

PUBLIC DEFENSE UPDATE: MULTNOMAH COUNTY & THE STATE

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PUBLIC DEFENDER SHORTAGE & THE UNREPRESENTED CRISIS: HOW WE GOT HERE...

2019

2020

2021

2022

2023

2024

- After decades and decades of ignoring and underfunding Public Defense, workloads were excessive, pay and morale was low, and the delivery model was deeply flawed
- 6th Amendment Center Report about Public Defense in Oregon (*January 2019*)



The 6th Amendment Center Report: The Right to Counsel in Oregon

January 2019

Findings:

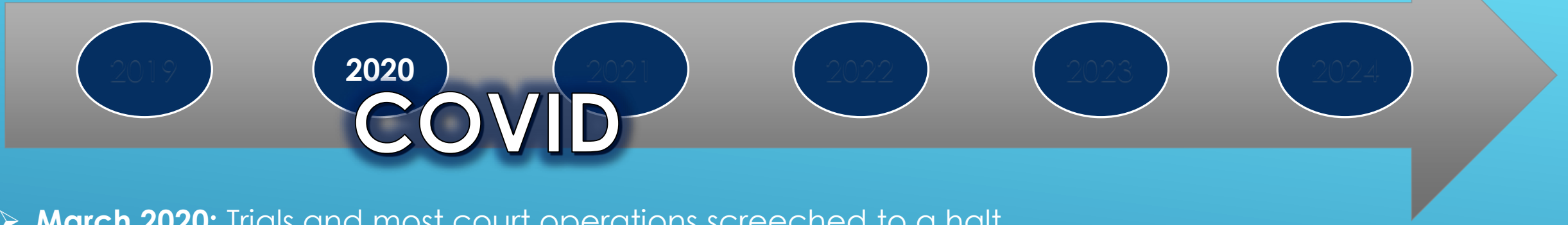
1. The State does not provide sufficient oversight or financial accountability of its public defense system.
2. Fixed-fee case credit model pits the financial self-interest of the attorney against the due process rights of their clients.

Recommendation:

Elimination of the case-credit model.



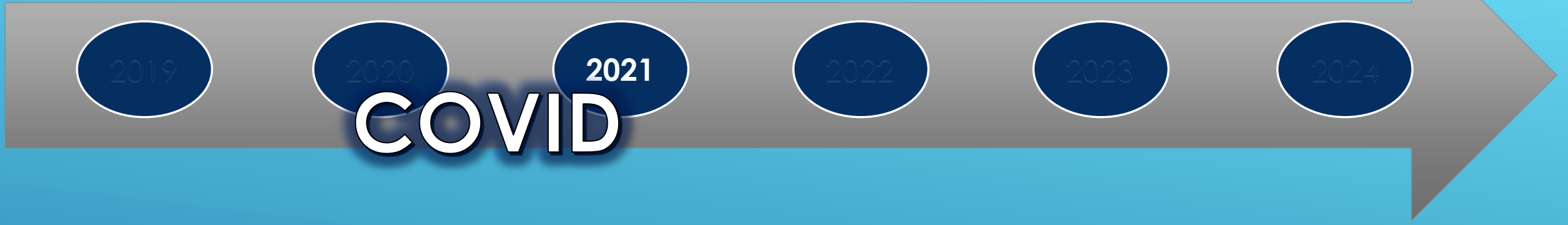
HOW WE GOT HERE...



- **March 2020:** Trials and most court operations screeched to a halt
- **However, cases were still being charged, but no meaningful way to resolve, with no trials available**
 - Clients less likely to entertain plea deals if there is no option for trial
- **Public Defense Caseloads BALLOONED – Making already excessive caseloads unmanageable**
- **Increased suffering from Mental Health and Substance Use Disorder amongst clients**



HOW WE GOT HERE...



- **As caseloads grew, we saw an exodus of public defenders from the practice**
 - Wasn't unique to public defense – much of public safety system
- **Departures of experienced Felony Attorneys – No experienced attorneys to replace them**
 - Needed to reassign those caseloads to remaining felony attorneys – causing workloads to grow even larger
- **Ethical obligation to existing clients prevented attorneys from taking on new clients, resulting in limiting the pick-up of new cases**



Ethics Opinion – OSB 2007-178

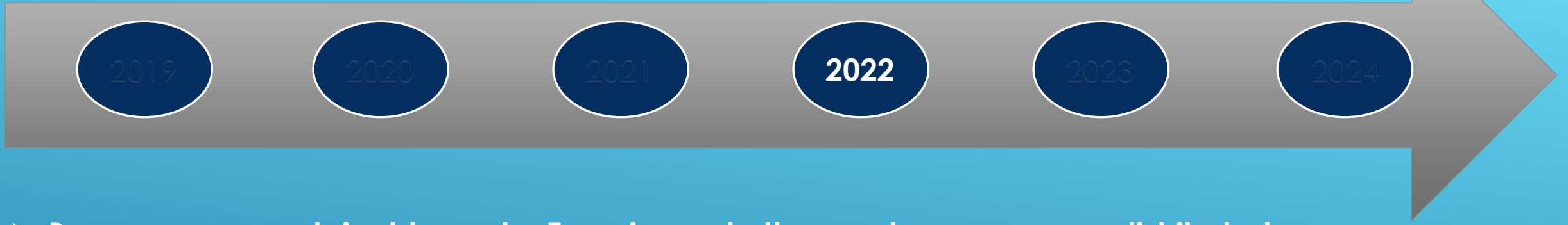
- ▶ “All lawyers are required to provide each client with competent and diligent representation, keep each client reasonably informed about the status of his or her case, explain each matter to the extent necessary to permit the client to make informed decisions regarding the representation and abide by the decision the client is entitled to make.”

- ▶ "For each client, a lawyer is required to, among other things, 'keep abreast of changes in the law; adequately investigate, analyze, and prepare cases; act promptly on behalf of clients; and communicate effectively on behalf of and with clients,' among other responsibilities."
- ▶ "A lawyer who is unable to perform these duties may not undertake or continue with representation of a client."

ETHICAL LIMITATIONS



HOW WE GOT HERE...



- **Became an unsustainable cycle: Experienced attorneys leave, cases redistributed, caseloads grow, more attorneys leave...**
- **Legislatively Sponsored American Bar Association Report confirmed what we already knew – There were not nearly enough public defenders in Oregon**



2022 American Bar Association Report:

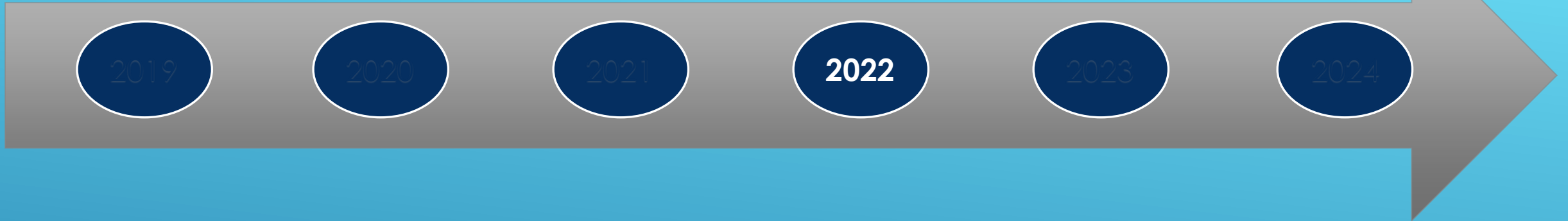
Oregon Public Defense System & Attorney Workload Standards

January 2022

- ▶ Multi-year process legislatively funded in February 2018
- ▶ Utilized Delphi methodology
- ▶ Pegged to the Oregon Rules of Professional Conduct
- ▶ **FINDINGS:**
 - ▶ Oregon had 1/3 of the public defenders needed to provide *reasonably effective* representation
 - ▶ Had 592 public defenders
 - ▶ Need additional 1,296



HOW WE GOT HERE...



- **Became an unsustainable cycle: Experienced attorneys leave, cases redistributed, caseloads grow, more attorneys leave...**
- **Legislatively Sponsored American Bar Association Report confirmed what we already knew – There were not nearly enough public defenders in Oregon**
- **State Contracts for Public Defense introduced Maximum Attorney Caseloads (MAC)**



- MAC definition: Maximum assigned caseload per attorney per year.
- Supposed to be a cap, not an expectation
- Contract requires meeting “ethical obligations” for every client.
- Cites to Oregon State Bar ethical rules and the American Bar Association's guidelines

- Contractor agrees to accept appointments to represent eligible clients. Contractor agrees to provide, and the PDSC agrees to pay for, competent, zealous legal representation to its clients as required by this contract, the Oregon Rules of Professional Conduct, Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and Oregon and federal judicial opinions regarding the right to counsel. Contractor agrees to comply with PDSC policies and procedures.

D. Workload: Contractor agrees that it will monitor attorney workloads to ensure those attorneys can meet their ethical obligations to each of their clients. Contractor agrees to adhere to the Oregon State Bar Rules of Professional Conduct and the ABA's *Eight Guidelines of Public Defense Related to Excessive Workloads*. Contractor agrees to report attorney workload information to the PDSC in its monthly caseload reports.

WHAT IS MAC & WHAT IT IS NOT



- ▶ Not based on workload studies or research – created through budgetary process
- ▶ Severely undervalues lower-level cases, creating an unfair and inaccurate standard for providers
 - ▶ Providers that historically take predominantly lower-level cases (MDI) have lower MAC utilization
 - ▶ Providers that historically take predominantly higher-level cases (PDC) have higher MAC utilization
 - ▶ Providers that historically take a more equal mix of all case types (MPD) fall in the middle
- ▶ More accurate measure is an open workload model - ORS 151.216(1)(f) (2021)

Criminal

- Murder: 6
- Jessica Law: 6
- Ballot Measure 11: 45
- Major (A/B) felonies: 138
- Minor (C) felonies: 165
- Misdemeanors: 300
- Probation violations: 825
- Civil commitments: 230

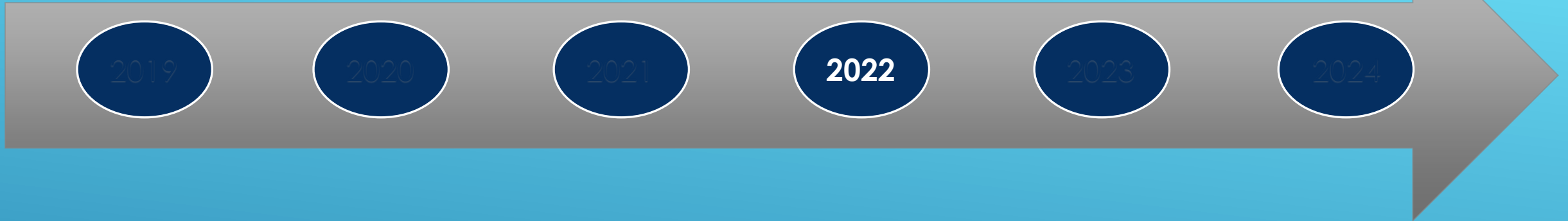
Juvenile

- Murder: 6
- Delinquencies: 132
- Probation violations: 825
- Dependency: 69

WHY MAC IS PROBLEMATIC



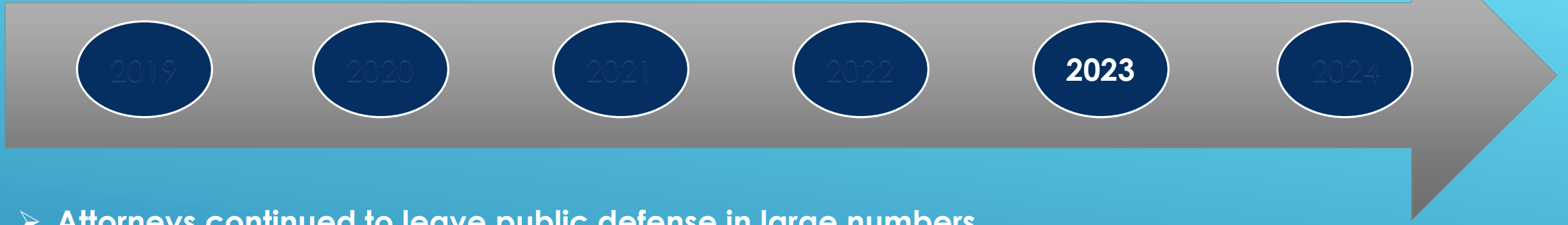
HOW WE GOT HERE...



- **Became an unsustainable cycle: Experienced attorneys leave, cases redistributed, caseloads grow, more attorneys leave...**
- **Legislatively Sponsored American Bar Association Report confirmed what we already knew – There were not nearly enough public defenders in Oregon**
- **State Contracts for Public Defense introduced Maximum Attorney Caseloads (MAC)**
- **Legislature invested additional \$12.8 million – adding 36 public defenders statewide**
 - Most were brand new attorneys – while unrepresented population largely in felonies
- **In many counties, including Multnomah, new felony case filings continued to rise**
 - Impossible to keep up with new cases & the backlog of cases that continued to grow



HOW WE GOT HERE...



- Attorneys continued to leave public defense in large numbers
- Oregon Legislature passed SB 337



- ▶ Moves public defense from the Judicial Branch to the Executive Branch in 2025
- ▶ Establishes policy and standard-making authority to ensure effective representation of clients
- ▶ Authorized a significant investment in public defense
 - ▶ Creates a state-trial division within OPDC
 - ▶ *Issues with recruitment*
 - ▶ Modernize OPDC's reporting capabilities
 - ▶ Increases to hourly rate for private attorneys



LEGISLATIVE RESPONSE – SB 337 (2023)



HOW WE GOT HERE...

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- Attorneys continued to leave public defense in great numbers
- Oregon Legislature passed SB 337
- The shortage was not unique to Oregon – Many other states saw similar issues
- As states sought to address the problem, The American Bar Association published a report to guide their work



1. Independence of public defender agencies and their lawyers.
2. Adequate state funding and oversight of public defender agencies.
3. Regular monitoring and control of public defender agency workloads.
4. Collection and review of public defense data and implementation of necessary improvements.
5. Eligibility for no-cost public defense services.
6. Immediate and confidential access to public defense counsel.
7. Comprehensive training and supervision of public defense counsel and staff.
8. Importance of “vertical” representation (the same defense lawyer should represent a client throughout their case).
9. Client-centered approach and other components of effective representation.
10. Inclusion of public defense agencies as equal participants in the legal system.

ABA 10 PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (AUGUST 2023)

[HTTPS://WWW.AMERICANBAR.ORG/GROUPS/LEGAL_AID_INDIGENT_DEFENSE/INDIGENT_DEFENSE_SYSTEMS_IMPROVEMENT/STANDARDS-AND-POLICIES/TEN-PRINCIPLES-PUB-DEF/](https://www.americanbar.org/groups/legal_aid_indigent_defense/indigent_defense_systems_improvement/standards-and-policies/ten-principles-pub-def/)



HOW WE GOT HERE...



- **Attorneys continued to leave public defense in great numbers**
- **Oregon Legislature passed SB 337**
- **The shortage was not unique to Oregon – Many other states saw similar issues**
- **As states sought to address the problem, The American Bar Association published a report to guide their work**
- **RAND National Public Defense Workload Study: Another reputable study demonstrated that public defense workloads were excessive**



National Public Defense Workload Study

Collaboration of:

- The RAND Corporation
- The National Center for State Courts (NCSC)
- ABA Standing Committee on Legal Aid and Indigent Defense (ABA SCLAID)

August 2023

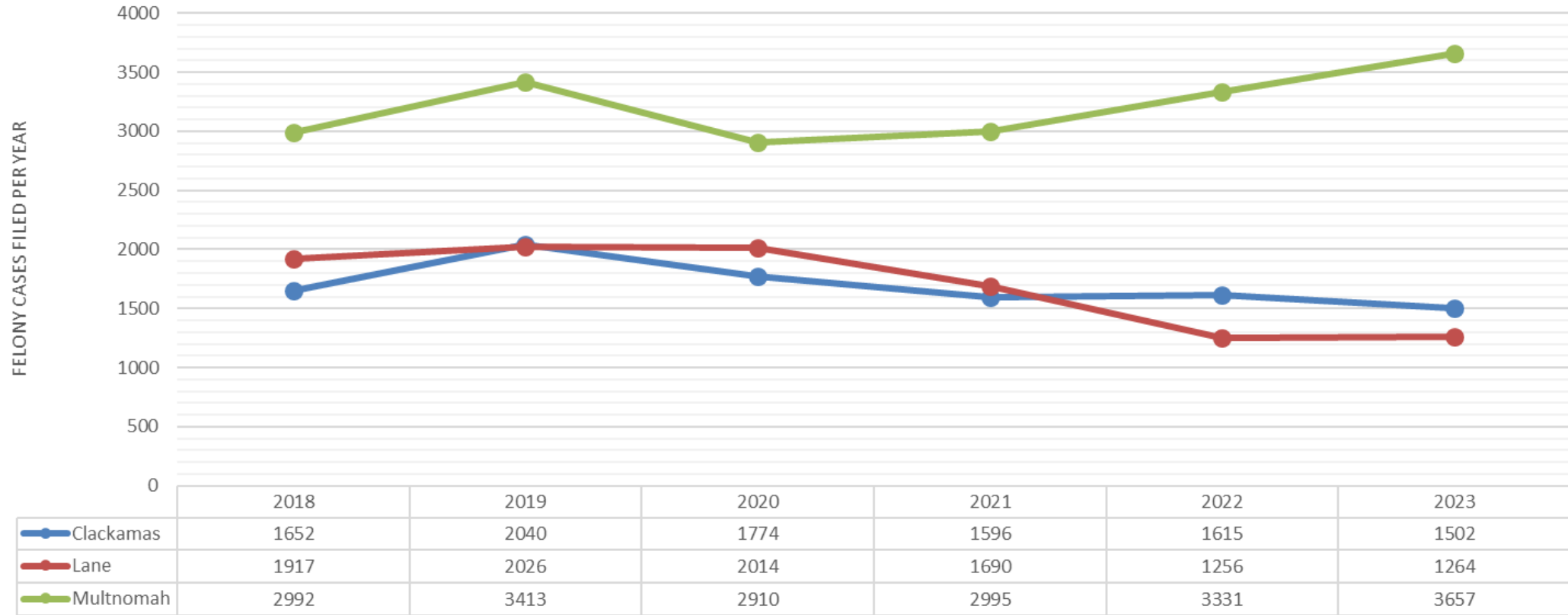
Workload Study Results

| Case Type | Case Weight (Hours per Case) | Caseload Standard (2,080 Hours per Year) |
|-----------------------------|------------------------------|--|
| Felony - High - LWOP | 286.0 | 7 |
| Felony - High - Murder | 248.0 | 8 |
| Felony - High - Sex | 167.0 | 12 |
| Felony - High - Other | 99.0 | 21 |
| Felony - Mid | 57.0 | 36 |
| Felony - Low | 35.0 | 59 |
| DUI - High | 33.0 | 63 |
| DUI - Low | 19.0 | 109 |
| Misdemeanor - High | 22.3 | 93 |
| Misdemeanor - Low | 13.8 | 150 |
| Probation/Parole Violations | 13.5 | 154 |



Felony filings continued to increase...

Total Felony Case Filings: Clackamas, Lane, & Multnomah Counties



Clackamas county (consortium) & Lane county (nonprofit) saw very few unrepresented individuals as filings decreased, while Multnomah's unrepresented population continued to grow alongside felony case filings



| Case Type | Multnomah | Clackamas | Difference |
|--------------|-----------|-----------|------------|
| Murder | 80 | 20 | 25% |
| Measure 11 | 886 | 105 | 12% |
| Major Felony | 710 | 305 | 43% |
| Minor Felony | 3,268 | 1,868 | 57% |
| Misdemeanor | 9,068 | 5,536 | 61% |

| | Multnomah | Clackamas | Difference |
|------------------|-----------|-----------|------------|
| Total MAC | 98.155 | 42.975 | 44% |

These figures exclude cases that have been filed but have gone unrepresented, which would further increase the differences

CLACKAMAS VS. MULTNOMAH: CASE TYPES

JULY 1, 2023 – DECEMBER 31, 2024



HOW WE GOT HERE...



- Washington State Bar Association pushes for meaningful caseload caps to help recruit and retain new public defenders



Washington State Bar Association Public Defense Caseload Maximums (March 2024)

The Bar's Council on Public Defense began working on new standards in 2022. In October the state Supreme Court asked the Bar to recommend revisions for the state after a [national report](#) reassessed how many cases public defenders should be expected to handle and proposed a new way of calculating reasonable limits.

[Washington State Bar Association OKs far lower caseloads for public defenders | AP News](#)

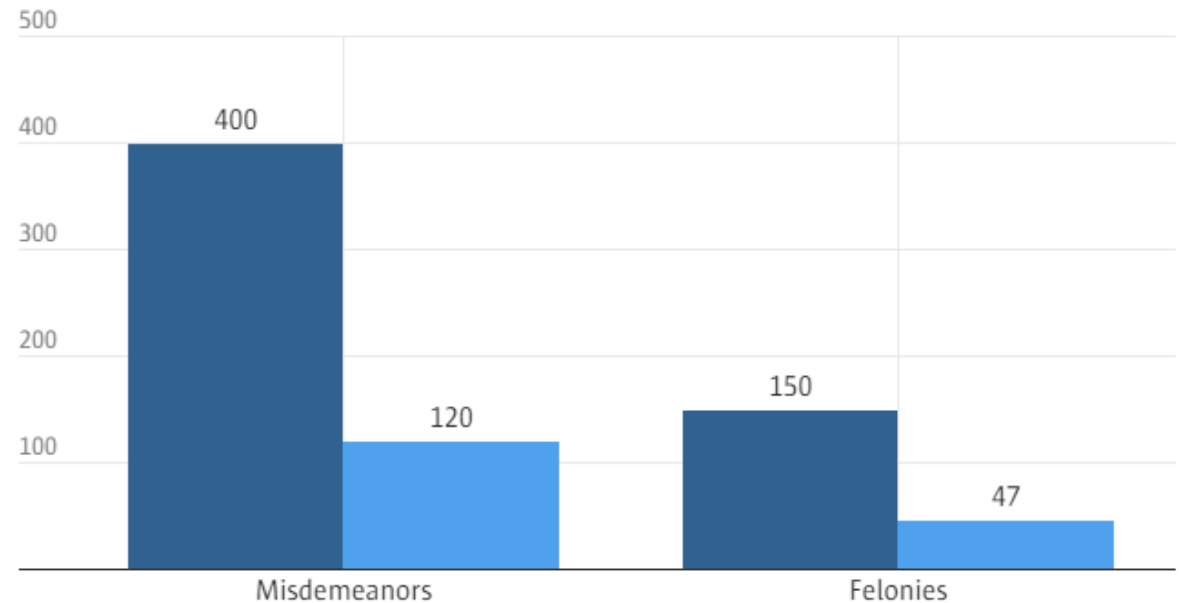
<https://www.wsba.org/news-events/media-center/media-releases/state-bar-adopts-new-public-defense-standards>

New caseload limits for public defenders in Washington

While proponents hope the new Washington State Bar Association limits will prevent burnout and improve representation, skeptics argue smaller counties lack funding to hire more defenders.

Caseload limits per year:

■ Old Standards ■ New Standards*



*Depending on case types, the new limits range from 80 to 120 cases for misdemeanors and 6 to 47 cases for felonies.

Chart: Alison Saldanha / The Seattle Times • Source: Washington State Bar Association

[Washington Bar approves much lower caseloads for public defenders | The Seattle Times](#)



HOW WE GOT HERE...



- Washington State Bar Association pushes for meaningful caseload caps to help recruit and retain new public defenders
- Unrepresented Population in Multnomah County continues to grow
 - Don't have enough attorneys to deal with influx of new cases in addition the backlog of unrepresented cases from past 2 years and *Watkins* reversals
 - Especially, as the work continues to get more complicated and difficult



- ▶ **More Complicated Clientele**
 - ▶ Houselessness
 - ▶ Complicated MH Issues
 - ▶ SUD Issues – Especially Fentanyl
- ▶ **Lack of Services**
- ▶ **Scientific Evidence & Experts**
 - ▶ Disputed forensic evidence
 - ▶ Increased use of experts
- ▶ **Increase in In-Custody Defendants**
- ▶ **Jail access issues due to staffing**
- ▶ **Complicated court processes**
- ▶ **Discovery**
 - ▶ **Electronic Discovery**
 - ▶ BWC, Ring videos, surveillance, phone extracts, computer extracts, social media dumps, etc.
 - ▶ **Sheer Volume of Discovery**
 - ▶ **Late or incomplete discovery**
- ▶ **Time wasted on frivolous and unprovable cases**
 - ▶ **Cases dismissed late**
- ▶ **Emotional Stress**
 - ▶ **Emotionally taxing work**
 - ▶ **Unfair “blame” for crisis**

CHANGES IN PUBLIC DEFENSE PRACTICE



HOW WE GOT HERE...

2019

2020

2021

2022

2023

2024

- **Unrepresented Population in Multnomah County continues to grow**
 - Don't have enough attorneys to deal with influx of new cases, let alone the backlog of unrepresented cases from past 2 years
 - Especially, as the work continues to get more complicated and difficult
- **Washington State Bar Association pushes for meaningful caseload caps to help recruit and retain new public defenders**
- **State-wide Attrition Survey – between July 1, 2023 and October 1, 2024**
 - **118 Contracted Attorneys (nonprofit and consortium) left that work**
 - **34 went to hourly work (consistency & cost)**
 - **9 went to state trial division**
 - **75 left public defense altogether**
 - **Top reasons for leaving: (1) Compensation; (2) Workload; and (3) Emotional Strain**



HOW WE MOVE FORWARD...

1. Reasonable Workloads for Public Defenders

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

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

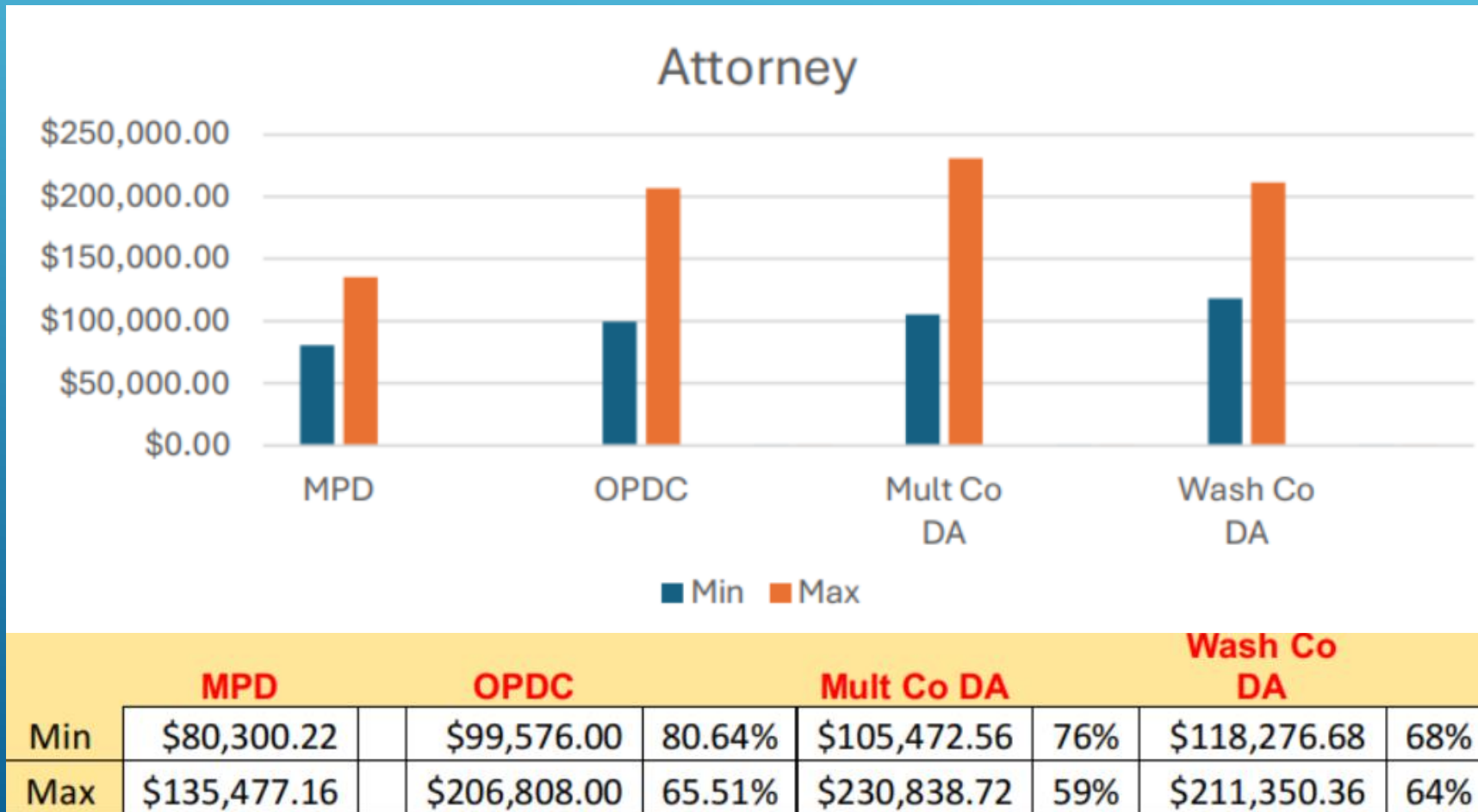
| Case Type | 2022 ABA Oregon Project | 2023 RAND National Study | OPDC MAC | WA State Bar Max (by 2027) |
|---------------------------|-------------------------|--------------------------|----------|----------------------------|
| Low-level misdemeanor | 93 | 151 | 300 | |
| Average misdemeanor | 70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

Reasonable workloads not only help with recruitment and retention of public defenders, but also ensure that public defense offices can absorb caseloads of departing attorneys without affecting normal case pick-up



HOW WE MOVE FORWARD...

1. Reasonable Workloads for Public Defenders
2. Reasonable Compensation for All Public Defenders (retention)



HOW WE MOVE FORWARD...

1. Reasonable Workloads for Public Defenders
2. Reasonable Compensation for All Public Defenders
3. Support & Expand Nonprofit Public Defense Providers

CURRENT PUBLIC DEFENSE PROVIDER TYPES IN OREGON:

- Consortium
- Private Hourly Attorneys
- OPDC Trial Division
- Nonprofit Offices



THE VALUE OF NONPROFIT PROVIDERS

- **Offer a variety of services and creative solutions to improve public safety**
 - **MPD's Community Law Division – Barrier Reduction Services**
 - Eviction Defense, Felony Reductions, Immigration Defense & Advice, Expungement Clinic, Etc.
 - Funded entirely through grants and contracts (including w/ Multnomah County)
 - **Case Management for public defense clients**
 - Release planning, connect with services, support in community, etc.
 - Reduce workload of public defenders
- **Cost-Effective model for public defense delivery**
 - Especially compared to State Trial Division and Hourly Providers
- **Quality Control: Provide Extensive Training and Meaningful Supervision**
 - Only provider type to offer such oversight
- **Addressing Workforce Shortage – Robust Nationwide Recruitment**



Metropolitan Public Defenders

Six Years of Nationwide Recruitment



48 New Public Defenders from law schools outside of Oregon
35 New Public Defenders from Oregon law schools
33 Practicing Attorneys from outside of Oregon

In the past six years, MPD has recruited over 116 new and practicing attorneys to public defense.
81 of those attorneys came from outside of Oregon.

HOW WE MOVE FORWARD...

1. Reasonable Workloads for Public Defenders
2. Reasonable Compensation for All Public Defenders
3. Support & Expand Nonprofit Public Defense Providers
4. Increase the number of public defenders and case managers
5. Be diligent about what new cases are added to the system and create new “off-ramps” for those already there

- **Better charging decisions and consistency**
 - *Planned changes with misdemeanors already*
- **Increased use of deflection and diversion programs**
 - **E.g. Low-Level Misdemeanors:**
 - Criminal Trespass II (C-Mis) increased 53% from FY24 to FY25
 - Disorderly Conduct (B-Mis) increased 19.15%
- **Meaningful Early Resolution Dockets – without sacrificing due process**
 - E.g. Young Offender Resolution Programs
- **More judicial discretion**



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6. Ensure that all attorneys providing public defense representation have appropriate oversight



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6. Ensure that all attorneys providing public defense representation have appropriate oversight
7. Stop the Spread of Lies and Misinformation about Public Defense



“I don’t say crisis, I call it a work stoppage.” “Because, quite frankly, there are more public defenders than there are prosecutors.”

~ Multnomah County District Attorney, Nathan Vasquez

- **That is an irrelevant and misleading metric that demonstrates a true lack of understanding of the differences between the roles and responsibilities of prosecutors and public defenders.**
 - **Resources:** Over \$50 million budget (plus \$295 million PPB budget + other law enforcement)
 - **Investigation:** Prosecutors receive case fully investigated by law enforcement (roughly 1,000 in Multnomah), while public defenders must start investigation anew when they are appointed w/ only 10 investigators for the entire office
 - **Client Representation:** Prosecutors do not have a client. 30% of a public defender’s time should be spent communicating with client. Must explain every step of the process, answer questions, visit in custody, etc.
- **Words have consequences – Affects Morale & Longevity in Public Defense**
- **Public Defenders HAVE NOT and WILL NOT *stop working* to ensure that every client we have the privilege of representing receives high-quality and effective representation**



HOW WE MOVE FORWARD...

1. Reasonable Workloads for Public Defenders
2. Reasonable Compensation for All Public Defenders
3. Support & Expand Nonprofit Public Defense Providers
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5. Be diligent about what new cases are added to the system and create new “off-ramps” for those already there
6. Ensure that all attorneys providing public defense representation have appropriate oversight
7. Stop the Spread of Lies and Misinformation about Public Defense
8. Recognize and Respect the Critical Role of Public Defenders in Our Public Safety System

Public Defenders are the check on the state’s immense power – to protect against wrongful convictions, excessive sentences, and disparate treatment.

Be wary of those who would advocate for an under-resourced public defense system, because it is in that environment that injustice reigns



QUESTIONS



PRINCIPLE 3: Control of Workloads

The workloads of Public Defense Providers should be regularly monitored and controlled to ensure effective and competent representation. Workloads should never be so large as to interfere with the rendering of quality representation or to lead to the breach of ethical obligations. Workload standards should ensure compliance with recognized practice and ethical standards and should be derived from a reliable databased methodology. Jurisdiction-specific workload standards may be employed when developed appropriately, but national workload standards should never be exceeded. If workloads become excessive, Public Defense Providers are obligated to take steps necessary to address excessive workload, which can include notifying the court or other appointing authority that the Provider is unavailable to accept additional appointments, and if necessary, seeking to withdraw from current cases.

APPLICATION OF 2023 RAND NPDWS



- ▶ 2019 Sixth Amendment Center Report, The Right to Counsel in Oregon HB 2003 (2021)
- ▶ The 2022 American Bar Association (ABA) report on caseloads entitled The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards
- ▶ The Tri-Branch Public Defense Work Group formed in 2022
- ▶ SB 337 (2023) established a new foundation for public defense in Oregon
- ▶ The ABA 10 Principles of a Public Defense Delivery System (August 2023)
- ▶ National Public Defense Workload Study, September 12, 2023, RAND Corporation, ABA et al.
- ▶ OPDC Six Year Plan to Reduce Representation Deficiency – Moss Adams Report (March 15, 2024)
- ▶ Washington State's New Standards for Indigent Defense Services (March 8, 2024)

SIGNIFICANT DEVELOPMENTS IN PUBLIC DEFENSE FROM 2019 - NOW

