representation?  Yes  No  
If yes, you may skip the Detention Status and Charges sections.

What stage were you appointed? \_\_\_\_\_

DCFS or Dependency Court/Mental Health Court Involvement?  Yes  No

If yes,

Name/ Contact of service provider: \_\_\_\_\_

Name/ Contact of service-related Attorney: \_\_\_\_\_

Charges (Code Section):	Indicate Felony (F) or Misdemeanor (M):	Enhancements:
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____

Max Exposure: \_\_\_\_\_

**Detention Status**

My client is currently detained:  Yes  No  
If no, please enter NA for the following fields.

If Detained After Arraignment:  House Arrest (CDP)  County Jail: Please select:

Other: \_\_\_\_\_ Detention Location: \_\_\_\_\_

Bail Review Date: \_\_\_\_\_ Preliminary Hearing Date: \_\_\_\_\_ Other: \_\_\_\_\_

**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

---

**Adult Criminal Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

Co-Defendant Information

If there was no co-defendant involvement, please enter NA

Names of Co-Defendant(s):	Case Number	Co-Attorneys of Co-Defendants
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

Other Open Cases

Charges:

Case Numbers:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Attorney: \_\_\_\_\_

Probation Officer: \_\_\_\_\_

Next Court Date: \_\_\_\_\_

Court/ Judge: \_\_\_\_\_

Notes

**INFORMATION MUST BE SUBMITTED TO OFFICE WITHIN 48 HOURS OF APPOINTMENT**

Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association

Effective as of 07/30/21

INDIGENT CRIMINAL DEFENSE APPOINTMENT | LOS ANGELES COUNTY BAR ASSOCIATION

CASE RESOLUTION FORM

Date of Resolution: \_\_\_\_\_ Attorney Name: \_\_\_\_\_  
Client Name: \_\_\_\_\_ Case Number: \_\_\_\_\_  
Court: \_\_\_\_\_ Department: \_\_\_\_\_  
Judicial Officer: \_\_\_\_\_

Ancillary Resources Used:

ICDA Team: \_\_\_\_\_ Investigator: \_\_\_\_\_  
Social Worker: \_\_\_\_\_ Expert Witness: \_\_\_\_\_  
Additional Names: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Is this a Prop 57 or a Transfer Case?  Yes  No

Case Status: Please select:   
Result: Please select:   
Sustained Max:  
Length: \_\_\_\_\_ Period: Please select:   
Client's Location: Please select:   
Facility: \_\_\_\_\_

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

<div style="display: flex; justify-content: space-between; align-items: center;"> <div style="text-align: left;"> <p style="margin: 0;"><b>INDIGENT CRIMINAL DEFENSE</b>  <b>APPOINTMENT</b></p> </div> <div style="text-align: right;"> <p style="margin: 0;">LOS ANGELES COUNTY              BAR ASSOCIATION</p> </div> </div>	
<b>Charges</b>	
1. Count 1: _____ Enhancements: _____ Notes:	Charge(s) Sustained: _____ Disposition: Please select: _____ Dispo. Date: Sentence: Please select: _____ Sentence Date: Alleged Max:           Period: Please select: _____
2. Count 2: _____ Enhancements: _____ Notes:	Charge(s) Sustained: _____ Disposition: Please select: _____ Dispo. Date: Sentence: Please select: _____ Sentence Date: Alleged Max:           Period: Please select: _____
3. Count 3: _____ Enhancements: Please select: _____ Notes:	Charge(s) Sustained: _____ Disposition: Please select: _____ Dispo. Date: Sentence: Please select: _____ Sentence Date: Alleged Max:           Period: Please select: _____

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

<p><b>INDIGENT CRIMINAL DEFENSE</b>  <b>APPOINTMENT</b></p>	<p><b>LOS ANGELES COUNTY</b>  <b>BAR ASSOCIATION</b></p>
<b>Charges</b>	
<p>4. Count 1:          _____          Enhancements: Please select: <input type="button" value="v"/>          Notes:</p>	<p>Charge(s) Sustained:          _____          Disposition: Please select: <input type="button" value="v"/>          Dispo. Date:          Sentence: Please select: <input type="button" value="v"/>          Sentence Date:          Alleged Max:      Period: Please select: <input type="button" value="v"/></p>
<p>5. Count 2:          _____          Enhancements: Please select: <input type="button" value="v"/>          Notes:</p>	<p>Charge(s) Sustained:          _____          Disposition: Please select: <input type="button" value="v"/>          Dispo. Date:          Sentence: Please select: <input type="button" value="v"/>          Sentence Date:          Alleged Max:      Period: Please select: <input type="button" value="v"/></p>
<p>6. Count 3:          _____          Enhancements: Please select: <input type="button" value="v"/>          Notes:</p>	<p>Charge(s) Sustained:          _____          Disposition: Please select: <input type="button" value="v"/>          Dispo. Date:          Sentence: Please select: <input type="button" value="v"/>          Sentence Date:          Alleged Max:      Period: Please select: <input type="button" value="v"/></p>
3	

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

<p><b>INDIGENT CRIMINAL DEFENSE          APPOINTMENT</b></p>	<p><b>LOS ANGELES COUNTY          BAR ASSOCIATION</b></p>																				
<p><b>Schedule</b></p> <p>Contested Hearings Conducted:</p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;">Description</th> <th style="width: 50%; text-align: center;">Date</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td style="text-align: center;">_____</td> </tr> </tbody> </table> <p style="margin-top: 20px;">*Please indicate results or any other notable information in the Notes section below.</p>			Description	Date	1.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____	2.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____	3.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____	4.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____					
	Description	Date																			
1.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____																			
2.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____																			
3.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____																			
4.	Please select: <input style="width: 20px;" type="text" value="v"/>	_____																			
<p><b>Motions</b></p> <table style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;"></th> <th style="width: 40%; text-align: center;">Types of Motions</th> <th style="width: 20%; text-align: center;">Date</th> <th style="width: 30%; text-align: center;">Ruling</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">1.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td></td> <td style="text-align: center;">Please select: <input style="width: 20px;" type="text" value="v"/></td> </tr> <tr> <td style="text-align: center;">2.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td></td> <td style="text-align: center;">Please select: <input style="width: 20px;" type="text" value="v"/></td> </tr> <tr> <td style="text-align: center;">3.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td></td> <td style="text-align: center;">Please select: <input style="width: 20px;" type="text" value="v"/></td> </tr> <tr> <td style="text-align: center;">4.</td> <td>Please select: <input style="width: 20px;" type="text" value="v"/></td> <td></td> <td style="text-align: center;">Please select: <input style="width: 20px;" type="text" value="v"/></td> </tr> </tbody> </table>			Types of Motions	Date	Ruling	1.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>	2.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>	3.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>	4.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>
	Types of Motions	Date	Ruling																		
1.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>																		
2.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>																		
3.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>																		
4.	Please select: <input style="width: 20px;" type="text" value="v"/>		Please select: <input style="width: 20px;" type="text" value="v"/>																		
<p>Did you file a notice of appeal?</p> <p style="text-align: center;"> <input type="checkbox"/> Yes                  <input type="checkbox"/> No                  <input type="checkbox"/> No Contested Issue of Law or Fact         </p>																					
<p>4</p>																					

**Adult Criminal Case Resolution Form – Los Angeles, California County Bar Association (continued)**

INDIGENT CRIMINAL DEFENSE | LOS ANGELES COUNTY  
APPOINTMENT | BAR ASSOCIATION

Notes

Please indicate any notable effort put into the case, not covered elsewhere on this form:

**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

**Juvenile Case Intake Form – Los Angeles, California County Bar Association**

Effective as of 09/01/18

**INDEPENDENT JUVENILE DEFENDER PROGRAM** | LOS ANGELES COUNTY BAR ASSOCIATION

**CLIENT INTAKE SHEET**

Attorney Name: \_\_\_\_\_

Duty Date: \_\_\_\_\_ / Non-Duty Pick-Up Date: \_\_\_\_\_

Case #: \_\_\_\_\_ Court: \_\_\_\_\_ Court Dept. #: \_\_\_\_\_

<b>EMAIL TO:</b>	<b>North</b>	<b>South</b>	<b>East</b>	<b>West</b>
	Bethany Judson (213) 896-6472 <a href="mailto:bjudson@lacba.org">bjudson@lacba.org</a>	Tracy Andrade (213) 896-6505 <a href="mailto:tandrade@lacba.org">tandrade@lacba.org</a>	Shanice Hawthorne (213) 833-6706 <a href="mailto:shawthorne@lacba.org">shawthorne@lacba.org</a>	Sarah Fiskin (213) 896-6430 <a href="mailto:sfiskin@lacba.org">sfiskin@lacba.org</a>

**Client Information**

Name: \_\_\_\_\_ AKA/Booked as: \_\_\_\_\_

DOB: \_\_\_\_\_ / AGE: \_\_\_\_ Gender:  M  F Race/ Ethnic Origin: Select: ▼

Minor's Place of Birth (City, Country): \_\_\_\_\_

Whether or not your client is a potential candidate, please check this box affirming that you have considered their eligibility for SIJS and that this is sufficiently documented in their file.

**Contact Information**

Client Phone Number: (\_\_\_\_) \_\_\_\_\_

Address/ Placement Location: \_\_\_\_\_

Name of Parent/ Legal Guardian/ DCFS Placement: \_\_\_\_\_

Please indicate this person's relationship to client: \_\_\_\_\_

Parent/ Guardian/ Placement Phone Number: (\_\_\_\_) \_\_\_\_\_

Interpreter Required? (Including Parents) :  Yes  No Preferred Language: \_\_\_\_\_

**Petition Information**

Petition Status:  New  Active Petition Type:  Detained  Non-Detained

Petition Date: \_\_\_\_\_ Next Hearing Date: \_\_\_\_\_ Next Hearing Type: \_\_\_\_\_



**Juvenile Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

**Case Information**

Was this an instance of witness representation?  Yes  No  
If yes, you may skip the Detention Status and Charges sections.

WIC 450/ AB12/212 appointment?  Yes  No  
If yes, you may skip the Detention Status section.

Were you appointed post-disposition?  Yes  No

Is this a 601 status offense?  Yes  No

Is your client facing a transfer motion to adult court?  Yes  No

Is this a Prop 57 return case?  Yes  No

Was there any DCFS or Dependency Court Involvement?  Yes  No

If yes,

Name/ Contact of Social Worker: \_\_\_\_\_

Name/ Contact of Dependency Court Attorney: \_\_\_\_\_

Charges (Code Section):	Indicate Felony (F) or Misdemeanor (M):	Enhancements:
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____
_____	<input type="checkbox"/> Felony <input type="checkbox"/> Misdemeanor	_____

Max Exposure: \_\_\_\_\_

**Detention Status**

My client is currently detained:  Yes  No  
If no, please enter NA for the following fields.

If Detained After Arraignment:

House Arrest (CDP)  Juvenile Hall/ Camp  Jail  Other: \_\_\_\_\_

Detention Location: \_\_\_\_\_  
Please provide full name.

Dennis "H" Hearing Date: \_\_\_\_\_ William "M" Hearing Date: \_\_\_\_\_ Other: \_\_\_\_\_

**The Oregon Project**  
**Appendix E: Example Opening and Closing Forms**

---

**Juvenile Case Intake Form – Los Angeles, California County Bar Association  
(continued)**

**Co-Minor Information**

If there was no co-minor involvement, please enter NA.

Names of Co-Minor(s):	Case Number:	Co-Attorney for Co-Minors:
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

**Other Open Petitions/ Probation**

If there are no other open petitions, please enter NA.

Charges:	Petition Date:
_____	_____
_____	_____
_____	_____
_____	_____
_____	_____
Attorney: _____	Probation Officer: _____
Next Court Date: _____	Court/ Judge: _____

**Notes**

**INFORMATION MUST BE SUBMITTED TO OFFICE WITHIN 48 HOURS OF APPOINTMENT**

Juvenile Case Resolution Form – Los Angeles, California County Bar Association

Effective as of 05/01/18

**INDEPENDENT JUVENILE DEFENDER PROGRAM** | LOS ANGELES COUNTY BAR ASSOCIATION

**CASE RESOLUTION FORM**

Date of Resolution: \_\_\_\_\_ Attorney Name: \_\_\_\_\_

Client Name: \_\_\_\_\_ Case Number: \_\_\_\_\_

Court: \_\_\_\_\_ Department: \_\_\_\_\_

Judicial Officer: \_\_\_\_\_ Petition Date: \_\_\_\_\_

Ancillary Resources Used:

Investigator  Social Worker  Writ Attorney  Resource Attorney

Expert Witnesses Appointed: \_\_\_\_\_

Charges in Petition: \_\_\_\_\_ Charges Sustained: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

MAX: \_\_\_\_\_ MAX: \_\_\_\_\_

Basis of Charges Sustained:

Admission

Adjudication

If your client admitted the charges, check this box if you have sufficiently documented your rationale for admission as opposed to adjudicating the matter.

Juvenile Case Resolution Form – Los Angeles, California County Bar Association  
(continued)

Disposition at time of Admission/Resolution:

- |                              |   |                                       |
|------------------------------|---|---------------------------------------|
| <input type="checkbox"/> 654 | <input type="checkbox"/> Suitable Placement | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> 725 | <input type="checkbox"/> CCP Term: _____    | <input type="checkbox"/> Transferred  |
| <input type="checkbox"/> 790 | <input type="checkbox"/> DJF Term: _____    | Dept: _____                           |
| <input type="checkbox"/> HOP | <input type="checkbox"/> Dismissed          | Attorney: _____                       |

Contested Hearings Conducted:

- William M.  
Witnesses Called: \_\_\_\_\_
- Dennis H.  
Witnesses Called: \_\_\_\_\_
- Motion to Suppress  
Witnesses Called: \_\_\_\_\_
- Adjudication  
Witnesses Called: \_\_\_\_\_
- Disposition  
Witnesses Called: \_\_\_\_\_
- Other: \_\_\_\_\_

Did you file a notice of appeal?

- Yes    No    No Contested Issue of Law or Fact

**Juvenile Case Resolution Form – Los Angeles, California County Bar Association  
(continued)**

Written Motions Filed

700.1 (WIC analog to PC 1538.5)

Other: \_\_\_\_\_

Oral Motions Argued

701.1

Other: \_\_\_\_\_

How many times did you meet with the client outside of court appearances? \_\_\_\_\_

Please indicate any notable effort put into the case, not covered elsewhere on this form:

## Exhibits

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Statewide Cases Represented by Court Appointed Attorneys by Type and Estimated Caseload

STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD

Adult Criminal						
Case Type	2017	2018	2019	2020	Jan 1 - October 10, 2021	Estimated Caseload
Low-Level Misdemeanor	26,908	30,604	28,533	24,942	12,398	25,407
Complex Misdemeanor	9,610	10,413	9,328	8,787	5,622	9,083
Low-Level Felony	23,828	19,303	19,461	17,641	10,395	18,738
Mid-Level Felony	2,043	2,002	1,855	1,754	1,238	1,851
High-Level Felony	1,651	1,724	1,571	1,548	1,352	1,649
Homicide and Sex Cases	55	58	55	30	51	53
Probation Violations <sup>103</sup>	25,227	25,145	24,567	15,092	3,095	18,807
<b>Total Adult Criminal<sup>103</sup></b>	<b>89,322</b>	<b>89,249</b>	<b>85,370</b>	<b>69,794</b>	<b>34,151</b>	<b>75,588</b>

<sup>103</sup> Probation Violation Data within the Adult Criminal data above is stated for the period January 1 – March 31, 2021.

# The Oregon Project

## Exhibit #1

### Statewide Cases Represented by Court Appointed Attorneys by Type and Estimated Caseload

#### STATEWIDE CASES REPRESENTED BY COURT APPOINTED ATTORNEYS BY TYPE AND ESTIMATED CASELOAD

Juvenile - Dependency						Estimated Caseload
Case Type	2017	2018	2019	2020	Q1 2021	
Parent Representation	10,094	8,380	7,920	5,980	1,148	7,888
Child Representation	5,335	4,401	4,114	3,096	608	4,130
<b>Total Juvenile - Dependency</b>	<b>15,429</b>	<b>12,781</b>	<b>12,034</b>	<b>9,076</b>	<b>1,756</b>	<b>12,018</b>

Juvenile - Termination of Parental Rights						Estimated Caseload
Case Type	2017	2018	2019	2020	Q1 2021	
Parent Representation	2,313	2,268	2,117	1,423	560	2,043
Child Representation	1,434	1,377	1,250	846	322	1,230
<b>Total Juvenile - Termination of Parental Rights</b>	<b>3,747</b>	<b>3,645</b>	<b>3,367</b>	<b>2,269</b>	<b>882</b>	<b>3,273</b>

Juvenile - Delinquency						Estimated Caseload
Case Type	2017	2018	2019	2020	Q1 2021	
Misdemeanor / Other	1,632	1,783	1,641	1,069	159	1,479
Minor Felonies	902	912	884	728	117	834
Major Felonies	175	167	155	118	18	149
Waiver / Measure 11 Cases	144	140	166	306	56	191
Probation Violation / Contempt	2,368	2,443	2,251	1,033	159	1,942
<b>Total Juvenile - Delinquency</b>	<b>5,221</b>	<b>5,445</b>	<b>5,097</b>	<b>3,254</b>	<b>509</b>	<b>4,594</b>

<b>Total Juvenile</b>	<b>24,397</b>	<b>21,871</b>	<b>20,498</b>	<b>14,599</b>	<b>3,147</b>	<b>19,885</b>
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<b>GRAND TOTAL</b>	<b>113,719</b>	<b>111,120</b>	<b>105,868</b>	<b>84,393</b>	<b>37,298</b>	<b>95,473</b>
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For Adult Criminal cases, in comparing the data provided to Published Annual Cases Filed reports, which can be found at <https://www.courts.oregon.gov/about/Pages/reports-measures.aspx>, the data above, excluding Probation Violations / Contempt cases was extracted from files that were within 0.5% and 9% of the total datasets. Certain violation cases, that are classified as felony or misdemeanors in the published reports were excluded from the tables above, as those cases are not eligible for court appointed attorneys. In total, the case counts above are less than referenced published reports.

#### Sources:

- Adult Criminal Probation Violations: *OPDS Contractor database, populated by monthly reports from Contractors based on appointed cases by case number and filing date.*
- Adult Criminal - All Other Case Types: *Sourced from Oregon Judicial Department dashboard data, based on case filed date for cases and clients represented by court appointed attorneys. This data was pulled through October 10, 2021 for 2021 presented above. See Exhibit 3 for certain allocations of Case Types.*
- Juvenile - Probation Violations: *OPDS Contractor database, populated by monthly reports from Contractors based on appointed cases by case number and filing date. For Parent Child Representation Program counties, the data is sourced from the Oregon Judicial Department Pre-trial dashboard, which are based on disposed date, and represent 29, 48, 79, 66, and 38 cases respectively for the periods presented above from 2017-Q1 2021.*
- Juvenile - All Other Case Types: *Sourced from Oregon Judicial Department dashboard data, based on case filed date for cases and clients represented by court appointed attorneys.*



**The Oregon Project**  
**Exhibit #2**  
**Workload Analysis**

**WORKLOAD ANALYSIS**

**ADULT CRIMINAL**

	[2]	[1]	
<b>Case Type</b>	<b>Delphi Hours Per Case</b>	<b>Estimated Annual Caseload</b>	<b>Total Hours</b>
Low-Level Misdemeanor	22.26	25,407	565,556
Complex Misdemeanor	36.98	9,083	335,887
Low-Level Felony	39.78	18,738	745,378
Mid-Level Felony	47.73	1,851	88,362
High-Level Felony	148.95	1,649	245,587
Homicide and Sex Cases	552.46	53	29,170
Probation Violations	8.33	18,807	156,666
<b>Total Adult Criminal</b>		<b>75,588</b>	<b>2,166,606</b>

**JUVENILE**

	[3]	[1]	
<b>Case Type</b>	<b>Delphi Hours Per Case</b>	<b>Estimated Annual Caseload</b>	<b>Total Hours</b>
<i>Dependency</i>			
Dependency - Parent Representation	115.62	7,888	911,956
Dependency - Child Representation	117.07	4,130	483,540
<i>Termination of Parental Rights</i>			
TPR - Parent Representation	104.92	2,043	214,309
TPR - Child Representation	76.83	1,230	94,528
<i>Delinquency</i>			
Misdemeanor / Other	35.65	1,479	52,712
Minor Felonies	43.79	834	36,506
Major Felonies	68.50	149	10,202
Waiver / Measure 11 Cases	261.48	191	49,958
Probation Violation / Contempt	14.07	1,942	27,326
<b>Total Juvenile</b>		<b>19,885</b>	<b>1,881,036</b>
<b>GRAND TOTAL</b>		<b>95,473</b>	<b>4,047,642</b>
<b>Hours needed by Contract Attorneys [4]</b>			<b>3,926,213</b>

[1] Based on the average opened cases per year for the respective case grouping and attorney type (see Exhibit 1)

[2] Per the Adult Criminal Delphi panel results (see Exhibit 4.1)

[3] Per the Juvenile Delphi panel results (see Exhibit 4.2)

[4] The caseload data – because it was pulled from the courts – did not exclude cases taken by non-contract attorneys. It included all "court appointments." To address this imbalance, the caseload numbers were reduced by the amount (best estimate) that could be attributed to non-contract attorneys by reducing the total hours needed to provide adequate representation based on current caseloads. We reduced the needed hours by 3% (meaning 97% of the needed hours were estimated to be covered by contract FTEs), because OPDS staff estimated that 2-3% of cases are handled by non-contract attorneys.

**The Oregon Project**  
**Exhibit #3**  
**Allocated Cases**

**ALLOCATIONS**

<b>Low-Felony to Mid-Level Felony</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021 partial</b>
<i>Initial Property, Person and Motor Vehicle Felonies within Low-Level Felony</i>	6,998	6,841	6,369	6,009	4,246
BM57 Cases allocated to Mid-Level Felony @ 29%	2,029	1,984	1,847	1,743	1,231
Remain within Low-Level Felony	4,969	4,857	4,522	4,266	3,015

*Based on information from the Multnomah County District Attorneys office, it was noted that 29% of Multnomah County's property felonies were subject to Ballot Measure 57 (data from September 2017-August 2019).*

*This Multnomah County rate was applied to the initial property, person, and motor vehicle felony cases within the statewide dataset to the Mid-Level Felony category, where BM57 cases are charged.*

<b>Low-Level Misdemeanor to Complex Misdemeanors</b>					
	<b>2017</b>	<b>2018</b>	<b>2019</b>	<b>2020</b>	<b>2021 partial</b>
<i>Initial Domestic Violence Misdemeanors within Low-Level Misdemeanor Category</i>	5,145	5,738	4,833	4,832	3,235
DV and MDT cases allocated to Complex Misdemeanors @ 50%	2,573	2,869	2,417	2,416	1,617
Remain within Low-Level Misdemeanor	2,572	2,869	2,416	2,416	1,618

*Based on information from the Multnomah County District Attorneys office, we were provided historical information (based on data from September 2017-August 2019) on issued cases, showing the percentage of all assault IV, harrasment and menacing charges that were assigned to the Domestic Violence and Multi-Disciplinary Team units. Cases assigned to these units should be cateogrizd as Complex Misdemeanors.*

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### Low-Level Misdemeanors

	Frequency	Total
% Should Plea / Otherwise Resolve	69%	8.28
% Should Go To Trial	31%	13.98
<b>Total:</b>		<b>22.26</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	3.20	100%	3.20	6.00	100%	6.00
Client Support Services	1.00	75%	0.75	1.70	75%	1.28
Discovery / Case Prep	1.80	100%	1.80	5.50	100%	5.50
Attorney Investigation / Interviews	1.20	40%	0.48	2.40	84%	2.02
Experts	1.80	24%	0.43	2.70	26%	0.70
Legal Research, Motions Practice	2.10	40%	0.84	4.10	100%	4.10
Negotiations	0.75	100%	0.75	1.00	100%	1.00
Court Prep	1.00	100%	1.00	10.00	100%	10.00
Court Time	1.50	100%	1.50	12.50	100%	12.50
Sentencing / Mitigation	0.75	100%	0.75	1.20	100%	1.20
Post Judgment	0.50	100%	0.50	0.80	100%	0.80
			<b>12.00</b>			<b>45.10</b>

#### Complex Misdemeanors

	Frequency	Total
% Should Plea / Otherwise Resolve	55%	9.49
% Should Go To Trial	45%	27.49
<b>Total:</b>		<b>36.98</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	3.00	100%	3.00	6.00	100%	6.00
Client Support Services	1.30	75%	0.98	2.00	75%	1.50
Discovery / Case Prep	3.00	100%	3.00	8.00	100%	8.00
Attorney Investigation / Interviews	1.75	50%	0.88	3.00	90%	2.70
Experts	2.50	50%	1.25	3.50	75%	2.63
Legal Research, Motions Practice	2.00	75%	1.50	6.00	100%	6.00
Negotiations	1.00	90%	0.90	1.25	100%	1.25
Court Prep	1.50	100%	1.50	12.00	100%	12.00
Court Time	1.50	100%	1.50	18.00	100%	18.00
Sentencing / Mitigation	2.00	100%	2.00	2.00	100%	2.00
Post Judgment	0.75	100%	0.75	1.00	100%	1.00
			<b>17.26</b>			<b>61.08</b>

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### Low-Level Felony

	Frequency	Total
% Should Plea / Otherwise Resolve	70%	16.88
% Should Go To Trial	30%	22.90
<b>Total:</b>		<b>39.78</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	4.00	100%	4.00	7.00	100%	7.00
Client Support Services	1.75	75%	1.31	2.50	80%	2.00
Discovery / Case Prep	4.50	100%	4.50	10.00	100%	10.00
Attorney Investigation / Interviews	2.00	80%	1.60	3.50	90%	3.15
Experts	2.50	45%	1.13	3.50	55%	1.93
Legal Research, Motions Practice	4.50	85%	3.83	8.00	100%	8.00
Negotiations	1.50	100%	1.50	1.50	100%	1.50
Court Prep	1.50	100%	1.50	15.00	100%	15.00
Court Time	1.50	100%	1.50	24.00	100%	24.00
Sentencing / Mitigation	2.50	100%	2.50	2.50	100%	2.50
Post Judgment	0.75	100%	0.75	1.25	100%	1.25
			<b>24.12</b>			<b>76.33</b>

#### Mid-Level Felony

	Frequency	Total
% Should Plea / Otherwise Resolve	80%	28.70
% Should Go To Trial	20%	19.03
<b>Total:</b>		<b>47.73</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	5.00	100%	5.00	9.00	100%	9.00
Client Support Services	2.50	75%	1.88	3.00	80%	2.40
Discovery / Case Prep	8.00	100%	8.00	12.00	100%	12.00
Attorney Investigation / Interviews	3.00	90%	2.70	4.50	100%	4.50
Experts	3.00	60%	1.80	5.00	70%	3.50
Legal Research, Motions Practice	5.00	100%	5.00	13.00	100%	13.00
Negotiations	2.50	100%	2.50	3.00	100%	3.00
Court Prep	2.50	100%	2.50	20.00	100%	20.00
Court Time	3.00	100%	3.00	24.00	100%	24.00
Sentencing / Mitigation	2.50	100%	2.50	2.50	100%	2.50
Post Judgment	1.00	100%	1.00	1.25	100%	1.25
			<b>35.88</b>			<b>95.15</b>

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### High-Level Felony

	Frequency	Total
% Should Plea / Otherwise Resolve	75%	81.64
% Should Go To Trial	25%	67.31
<b>Total:</b>		<b>148.95</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	14.00	100%	14.00	30.00	100%	30.00
Client Support Services	5.00	95%	4.75	7.00	100%	7.00
Discovery / Case Prep	24.00	100%	24.00	60.00	100%	60.00
Attorney Investigation / Interviews	10.00	100%	10.00	16.00	100%	16.00
Experts	9.00	90%	8.10	15.00	95%	14.25
Legal Research, Motions Practice	22.00	100%	22.00	35.00	100%	35.00
Negotiations	4.00	100%	4.00	6.00	100%	6.00
Court Prep	8.00	100%	8.00	50.00	100%	50.00
Court Time	7.00	100%	7.00	40.00	100%	40.00
Sentencing / Mitigation	5.00	100%	5.00	8.00	100%	8.00
Post Judgment	2.00	100%	2.00	3.00	100%	3.00
			<b>108.85</b>			<b>269.25</b>

#### Homicide and Sex Cases

	Frequency	Total
% Should Plea / Otherwise Resolve	67%	268.00
% Should Go To Trial	33%	284.46
<b>Total:</b>		<b>552.46</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	60.00	100%	60.00	80.00	100%	80.00
Client Support Services	13.00	100%	13.00	20.00	100%	20.00
Discovery / Case Prep	100.00	100%	100.00	180.00	100%	180.00
Attorney Investigation / Interviews	27.00	100%	27.00	40.00	100%	40.00
Experts	30.00	100%	30.00	45.00	100%	45.00
Legal Research, Motions Practice	80.00	100%	80.00	120.00	100%	120.00
Negotiations	12.00	100%	12.00	16.00	100%	16.00
Court Prep	25.00	100%	25.00	180.00	100%	180.00
Court Time	23.00	100%	23.00	140.00	100%	140.00
Sentencing / Mitigation	25.00	100%	25.00	35.00	100%	35.00
Post Judgment	5.00	100%	5.00	6.00	100%	6.00
			<b>400.00</b>			<b>862.00</b>

# The Oregon Project

## Exhibit #4.1

### Analysis of the Delphi Survey Results – Adult Criminal

#### Probation Violations

	Frequency	Total
% Should Resolve by Stipulation, Admission or Dismissal, etc.	70%	4.89
% Should Go To Contested Hearing	30%	3.44
<b>Total:</b>		<b>8.33</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	1.40	100%	1.40	1.90	100%	1.90
Client Support Services	0.80	75%	0.60	1.00	90%	0.90
Discovery / Case Prep	1.00	100%	1.00	1.50	100%	1.50
Attorney Investigation / Interviews	0.75	55%	0.41	1.10	75%	0.83
Experts	1.00	13%	0.13	1.00	25%	0.25
Legal Research, Motions Practice	0.75	25%	0.19	1.00	85%	0.85
Negotiations	0.50	100%	0.50	0.75	100%	0.75
Court Prep	0.75	100%	0.75	1.50	100%	1.50
Court Time	0.75	100%	0.75	1.75	100%	1.75
Sentencing / Mitigation	0.75	100%	0.75	0.75	100%	0.75
Post Judgment	0.50	100%	0.50	0.50	100%	0.50
			<b>6.98</b>			<b>11.48</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Juvenile Dependency**

**Dependency - Parent Representation**

	Frequency	Total
% Should Resolve by Admission / Other Resolution	78%	83.98
% Should Go To Contested Hearing / Trial	22%	31.64
<b>Total:</b>		<b>115.62</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	5.50	100%	5.50	9.00	100%	9.00
Client Advocacy and Support	3.50	100%	3.50	5.00	100%	5.00
Discovery / Case Analysis	8.00	100%	8.00	12.50	100%	12.50
Experts	3.50	20%	0.70	6.00	35%	2.10
Legal Research, Motions Practice, Other Writing	2.50	100%	2.50	5.00	100%	5.00
Court Preparation	4.00	100%	4.00	12.00	100%	12.00
Court Time	4.00	100%	4.00	22.00	100%	22.00
Appeal Preparation	0.50	5%	0.03	0.50	40%	0.20
Post-Jurisdiction Client Communication	26.00	99%	25.74	26.00	95%	24.70
Post-Jurisdiction Client Advocacy and Support	24.00	100%	24.00	24.00	95%	22.80
Post-Jurisdiction Hearing Preparation	15.00	99%	14.85	15.00	95%	14.25
Post-Jurisdiction Court Time	15.00	99%	14.85	15.00	95%	14.25
			<b>107.67</b>			<b>143.80</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Dependency - Child Representation**

	<b>Frequency</b>	<b>Total</b>
% Should Resolve by Admission / Other Resolution	78%	85.33
% Should Go To Contested Hearing / Trial	22%	31.74
<b>Total:</b>		<b>117.07</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	4.00	100%	4.00	5.00	100%	5.00
<i>Client Advocacy and Support</i>	5.00	100%	5.00	6.50	100%	6.50
<i>Discovery / Case Analysis</i>	8.00	100%	8.00	12.50	100%	12.50
<i>Experts</i>	3.50	20%	0.70	6.00	35%	2.10
<i>Legal Research, Motions Practice, Other Writing</i>	2.50	100%	2.50	5.00	100%	5.00
<i>Court Preparation</i>	3.00	100%	3.00	12.00	100%	12.00
<i>Court Time</i>	4.00	100%	4.00	22.00	100%	22.00
<i>Appeal Preparation</i>	0.50	5%	0.03	1.00	30%	0.30
<i>Post-Jurisdiction Client Communication</i>	26.00	99%	25.74	26.00	95%	24.70
<i>Post-Jurisdiction Client Advocacy and Support</i>	24.00	99%	23.76	24.00	95%	22.80
<i>Post-Jurisdiction Hearing Preparation</i>	15.00	99%	14.85	15.00	95%	14.25
<i>Post-Jurisdiction Court Time</i>	18.00	99%	17.82	18.00	95%	17.10
			<b>109.40</b>			<b>144.25</b>



# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Juvenile Termination of Parental Rights

##### Termination of Parental Rights - Parent Representation

	Frequency	Total
% Should Resolve by Admission / Other Resolution	70%	60.70
% Should Go To Contested Hearing / Trial	30%	44.22
<b>Total:</b>		<b>104.92</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	16.00	100%	16.00	20.00	100%	20.00
Client Advocacy and Support	15.00	100%	15.00	15.00	100%	15.00
Discovery / Case Analysis	25.00	100%	25.00	25.00	100%	25.00
Experts	8.00	90%	7.20	10.00	90%	9.00
Legal Research, Motions Practice, Other Writing	5.00	100%	5.00	10.00	100%	10.00
Court Preparation	12.00	100%	12.00	30.00	100%	30.00
Court Time	4.50	100%	4.50	35.00	100%	35.00
Appeal Preparation	0.50	1%	0.01	1.00	70%	0.70
Post-Judgment Work	2.00	100%	2.00	2.70	100%	2.70
			<b>86.71</b>			<b>147.40</b>

##### Termination of Parental Rights - Child Representation

	Frequency	Total
% Should Resolve by Admission / Other Resolution	70%	42.92
% Should Go To Contested Hearing / Trial	30%	33.91
<b>Total:</b>		<b>76.83</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	8.00	100%	8.00	9.00	100%	9.00
Client Advocacy and Support	10.00	100%	10.00	12.00	100%	12.00
Discovery / Case Analysis	25.00	100%	25.00	25.00	100%	25.00
Experts	3.00	65%	1.95	4.50	65%	2.93
Legal Research, Motions Practice, Other Writing	2.00	100%	2.00	10.00	100%	10.00
Court Preparation	8.00	100%	8.00	17.00	100%	17.00
Court Time	5.00	100%	5.00	35.00	100%	35.00
Appeal Preparation	0.50	1%	0.01	1.00	30%	0.30
Post-Judgment Work	1.50	90%	1.35	2.00	90%	1.80
			<b>61.31</b>			<b>113.03</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Juvenile Delinquency

#### Misdemeanors

	Frequency	Total
% Should Resolve by Admission / Other Resolution	75%	23.78
% Should Go To Contested Hearing / Trial	25%	11.87
<b>Total:</b>		<b>35.65</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	5.00	100%	5.00	7.00	100%	7.00
Parent / Guardian / Custodian Communication	1.00	90%	0.90	1.30	90%	1.17
Client Advocacy and Support	2.50	100%	2.50	3.00	100%	3.00
Discovery / Case Analysis	5.00	100%	5.00	7.00	100%	7.00
Attorney Investigations / Attorney Interviews	2.00	85%	1.70	3.50	100%	3.50
Experts	4.00	40%	1.60	4.00	45%	1.80
Legal Research, Motions Practice, Other Writing	2.50	100%	2.50	3.50	100%	3.50
Negotiations	2.00	100%	2.00	2.00	100%	2.00
Court Preparation	3.00	100%	3.00	8.00	100%	8.00
Court Time	3.00	100%	3.00	6.00	100%	6.00
Post Disposition	4.50	100%	4.50	4.50	100%	4.50
			<b>31.70</b>			<b>47.47</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Minor Felonies

	Frequency	Total
% Should Resolve by Admission / Other Resolution	60%	21.50
% Should Go To Contested Hearing / Trial	40%	22.29
<b>Total:</b>		<b>43.79</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
<i>Client Communication</i>	4.50	100%	4.50	7.00	100%	7.00
<i>Parent / Guardian / Custodian Communication</i>	1.50	93%	1.40	2.50	93%	2.33
<i>Client Advocacy and Support</i>	4.00	100%	4.00	5.00	100%	5.00
<i>Discovery / Case Analysis</i>	5.00	100%	5.00	7.00	100%	7.00
<i>Attorney Investigations / Attorney Interviews</i>	2.70	90%	2.43	4.00	100%	4.00
<i>Experts</i>	4.00	50%	2.00	4.00	60%	2.40
<i>Legal Research, Motions Practice, Other Writing</i>	3.00	100%	3.00	4.00	100%	4.00
<i>Negotiations</i>	2.00	100%	2.00	2.00	100%	2.00
<i>Court Preparation</i>	4.00	100%	4.00	8.00	100%	8.00
<i>Court Time</i>	2.50	100%	2.50	9.00	100%	9.00
<i>Post Disposition</i>	5.00	100%	5.00	5.00	100%	5.00
			<b>35.83</b>			<b>55.73</b>

The Oregon Project

Exhibit #4.2

Analysis of the Delphi Survey Results – Juvenile

**Major Felonies**

	<b>Frequency</b>	<b>Total</b>
<i>% Should Resolve by Admission / Other Resolution</i>	70%	40.13
<i>% Should Go To Contested Hearing / Trial</i>	30%	28.37
<b>Total:</b>		<b>68.50</b>

	<b>Plea / Otherwise Resolve</b>			<b>Go to Trial</b>		
	<b>Time</b>	<b>Frequency</b>	<b>Total</b>	<b>Time</b>	<b>Frequency</b>	<b>Total</b>
<i>Client Communication</i>	8.00	100%	8.00	12.00	100%	12.00
<i>Parent / Guardian / Custodian Communication</i>	2.50	93%	2.33	3.00	92%	2.76
<i>Client Advocacy and Support</i>	6.00	100%	6.00	7.00	100%	7.00
<i>Discovery / Case Analysis</i>	10.00	100%	10.00	12.00	100%	12.00
<i>Attorney Investigations / Attorney Interviews</i>	4.00	100%	4.00	7.00	100%	7.00
<i>Experts</i>	5.00	70%	3.50	6.00	80%	4.80
<i>Legal Research, Motions Practice, Other Writing</i>	5.00	100%	5.00	7.00	100%	7.00
<i>Negotiations</i>	3.00	100%	3.00	4.00	100%	4.00
<i>Court Preparation</i>	4.50	100%	4.50	16.00	100%	16.00
<i>Court Time</i>	6.00	100%	6.00	16.00	100%	16.00
<i>Post Disposition</i>	5.00	100%	5.00	6.00	100%	6.00
			<b>57.33</b>			<b>94.56</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Measure 11 / Waiver

	Frequency	Total
% Should Resolve by Admission / Other Resolution	80%	168.08
% Should Go To Contested Hearing / Trial	20%	93.40
<b>Total:</b>		<b>261.48</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
Client Communication	25.00	100%	25.00	45.00	100%	45.00
Parent / Guardian / Custodian Communication	10.00	100%	10.00	15.00	100%	15.00
Client Advocacy and Support	12.00	100%	12.00	20.00	100%	20.00
Discovery / Case Analysis	50.00	100%	50.00	75.00	100%	75.00
Attorney Investigations / Attorney Interviews	12.00	100%	12.00	20.00	100%	20.00
Experts	16.50	100%	16.50	23.00	100%	23.00
Legal Research, Motions Practice, Other Writing	14.00	90%	12.60	30.00	100%	30.00
Negotiations	7.00	100%	7.00	9.00	100%	9.00
Court Preparation	20.00	100%	20.00	135.00	100%	135.00
Court Time	30.00	100%	30.00	80.00	100%	80.00
Post Disposition	15.00	100%	15.00	15.00	100%	15.00
			<b>210.10</b>			<b>467.00</b>

# The Oregon Project

## Exhibit #4.2

### Analysis of the Delphi Survey Results – Juvenile

#### Probation Violation / Contempt

	Frequency	Total
% Should Resolve by Admission / Other Resolution	80%	9.68
% Should Go To Contested Hearing / Trial	20%	4.39
<b>Total:</b>		<b>14.07</b>

	Plea / Otherwise Resolve			Go to Trial		
	Time	Frequency	Total	Time	Frequency	Total
<i>Client Communication</i>	1.60	100%	1.60	2.50	100%	2.50
<i>Parent / Guardian / Custodian Communication</i>	0.60	83%	0.50	0.90	86%	0.77
<i>Client Advocacy and Support</i>	1.40	100%	1.40	1.90	100%	1.90
<i>Discovery / Case Analysis</i>	1.10	100%	1.10	2.20	100%	2.20
<i>Attorney Investigations / Attorney Interviews</i>	1.00	80%	0.80	2.00	100%	2.00
<i>Experts</i>	3.00	20%	0.60	3.00	30%	0.90
<i>Legal Research, Motions Practice, Other Writing</i>	1.10	100%	1.10	1.70	100%	1.70
<i>Negotiations</i>	0.70	100%	0.70	1.00	100%	1.00
<i>Court Preparation</i>	2.00	100%	2.00	4.00	100%	4.00
<i>Court Time</i>	1.10	100%	1.10	3.00	100%	3.00
<i>Post Disposition</i>	1.20	100%	1.20	2.00	100%	2.00
			<b>12.10</b>			<b>21.97</b>

# **EXHIBIT C1**

## Introduction

# ABA Workload Study - Round One- Adult Criminal

## General Instructions

Thank you for participating in this study on public defender workloads. As noted in the email, this study uses the Delphi Method. This Delphi study consists of three survey rounds. The first and second rounds are distributed online, and the third is conducted as an in-person meeting. You are now participating in the FIRST survey round. A full description of the process used in this study is found in the Description of the Public Defender Workload Process ([link](#)).

## Standards Applicable to Survey

In answering the survey questions, you must consider how long the task SHOULD take and the percentage of cases in which the task SHOULD occur. The key standard to keep in mind is providing reasonably effective assistance pursuant to prevailing professional norms. In thinking about prevailing professional norms, draw on the [ABA Criminal Justice Standards: Defense Function](#) and [Oregon Rules of Professional Conduct](#), as well as your own knowledge and experience as a practitioner. These standards cover: [Client Interviews](#) | [Establishing Client Trust](#) | [the Duty to Keep the Client Informed](#) | [the Duty to Investigate](#) | [Court Appearances](#) | [Sentencing Responsibilities](#).

Today, most state-level criminal cases are resolved without a trial. In *Missouri v. Frye*, 132 S.Ct. 1399 (2012), the Supreme Court noted that "ninety-four percent of state convictions are the result of guilty pleas." For cases in which a plea of guilty is expected, you should keep in mind: ABA Criminal Justice Standard 4-6.1(b) (*emphasis below added*):

**In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been *completed*. Such study should include:**

- discussion with the client; and
- an analysis of relevant law; and
- an analysis of the prosecution's evidence; and
- an analysis of potential dispositions; and
- an analysis of relevant collateral consequences.

**Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.**



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## Save and Return

You can close this browser at any point, and use the link you received in the email to return to the survey with your previous answers saved.

## Deadline

We would ask that you complete this survey by end of day **Friday, August 21st**.



How many years have you been a practicing attorney?

- Less than 5 years
- 5 to 15 years
- 16 to 25 years
- More than 25 years

In which Oregon county or counties do you practice?  
(select at least one and all that apply)

- |                                    |                                     |                                     |
|------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Baker     | <input type="checkbox"/> Harney     | <input type="checkbox"/> Morrow     |
| <input type="checkbox"/> Benton    | <input type="checkbox"/> Hood River | <input type="checkbox"/> Multnomah  |
| <input type="checkbox"/> Clackamas | <input type="checkbox"/> Jackson    | <input type="checkbox"/> Polk       |
| <input type="checkbox"/> Clatsop   | <input type="checkbox"/> Jefferson  | <input type="checkbox"/> Sherman    |
| <input type="checkbox"/> Columbia  | <input type="checkbox"/> Josephine  | <input type="checkbox"/> Tillamook  |
| <input type="checkbox"/> Coos      | <input type="checkbox"/> Klamath    | <input type="checkbox"/> Umatilla   |
| <input type="checkbox"/> Crook     | <input type="checkbox"/> Lake       | <input type="checkbox"/> Union      |
| <input type="checkbox"/> Curry     | <input type="checkbox"/> Lane       | <input type="checkbox"/> Wallowa    |
| <input type="checkbox"/> Deschutes | <input type="checkbox"/> Lincoln    | <input type="checkbox"/> Wasco      |
| <input type="checkbox"/> Douglas   | <input type="checkbox"/> Linn       | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Gilliam   | <input type="checkbox"/> Malheur    | <input type="checkbox"/> Wheeler    |
| <input type="checkbox"/> Grant     | <input type="checkbox"/> Marion     | <input type="checkbox"/> Yamhill    |

Which category best describes you?

- Private Practice Attorney – criminal defense attorney who does no state public defense work
- Private Practice Attorney – criminal defense attorney who does some minimal public defense work
- Attorney at a law firm or consortium that has a public defense contract with OPDS
- Public defender at a non-profit public defender contract office

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Criminal Defense

%

Other Work  %

Total  %

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

% Public Defense Cases

In what type of organization do you practice?

- Solo Practice
- Law Firm

How many lawyers are in your firm?

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Public Defense Cases  %

Private Practice Criminal Defense Cases  %

Other Types of Cases  %

Total  %

What percentage of your practice is ADULT CRIMINAL DEFENSE in Oregon?

% percent of total practice

What percentage of your Oregon Adult Criminal Defense Practice falls into each of the below categories ?  
(*must total 100%*)

Low-Level Misdemeanor  %

Complex Misdemeanor (e.g. DUI/DV Misdemeanors)  %

Low-Level Felony (e.g. Grid Felonies, Felonies with No Mandatory Minimums)  %

Mid-Level Felony (e.g. Measure 57 Cases; Level 10 Drug Crimes)  %

High Level Felony (Measure 11 Cases excluding Homicides)  %

Homicide and Serious Sex Cases (potential for 25+ years)	0	%
Probation Violations	0	%
<b>Total</b>	<b>0</b>	<b>%</b>

How many of the following staff do you have available to you in your practice setting?

	Full-Time Employees	Contracted
Legal Assistants/Secretaries	<input type="text"/>	<input type="text"/>
Paralegals	<input type="text"/>	<input type="text"/>
Investigators	<input type="text"/>	<input type="text"/>
Social Workers	<input type="text"/>	<input type="text"/>
Interpreters	<input type="text"/>	<input type="text"/>
Others (please describe): <input type="text"/>	<input type="text"/>	<input type="text"/>

**Workload Survey**

You will now begin the workload study section of the survey. First you will be asked whether have sufficient experience to respond to questions about preparing a defense for a particular Case Type.

- Please respond "Yes" if you have sufficient experience to answer questions regarding what is required to reasonably represent individuals facing such charges in Oregon.
- Please respond "No" if you do not think you have had enough experience to answer questions for this Case Type.

*If you answer "Yes," you will be directed to answer questions about the Case Type. If you answer "No," your survey will automatically advance to the next Case Type.*

**Low-Level Misdemeanors**

**LOW-LEVEL MISDEMEANORS**

*All types of low-level misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **low-level misdemeanor** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

### LOW-LEVEL MISDEMEANORS

*All types of low-level misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.*

What percentage of **Low-Level Misdemeanor** cases do you believe *SHOULD*:

% Go to Trial

% Plead Guilty or Otherwise Resolve

### LOW-LEVEL MISDEMEANORS

*All types of misdemeanors except for misdemeanors related to DUIs, domestic violence, sexual abuse, and animals.*

Below, you will be asked to complete two charts about specific tasks in **Low-Level Misdemeanor** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Low-Level Misdemeanors - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Low-Level Misdemeanors - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Complex Misdemeanors**

### COMPLEX MISDEMEANORS

*COMPLEX MISDEMEANORS have been defined as misdemeanors related to DUIs, domestic violence, sexual abuse, and animals [abuse of animals and game violations charged as misdemeanors].*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **complex misdemeanor** cases in Oregon?  
*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

### COMPLEX MISDEMEANORS

*COMPLEX MISDEMEANORS have been defined as misdemeanors related to DUIs, domestic violence, sexual abuse, and animals [abuse of animals and game violations charged as misdemeanors].*

What percentage of **Complex Misdemeanor** cases do you believe *SHOULD*:

% Go to Trial

% Plead Guilty or Otherwise Resolve

### COMPLEX MISDEMEANORS

*COMPLEX MISDEMEANORS have been defined as misdemeanors related to DUIs, domestic violence, sexual abuse, and animals [abuse of animals and game violations charged as misdemeanors].*

Below, you will be asked to complete two charts about specific tasks in **Complex Misdemeanor** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Complex Misdemeanors - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Complex Misdemeanors - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

### Low-Level Felonies

#### LOW-LEVEL FELONIES

*LOW-LEVEL FELONIES have been defined as presumptive probation and prison grid felonies that do not include mandatory minimums.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **low-level felony** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

#### LOW-LEVEL FELONIES

*LOW-LEVEL FELONIES have been defined as presumptive probation and prison grid felonies that do not include mandatory minimums.*

What percentage of **Low-Level Felony** cases do you believe should:

% Go to Trial

% Plead Guilty or Otherwise Resolve

#### LOW-LEVEL FELONIES

*LOW-LEVEL FELONIES have been defined as presumptive probation and prison grid felonies that do not include mandatory minimums.*



Below, you will be asked to complete two charts about specific tasks in **Low-Level Felony** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Low-Level Felonies - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Low-Level Felonies - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Mid-Level Felonies**

**MID-LEVEL FELONIES**

*MID-LEVEL FELONIES have been defined as property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **mid-level felony** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**MID-LEVEL FELONIES**

*MID-LEVEL FELONIES have been defined as property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.*

What percentage of **Mid-Level Felony** cases do you believe should:

% Go to Trial

0

% Plead Guilty or Otherwise Resolve

### MID-LEVEL FELONIES

MID-LEVEL FELONIES have been defined as property and drug felonies that include possible mandatory minimum sentences, ballot measure 57 cases, and level 10 drug crimes.

Below, you will be asked to complete two charts about specific tasks in **Mid-Level Felony** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

#### Mid-Level Felonies - Plead Guilty or Otherwise Resolved

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Mid-Level Felonies - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**High-Level Felonies**

**HIGH-LEVEL FELONIES**

*HIGH-LEVEL FELONIES have been defined as measure 11 [excluding homicide]; sex cases [excluding sex cases with potential for 25+ years]; and gun minimums.*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **high-level felony** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

## HIGH-LEVEL FELONIES

*HIGH-LEVEL FELONIES have been defined as measure 11 [excluding homicide]; sex cases [excluding sex cases with potential for 25+ years]; and gun minimums.*

What percentage of **High-Level Felony** cases do you believe should:

% Go to Trial

% Plead Guilty or Otherwise Resolve

## HIGH-LEVEL FELONIES

*HIGH-LEVEL FELONIES have been defined as measure 11 [excluding homicide]; sex cases [excluding sex cases with potential for 25+ years]; and gun minimums.*

Below, you will be asked to complete two charts about specific tasks in **High-Level Felony** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**High-Level Felonies - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY	PLEAD GUILTY			PLEAD GUILTY
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**High-Level Felonies - Go to Trial**

	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Homicide and Sex Cases with Potential 25 years+**

**HOMICIDE AND SEX CASES (POTENTIAL 25 YEARS+)**

*HOMICIDE AND SEX CASES have been defined as homicide [excluding Death Penalty]; Jessica's*

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **homicide and sex (potential 25+ years)** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

### **HOMICIDE AND SEX CASES (POTENTIAL 25 YEARS+)**

*HOMICIDE AND SEX CASES have been defined as homicide [excluding Death Penalty]; Jessica's Law; 3rd Strike sex cases; and Measure 73 sex cases.*

What percentage of **Homicide and Sex Cases (25+ years)** cases do you believe should:

% Go to Trial

% Plead Guilty or Otherwise Resolve

### **HOMICIDE AND SEX CASES (POTENTIAL 25 YEARS+)**

*Homicide [excluding Death Penalty]; Jessica's Law; 3rd Strike Sex Cases; Measure 73 Sex Cases*

Below, you will be asked to complete two charts about specific tasks in **Homicide and Sex Cases (potential 25 years+)**. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the "typical" case. In other words, please consider the AVERAGE or TYPICAL case.

- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Homicide and Sex Cases (potential 25+ years) - Plead Guilty or Otherwise Resolved**

*Includes all cases that resolve prior to trial including dismissals, etc.*

	PLEAD GUILTY				% Cases Performed
	Time Needed	Minutes	Hours	Days	
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Homicide and Sex Cases (potential 25+ years) - Go to Trial**

	GO TO TRIAL				% Cases Performed
	Time Needed	Minutes	Hours	Days	
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>



	GO TO TRIAL	GO TO TRIAL			GO TO TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

### Probation Violation

### PROBATION VIOLATIONS

Do you have sufficient experience to answer to questions regarding what is reasonably required to prepare a defense in **probation violation** cases in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the end of the survey.*

- Yes  
 No

### PROBATION VIOLATIONS

What percentage of **probation violation** cases do you believe should:

% Go to a contested hearing

% Resolved by stipulation, admission or dismissal, etc.

### PROBATION VIOLATIONS

Below, you will be asked to complete two charts about specific tasks in **Probation Violation** cases. The first chart is about cases that PLEAD GUILTY OR OTHERWISE RESOLVE. The second chart is about cases that GO TO TRIAL. For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Probation Violations - Resolved by Stipulation, Admission, or Dismissal**

*Includes all cases that resolve by stipulation, admission, or dismissal, etc.*

	RESOLVED	RESOLVED			RESOLVED
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Probation Violations - Go to Trial**

	CONTESTED HEARING	CONTESTED HEARING			CONTESTED HEARING
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED HEARING	CONTESTED HEARING			CONTESTED HEARING
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Support Services	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Sentencing/Mitigation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post Judgment	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Finish**

Please click "Finish Survey" below to submit your answers.

# **EXHIBIT C2**

## Introduction

# ABA Workload Study - Round One- Juvenile Delinquency and Dependency

## General Instructions

Thank you for participating in this study on public defender workloads. This part of the study covers juvenile delinquency and dependencies cases in Oregon courts. As noted in the introductory email, this study uses the Delphi Method. This Delphi study consists of three survey rounds. The first and second rounds are distributed online, and the third is conducted as an "in-person" meeting, though this will likely take place online. You are now participating in the FIRST survey round. A full description of the process used in this study is found in the Description of the Public Defender Workload Process ([link](#)).

## Standards Applicable to Survey

In answering the survey questions, you must consider how long the task SHOULD take and the percentage of cases in which the task SHOULD occur. The key standard to keep in mind is providing reasonably effective assistance pursuant to prevailing professional norms. In thinking about prevailing professional norms, draw on

- the [ABA Criminal Justice Standards: Defense Function](#);
- the [IJA-ABA Juvenile Justice Standards](#);
- [ABA Standards of Practice for Attorneys Representing Parents in Abuse and Neglect Cases](#);
- Oregon State Bar's [Specific Standards for Representation in Juvenile Dependency Cases](#);
- Oregon State Bar's [Specific Standards for Representation in Criminal and Juvenile Delinquency Cases](#); and
- [Oregon Rules of Professional Conduct](#), as well as your own knowledge and experience as a practitioner.

These standards cover: [Client Interviews](#) | [Establishing Client Trust](#) | [the Duty to Keep the Client Informed](#) | [the Duty to Investigate](#) | [Court Appearances](#) | [Sentencing Responsibilities](#), among other tasks.

Today, most state-level juvenile cases are resolved without a trial (or contested resolution). In *Missouri v. Frye*, 132 S.Ct. 1399 (2012), the Supreme Court noted that "ninety-four percent of state convictions are the result of guilty pleas." Particularly for delinquency cases, you should keep in mind: ABA Criminal Justice Standard 4-6.1(b) (*emphasis below added*):

**In every criminal matter, defense counsel should consider the individual circumstances of the case and of the client, and should not recommend to a client acceptance of a disposition offer unless and until appropriate investigation and study of the matter has been *completed*. Such study should include:**

- **discussion with the client; and**
- **an analysis of relevant law; and**
- **an analysis of the prosecution's evidence; and**
- **an analysis of potential dispositions; and**
- **an analysis of relevant collateral consequences.**

**Defense counsel should advise against a guilty plea at the first appearance, unless, after discussion with the client, a speedy disposition is clearly in the client's best interest.**

### **Save and Return**

You can close this browser at any point, and use the link you received in the email to return to the survey with your previous answers saved.

How many years have you been a practicing attorney?

- Less than 5 years
- 5 to 15 years
- 16 to 25 years
- More than 25 years

In which Oregon county or counties do you practice?  
(select at least one and all that apply)

- |                                    |                                     |                                     |
|------------------------------------|-------------------------------------|-------------------------------------|
| <input type="checkbox"/> Baker     | <input type="checkbox"/> Harney     | <input type="checkbox"/> Morrow     |
| <input type="checkbox"/> Benton    | <input type="checkbox"/> Hood River | <input type="checkbox"/> Multnomah  |
| <input type="checkbox"/> Clackamas | <input type="checkbox"/> Jackson    | <input type="checkbox"/> Polk       |
| <input type="checkbox"/> Clatsop   | <input type="checkbox"/> Jefferson  | <input type="checkbox"/> Sherman    |
| <input type="checkbox"/> Columbia  | <input type="checkbox"/> Josephine  | <input type="checkbox"/> Tillamook  |
| <input type="checkbox"/> Coos      | <input type="checkbox"/> Klamath    | <input type="checkbox"/> Umatilla   |
| <input type="checkbox"/> Crook     | <input type="checkbox"/> Lake       | <input type="checkbox"/> Union      |
| <input type="checkbox"/> Curry     | <input type="checkbox"/> Lane       | <input type="checkbox"/> Wallowa    |
| <input type="checkbox"/> Deschutes | <input type="checkbox"/> Lincoln    | <input type="checkbox"/> Wasco      |
| <input type="checkbox"/> Douglas   | <input type="checkbox"/> Linn       | <input type="checkbox"/> Washington |
| <input type="checkbox"/> Gilliam   | <input type="checkbox"/> Malheur    | <input type="checkbox"/> Wheeler    |
| <input type="checkbox"/> Grant     | <input type="checkbox"/> Marion     | <input type="checkbox"/> Yamhill    |

Which category best describes you?

- Private Practice Attorney – lawyer in private practice who does **no** state-funded public defense or dependency work
- Private Practice Attorney – lawyer in private practice who does **no or some** minimal state-funded public defense or dependency work
- Attorney at a law firm or consortium that has a public defense (and/or dependency) contract with OPDS
- Public defender at a non-profit public defender contract office
- Other (please describe):

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Juvenile delinquency	<input style="width: 40px; text-align: center;" type="text"/> %
Juvenile dependency	<input style="width: 40px; text-align: center;" type="text"/> %
Other Work	<input style="width: 40px; text-align: center;" type="text"/> %
<b>Total</b>	<b><input style="width: 40px; text-align: center;" type="text"/> %</b>

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Public Defense Cases (including juvenile dependency and delinquency)	<input style="width: 40px; text-align: center;" type="text"/> %
Other Work	<input style="width: 40px; text-align: center;" type="text"/> %
<b>Total</b>	<b><input style="width: 40px; text-align: center;" type="text"/> %</b>

In what type of organization do you practice?

- Solo Practice
- Law Firm

How many lawyers are in your firm?  
(*enter whole number*)

Approximately what percentage of your time do you spend on:  
(*must total 100%*)

Public Defense Cases (including juvenile dependency and delinquency)	<input style="width: 40px; text-align: center;" type="text"/> %
--	---

Private Practice Defense Cases (including criminal defense, juvenile dependency, and delinquency)  %

Other Types of Cases  %

Total  %

What percentage of your practice is **Juvenile Dependency and Delinquency** in Oregon?  
(must be between 1 and 100)

%

percent of total practice from juvenile dependency and delinquency cases in Oregon

What percentage of your Oregon Juvenile Dependency and Delinquency Practice falls into each of the below categories ?

(must total 100%)

Juvenile Dependency - Parent Representation  %

Juvenile Dependency - Child Representation  %

Termination of Parental Rights - Parent Representation  %

Termination of Parental Rights - Child Representation  %

Juvenile Delinquency - Misdemeanor/Other  %

Juvenile Delinquency - Minor Felonies  %

Juvenile Delinquency - Major Felonies  %

Juvenile Waiver/ Measure 11 Cases  %

Juvenile Probation Violation/Contempt  %

Total  %

How many of the following staff do you have available to you in your practice setting?

	Full-Time Employees	Contracted
Legal Assistants/Secretaries	<input type="text"/>	<input type="text"/>
Paralegals	<input type="text"/>	<input type="text"/>
Investigators	<input type="text"/>	<input type="text"/>
Social Workers	<input type="text"/>	<input type="text"/>
Interpreters	<input type="text"/>	<input type="text"/>
Others (please describe): <input type="text"/>	<input type="text"/>	<input type="text"/>



## **Workload Survey**

You will now begin the workload study section of the survey. First you will be asked whether you have sufficient experience to respond to questions about representing an individual in a particular Case Type.

- Please respond "Yes" if you have sufficient experience to answer questions regarding what is required to reasonably represent individuals facing such charges in Oregon.
- Please respond "No" if you do not think you have had enough experience to answer questions for this Case Type.

*If you answer "Yes," you will be directed to answer questions about the Case Type. If you answer "No," your survey will automatically advance to the next Case Type.*

The **Dependency portion** of this survey is divided into the following Case Types:

- Dependency - Parent Representation
- Dependency - Child Representation
- Termination of Parental Rights - Parent Representation
- Termination of Parental Rights - Child Representation

The **Delinquency portion** of this survey is divided into the following Case Types:

- Misdemeanor/Other
- Minor Felonies
- Major Felonies
- Waiver/ Measure 11 Cases
- Probation Violation/Contempt

The Case Types and the relevant Case Tasks for each are defined in the survey. For the Case Task definitions, simply hover over the Case Task name and a definition will appear.

### **JUV DEP - Dependency Parent Rep**

#### **JUVENILE DEPENDENCY Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Dependency - Parent Representation** case in Oregon? *If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**JUVENILE DEPENDENCY**  
**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

What percentage of **Juvenile Dependency - Parent Representation** cases do you believe **SHOULD** resolve by:  
 (total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	0	%
Contested Jurisdiction / Fact-Finding (Trial)	0	%
Total	0	%

**JUVENILE DEPENDENCY**  
**Juvenile Dependency - Parent Representation**

*Defined as any case in which you represent a parent in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Dependency - Parent Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10

minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.

- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Parent Representation - ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Parent Representation - CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DEP - Dependency Child Rep**

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Child Representation**

*Defined as any case in which you represent a child in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Dependency - Child Representation** case in Oregon?  
 If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes
- No

**JUVENILE DEPENDENCY**

**Juvenile Dependency - Child Representation**

*Defined as any case in which you represent a child in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

What percentage of **Juvenile Dependency - Child Representation** cases do you believe SHOULD resolve by:  
 (total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction  %

Contested Jurisdiction / Fact-Finding (Trial)  %

**JUVENILE DEPENDENCY**  
**Juvenile Dependency - Child Representation**

*Defined as any case in which you represent a child in a child welfare proceeding other than Termination of Parental Rights cases, which are their own Case Type*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Dependency - Child Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Child Representation - ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Child Representation - CONTESTED JURISDICTION /  
FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Hearing Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Jurisdiction Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DEP - Termination of Parental Rights - Parent**

**JUVENILE DEPENDENCY**  
**Termination of Parental Rights Cases - Parent Representation**

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Termination of Parental Rights - Parent Representation** case in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

**JUVENILE DEPENDENCY**  
**Termination of Parental Rights Cases - Parent Representation**

What percentage of **Termination of Parental Rights - Parent Representation** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	<input type="text" value="0"/> %
Contested Jurisdiction / Fact-Finding (Trial)	<input type="text" value="0"/> %
Total	<input type="text" value="0"/> %

**JUVENILE DEPENDENCY**  
**Termination of Parental Rights Cases - Parent Representation**

Below, you will be asked to complete two charts about specific tasks in **Termination of Parental Rights - Parent Representation** cases. The first chart is about cases that have **ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**. The second chart is about cases that have **CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.

- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Termination of Parental Rights - Parent Representation  
ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Termination of Parental Rights - Parent Representation  
CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>



	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DEP- Termination of Parental Rights - Child**

**JUVENILE DEPENDENCY  
Termination of Parental Rights - Child Representation**

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Termination of Parental Rights - Child Representation** case in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**JUVENILE DEPENDENCY  
Termination of Parental Rights - Child Representation**

What percentage of **Termination of Parental Rights - Child Representation** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission / Dismissal Prior to Contested Jurisdiction	<input type="text" value="0"/> %
Contested Jurisdiction / Fact-Finding (Trial)	<input type="text" value="0"/> %
<b>Total</b>	<input type="text" value="0"/> %

**JUVENILE DEPENDENCY  
Termination of Parental Rights - Child Representation**

Below, you will be asked to complete two charts about specific tasks in **Termination of Parental Rights - Child Representation** cases. The first chart is about cases that have ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION. The second chart is about cases that have CONTESTED JURISDICTION / FACT-FINDING (TRIAL). For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Dependency - Termination of Parental Rights - Child Representation**  
**ADMISSION / DISMISSAL PRIOR TO CONTESTED JURISDICTION**

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / DISMISSAL	ADMISSION / DISMISSAL			ADMISSION / DISMISSAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Dependency - Termination of Parental Rights - Child Representation**  
**CONTESTED JURISDICTION / FACT-FINDING (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Appeal Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Judgment Work	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Misdemeanors**

**JUVENILE DELINQUENCY**  
**Misdemeanor / Other Cases**

*Defined as Misdemeanor Cases including Violations (but not Probation Violations, which are their own case type), Status Offenses, Expungements, etc.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Misdemeanor / Other** case in Oregon?  
*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes  
 No

**JUVENILE DELINQUENCY**

### Misdemeanor / Other Cases

Defined as Misdemeanor Cases including Violations (but not Probation Violations, which are their own case type), Status Offenses, Expungements, etc.

What percentage of **Juvenile Delinquency - Misdemeanor / Other** cases do you believe **SHOULD**:

(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/>	%
Contested Jurisdiction (trial)	<input type="text" value="0"/>	%
Total	<input type="text" value="0"/>	%

### JUVENILE DELINQUENCY

#### Misdemeanor / Other Cases

Defined as Misdemeanor Cases including Violations (but not Probation Violations, which are their own case type), Status Offenses, Expungements, etc.

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Misdemeanor / Other** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.)**. The second chart is about cases that go to **CONTESTED JURISDICTION (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Misdemeanor / Other Cases - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Misdemeanor / Other Cases - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Minor Felonies**

**JUVENILE DELINQUENCY  
Minor Felony Cases**

*Defined as Class C Felonies other than Sex Crimes.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Minor Felony** case in Oregon?  
If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes
- No

**JUVENILE DELINQUENCY  
Minor Felony Cases**

*Defined as Class C Felonies other than Sex Crimes.*

What percentage of **Juvenile Delinquency - Minor Felony** cases do you believe SHOULD resolve by:  
(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/>	%
Contested Jurisdiction (trial)	<input type="text" value="0"/>	%
<b>Total</b>	<input type="text" value="0"/>	%

**JUVENILE DELINQUENCY  
Minor Felony Cases**

*Defined as Class C Felonies other than Sex Crimes.*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Minor Felony** cases. The first chart is about cases that are **ADMISSION**

(PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.).

The second chart is about cases that go to CONTESTED JURISDICTION (TRIAL). For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Minor Felonies - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Minor Felonies - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Major Felonies**

**JUVENILE DELINQUENCY  
Major Felony Cases**

*Defined as all other felonies originating in juvenile court in which waiver is not sought.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Major Felony** case in Oregon?  
If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes
- No



## JUVENILE DELINQUENCY

### Major Felony Cases

*Defined as all other felonies originating in juvenile court in which waiver is not sought.*

What percentage of **Juvenile Delinquency - Major Felony** cases do you believe *SHOULD* resolve by:

*(total must equal 100%)*

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)  %

Contested Jurisdiction (trial)  %

Total  %

## JUVENILE DELINQUENCY

### Major Felony Cases

*Defined as all other felonies originating in juvenile court in which waiver is not sought.*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Major Felony** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.)**. The second chart is about cases that go to **CONTESTED JURISDICTION (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Major Felonies - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Major Felonies - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Disposition	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>	<input type="text"/>

## JUV DELQ - Waiver / Measure 11 Cases

### JUVENILE DELINQUENCY Waiver / Measure 11 Cases

*Defined as all cases in which Waiver is sought and all Measure 11 cases.*

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Waiver / Measure 11** case in Oregon?  
If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.

- Yes  
 No

### JUVENILE DELINQUENCY Waiver / Measure 11 Cases

*Defined as all cases in which Waiver is sought and all Measure 11 cases.*

What percentage of **Juvenile Delinquency - Waiver / Measure 11** cases do you believe **SHOULD** resolve by:  
(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/> %
Contested Jurisdiction (trial)	<input type="text" value="0"/> %
Total	<input type="text" value="0"/> %

### JUVENILE DELINQUENCY Waiver / Measure 11 Cases

*Defined as all cases in which Waiver is sought and all Measure 11 cases.*

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Waiver / Measure 11** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE**

DISPOSITIONS, ETC.). The second chart is about cases that go to CONTESTED JURISDICTION (TRIAL). For each task, you will be asked:

1. When this task *should be* performed, how much TIME IS SUFFICIENT to perform the task with reasonable effectiveness under prevailing professional norms? AND
2. In what PERCENTAGE OF CASES should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be CONFIDENTIAL and the reporting of the results will be ANONYMOUS.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the AVERAGE or TYPICAL case.
- Your time estimate should reflect the CUMULATIVE TIME reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Waiver / Measure 11 - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Waiver / Measure 11 - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**JUV DELQ - Probation Violation / Contempt**

**JUVENILE DELINQUENCY  
Probation Violation / Contempt Cases**

Do you have sufficient experience to answer questions regarding what is reasonably required to prepare a **Juvenile Delinquency - Probation Violation / Contempt** case in Oregon?

*If yes, you will be directed to questions related to these types of cases. A "No" answer will automatically direct you to the next case type.*

- Yes
- No

**JUVENILE DELINQUENCY**  
**Probation Violation / Contempt Cases**

What percentage of **Juvenile Delinquency - Probation Violation / Contempt** cases do you believe *SHOULD* resolve by:  
(total must equal 100%)

Admission (plea) / Other Resolution (dismissals, alternative dispositions, etc.)	<input type="text" value="0"/>	%
Contested Jurisdiction (trial)	<input type="text" value="0"/>	%
Total	<input type="text" value="0"/>	%

**JUVENILE DELINQUENCY**  
**Probation Violation / Contempt Cases**

Below, you will be asked to complete two charts about specific tasks in **Juvenile Delinquency - Probation Violation / Contempt** cases. The first chart is about cases that are **ADMISSION (PLEA) / OTHER RESOLUTION (DISMISSALS, ALTERNATIVE DISPOSITIONS, ETC.)**. The second chart is about cases that go to **CONTESTED JURISDICTION (TRIAL)**. For each task, you will be asked:

1. When this task *should be* performed, how much **TIME IS SUFFICIENT** to perform the task with reasonable effectiveness under prevailing professional norms? **AND**
2. In what **PERCENTAGE OF CASES** should these tasks be performed?

If you have questions about the task definition, place your mouse over the task name for more details about how the task is defined.

Please keep in mind the following:

- Your responses will be **CONFIDENTIAL** and the reporting of the results will be **ANONYMOUS**.
- While each case has significant variability in level of complexity, this survey is meant to capture the responses for the “typical” case. In other words, please consider the **AVERAGE** or **TYPICAL** case.
- Your time estimate should reflect the **CUMULATIVE TIME** reasonably required to perform the task for the entire length of the case. In other words, if the task takes 10 minutes per instance and a typical case required you to perform the task five times, the appropriate response would be 50 minutes.
- In setting time, you can pick the way in which you would like to report it – minutes, hours or 8 hour days. For each task, you must only use one reporting method for each row. For example, you can report Client Communication time as **90 minutes** or **1.5 hours**, but NOT 1 hour and 30 minutes.

**Juvenile Delinquency - Probation Violation / Contempt - ADMISSION (PLEA) / OTHER RESOLUTION**

	ADMISSION / OTHER	ADMISSION / OTHER			ADMISSION / OTHER
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Juvenile Delinquency - Probation Violation / Contempt - CONTESTED JURISDICTION (TRIAL)**

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Client Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Parent/Guardian/Custodian Communication	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Client Advocacy and Support	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Discovery/Case Analysis	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Attorney Investigation/Attorney Interviews	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Experts	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Legal Research, Motions Practice, Other Writing	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Negotiations	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Preparation	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>
Court Time	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

	CONTESTED / TRIAL	CONTESTED / TRIAL			CONTESTED / TRIAL
	Time Needed	Minutes	Hours	Days	% Cases Performed
Post-Disposition	<input type="text"/>	<input type="radio"/>	<input type="radio"/>	<input type="radio"/>	<input type="text"/>

**Finish**

Please click "Finish Survey" below to submit your answers.

Powered by Qualtrics

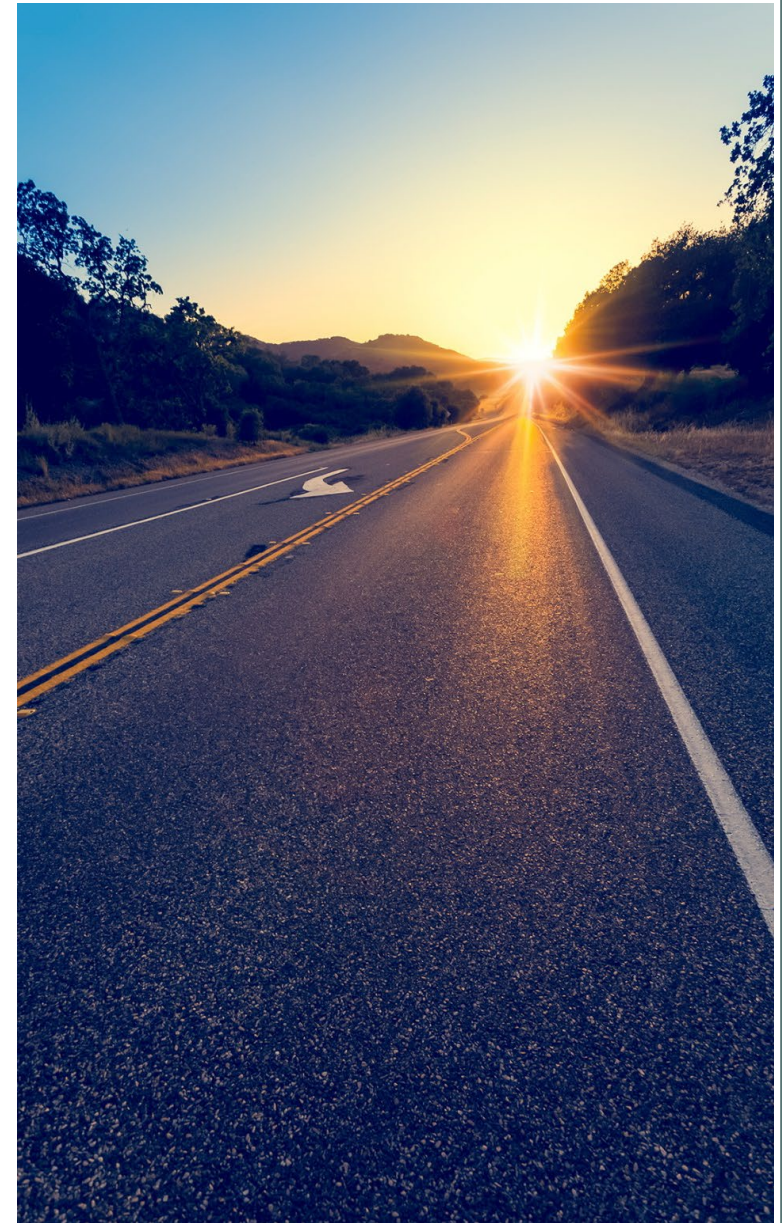


# **EXHIBIT D**

# ABA Workload Study – New Mexico Adult Criminal

## Agenda – Day 1

- Introductions
- Delphi Method
- Instruction & Guidance
- Logistics for Today's Survey
- Low Level Misdemeanor Survey



# ABA Workload Study – OREGON

## Adult Criminal

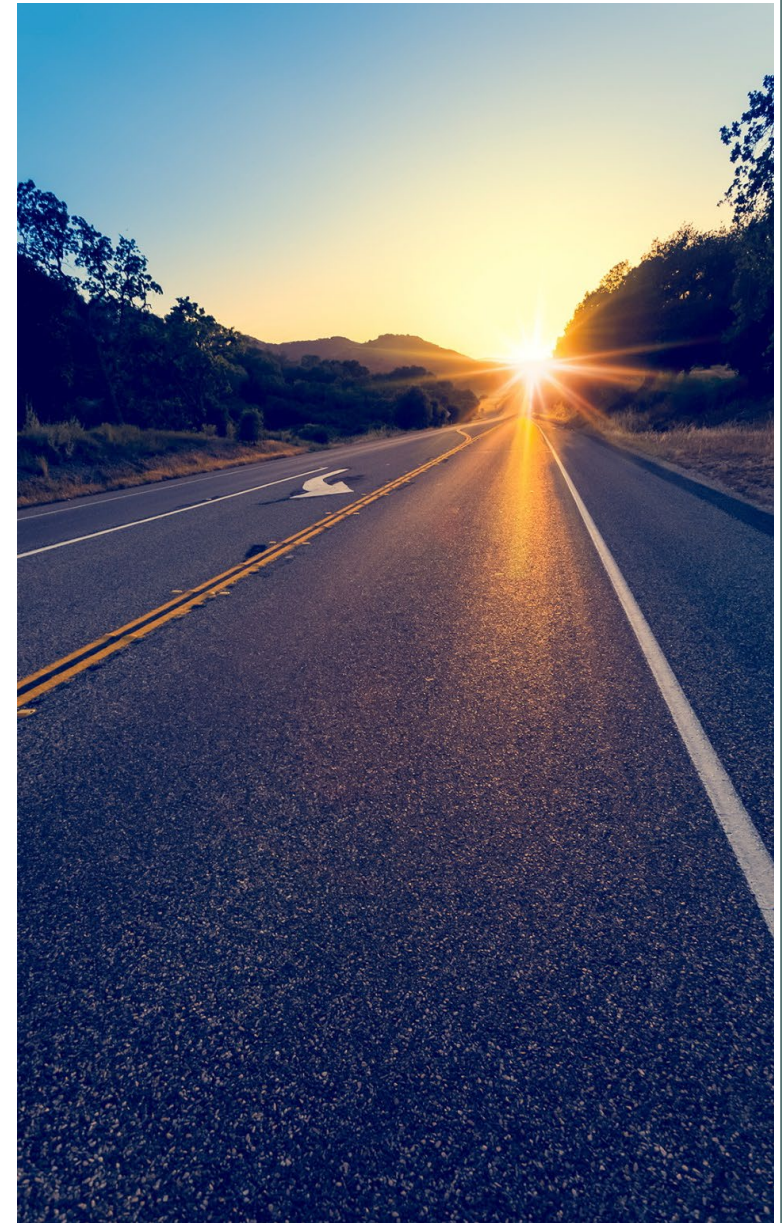
Moss Adams LLP

- Scott Simpson, Partner
- Emily Hayes, Manager

American Bar Association

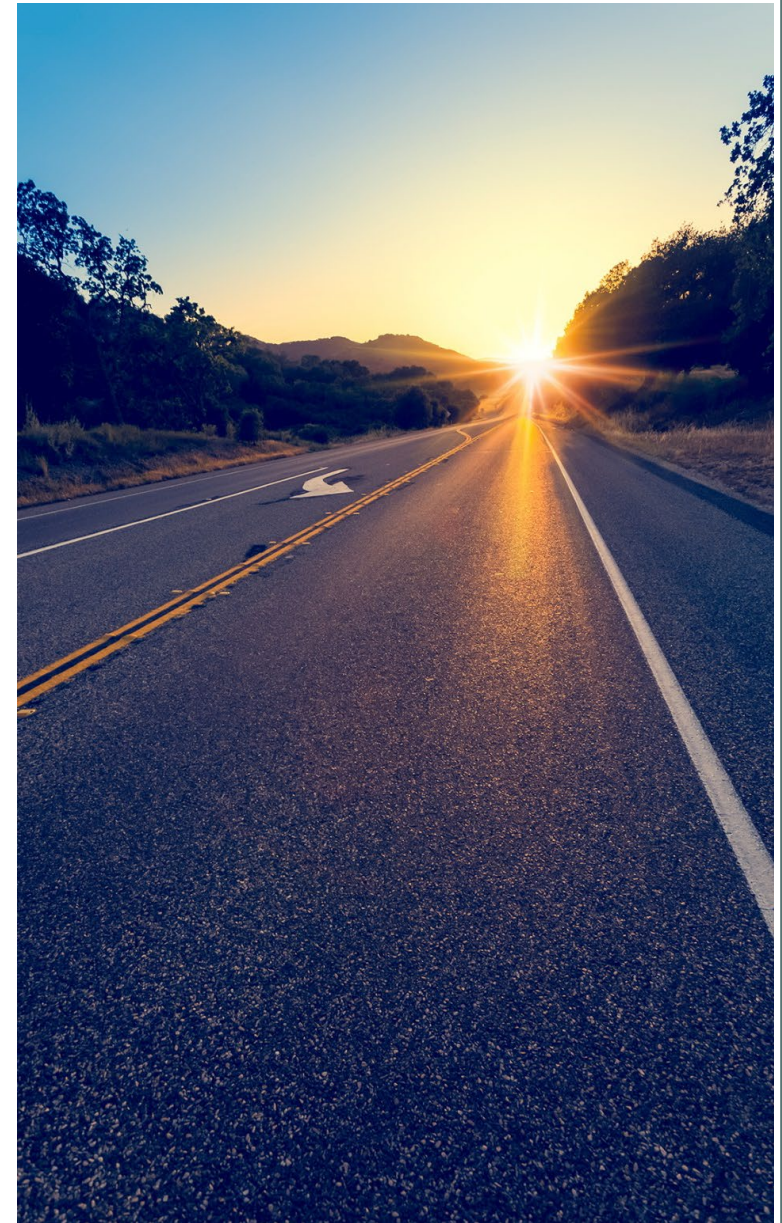
- Malia Brink, Counsel for Indigent Defense

Stephen Hanlon, Project Director ABA  
Workload Study



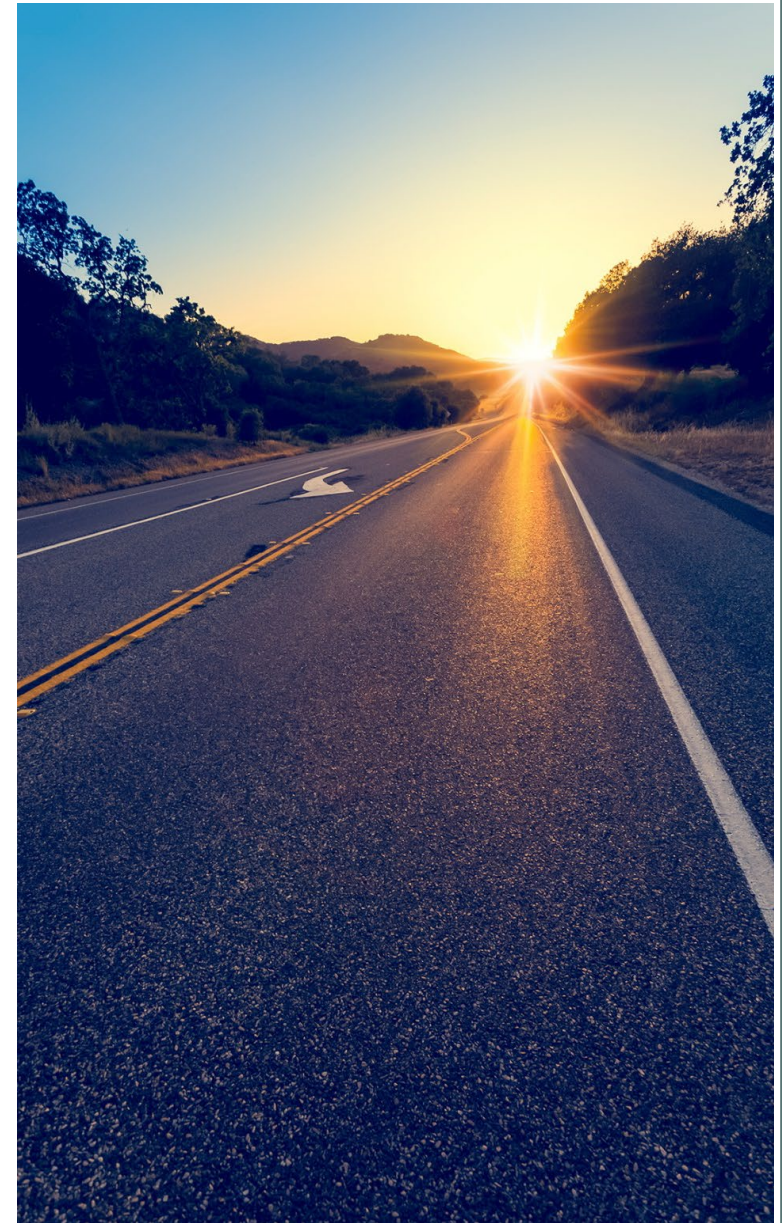
# Delphi Method

- Multi Round Survey
- Requires experienced professionals operating in a specific space (group of experts)
- Iterative Process
  - Round 1: anonymous written survey
  - Round 2: anonymous written survey with aggregated results from Round 1
  - Round 3: in-person survey with aggregated results from Round 2
- Determine a consensus opinion on each case task



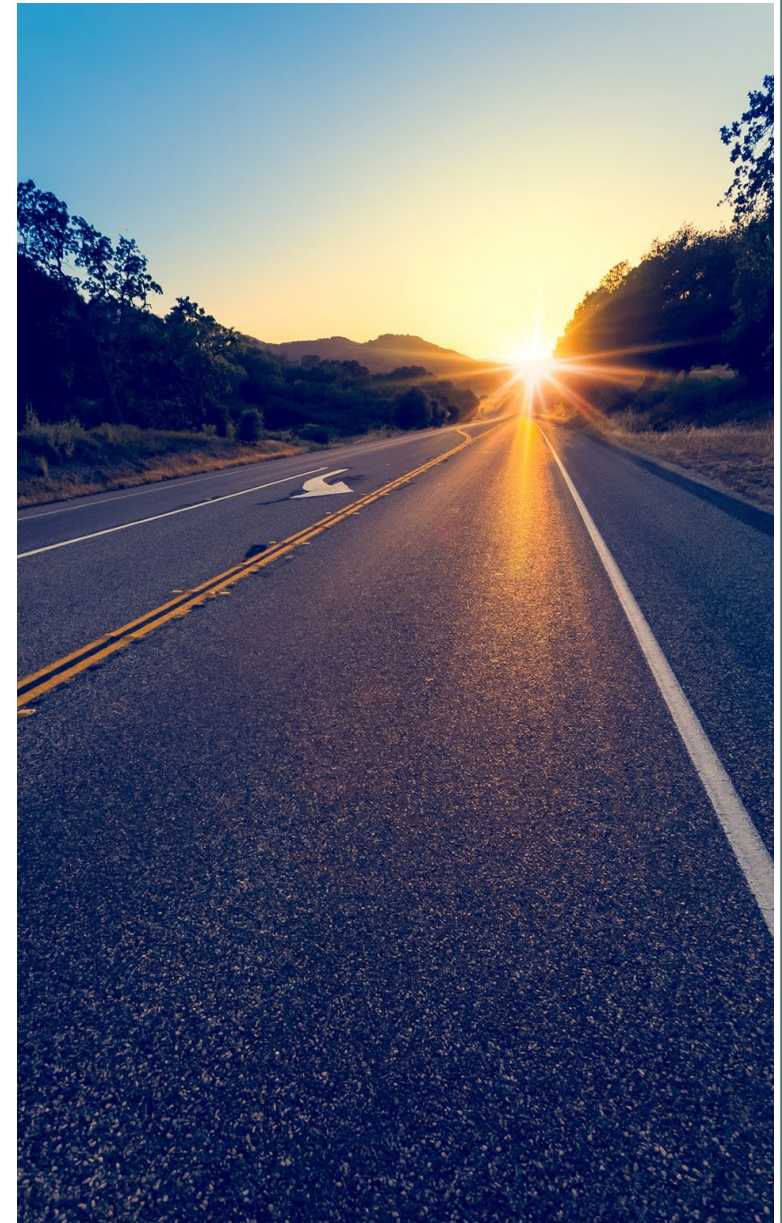
# Instruction & Guidance

- Turn over to Stephen Hanlon



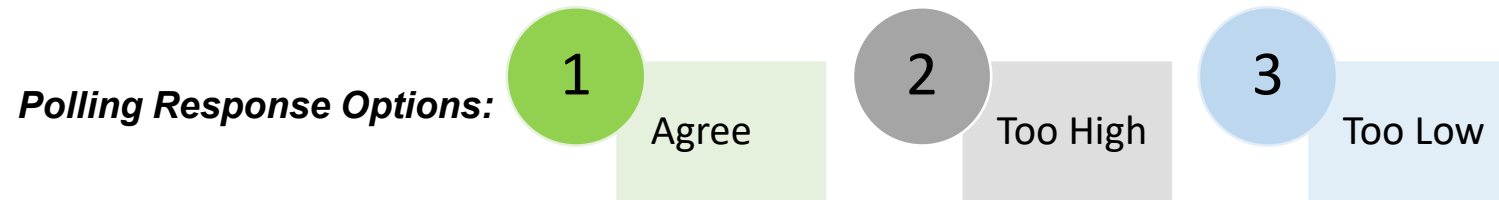
# Logistics for Today's Survey

- Number of Professionals with us today
- Years of experience in the “Room”
- This session is being recorded. Once data is accumulated and cross checked, recording will be deleted.
- If you do not have experience with the case type being covered, you do not need to participate in that specific section.
- Use the “Chat” feature to raise hand to speak or to ask a question.
- For our purposes, consensus is reached when 2/3 of group agrees.



Case Type: **Low Level Misdemeanor**

	<b>Trimmed Range</b>	<b>Trimmed Mean</b>
What % of cases <u>should</u> go to trial:	15% - 35%	24%
What % of cases <u>should</u> plead guilty or otherwise resolve:	65% - 85%	76%



**Reminder: Focus on the "Should"**



Case Task: **Client Communication**  
**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

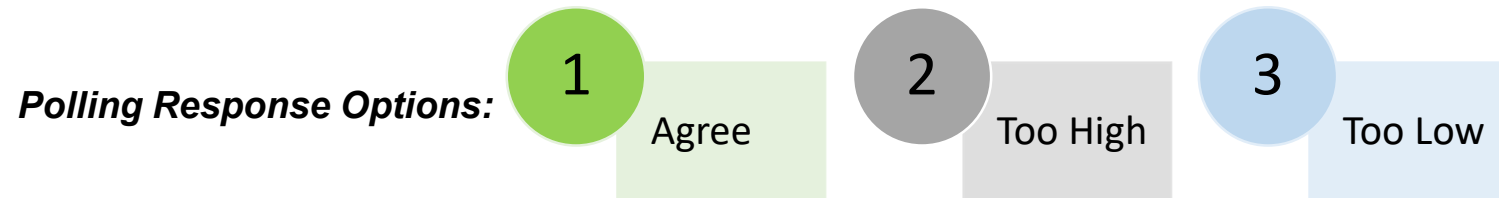
1.5 — 2.7 hours

2.2 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**





Case Task: **Client Communication**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

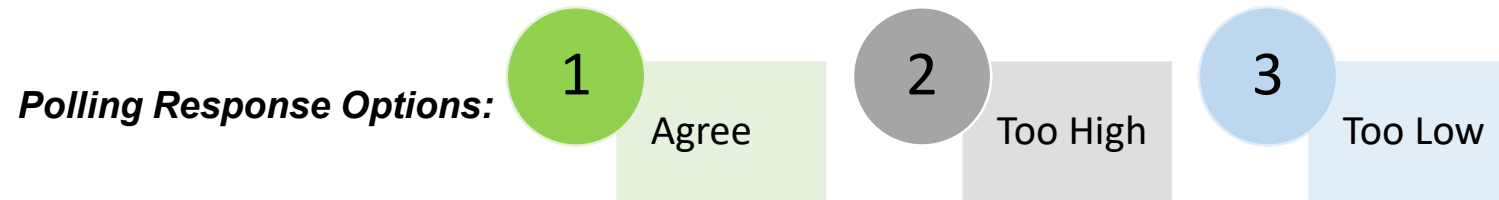
4.0 — 6.0 hours

5.1 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**



Case Task: **Client Support Services**  
**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

.75 — 1.0 hours

.97 hours

Percent of cases when task should be performed:

50% - 90%

60%



**Reminder: Focus on the "Should"**



Case Task: **Client Support Services**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

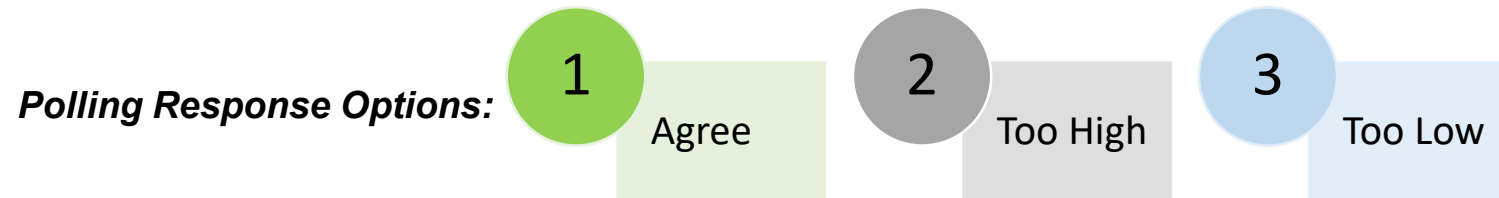
1.0 — 2.0 hours

1.7 hours

Percent of cases when task should be performed:

40% - 100%

67%



**Reminder: Focus on the "Should"**



Case Task: **Discovery / Case Preparation**  
**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

1.0 — 2.2 hours

1.8 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**



Case Task: **Discovery / Case Preparation**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

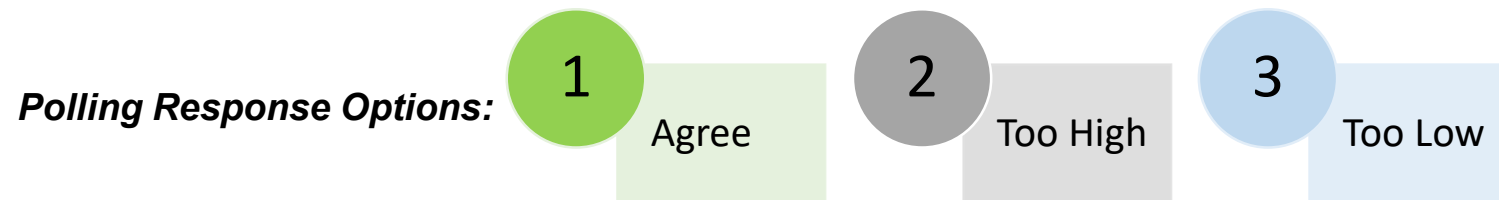
4.0 — 7.5 hours

5.5 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**



Case Task: **Attorney Investigation / Interviews**  
**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

1.0 — 1.5 hours

1.2 hours

Percent of cases when task should be performed:

50% - 75%

58%



**Reminder: Focus on the "Should"**



Case Task: **Attorney Investigation / Interviews**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

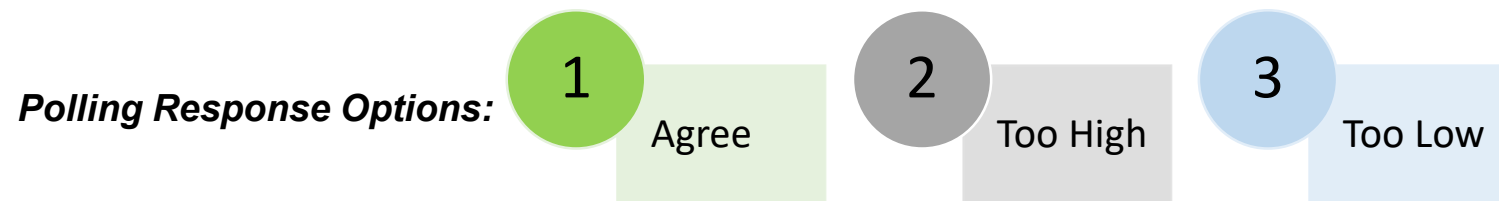
1.0 — 3.0 hours

2.4 hours

Percent of cases when task should be performed:

75% - 95%

84%



**Reminder: Focus on the "Should"**



Case Task: **Experts**

**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

1.0 — 2.5 hours

1.8 hours

Percent of cases when task should be performed:

10% - 30%

19%



**Reminder: Focus on the "Should"**





Case Task: **Experts**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

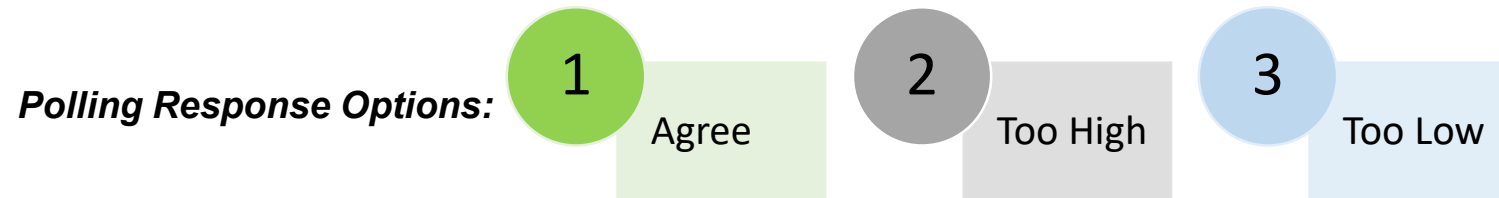
1.0 — 4.0 hours

2.7 hours

Percent of cases when task should be performed:

10% - 50%

31%



**Reminder: Focus on the "Should"**



Case Task: **Legal Research, Motions Practice, Other Writing**  
**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

1.5 — 3.0 hours

2.1 hours

Percent of cases when task should be performed:

20% - 50%

36%



**Reminder: Focus on the "Should"**



Case Task: **Legal Research, Motions Practice, Other Writing**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

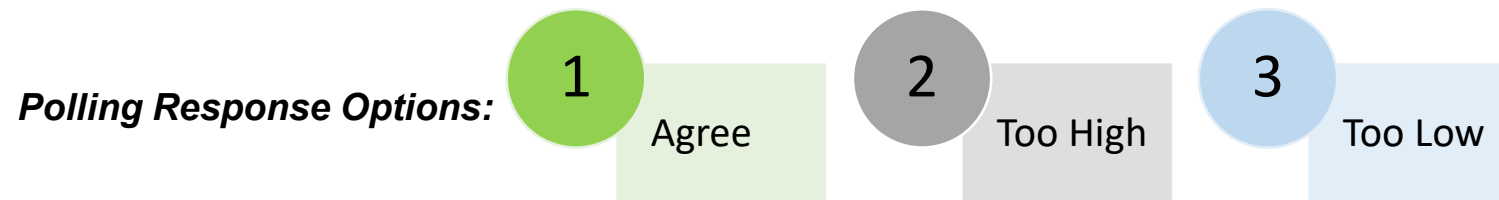
2.0 — 6.0 hours

4.1 hours

Percent of cases when task should be performed:

50% - 100%

80%



**Reminder: Focus on the "Should"**



Case Task: **Negotiations**

**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

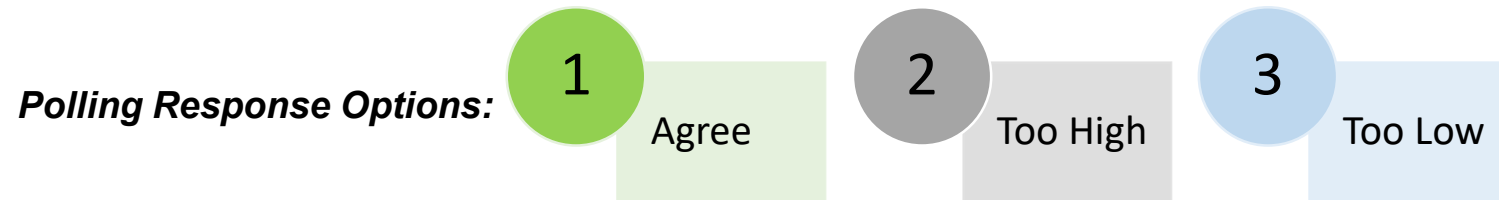
.5 — 1.0 hours

.7 hours

Percent of cases when task should be performed:

85% - 100%

97%



**Reminder: Focus on the "Should"**



Case Task: **Negotiations**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

.75 — 1.5 hours

1.0 hours

Percent of cases when task should be performed:

90% - 100%

98%



**Reminder: Focus on the "Should"**



Case Task: **Court Preparation**

**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

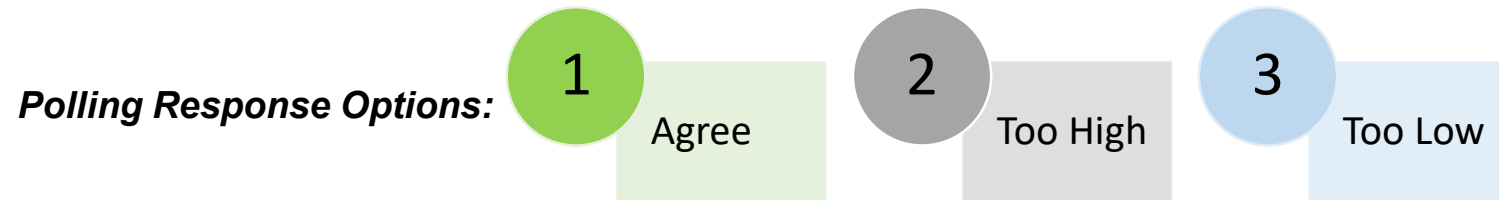
.5 — 1.0 hours

.9 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**



Case Task: 

# Court Preparation

## Go to Trial

Case Type: Low Level Misdemeanor

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

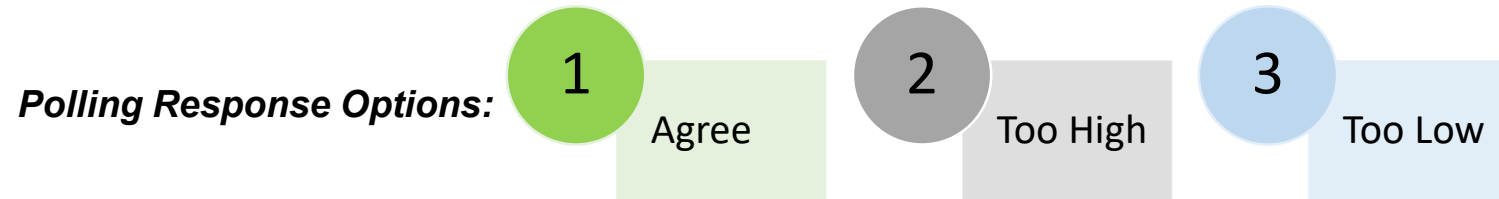
5.0 — 10.0 hours

7.4 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**



Case Task: **Court Time**

**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

.75 — 2.0 hours

1.2 hours

Percent of cases when task should be performed:

100%

100%



**Reminder: Focus on the "Should"**





Case Task: **Court Time**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

8.0— 16.0 hours

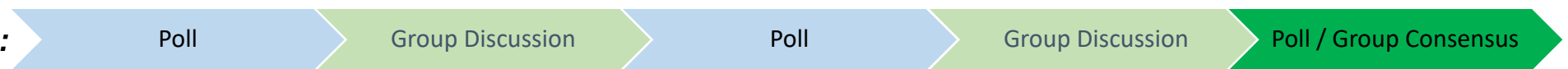
12.5 hours

Percent of cases when task should be performed:

90% - 100%

98%

**Consensus Cycle:**



**Polling Response Options:**



**Reminder: Focus on the "Should"**



Case Task: **Sentencing / Mitigation**  
**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

.5 — 1.0 hours

.7 hours

Percent of cases when task should be performed:

66% - 100%

89%



**Reminder: Focus on the "Should"**



Case Task: **Sentencing / Mitigation**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

1.0 — 1.5 hours

1.2 hours

Percent of cases when task should be performed:

50% - 100%

84%



**Reminder: Focus on the "Should"**



Case Task: **Post Judgment**

**Plead Guilty or Otherwise Resolved**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

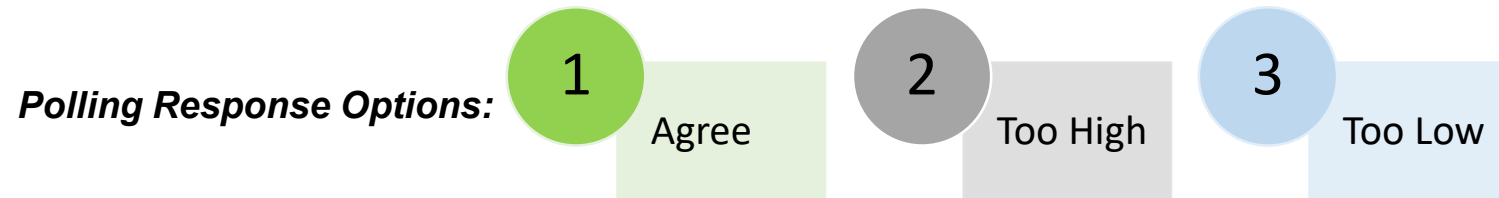
.5 — .6 hours

.5 hours

Percent of cases when task should be performed:

20% - 90%

46%



**Reminder: Focus on the "Should"**



Case Task: **Post Judgment**  
**Go to Trial**

Case Type: **Low Level Misdemeanor**

**Trimmed Range**

**Trimmed Mean**

Total time (in hours) task should be performed:

.5 — 1.0 hours

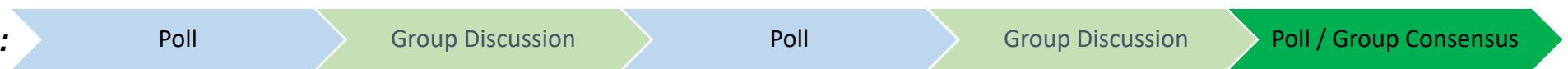
.8 hours

Percent of cases when task should be performed:

50% - 85%

61%

**Consensus Cycle:**



**Polling Response Options:**



**Reminder: Focus on the "Should"**

