

IN THE COURT OF APPEALS OF THE STATE OF OREGON

SHANNON I. WILSON, Individually
and as Executive Director of The Public
Defender of Marion County, Inc. and
STACEY K. LOWE, Individually and as
Director of Southwestern Oregon Public
Defender Services,

Plaintiffs-Appellants,
Cross-Respondents,

v.

OREGON PUBLIC DEFENSE
COMMISSION,

Defendant-Respondent,
Cross-Appellant.

Court of Appeals No. A190765

Marion County Circuit Court
No. 25CV53416

**AMICUS BRIEF OF THE DEFENDER INITIATIVE AND THE
NATIONAL ASSOCIATION FOR PUBLIC DEFENSE**

Appeal from the General Judgment entered on April 17, 2026
By the Honorable Michael C. Wetzel, Clackamas County Circuit Court Judge
as Designated *Pro Tem* Judge for Marion County

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I. Introduction

The public defenders herein have asked for substantial deference when exercising their professional judgment regarding their workload assessments and urge that compliance with the national standards as adopted by the Oregon Public Defense Commission satisfies those ethical obligations.¹

The amici will address the importance of defender workload standards to chief defenders evaluating their staff's capacity and in guiding the court as it implements deference to the defenders' determination of their ethical limits.

The trial court refused to grant the injunctive relief sought by the defenders, to declare the Commission's MAC (Maximum Attorney Caseload) requirement unenforceable and to replace it with the Oregon Standards, that is, the Commission's adoption of the National Public Defense Workload Study (NPDWS)² with a modification of the expected yearly hours devoted to case work. Except for the most serious felony cases, the MAC case requirement per lawyer is significantly higher than what the Commission had determined was appropriate using the NPDWS. The OPDC expects the lawyers to do at least 90 percent of the MAC limits. (ER 473, ER 265)

The Rand Corporation published the National Public Defense Workload

¹ Plaintiffs/Appellants' Opening Brief at 5.

² Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon, National Public Defense Workload Study, July 27, 2023, available at https://www.rand.org/pubs/research_reports/RRA2559-1.html.

Study in July 2023.³ In May 2024, “the Oregon Public Defense Commission (OPDC) adopted the National Public Defense Workload Standards (NPDWS) for Adult Criminal cases.”⁴ This Court should find that it is appropriate for defenders to use the Oregon Standards to determine their ethical caseload limits and that reviewing courts, while giving deference to the Chief Defenders’ determinations, should be guided by the Oregon Standards.

II. Standards as Guidance to Meeting Ethical Requirements

The defenders must comply with RPC 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.

Excessive caseloads undercut attorneys’ ability to comply with the RPC’s.

As the Washington Defender Association wrote decades ago:

Caseload levels are the single biggest predictor of the quality of public defense representation. Not even the most able and industrious lawyers can provide effective representation when their workloads are unmanageable. Without reasonable caseloads, even the most dedicated lawyers cannot do a consistently effective job for their clients. A warm body with a law degree, able to affix his or her name to a plea agreement, is not an acceptable substitute for the effective advocate envisioned when the Supreme Court extended the right to counsel to all persons facing incarceration....

³ National Public Defense Workload Study, available at https://www.rand.org/pubs/research_reports/RRA2559-1.html.

⁴ Oregon Six-Year Plan to Reduce Representation Deficiency, available at <https://www.oregon.gov/opdc/SiteAssets/Lists/General%20Accordions/Reports/OPDC%206%20Year%20Plan%20Reduce%20the%20Public%20Defender%20Deficit%20Report%2010.23.24.pdf>, last checked October 3, 2026.

Legal research, investigation and the timely presentation of motions become unattainable dreams to the attorney burdened with too many cases.⁵

The Oregon Project workload study emphasized the same concerns:

Overwhelming caseloads force even excellent public defenders to cut corners. 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.

(ER 371)

The Defenders in this case did not have to re-invent the wheel in determining whether they were able to provide the thoroughness and preparation necessary with the diligence and communication requirements of RPC 1.3 and RPC 1.4. Both caselaw and American Bar Association Standards support reliance on national and state standards in determining caseload and workload limits.

The United States Supreme Court relies on ABA standards:

We long have recognized that “[p]revailing 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...

⁵ Commentary, Washington Defender Association Standards (2007), available at https://defensenet.org/wp-content/uploads/2017/12/Final-2007-WDA-Standards-with-Commentary_18.12.06.pdf.

Padilla v. Kentucky, 559 U.S. 356 (2010), internal citations omitted.

The ABA has developed standards precisely on point for Chief Defenders determining their ethical caseload limit, the ABA's Eight Guidelines of Public Defense Related to Excessive Workloads. And the OPDC by contract required the chief defenders herein to follow those guidelines:

Contractor shall monitor Attorney Caseloads 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.

(ER 692)

Guideline One provides in part: "The Public Defense Provider avoids excessive lawyer workloads and the adverse impact that such workloads have on providing quality legal representation to all clients."⁶ As the commentary to the Guidelines points out, "if workloads are excessive, neither competent nor quality representation is possible."⁷ The rest of the guidelines include monitoring and supervision and training requirements and how defender managers should seek to prevent or stop excessive workloads.

Guideline One also states: "The Provider considers whether the

⁶ ABA Eight Guidelines of Public Defense Related to Excessive Workloads, available at https://www.americanbar.org/content/dam/aba/administrative/death_penalty_representation/dp-policy/2009_am_119.pdf

⁷ Id.

performance obligations of lawyers who represent indigent clients are being fulfilled,” and lists in nine bullet points tasks such as investigation, seeking pre-trial release, and preparing sufficiently for trials and sentencing.⁸

The executive director of OPDC, Kenneth Sanchagrin, admitted that defenders complying with MAC could not meet all of those required tasks.

Q. Can you identify for me which of those bullets are not being fulfilled as a result of public defenders complying with MAC?

A. Probably at different times all of them.

(ER 215)

In a decision finding ineffective assistance of counsel and reversing a juvenile’s conviction, the Washington Supreme Court emphasized the value of defender standards. The Court wrote: “While we do not adopt the WDA *Standards for Public Defense Services*, we hold they, and certainly the bar association's standards, may be considered with other evidence concerning the effective assistance of counsel.” State v. A.N.J., 168 Wn.2d 91, 110, 225 P.3d 956, 966 (2010).

Since A.N.J., the Washington Supreme Court has enacted court rules limiting defender caseloads. See, CrR 3.1 STANDARDS FOR INDIGENT DEFENSE, available at https://www.courts.wa.gov/court_rules/pdf/CrR/SUP_CrR_03_01_Standards.pdf.

⁸ Id.

The Court wrote: “...the crisis in the provision of indigent criminal defense services throughout our state requires action now to address the crisis and to support quality defense representation at every level.”⁹ The Court set caseload limits to be implemented beginning January 2026. The Court ordered that implementation of the standards “must be accomplished as soon as reasonably possible,” but allowed 10 years for full implementation. The Court set a limit of 47 felony case credits per lawyer per year.

The Court had asked the Washington State Bar Association (WSBA) Council on Public Defense to review the NPDWS and to make recommendations based on it. After extensive study, the WSBA recommended case limits informed by the NPWDS and its recommendation of annual hours devoted to case work.¹⁰

In a landmark systemic ineffectiveness case about the failed defender services in two cities, Federal Judge Robert Lasnik ordered:

Within seven days of the date of this Order, the officials charged with administering the public defense contracts in Mount Vernon and Burlington and all full—and part-time public defenders in those municipalities shall read the Washington Defender Association's 2007 Final Standards for Public Defense Services with Commentary (<http://www.defensenet.org/about-wda/standards>).

⁹ IN THE MATTER OF THE STANDARDS FOR INDIGENT DEFENSE IMPLEMENTATION OF CrR 3.1, CrRLJ 3.1, AND JuCR 9.2, Order NO. 25700-A-1644, available at

https://www.courts.wa.gov/court_rule_related_orders/orders/25700-A-1644.pdf.

¹⁰ State Bar Adopts New Public Defense Standards, March 14, 2024, at <https://www.wsba.org/news-events/media-center/media-releases/state-bar-adopts-new-public-defense-standards>

Wilbur v. City of Mount Vernon, 989 F. Supp. 2d 1122, 1134 (W.D. Wash. 2013).

The judge’s recognition of the importance of standards followed his holding that “defendants are obligated to comply with the dictates of the Sixth Amendment, and the Court will “not shrink from [its] obligation to enforce the constitutional rights of all persons.” *Id.*, citation omitted.

The trial court herein similarly should have recognized the value of standards in assessing the defenders’ determination of their ethical obligation to limit their caseloads.

III. The Standards Help Ensure Effective Assistance of Counsel

The Oregon Supreme Court this year reaffirmed that the right to counsel is a “core constitutional right that is essential for the functioning and integrity of our legal system...” State v. Roberts, 374 Or. 821, 835, 584 P.3d 1217, 1229 (2026).

The mission of the OPDC “is to ensure constitutionally competent and effective legal representation for persons eligible for a public defender.”¹¹

As the Oregon Bar Association has stated in an ethics opinion, “a lawyer’s primary obligation is to existing clients.”¹² And, “Supervisory lawyers, including

¹¹ Oregon Public Defense Commission website, at <https://www.oregon.gov/opdc/pages/default.aspx>.

¹² Formal Opinion No 2007-178 (revised 2026), Competence and Diligence: Excessive Workloads of Indigent Defense Providers, available at https://www.osbar.org/_docs/ethics/2007-178.pdf.

a firm director or manager, may violate ethical responsibilities when subordinate lawyers have excessive workloads.” The ethics opinion concludes: “When those supervisors and managers have knowledge of excessive workloads among firm lawyers, they must make reasonable efforts to remedy the problem.”¹³

The two chief defenders in this case were obligated to prevent their lawyers from having excessive workloads.

The Rand Corporation in its overview of the NPDWS emphasized the impact of excessive caseloads on clients:

Public defense attorneys with excessive caseloads cannot give appropriate time and attention to each client. Excessive caseloads violate ethics rules and inevitably cause harm. Overburdened attorneys are forced to choose cases or activities to focus on, such that many cases are resolved without appropriate diligence. A justice system burdened by triage risks unreliability, denying all people who rely on it — victims, witnesses, defendants, and their families and communities — efficient, equal, and accurate justice.¹⁴

The American Council of Chief Defenders recognized the negative impact of excessive caseloads in its Statement on Caseloads and Workloads: “Excessive public defender caseloads and workloads threaten the ability of even the most dedicated lawyers to provide effective representation to their clients.”¹⁵

¹³ Id.

¹⁴ National Public Defense Workload Study Overview at https://www.rand.org/pubs/research_reports/RRA2559-1.html.

¹⁵ American Council of Chief Defenders Statement on Caseload and Workload (2007), available on the Oregon Commission website at <https://www.oregon.gov/opdc/provider/StandardsBP/ACCDCaseloadsReport.pdf>.

The NPDWS discussed the problems when an “attorney’s desk is stacked to the ceiling with the case files of far too many active representations”:

...time spent to fully comply with the letter and spirit of ethics rules and practice standards in one case can mean that the attorney must scale back or completely skip equally important activities in another.¹⁶

Implementing rigorous caseload limits can help avoid those ethical dilemmas.

IV. The MAC Requirement Leads to Ineffective Assistance of Counsel

Expert witness Malia Brink testified that a lawyer complying with the MAC caseload standards cannot consistently provide effective assistance of counsel:

Q. Can a public defender provide reasonably effective assistance of counsel if they're complying with the MAC requirements, whatever the numbers are that you've calculated?

A. Again not for all of their clients, except at those highest case types.

(ER224)

Executive Director Sanchagrin testified that the legislature does not provide enough funding to implement the standards that he would like to meet.

Q. Sure, as I understand it from those papers but also from your declaration at the preliminary injunction hearing, essentially you said the legislature's not giving us enough money to, you know, create a workload model that's more consistent with the national standards.

That --

¹⁶ NPDWS, fn.2., at 8.

A. Correct.

Q. -- fair?

A. Yes, that's correct.

Q. That is not funding it to give us to allow you to create a workload model that would deliver the kinds of services that you would like to be able to deliver, that fair too?

A. That's correct.

(ER 256-257)

Chief Defender Wilson testified that as a result of her participation in the Delphi group in the Oregon Project workload study, she and other participants learned “that there was a clear difference between how much time we were spending with our clients, given the realities of the system, versus how much time we should be spending.” (ER 263)

She added:

... I think what was really eye-opening through that whole process is that we were all in agreement that what we should be doing to meet our ethical obligations was not happening, it couldn't, it just wasn't reality –

(ER 264-265)

The Oregon Project and the NPDWS have confronted defenders with the realization that, as Defender Wilson put it, “you just had too many clients.” (ER 265) In her case, after considerable review and after the OPDC adopted the National Study, Defender Wilson created a plan to implement the national standards. (ER 282-285.) She described the positive impacts for her lawyers and clients when the lawyers had time to do investigation, prepare motions, consult

with their clients, develop mitigation evidence. (ER 293 et.seq.) She testified that the quality of representation has improved tremendously. (ER 295) She testified that if lawyers worked the average hours in the MAC standards, they would not be able to meet their ethical obligations to their clients. (ER 298-299)

Defender Wilson explained how with an average of 5.3 hours for a misdemeanor case, as following the MAC calculation would provide, an attorney could not provide effective assistance of counsel. (ER 303.et.seq.) Clients with means would simply reject a lawyer who told them they had only five hours to work for them. But using a caseload with the MAC average hours per case is to expect low-income people to accept that level of representation.

Because people of color are over-represented in Oregon's criminal legal system,¹⁷ enforcing the MAC limits has an adverse racially disparate impact.

V. The OPDC Has Identified Ways to Implement the Standards It Endorsed

In its SIX-YEAR PLAN TO REDUCE REPRESENTATION DEFICIENCY, the Commission identified several approaches that would drastically reduce the number of attorneys needed to meet the Oregon

¹⁷ The state's population is 2 per cent Black, but the prison population is 9 per cent Black people and the jail population is ten per cent Black. See, Prison Policy Initiative, Oregon profile, at <https://www.prisonpolicy.org/profiles/OR.html>, last checked October 6, 2026. See also, "Black Oregonians Are Imprisoned at a Rate Almost Four Times That of White People", Willamette Week, May 5, 2021, at <https://www.wweek.com/news/2021/05/05/black-oregonians-are-imprisoned-at-a-rate-almost-four-times-that-of-white-people/>.

Standards.¹⁸ Decriminalizing some non-violent and victimless crimes such as driving with a suspended license would reduce the need for additional attorneys by 162 FTE.

Reducing sentences for some “Measure 11” offenses to mid-level felony levels would reduce the need for additional attorneys by 13 FTE. The report added:

Repealing the Measure 11 provisions that unnecessarily lengthen prison terms and artificially prop up the prison population, would also significantly reduce the projected prison population and result in additional considerable cost savings on incarceration.¹⁹

The report estimated that there would be \$215 million in savings from sentencing reform. It further reported that increasing the use of professional support staff could reduce the need for additional attorneys:

Based on an analysis of Oregon Project case tasks and the Delphi panel’s estimated time per task, 18.5% of total annual attorney case hours could be shifted to case-support personnel.²⁰

The proposed strategies could save \$59 million. And the report noted additional benefits:

¹⁸ OPDC Six Year Plan to Reduce Representation Deficiency, October 2024, available at <https://www.oregon.gov/opdc/SiteAssets/Lists/General%20Accordions/Reports/OPDC%206%20Year%20Plan%20Reduce%20the%20Public%20Defender%20Deficit%20Report%2010.23.24.pdf>.

¹⁹ Id., at 5.

²⁰ Id., at 6.

These aggregated strategies and the associated impact on attorney FTEs and costs do not account for other potential cost savings, including savings on appeals, post-conviction cases, wrongful litigation, and litigation over failure to properly fund and staff indigent defense.²¹

CONCLUSION

As the Oregon Supreme Court has written, the community as a whole benefits from strong public defense.

Although defendants are the immediate beneficiaries of the right to counsel, they are not the only beneficiaries. As discussed above, defense counsel help ensure that our adversarial system functions properly. In doing so, they protect the integrity of, and public confidence in, our criminal justice system.

State v. Roberts, 374 Or. 821, 843, *supra*.

This Court should hold that The Oregon Standards establish the caseload guidelines that public defenders should consider when determining whether they are satisfying their ethical obligations to their clients.

Dated: October 7, 2026

Respectfully submitted,

/s/ Jeffrey E. Ellis

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²¹ *Id.*, at 7.

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Brief length:

I certify that (1) this brief complies with the word-count limitation in ORAP 5.05(1)(b)(ii) and (2) the word-count of this brief (as described in ORAP 5.05(1)(a)) is 2915 words.

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Robert C. Boruchowitz, WSBA 4563
(*pro hac vice pending*)

CERTIFICATE OF SERVICE

I hereby certify that I filed the foregoing **AMICUS BRIEF** by causing it to be electronically filed with the Appellate Court Administrator on October 7, 2026, through the appellate e-filing system.

I further certify that on the same date, I served a true and correct copy of the same on the following individuals, who are registered eFilers, using the electronic service function of the appellate eFiling system, pursuant to ORAP 16.45:

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