



Review of the Municipal Court Indigent Defense Service Delivery Eugene, Oregon

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Table of Contents

Chapter 1: Background and Methodology.....	3
Background on Project.....	3
Methodology.....	4
Report Roadmap.....	4
Chapter 2: Eugene’s Municipal Court Structure and Operation.....	6
Eugene Municipal Court.....	6
Evolution and Maturation of Eugene Public Safety and Municipal Court Functions	7
Spotlight: Community Court	8
Chapter 3: National Models and Eugene’s Indigent Defense System: Structure, Operation, and Compensation.....	11
National Public Defense System Delivery Models	11
Eugene’s Indigent Defense System.....	12
Caseload and Compensation	13
Caseload Trends.....	13
Compensation Structure.....	14
Compensation Comparison: Oregon Public Defense System	15
Other Necessary Indigent Defense Expenditures	15
Overall Indigent Defense Budget and Expenditures.....	16
Pay Adequacy and Parity.....	16
Effect of Coronavirus Pandemic.....	17
Comparison Snapshot: Three Municipal Public Defender Offices.....	17
Interviewee Suggestions for Improvement	19
Chapter 4: Applying National Public Defense System Standards and Best Practices to Eugene.....	20
Contract System Guidance.....	20
Adherence to ABA Ten Principles	22
Principle 1.....	22
Principle 2.....	23
Principle 3.....	23
Principle 4.....	24
Principle 5.....	25
Principle 6.....	26
Principle 7.....	27

Principle 8..... 27

Principle 9..... 28

Principle 10 29

Looking Ahead to the Revised Ten Principles 29

Chapter 5: Findings and Recommendations 30

 Findings 30

 Recommendations 32

Appendix: Eugene Municipal Court Administration’s Assumptions for Calculating 2019 Public Defender Compensation Rates 35

Chapter 1: Background and Methodology

Background on Project

The Eugene, Oregon Municipal Court is a recipient of training and technical assistance from the U.S. Department of Justice, Office of Justice Programs, Bureau of Justice Assistance's (BJA) Sixth Amendment Initiative. The Eugene Municipal Court applied to BJA requesting subject matter expertise to examine its current indigent defense¹ system, focusing particularly on three areas:

- Applying best practices to ensure protection of Sixth Amendment rights within the Municipal Court's jurisdiction;
- Providing expertise to determine appropriate compensation methodology for municipal indigent defense contracts; and
- Considering the feasibility of creating a municipal public defender office.

Two factors contributed to the feeling that the time was right to take advantage of an objective look at the City's current indigent defense system.

- First, the state's public defense system was the subject of a recent, extensive evaluation that made specific recommendations for structural and policy changes, many of which are being considered by the state legislature and the state Office of Public Defense Services. However, the scope of the report did not include examination of issues at the municipal court level.²
- Second, the Eugene community safety system is undergoing enhancements using revenue from a payroll tax enacted in 2019 that phases in additions of new police officers, detectives, 911 dispatchers, and jail beds beginning in 2020. The expansion will also increase courtroom time and court administrative staff, and will add to indigent defense workloads.

After initial screening calls, the TTA team determined that the scope of their inquiry needed to be expanded to encompass a broader evaluation of the Municipal Court's indigent defense function.

Located in Washington, DC, the National Legal Aid & Defender Association (NLADA) is America's oldest and largest nonprofit association devoted to excellence in the delivery of legal services to those who cannot afford counsel. NLADA is one of several providers of technical assistance and subject matter expertise for the BJA's Sixth Amendment Initiative, and was asked to undertake the review in Eugene.

¹ Multiple terms can be used to refer to legal services for people who are accused of crimes and cannot afford a lawyer, including public defense, indigent defense, and criminal legal aid. This report will generally use the term "indigent defense" to refer to Eugene's municipal defense services, which do not rely on an institutional public defender office.

² SIXTH AMENDMENT CTR., THE RIGHT TO COUNSEL IN OREGON: EVALUATION OF TRIAL LEVEL PUBLIC DEFENSE REPRESENTATION PROVIDED THROUGH THE OFFICE OF PUBLIC DEFENSE SERVICES (2019), <https://sixthamendment.org/oregon-report>. Just as the state's Office of Public Defense Services has no administrative control over municipal indigent defense operations, Oregon's state court system (Oregon Judicial Department) has no administrative control over municipal courts.

Methodology

NLADA's assessment of Eugene's indigent defense system is guided by consideration of relevant national, state, and local standards and guidelines, and relevant national, state, and local statutory and case law.³

A core component of NLADA's review of Eugene's indigent defense system was a site visit conducted by three members of NLADA's Defender Legal Services Division occurring October 4, 7, and 8, 2019. The full methodology for NLADA's work incorporated:

- Review of indigent defense provider contracts and other materials shared by court administrators;
- Semi-structured interviews;
- Court observation;
- Collection and review of information from other municipal indigent defense systems; and
- Synthesis and analysis of observations and in written report.

Interviews were arranged by Court Administrators. In total, NLADA interviewed 12 individuals about their perceptions of the current indigent defense system and to learn any suggestions for improvement.

By professional category, interviewees included:

- Judges (3);
- Court Staff (3);
- Contract Attorneys (5); and
- City Prosecutor (1).

Court observations were conducted of:

- Eugene Community Court, held at the Eugene Public Library's downtown branch, preceded by observing the court staffing meeting;
- Arraignment at Lane County Jail via video feed in the jail's observation room;
- Eugene Municipal Court, Transport Docket (hearings for individuals jailed in the neighboring city of Springfield, Oregon);
- Arraignment at Eugene Municipal Courthouse; and
- Eugene Municipal Court, Problem Solving Docket.

Report Roadmap

The balance of this report is divided into chapters as follows. Chapter 2 discusses the Eugene Municipal Court's structure and operation. Chapter 3 focuses on the structure and operation of Eugene's indigent defense system, including compensation of indigent defense attorneys. Chapter 4 outlines relevant

³ Examples of relevant national standards include the ABA Ten Principles of a Public Defense System and NLADA's Performance Guidelines for Criminal Defense Representation. Examples of relevant U.S. Supreme Court case law include *Gideon v. Wainwright*, 372 U.S. 335 (1963); *Argersinger v. Hamlin*, 407 U.S. 25 (1972); and *Alabama v. Shelton*, 535 U.S. 654 (2002).

national standards and best practices for indigent defense systems and uses those as a lens for analyzing the current system in Eugene. Finally, Chapter 5 presents findings and recommendations.

Chapter 2: Eugene’s Municipal Court Structure and Operation

This chapter begins with an overview of municipal courts generally and Eugene’s municipal court specifically, then discusses recent changes and evolutions in the operation of the Eugene Municipal Court. The chapter closes with a spotlight on the Community Court docket.

Eugene Municipal Court

In Oregon, municipal courts, along with county and justice courts, are classified as "local" courts, operating outside of the state-funded, unified system of state circuit courts, appellate courts, and the Tax Court. These local courts are required to register with the Oregon Supreme Court as a precondition to operating. As of January 2020, the Office of the State Court Administrator’s registry shows 145 municipal courts operating in Oregon.⁴ The registry does not indicate which of these hear criminal matters.

As allowed by state law, the Eugene Municipal Court was established by City Charter to adjudicate violations of the City’s municipal laws occurring within the city limits.⁵ Those violations include misdemeanors that carry a possible sentence involving loss of liberty.⁶ In addition, the City of Eugene has adopted the Oregon State Vehicle Code by ordinance, which gives the Eugene Municipal Court jurisdiction over vehicular offenses occurring within the City. Court sanctions may include fines, time in jail, community service, road/work crew, diversion/probation, or other alternative programs, depending upon the severity of the offense and the defendant’s history with the Court.⁷

The Sixth Amendment to the U.S. Constitution guarantees the right to counsel for any person accused of a jailable criminal offense, where there is a potential for the loss of liberty.⁸ As such, any defendant facing charges for a jailable offense in the Eugene Municipal Court who cannot afford to hire his or her own attorney is entitled under federal and state law to have counsel provided at public expense.

In misdemeanor cases, law enforcement officers typically make the decision whether to make an arrest or issue a citation to an alleged offender. Law enforcement officers also decide whether to direct the case to proceed in the state circuit court or in the justice/municipal court.

⁴ See OR. JUDICIAL DEP’T, OREGON JUSTICE/MUNICIPAL COURT REGISTRY SORTED BY CITY (2020), https://www.courts.oregon.gov/courts/Documents/rpt_JP-Muni_Court_Registry_by_City.pdf.

⁵ Municipal courts in Oregon have concurrent jurisdiction with circuit and justice courts over all violations and misdemeanors committed or triable in the city in which the court is located. They do not have jurisdiction over felonies. See *Oregon Blue Book: Municipal Courts*, OR. SEC’Y OF STATE, <https://sos.oregon.gov/blue-book/Pages/state/judicial/municipal-courts.aspx>.

⁶ Typical sentences, one Eugene judge said, are for 15 days in jail, while the longest sentence seen was for 190 days in jail.

⁷ See *Municipal Court*, CITY OF EUGENE, <https://www.eugene-or.gov/117/Municipal-Court>. In addition, they may not exercise jurisdiction over any “designated drug-related misdemeanor,” which includes possession of Schedule I, Schedule II, methadone, oxycodone, heroin, methylenedioxymethamphetamine, and cocaine. OR. REV. STAT. § 423.478 (2017).

⁸ The right applies to state and local courts through the Due Process and Equal Protection Clauses of the Fourteenth Amendment and for purposes of misdemeanors is clarified in *Argersinger v. Hamlin*, 407 U.S. 25 (1972) and *Alabama v. Shelton*, 505 U.S. 654 (2002). At the state level, see section Eleven of the Oregon Constitution and *Stevenson v. Holzman*, 458 P.2d 414, 418-19 (Or. 1969).

Like most of Oregon’s municipal courts, the Eugene Municipal Court is not a court of record,⁹ so proceedings are not transcribed. Appeals proceed to Circuit Court to be heard as de novo matters, where the case proceeds anew, without a record of the proceedings from the Municipal Court.

Eugene’s municipal court judges are appointed by the City Council and, although state law does not require that they be lawyers, all current judges are lawyers. Only the Presiding Judge is a full-time City employee.

Evolution and Maturation of Eugene Public Safety and Municipal Court Functions

Eugene’s public safety infrastructure, including the Municipal Court, is undergoing substantial growth. Between 2000 and 2010, the population of Eugene climbed 11%, from 140,000 to 156,000¹⁰; and estimates for the 2019 census count forecast an increase to 172,622.¹¹ Despite this population growth, one interviewee noted, the Eugene Police Department (EPD) had until just recently remained the same size it had been in 1992. The EPD is the City’s primary public safety and law enforcement agency. The county Sheriff’s Office is also located in Eugene, along with the Lane County Transit Police and agencies attached to the University of Oregon and Lane Community College.

In 2019, the Eugene City Council enacted a new payroll tax intended to enhance public safety and justice system operations. Beginning in 2020, revenues collected will support the hiring of additional police officers, detectives, and 911 dispatchers; addition of jail beds; plus increased courtroom time and additional homeless services. The City’s new payroll tax will support growth of the EPD, with thirty to forty new officers to be hired over a three-year period. EPD officer training takes one year, so there will be a delay between hirings and the first wave of new officers serving on the streets of Eugene.

Another sign of Eugene’s maturing criminal justice system was the City’s designation of the presiding judge position as a full-time City employee (FTE), rather than a contract position. Presiding Judge Greg Gill was appointed as the first-ever full-time presiding judge in 2019. The full-time designation recognizes the increased attention required to oversee a court that has evolved to apply best practices in court administration that strive to achieve optimal public safety and court-user outcomes. Furthermore, since 2014, the City Prosecutor Office has gradually shifted from use of contract positions to FTE staff positions to fulfill its duties. In 2014 the City Prosecutor Office had just one FTE, while by 2019 it had 5.4 FTE positions. The office contracts with additional private attorneys to handle case assignments, file review and court appearances as needed.

Finally, another example of a maturing court system is Eugene’s development of differentiated case management tracks that steer cases through specialty courts and dockets equipped to ensure accountability and provide holistic solutions to unlawful conduct that is widely understood to be directly

⁹ State Court Administrator records show just six municipal courts in Oregon have officially declared themselves to be courts of record. See *Other Courts*, OR. STATE CTS., <https://www.courts.oregon.gov/courts/Pages/other-courts.aspx>.

¹⁰ See *QuickFacts: Eugene City, Oregon*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/fact/table/eugencityoregon/POP010210>; *Eugene, Oregon Population: Census 2010 and 2000 Interactive Map, Demographics, Statistics, Quick Facts*, CENSUS VIEWER, <http://censusviewer.com/city/OR/Eugene>.

¹¹ *Id.*

associated with housing, health care and opportunity needs. The different tracks are distinguished as follows.

- **Traditional Court:** Most new cases in the Municipal Court begin in the traditional court and individuals in need of holistic interventions are transferred to the specialty court or docket that can best address each particular need. Cases that are not diverted are resolved in this conventional court setting.
- **Mental Health Court:** Individuals with a diagnosis of mental illness and charged with misdemeanor offenses who are motivated to participate in a long-term program receive targeted treatment, skill building and access to services. The Mental Health Court program spans six months, and requires 36 contacts over six months: weekly group sessions, bi-weekly check-ins with the Mental Health liaison, and monthly court appearances. Supports offered to participants include cognitive behavioral treatment services, basic social skills building, and job-seeking assistance.
- **Problem-Solving Docket:** Individuals assigned to this track are charged with misdemeanor offenses and are generally diagnosed with dual mental health and substance use disorders. People with a dual diagnosis can require an enhanced level of support than offered in the Mental Health Court curriculum. The Problem-Solving Docket connects participants to more intensive treatment and intervention strategies.
- **Community Court:** The Community Court applies a service-rich approach to solving problems faced by individuals charged with misdemeanor offenses within a geographically defined area in downtown Eugene. Eligible individuals voluntarily participate in a one- to six-month rehabilitative program that incorporates social service interventions. The Community Court is described in further detail below.

Spotlight: Community Court

In 2016, with help from a federal grant, Eugene began a Community Court that was modeled in part on one started in Spokane, Washington in 2013. The Court seeks to help homeless individuals and others concentrated in downtown Eugene who are repeatedly arrested and ticketed for minor offenses to avoid fines and jail time by enrolling in a program that connects them with mental health services, housing, and supports to find employment. Eugene's Community Court is one of the few courts of its kind in the country. The NLADA team was asked to pay particular attention to the Community Court, and the team's visit was structured to enable it to observe operations of this Court.

Convening once a week (every Friday), the Community Court incorporates a service-rich model with individualized adjudication plans that strive to direct participants to resources that will help them address needs and move out of the criminal justice system toward an improved quality of life. Every participant in Community Court is represented by a contract defense attorney (from Eckart Westmann Wiese, LLC). Core to the Court's operation is a team of justice system and social service professionals dedicated to collaborating on cases to reach practical solutions. Public safety representatives, community members, and service providers work together to address underlying challenges that may lead to criminal behavior, giving the justice system meaningful options to address lower-level offenses.

Like other community courts, Eugene's is founded on evidence-based practices, problem-solving, accountability, community engagement, and alternatives to incarceration.

Who Participates in Community Court?

Participation in Community Court is voluntary. Eligible individuals may opt to pursue Community Court adjudication rather than traditional court adjudication if accused of an enumerated offense that was committed within a designated geographic area, and if they do not have any violence in their past criminal history. Community Court convenes on Fridays at the Eugene Public Library's downtown branch rather than at the Municipal Courthouse. Service providers co-locate at the library, offering low-barrier access to multiple social service providers, including specialists in behavioral and mental health treatment, substance abuse, housing, job placement, and others. Every participant is asked to complete a risk and needs assessment to help create an individualized service plan. Community members who do not have a citation or arrest are also welcome to attend the Friday court to seek services from the service providers.

Examples of eligible offenses for Community Court engagement include:

- disorderly conduct;
- interfering with public transportation;
- open container/consumption;
- prohibited noise;
- theft; and
- criminal trespass.

Depending on the risk/needs assessment results, Community Court participants enter programs that extend for four, eight, or twelve weeks, or six months. They return to court each week they are enrolled. Successful completion of the programs result in "graduation" from Community Court, and dismissal of charges.

The TTA Team was struck by the sincere efforts observed by all Community Court personnel – including the bailiff, court staff, judge, defense attorneys, prosecutor, law enforcement officers, and service providers – to treat Court participants with decency and respect. Even the physical layout of the library's "courtroom" reflected this more egalitarian and accessible approach: the unadorned room on the first floor of the library lacks the impersonality of a traditional courtroom, and the orientation of the judge and the participant sitting across a table from one another at the same height while defense counsel stands by the participant's side breaks from the typically imbalanced power dynamics in a conventional courtroom. Many Community Court participants struggle with homelessness, mental health issues, and substance use disorders, which contribute to their entanglement with the criminal justice system. The model recognizes these factors and strives to connect participants to appropriate resources.

Challenges to the model include limitations on available social service resources and infrastructure, which result in long waitlists for service providers, such as therapists and housing providers. Additionally, the reach of the Court is limited as it is a voluntary, opt-in program that serves a discrete set of offenses within a limited catchment area. The size of the catchment area – which includes just one park, excluding many areas where homeless individuals are likely to be arrested – is limited by the size

of the “courtroom” at the public library, as only so many people can fit in the room to participate in a Community Court session.

Despite these limitations, the TTA team was told that the Municipal Court is committed to sustaining and growing the Community Court capabilities.

Data about the Community Court’s activity in FY2019 shared by court administrators show:

- 29% of Eugene municipal cases were eligible for Community Court.
- The opt-in rate was approximately 38% of eligible cases.
- Out of 98 participants, 78, or 80%, successfully completed the program.

The National Center for State Courts is currently conducting an evaluation that will include information on recidivism trends for Eugene Community Court “graduates.”

Chapter 3: National Models and Eugene’s Indigent Defense System: Structure, Operation, and Compensation

With the background of the Eugene Municipal Court and local justice system laid out, this chapter continues with an in-depth look at the City’s indigent defense system. The chapter begins by describing the broader context, with a general overview of public defense delivery models used in the U.S., followed by a look at examples of how municipal court systems provide defense representation for people who cannot afford a lawyer. The discussion then delves into Eugene’s indigent defense system. The Eugene-specific discussion begins with a look at the structure of the current contract system. The focus then shifts to caseloads and compensation for attorneys, paying special attention to compensation structure and how Eugene’s compensation system compares to the rest of Oregon. The chapter concludes with a look at the system of budgeting for indigent defense in Eugene.

National Public Defense System Delivery Models

Broadly speaking, the U.S. relies on three primary delivery systems to provide constitutionally required legal services to individuals who cannot afford defense counsel at the state and local levels: a public defender office, private attorneys who undertake appointments on a case by case basis, and the contract model. Variations of these models exist but general characteristics are described in Table 1.

**Table 1:
Public Defense Delivery Models**

Public Defender:	All attorneys work in one office under the direction of a chief public defender.
Court-Appointed:	Individual attorneys are appointed by the court and compensated on a per-case basis.
Contract System:	Attorneys, law firms, or non-profit organizations enter into contracts with the governing body to provide defense services to people who cannot afford counsel.

Many jurisdictions use two or all three of these models. For instance, they might use a public defender office to handle the majority of cases, and assign overflow and conflict of interest cases to assigned or contract counsel. There are multiple types of contracting arrangements, including fixed-fee contracts to handle all cases in a given jurisdiction in a given year, contracts establishing flat fees paid for handling particular case types, and contracts applying an hourly flat fee paid for all work performed up to a particular dollar amount.¹²

¹² U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE ASSISTANCE, CONTRACTING FOR INDIGENT DEFENSE SERVICES: A SPECIAL REPORT 4 (2000), NCJ 181160, <https://www.ncjrs.gov/pdffiles1/bja/181160.pdf> [hereinafter CONTRACTING FOR INDIGENT DEFENSE SERVICES].

National information on public defense systems used across the country is available from the Bureau of Justice Statistics.¹³ However, this information in large part overlooks misdemeanor case delivery systems in general, and municipal court operations in particular, focusing instead on systems that handle felony and juvenile delinquency cases. Reliable information about public defense systems operating at the municipal level is scant. What is known from review of available information is that about 43 states currently operate some form of a municipal court that processes city ordinance violations and, in some jurisdictions, misdemeanors as well. Not all of entities are called “municipal courts,” but where there is a local court structure, municipalities provide representation for indigent defendants primarily through individual case court appointments, contract systems, or a combination of both. Municipal court public defender offices are rare. And unfortunately, some municipal court systems do not provide counsel as required at all.

Eugene’s Indigent Defense System

Currently, the City of Eugene contracts with two law firms to provide indigent defense legal services to eligible individuals facing criminal charges in Municipal Court. For an extended period until 2014, there was just one law firm, Rosta & Connelly, P.C. (RC), contracted to provide indigent defense legal services in Municipal Court.¹⁴ In 2014, a second law firm, Eckart Wostmann Wiese, LLC (EWW), was added to divide up the workload across the different dockets.

The City issues a Request for Proposals (RFP) for the contract work every five years. It annually reviews and, if needed, re-negotiates aspects of the existing contracts during the five-year terms.

**Table 2:
Eugene Municipal Court Public Defense Providers**

Firm	Case/Docket Coverage
Rosta & Connelly	<ul style="list-style-type: none"> • Traditional • Problem Solving Docket • Mental Health Court • .370 Program†
Eckart Wostmann Wiese	<ul style="list-style-type: none"> • Traditional • Community Court • .370 Program

† Under Oregon statute, if a person is unable to participate in their trial due to mental illness, the court may issue an order, known as a .370 Order or an Aid and Assist Order, to have the individual receive mental health treatment (often at the Oregon State Hospital) until he or she can “aid and assist” in his or her own defense.¹⁵

Contracts are negotiated and administered by the Court Administrator. In cases that present a conflict of interest to both law firms, the Municipal Court appoints one of two attorneys who also work under

¹³ For relevant past studies, see *Indigent Defense Systems*, U.S. DEP’T OF JUSTICE, OFFICE OF JUSTICE PROGRAMS, BUREAU OF JUSTICE STATISTICS, <https://www.bjs.gov/index.cfm?ty=tp&tid=28>.

¹⁴ Rosta & Connelly assumed duties under the contract from another firm. RC was the only firm providing public defense services at the time Eckart Wostmann & Wiese was added to the contract.

¹⁵ OR. REV. STAT. § 161.370; see also *Aid and Assist Orders*, OR. HEALTH AUTHORITY, <https://www.oregon.gov/oha/OSH/LEGAL/Pages/Aid-Assist-Orders.aspx>.

contract. The two firms carry out their contract responsibilities through a combination of firm partners and attorneys hired or contracted by the firms. The two firms have primary responsibility for different dockets, as shown in Table 2.

Caseload and Compensation

Caseload data and compensation details for Eugene’s indigent defense systems follow.

Caseload Trends

Since FY2015, indigent defense contractors have handled between 74-81% of all misdemeanor filings in Eugene Municipal Court, as displayed in Table 3 below.

**Table 3:
Eugene Municipal Court Case Filings and Appointment of Counsel, FY2015-FY2019**

	FY2015	FY2016	FY2017	FY2018	FY2019
Misdemeanor Filings	3,728	3,654	3,989	4,251	3,731
Court Appointed Cases (CAC)	2,857	2,699	2,983	3,408	3,016
% CAC Case Filings	77%	74%	75%	80%	81%

As mentioned in Chapter 2, Eugene’s new payroll tax will support growth of the Eugene Police Department, including the hiring of thirty to forty new officers over three years. The addition of police officers will result in increased arrests, additional Municipal Court cases, and an increased demand for indigent defense services. While misdemeanor filings are expected to increase, concrete projections are not yet complete.

The indigent defense contracts in Eugene include two general provisions regarding individual attorney workload. Per the June 2019 amendment to the contracts, Section 2.4 states:

An attorney will not exceed the maximum misdemeanor caseloads defined in the Oregon State Bar (OSB) Performance Standard 5: Maximum Caseload Standards for Defense Counsel.

Similarly, Section 3.4 of the June 2019 amendment caps caseloads according to OSB Performance Standard 5: Maximum Caseload Standards for Defense Counsel. This standard places a maximum of 400 misdemeanors per attorney per year, including misdemeanor traffic cases.¹⁶

The standard was formulated around the delivery model used by the Metropolitan Public Defender (MPD) in Multnomah County (Portland). The MPD has full-time public defender staff and a “high level of staff support and clerical support,” which “are not available in other settings

¹⁶ OR. STATE BAR PERFORMANCE STANDARD 5, MAXIMUM CASELOAD STANDARDS FOR DEFENSE COUNSEL (2014), https://www.osbar.org/_docs/resources/juveniletaskforce/JTFR5.pdf.

and substantially increase the ability of counsel to handle cases.”¹⁷ Accordingly, the OSB Performance Standards specifically warn that “adjustments to factor in the lack of available resources are necessary in determining maximum caseloads in other settings.”¹⁸ The Eugene, Oregon indigent defense contract system is one of these “other settings.” Use of some level of support staff (a legal assistant) is specified in EWW’s contract for its Community Court work, but use of additional support staff required by the RC and EWW firms is not articulated, thus left to the firms to structure using their flat–fee-per-case payment structure (see broader discussion in following “Compensation Structure” section). Additionally, MPD attorneys do not take on additional cases outside of the scope of public defense, unlike the indigent defense contract attorneys for the Eugene Municipal Court, who mentioned in on-site interviews that they have some additional retained clients. The net result of the two contract sections is a lack of clarity as to whether the standard is inclusive of retained and appointed cases, and a lack of strict applicability to the particular delivery model used in Eugene Municipal Court.

Compensation Structure

Most work performed by contract indigent defense attorneys in Eugene is paid by the case, using flat, per-case rates that vary somewhat by case type. The one exception is Community Court, for which all work performed is compensated under a flat, annual rate. The per-case rates are built to reflect an average amount of time for like cases, paid at what the City determines is a reasonable hourly rate.

In 2019, at the time of the annual contract review, the two contract firms collectively pushed for increased compensation. Court administrators responded by engaging in a process to determine adequate updated rates. The analysis included researching compensation paid to indigent defense counsel for misdemeanors in other Oregon courts¹⁹ and reviewing the accuracy of estimates used about the average case time devoted to various case types by the Eugene contract attorneys. The result was increases in the per-case rates for three case categories (Traditional Court, Mental Health Court, and withdrawals²⁰), plus an increase for the annual Community Court contract. There was no change made to the \$65 per hour base rate, which is based on pay for Eugene’s City Prosecutor’s staff.

As of July 2019, contractors are paid a flat fee, per case that varies depending on the case type:

- Traditional Court (“non-specialty court”) case: \$290, up from \$180 (average time 4.4 hours per case)
- DUI Diversion: \$290, up from \$225 (average time 4.4 hours per case)
- Mental Health Court Case: \$290, up from \$225 (average time 4.4 hours per case)
- Problem Solving Docket Case: \$325 (no change) (average time 5 hours per case)
- Withdrawal: \$145, up from \$90 (average time 2.2 hours per case)
- Community Court, all services: flat rate of \$118,320, up from \$90,000

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ Eugene court administrators contacted municipal courts in Salem, Springfield, Cottage Grove and Beaverton, as well as the Lane County Public Defender’s Office, six Circuit Courts that have Mental Health Courts, and the state Office of Public Defense Services.

²⁰ The case withdrawal rate applies to all case types. Withdrawals are initiated for various reasons, including irreversible attorney-client conflict, or a late-appearing conflict of interest.

Additional details about the assumptions that went into developing the updated 2019 fee structure appear in the Appendix.

Compensation Comparison: Oregon Public Defense System

As part of the changes sparked by the 2019 assessment of the state’s public defense system, the Oregon Office of Public Defense Services (OPDS) adjusted the base rates of compensation it pays contract attorneys working in the state court system. To develop the new rates, OPDS considered practices of other systems regarded as delivering high quality defense services, including the Massachusetts Committee for Public Counsel Services and the federal Criminal Justice Act panel attorneys, and also solicited input from contract attorneys. The result of the review was an increase in the presumptive hourly rate of pay for public defense attorneys from \$55 to \$75 for misdemeanor cases. OPDS intended to use a higher figure, \$90 per hour for misdemeanors, but scaled that back when COVID-19 related budget shortfalls made that appear impossible for the short term.²¹

Other Necessary Indigent Defense Expenditures

Expenses tied to the administration of the indigent defense system in Eugene extend beyond the attorney contracts. Expenses for investigators or experts engaged by contract attorneys are approved by and billed to the Court, separate from the indigent defense contracts. These expenses are classified as “extraordinary and non-routine case expenses” within the provisions outlined in the defense contracts. Investigators may work and bill for up to four hours at the request of contract defenders without Court approval. Any investigator time conducted in excess of four hours per case must be preapproved upon order by a judge. Amendment number 4, section 2.7 of the current indigent defense contracts indicates that investigators will be paid a maximum of \$120.00 per case (\$30 per hour), unless the judge preauthorizes additional sums. A complete itemization of investigator expenses in aggregate or by individual contract is not available due to current methods of budget expenditure tracking by the Court.

Court staff reported they had “never seen” a request for use of a social worker by a contract attorney, but a request for a mental health evaluation is “pretty typical.” Contact attorneys said they do not need social workers, and find no problems with access to investigators or experts. (Although somewhat confusingly, when asked for changes to the current system they favored, one attorney said that “an in-house social worker would be great.”) Investigators typically charge right up to four hours, it was suggested, likely to minimize administrative time spent billing for overage time.

Section 4.3.3.1 in Amendment 4 of the current contracts provides that contract attorneys can also petition the Court to cover expenses for expert witnesses, psychiatric exams, and transcription. However, an itemization of these expenses is not available due to current budgetary tracking measures. The contract attorneys noted that there is no provision in the contract to cover the cost of serving subpoenas.

²¹ Interviews with Lane Borg, Exec. Dir., Or. Office of Pub. Defense Servs. (Jan. 13, 2020 and June 29, 2020). The Oregon Public Defender Services Commission (PDSC) voted in approval of the \$75 per hour rate on June 11, 2020 and the rate went into effect July 1, 2020. See Meeting Transcript of PDSC meeting held on June 11, 2020, in June 25 PDSC Meeting Materials, p. 27, <https://www.oregon.gov/opds/commission/Lists/Meetings%20Schedule/Attachments/155/PDSC%20Agenda%20&%20Meeting%20Materials%2006%2025%202020.pdf>.

Overall Indigent Defense Budget and Expenditures

Eugene's total budget for indigent defense in FY2019 was seeded at \$573,740, not including necessary expenses (*discussed above*) that are billed directly to the Court. However, court administration reported expecting to pay \$1 million for indigent defense for fiscal year 2019, which is approximately 74 percent over budget. One administrator said of indigent defense cost, "It goes over [what is budgeted] every year." When asked what services in particular go over budget, court administrators explained it is difficult to pinpoint with the Court's current accounting practices, which group together expenditures such as psychological evaluations, interpreters, and investigators, rather than tracking them in separate line items. The baseline budget for these services has reportedly not increased in concert with caseload and contract increases.

Pay Adequacy and Parity

At the time of NLADA's October visit, contract attorneys felt that it was too soon to know for sure if the new rates were adequate. In a June 2020 follow up conversation with one contract attorney, it was mentioned the new \$290 case rates came to feel "fairly comfortable," but that \$300 rather than \$290 per case would be more appropriate. Attorneys noted there is not exactly pay parity with City Prosecutor staff because, unlike indigent defense contractors, City Prosecutor staff receive benefits and do not have to carry malpractice insurance, which runs \$3,600 per attorney annually. Nor are contract attorneys eligible for student loan forgiveness, unlike City Prosecutors. One contract attorney noted their firm's pay must cover student loans, insurance, support staff pay, and pay for partners. The firm also pays health insurance for staff but not partners.

Attorneys with one firm noted they preferred per-case compensation over hourly billing for ease of contract administration. For instance, it is difficult to track and bill secretarial time across various cases. Also, it was felt that a flat fee simplifies breaking down time by case. For instance, when appearing in court for ten separate clients, it is not necessary to bill each one for "five or ten minutes here and there" when using a flat fee per case.

However, the flat rate model is criticized for not adequately compensating certain types of work, and sometimes acting as a disincentive to putting in adequate effort for clients.²² The most obvious example is trial cases. One contract attorney reported that a recent open weapon carry case that went to trial involved a motion to suppress, six court appearances, and the trial. The case, which ended in acquittal, was still paid according to the flat fee. The attorney said, "Maybe I made \$5 an hour." Other worrisome areas include court administration complaints that some attorneys do not adequately consult with clients prior to court appearances, and comments from judges that attorneys resist requests to put motions in writing.

Court administration reported that while the RFP process is conducted every five years, there has been minimal to no competition over it in prior years. Since the Oregon state system has increased misdemeanor hourly pay to \$75, Eugene's lower rate of \$65 may make it even more difficult to attract contract attorney bids without an additional increase.

²² See CONTRACTING FOR INDIGENT DEFENSE SERVICES, *supra* note 12.

Effect of Coronavirus Pandemic

In 2020, the unanticipated Coronavirus (COVID-19) pandemic produced stress on indigent defense contract attorneys that was exacerbated by the system's flat-fee-per-disposition compensation model. Like courts across the country, the Eugene Municipal Court ceased all but emergency functions in mid-March 2020. Limited operations resumed in mid-June, but for several months, court processing largely paused. Further, police issued far fewer citations during the quarantine period.

With exception of the flat annual fees paid for Community Court and Mental Health work, indigent defense contract attorneys are compensated on a per case basis paid after a case is disposed. The contracted firms built their law practices on predictions from historic case flow trends of monthly appointments, closings, and, therefore revenue. When case processing slowed to a trickle in March 2020, dispositions and, therefore, contractor pay, dropped unexpectedly. The Eugene Municipal Court contract for Indigent Defense Services offers contractors the option of being compensated using estimated monthly payments rather than by per case dispositions. Under that option, any difference between the estimated payment they request and actual performance must be reconciled quarterly. As effects of COVID on case processing became more apparent, both contract firms opted to switch to receiving estimated monthly payments. The Court remained closed until June 17, 2020. During the shutdown period, attorneys had the option to contact the Court to schedule virtual hearings. One firm was able to dispose of some cases using the option of virtual court conferencing. The other firm reported difficulty with client access to the needed technology and thus was unable to move cases toward disposition. The end result was that the firms "owed" dispositions that for one of the firms were impossible to deliver, or reconcile, by the June 30 end date of the contract period.

Comparison Snapshot: Three Municipal Public Defender Offices

In evaluating a given indigent defense system and considering a shift from one service delivery model to a different one, it can help to compare the system in question with other jurisdictions. NLADA was able to obtain comparison information from three public defender programs that operate strictly on the municipal court level, shown in Table 4.

NLADA unsuccessfully attempted to collect comparison information from jurisdictions listed on municipal websites as having public defender systems in Nevada, New Jersey, and Washington State. NLADA also attempted to collect indigent defense system information from several municipalities with populations of similar size to Eugene, but none returned requests for information.²³ Other municipal indigent defense systems worth reviewing include Spokane, WA, which has a municipal public defender office but did not respond to requests for comparison information, and Phoenix, Arizona, which operates what appears to be a well-resourced contract defender system for its municipal court.

²³ These offices are located in Overland Park, Kansas; Tempe, Arizona; Vancouver, Washington; Salem, Oregon; and Springfield, Missouri.

**Table 4:
Three Municipal Public Defender Profiles, FY 2019**

	Atlanta	Aurora	Denver
Case types handled <i>in addition to</i> jailable misdemeanors	Traffic; quasi-civil city ordinances	No others	No others
Caseload (trial level)	28,000	N/A (3,000 pending)	10,000
Budget	\$3,898,180	\$1,500,000	\$2,500,000
Staff	24 Attorneys 8 Investigators 2 Social workers 5 Support staff	10 Attorneys 1 Paralegal 1 Investigator 3.5 Support staff	11.5 Attorneys 2 Paralegals 4 Support staff**
Attorney Pay Parity?	Yes	No	No (city council revisits in March 2020)
Conflict of interest cases (system/pay)	Assigned counsel paid flat per-case fees: \$200	Assigned counsel paid flat per-case fees: \$250 pre-trial; \$600 jury seated	Flat fee annual contract
Independent oversight Commission?	No	Yes	Yes
PD Hiring Authority	Mayor	PD Commission	PD Commission
Caseload Standards?	No***	No	No
Other Standards?	Generally accepted standards and practices associated with operating a client-centered, holistic practice	No	No

* *The Denver office reportedly touches approximately 10,000 cases annually, including people arrested on warrants.*

** *Includes three full-time and two part-time support staff.*

*** *Atlanta relies on ABA caseload standards in advocating for additional staff attorneys, but the caseload per attorney exceeds these standards.*

Interviewee Suggestions for Improvement

To close out this chapter, the TTA Team felt it worth mentioning some thoughtful suggestions from interviewees about desired improvements for Eugene's indigent defense system. They speak to the Team's overall perception of a justice system whose various stakeholders are committed to improving responsiveness to those involved in the criminal justice system.

- It was mentioned that court administrators sought input from the City Prosecutor and the Presiding Judge when developing the most recent indigent defense contracts. The City Prosecutor suggested specifying there should be no double-booking of court appearances for contract attorneys, e.g., no booking of temporary supervised releases at the same time as Springfield jail transfers.
- A judge said that it would be great to see the Court add peer support specialists to help clients with persistent mental illness. With a background in bachelor's degree level psychology, these individuals could offer practical support attorneys can't undertake, such as driving clients to treatment, but that contribute to client success with court-ordered programming.
- One judge suggested expanded use of supervised release to keep people out of detention and avoid FTAs, noting that participating in road crew is preferable to pre-trial detention.
- Two judges said it would be nice to see mentoring of less experienced contract attorneys.
- One court staff member wished that contract attorneys would always meet with clients ahead of court sessions to streamline court processing and, in general, have improved communication with clients.
- One contract attorney suggested that resources be provided for an "on-board" social worker and/or investigator, and echoed the suggestion to add a peer support person to drive clients to appointments and service providers.
- One judge said that it would be healthy to see more litigation and advocacy on behalf of clients from some defense providers, noting that "Even with a joint recommendation for a sentence or negotiated disposition, your client needs to see advocacy on [their] behalf."

Chapter 4: Applying National Public Defense System Standards and Best Practices to Eugene

Building on the description of the Eugene Municipal Court and the City’s system for indigent defense delivery, this chapter proceeds with analysis of the system, guided by national standards and best practices.

Contract System Guidance

A Special Report issued by the U.S. Department of Justice, Bureau of Justice Assistance, *Contracting for Indigent Defense Services*, contains information on best practices and national standards. It notes that with proper safeguards in place, contract systems can deliver quality representation for clients. The special report was prepared in large measure to respond to a proliferation of problematic contract systems that emerged in the 1990s. Some contract programs were created largely as a means to contain costs as criminal caseloads steadily increased. Such programs paid little heed to the quality of services delivered. Use of competitively bid fixed fee contracts, where contracted attorneys were expected to provide all services for an uncapped number of case appointments for one set time period, was perhaps the most problematic model. Programs using unrealistically low flat fees per case were also problematic. Both models can incentivize corner-cutting practices.

The Special Report provides general observations from subject matter experts about the question of costs of operating a contract system. Contract systems that provide proper safeguards for ensuring quality representation were observed to “cost more per case than do public defender or assigned counsel programs.”²⁴

Contracting for Indigent Defense Services sets out characteristics of effective and ineffective contract systems, and discusses relevant national standards from the American Bar Association (*Standards for Criminal Justice: Providing Defense Services*, Third Edition, Chapter 5, 1992), and the National Legal Aid & Defender Association (*Guidelines for Negotiating and Awarding Indigent Defense Contracts*, 1984). Table 5 summarizes the characteristics mentioned in the Special Report.²⁵

The scope of provisions included in Eugene’s current indigent defense contracts address:

- the services to be provided,
- the caseload (cap) commitment,
- requirements for suitable electronic case management systems,
- some provisions that control for quality services, like timely meetings with clients and preparation prior to court, and
- compensation provisions.

Table 6 illustrates how Eugene’s indigent defense contract system conforms only in part with the characteristics identified in the Special Report as representative of effective contract systems.

²⁴ CONTRACTING FOR INDIGENT DEFENSE SERVICES, *supra* note 12, at 17.

²⁵ *Id.* at 13-14.

**Table 5:
Characteristics of Effective and Deficient Contract Systems**

Effective Characteristics	Deficient Characteristics
Minimum attorney qualifications	Cost containment is prioritized over quality
Training provisions	Contract incentivizes speed over quality
Independent oversight and monitoring	No lawyer qualifications
Workload caps	Limited training and supervision
Caseload caps	Unrealistic caseload limits or no limits at all
Limits on private practice	Low bids rewarded
Provisions for completing open cases after contract ends	Incentive to withdraw from cases
Case management and tracking systems	No provision for support staff or investigative and expert services

**Table 6:
Characteristics of Eugene’s Contract System**

Effective Characteristics	Does Eugene’s System Conform?
Minimum attorney qualifications	Yes
Training provisions	No*
Independent oversight and monitoring	No
Workload caps	No
Caseload caps	Yes**
Limits on private practice	Unclear***
Provisions for completing open cases after contract ends	Yes
Case management and tracking systems	Yes
Mechanism for oversight and evaluation	Yes, marginally****
Costs for paralegals, investigators, social workers	Yes
Appointment and performance guidelines	Yes for appointment guidelines; No for performance guidelines

* The current contract includes one mention of training, in Section 4.1 for Community Court.

** Section 3.4 of the current contract adopts the Oregon State Bar (OSB) Performance Standard 5: **Maximum Caseload Standards for Defense Counsel**, which states that attorneys at a **full-time public defender office with a high level of staff support and clerical support** should take no more than 400 misdemeanor cases per year. (Emphasis added.) The contract includes no mechanism to monitor or enforce that maximum.

*** The current contract contains two sections on total expected caseload. Section 2.4, sets out an annual cap of 400 cases per attorney, including appointed and retained cases. Section 3.4 follows the OSB Performance Standard 5 mentioned above and is silent as to whether the Municipal Court interprets the OSB’s maximum of 400 misdemeanors per attorney per year as inclusive of private retained cases.

**** Court staff track complaints received by clients and notes observed contractor performance lapses, such as appearing late to court hearings. The Court also surveys court staff yearly to identify performance deficiencies.

Notably, a contract system requires investment to be effective. As *Contracting for Indigent Defense Services* states:

Typically, good contract systems cost more per case than do public defender or assigned counsel programs. In part, this results from the costs of administering the contracts, from the costs of overseeing and evaluating multiple providers, and from the costs of additional work necessitated when contractors lack the institutional knowledge that accumulates with a staff-based organization.²⁶

Contracting for Indigent Defense Services was published two years prior to release of what is perhaps the most accessible indigent defense system guidance, the ABA's *Ten Principles of a Public Defense Delivery System*.²⁷ That publication pulled together key considerations from standards promulgated by the ABA, NLADA, and other sources. Since its release, that resource has set the guideposts for many well-regarded assessments of indigent defense services, and served as an aid when jurisdictions seek to improve their systems, regardless of the service delivery model used. The resource is currently undergoing an update, with an expected release in 2021. The next section examines Eugene's indigent defense system in context of the *Ten Principles*, which contain important system factors not fully addressed in *Contracting for Indigent Defense Services*.

Adherence to ABA Ten Principles

The *Ten Principles* contain guidance to help jurisdictions operate a public defense delivery system that incorporates best practices. In applying the Ten Principles to Eugene's current indigent defense system, it is possible to identify areas for which there is room for improvement. Some principles are not fully adhered to, and some principles are not adhered to at all. The following analysis points to the strength and weaknesses of the current system when the *Ten Principles* are applied, and includes guidance for further evaluation and implementation of improvements.

Principle 1

The public defense function, including the selection, funding, and payment of defense counsel, is independent.²⁸

Eugene's indigent defense system does not adhere to this foundational principle. Independence of the defense function protects against inappropriate political influence or judicial supervision. An independent board or commission that provides oversight of the system is the recommended mechanism to fulfill this principle. "To safe-guard independence and to promote efficiency and quality of services, a nonpartisan board should oversee defender, assigned counsel, or contract systems."²⁹ At the state level in Oregon, the Public Defense Services Commission (PDSC) serves this function, overseeing work that is carried out by the Office of Public Defense Services (OPDS). It is important to note that NLADA did not detect undue political or judicial interference with the current indigent defense

²⁶ *Id.* at 17. Additional discussion of this report is located earlier in Chapter 4, in Contract System Guidance.

²⁷ See AM. BAR ASS'N, TEN PRINCIPLES OF A PUBLIC DEFENSE DELIVERY SYSTEM (2002), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_ten_principlesbooklet.authcheckdam.pdf [hereinafter ABA TEN PRINCIPLES].

²⁸ *Id.* at 2.

²⁹ *Id.*

system in Eugene. One contract attorney said, “We’re never interfered with.” However, structurally, the opportunity exists for inappropriate interference if there were to be a changeover in key leadership roles of the court, city council, or mayor. An independent board acts as a bulwark to undue influence and as an advocate for delivery of efficient and quality public defense services.

Principle 2

Where the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.³⁰

Eugene’s indigent defense system does not fully adhere to this principle. Since FY2015, Eugene’s annual indigent defense caseload has ranged from 2,700 to 3,400 appointments (see Table 3, above). There is no national guidance that defines when a caseload is “sufficiently high” to warrant introduction of a staffed public defender office or other type of delivery system. A review of existing municipal defender offices is not fully dispositive, as few exist. However, the contracts for the Eugene defense firms stipulate that attorneys are not to exceed an annual caseload of 400 misdemeanor cases. Simply applying the reported annual caseload of 3,400, and assuming that attorneys work full-time on Municipal Court work only, would require 8.5 full-time public defender attorneys.

If Eugene instituted a municipal public defender’s office following best practices, 8.5 full-time attorneys would not be sufficient. The office would need a chief defender who carries a reduced caseload to permit time to perform internal and external administrative functions. And with a public defender office, some portion of cases would always have to be handled by counsel outside the office because of conflicts of interest, much as the current contract attorneys sub-contract cases to outside attorneys: EWW works with one to two subcontract attorneys, and RC works with four to five. If a public defender office in Eugene was structured in accordance with national standards, the system for handling conflict and overflow cases would be the portion of the system that constitutes the “active participation” of the private bar.

Principle 3

Clients are screened for eligibility and defense counsel is assigned and notified of appointment as soon as feasible after arrest, detention or request of counsel.³¹

NLADA’s assessment did not fully examine this area, but from what the TTA team did observe, Eugene’s public defense system appears to adhere to this principle. The Eugene Municipal Court screens people for appointed counsel eligibility at their first appearance in court. There is also an advisement of rights video available on the Court’s website and shown in court that explains that if you cannot afford to pay for counsel that you are entitled to the appointment of counsel.³² Eligibility is determined in line with

³⁰ *Id.*

³¹ *Id.*

³² It should be noted that the Ninth Circuit has found that when courts advise accused individuals of their rights en masse, the court needs to question each person individually to make sure they understand their rights. *United States v. Arqueta-Ramos*, 730 F.3d 1133, 1135 (9th Cir. 2013) (citing *United States v. Escamilla-Rojas*, 640 F.3d 1055, 1060 (9th Cir. 2011)); see also Robert C. Boruchowitz, *Judges Need to Exercise Their Responsibility to Require That Eligible Defendants Have Lawyers*, 46 HOFSTRA L. REV. 35, 57-58 (2017), <https://www.hofstralawreview.org/wp->

eligibility criteria used for food stamps and public assistance programs. Individuals who are on the threshold of eligibility are advised by the Court that they may have to pay some or all fees for representation after their case, but the Court reportedly does not usually impose attorney fees.

The indigent defense contract attorneys in Eugene are required to staff all dockets scheduled by the Municipal Court. This practice ensures that counsel is available for appointments in the courtroom. Still, opportunities may exist in Eugene for optimizing the efficiency of court proceedings by evaluating the in-court appointment process and opportunities to provide access to counsel before the first court appearance.³³

Principle 4

Defense counsel is provided sufficient time and a confidential space within which to meet with the client.³⁴

Eugene's indigent defense system seems to adhere in large part to this principle, with some room for improvement. Attorneys should spend enough time with their clients to ensure a "full exchange of legal, procedural, and factual information."³⁵ The sufficiency of time provided to consult prior to the initial appearance in court is largely dependent on the process of appointing cases, and the unique characteristics of each case and client. Once a client is appointed, their physical and mental health, and cognitive capabilities to recall details and understand what the attorney is explaining are among some of the factors that influence the amount of time needed with each client. However, it is widely agreed among defense practitioners that the pressure to be "ready" for cases being called by the court functions as a barrier to sufficiently meeting with the client while the court is waiting.

The anticipated increase in the police force in Eugene will likely result in additional cases in the Municipal Court, and the pressure to avoid delays and backlog of dockets may reduce the amount of time available for in-court consultations. One contract attorney said there is not enough time to fully speak to clients who are appearing on the jail docket and, additionally, that conflicts with other responsibilities sometimes functioned as barriers to pre-court consultations.

The time available for attorneys to consult with clients *after* the first appearance in court is dependent on the caseload and workload of each attorney and the time needed between court dates to accomplish

content/uploads/2018/02/BB.4.Boruchowitz.pdf (discussing the *Arqueta-Ramos* case and steps that judges need to take to ensure valid waivers of counsel).

³³ Two examples of early appointment in misdemeanor cases are found in Atlanta, GA and Contra Costa County, CA; one for pre-trial detainees and one for individuals cited and released. By way of order of the chief judge in the Atlanta Municipal Court, all people who are detained are presumed eligible for the appointment of counsel prior to first appearance. This allows public defenders to connect with clients before their first appearance for a confidential interview, and to expedite the need for investigation and access to documents that may inform the court about release decisions. In Contra Costa County, CA, police officers hand out a card containing public defender contact information to people when issuing misdemeanor citations. Also, police share with the public defender office lists of all individuals for whom they process requests for prosecution, allowing public defender staff to conduct outreach to them well in advance of their initial court appearance and official appointment of counsel.

³⁴ ABA TEN PRINCIPLES, *supra* note 27, at 2.

³⁵ *Id.*

work. The experience of NLADA working with other jurisdictions indicates that commitments to provide zealous representation, fee structures, and training also factor into whether the attorneys engage in sufficient client consultation.

Principle 4 also calls for confidential meeting space for attorneys and their clients. This principle applies at the jail, courthouse and other places that meetings occur. All meeting spaces should provide privacy, including physical and audible privacy. The NLADA team was not able to assess the integrity of all spaces provided for consultations due to time and resource limitations. Concerns regarding privacy and confidentiality may be factors to further evaluate, including provisions at the Community Court. The Community Court is held in the public library and contract attorneys use a kitchen area off the main “court” area to speak privately with clients.

Principle 5

Defense counsel’s workload is controlled to permit the rendering of quality representation.³⁶

Eugene’s indigent defense system adheres in part to this principle. Attorneys are ethically required to decline case appointments when their workload interferes with their ability to provide quality representation. As mentioned above, the contracts for indigent defense work set a maximum of 400 misdemeanor cases per attorney per year. The TTA team was told that the caseload cap is not strictly enforced. And, when asked during interviews whether they felt overburdened by their caseloads, contract attorneys responded they did not feel burdened by their caseloads. This is perhaps due to their ability to rely on outside attorneys to handle delegated appointments. The total caseload reported in 2018 was 3,408. That number, divided by the five attorneys managing the two contracts, averages out to 618 per attorney. The actual number of cases handled by the five partners, instead of those five plus the attorneys whom they engage to handle overflow cases, was not available. Nor does the TTA team know how many retained cases the firms handled, or how many of the 3,408 cases were assigned to conflict attorneys.

The 400 cases caseload cap does not control for the *workload* that is created based on the individual time and resource needs for each case. The concept of workload (i.e., caseload adjusted by factors such as case complexity, support services, and an attorney’s nonrepresentational duties) is regarded as a more accurate measurement.

The few municipal courts that have public defender offices are likewise challenged with controlling workloads, but other guidance exists. Nationally recognized caseload studies for public defender offices recently completed by the American Bar Association Standing Committee on Legal Aid and Indigent Defendants recommend annual caseload standards that are far lower than 400 annual misdemeanor cases, expressed in per-case time estimates rather than an annual number.³⁷ The Phoenix, Arizona full-

³⁶ *Id.*

³⁷ The study for the Rhode Island Public Defender sets a caseload standard of 12.7 hours per misdemeanor compared to Eugene’s estimate of 4.4 hours. See AM. BAR ASS’N & NAT’L ASS’N OF CRIM. DEFENSE LAWYERS, THE RHODE ISLAND PROJECT: A STUDY OF THE RHODE ISLAND PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/lis_sclaid_def_ri_

time caseload limit for municipal court contract attorneys is 270 cases per year. And a recent caseload standards study in New York established a maximum number of new misdemeanor case assignments at 300 per year, and a minimum of 6.6 hours per case.³⁸ Regardless of the type of public defense delivery system, when there is an independent oversight system in place, with leadership that can devote time to assessing workload and resource needs of all staff, the ability to guard against ineffective assistance of counsel by having time to evaluate and implement strategies for balancing workloads is enhanced.

Principle 6

Defense counsel’s ability, training, and experience match the complexity of the case.³⁹

Eugene’s indigent defense system adheres in part to this principle. Participating contract attorneys must meet minimum qualifications set out in the RFP, which is incorporated by reference into the executed contracts. However, contract attorneys are not required to acquire initial or ongoing training related to their indigent defense work. The RFP inquires about experience working with a diverse population and addressing local community special interest and quality-of-life issues. It asks bidders to specify a diversity training plan for staff, clearly signaling that such training is valued. But the contract does not mandate ongoing training.

Individual case complexity, regardless if all are technically “misdemeanors,” is dependent upon many variables including collateral consequences of certain convictions, the ability of clients to assist attorneys in their defense, and factual issues that may elevate the complexity of a case. Some cases require more experienced counsel than others. Like measuring workload, measuring case complexity and ensuring that experienced counsel is assigned requires a level of professional judgment that is integrated into the defense delivery system. Eugene currently lacks such an oversight mechanism.

Contract models used in Phoenix, Arizona and by Oregon’s state trial court system demonstrate the quality controls more common to staffed, public defender office structures. Whether using a public defender, managed assigned counsel system, or a contract counsel system, the key to ensuring competence throughout the attorney pool is dedicated and independent oversight.⁴⁰

project.pdf. The study for the Colorado State Public Defender sets out several standards for various misdemeanors that are also higher than in Eugene: Misdemeanor 1 - 16.3 hours; Misdemeanor 2 or 3 - 11.4 hours, Misdemeanor Driving Under the Influence - 15.5 hours; Misdemeanor Traffic/Other - 6.9 hours; Misdemeanor Sex Offense - 33.8 hours. See AM. BAR ASS’N, THE COLORADO PROJECT: A STUDY OF THE COLORADO PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS (2017), https://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_co_project.pdf.

³⁸ See N.Y. STATE OFFICE OF INDIGENT LEGAL SERVS., A DETERMINATION OF CASELOAD STANDARDS PURSUANT TO § IV OF THE HURRELL-HARRING V. THE STATE OF NEW YORK SETTLEMENT 15 (2018), <https://www.ils.ny.gov/files/Hurrell-Harring/Caseload%20Reduction/Caseload%20Standards%20Report%20Final%20120816.pdf>.

³⁹ ABA TEN PRINCIPLES, *supra* note 27, at 3.

⁴⁰ The contract counsel system used in the Phoenix, Arizona municipal court is structured with leadership and support staff that oversee the appointment of cases to private attorneys working under contract. The executive director of Phoenix’s “Public Defender Office” has a staff of nine public employees who work to support 87 private contract attorneys to provide representation in the municipal court. The Phoenix system also has an independent review committee (Principle 1) that is responsible for hiring the executive director and approving contracts for

Principle 7

The same attorney continuously represents the client until completion of the case.⁴¹

Eugene’s indigent defense system substantially adheres to this principle. Transferring clients to different attorneys as a case progresses through various stages of the process (“horizontal” practice) does not ensure the effective development of the attorney-client relationship. Similarly, attorneys who routinely are double-booked, and thus rely on having colleagues stand in with their clients at various court hearings, can also undermine client trust in the representation they receive, and in the court system. The horizontal, or assembly line, method of case processing can also jeopardize best case outcomes and effective assistance of counsel as there is no guarantee that investigative analysis, case strategies and advice of counsel will remain consistent and protect the best interests of the client. The American Bar Association rejects the horizontal method of representation and recommends the best practice to be a model of vertical representation, where one attorney represents the client from the beginning to the end of a case.

Observations of the process of representation in Eugene appear to model vertical representation, except in instances where cases are transferred to other dockets and the other of two contact offices are assigned to cover the docket in the new courtroom. (The current contracts assign the entirety of specialty dockets to just one of the two offices, so do not always provide for the original attorney to follow the case to the transferred docket.) Another concern noted by contract attorneys arises when clients they formerly represented appear in the system with new charges. There is no mechanism to assign such clients to the attorney with whom they have a prior relationship.

Principle 8

There is parity between defense counsel and the prosecution with respect to resources and defense counsel is included as an equal partner in the justice system.⁴²

Based on the information available to the TTA team, it is unclear whether Eugene’s indigent defense system fully adheres to Principle 8. The intent of this principle is to achieve resource parity, not a dollar-for-dollar match in budget, or merely equality in attorney pay. The resources to be considered in evaluating resource parity includes but is not limited to: overall budget; level of financial compensation for individual attorneys and support staff; office space availability and costs; access to support staff, including administrative support, paralegals, social workers, and investigators; health insurance and benefits; malpractice insurance; student loan forgiveness; access to technology; and influence on justice system policy and practice.

The City of Eugene has a City Prosecutor’s Office that is resourced with office space, support staff, and attorneys. Any needed investigation is conducted by police officers. The prosecution staff are public employees who receive salaries and benefits extended to other City employees. The two law firms under contract with the City to provide representation to people who qualify for court-appointed

hiring private counsel. The executive director is responsible for investigating any complaints about attorney performance and ensuring that assigned cases match the experience of the attorney.

⁴¹ ABA TEN PRINCIPLES, *supra* note 27, at 3.

⁴² *Id.*

counsel are allocated resources in a different way: the firms negotiate with the City for contract rates and amounts that are intended to meet defense counsel's resource needs. The Municipal Court reported that the overall budget for defense counsel is roughly equal to that of the entire City Prosecutor's Office, and that the contract amount accounts for benefits, office space, and other resource needs. Access to investigators is provided outside of the attorney contracts, but they are not exclusively attached to the law firms and cannot investigate cases beyond four hours unless the Court authorizes additional time.

Determining whether contract counsel in Eugene are included as an equal partner in the justice system also requires consideration of what involvement they have in the shaping of policy and procedures that promote the fair administration of justice, along with balancing this involvement with the need to function independently. Eugene's indigent defense firms are contractually required to attend monthly court improvement meetings with the Court and prosecutors, which is a good practice. Meaningful participation by the defense firms in meetings convened by the Court should promote the ability to provide perspectives on the impact of policy and process changes. At the same time, it should avoid what could also become a culture of expecting the defender system to support policies that may not be in the best interest of clients, and interfering with the ability to make independent decisions, free from institutional pressures to support Court needs. The current contracts appear close to achieving resource parity but full analysis was not possible with available information.

Principle 9

Defense counsel is provided with and required to attend continuing legal education.⁴³

Eugene's indigent defense system does not currently adhere to this principle. The accompanying narrative to the principle notes, "Counsel and staff providing defense services should have systematic and comprehensive training appropriate to their areas of practice and at least equal to that received by prosecutors." Members of the Oregon State Bar are required to engage in continuing legal education (CLE) but there is no requirement to receive training in their respective areas of practice. The Municipal Court contract attorneys are not required to attend CLE that is related to their practice, and they are not given time off from their contract to attend training. In 2019 an effort was made by contractors to negotiate "in service" days, so that all contract attorneys could attend a training provided by the Oregon Criminal Defense Lawyers Association. The request was reportedly rejected by Court Administration, the City Attorney, and Human Resources.

Two judges expressed concern over the experience level of some of the contract attorneys. An advantage of adequately resourced defender offices is staff access to initial and ongoing in-house training, which is reinforced by supervision. But even when in-house training is provided, participation in outside CLE that addresses relevant issues is important, for newer and more experienced lawyers alike.

⁴³ *Id.*

Principle 10

Defense counsel is supervised and systematically reviewed for quality and efficiency according to nationally and locally adopted standards.⁴⁴

Eugene's indigent defense system does not currently adhere to this principle. There is no mechanism for ongoing quality control of contract counsel. Ongoing supervision and quality control are an area in which contract systems are most deficient compared to public defender offices and to managed assigned counsel programs, such as that in Lubbock County, Texas. The issue of attorney supervision and who should oversee quality is directly related to the issue of independence. For professional and ethical reasons, it is not proper for court administration, a judge, or the city council to fulfill that role. Such involvement compromises the ability of attorneys to independently function in the best interest of clients. No matter how well intentioned, supervision by a judge or city agency is improper. No judge or city agency is in a position to receive confidential information from the client which, often times, will steer the course of a defense plan. Without access to this information, and because of attorneys' professional ethical obligations and how they must be carried out, judges and other city entities are not equipped with information necessary to comprehensively assess quality. This does not mean that court administration, judges, and others will not formulate opinions about the quality of representation provided, and that may indeed influence how a jurisdiction structures its system, but decisions about how to evaluate and measure quality should remain an independent function of the delivery system.

Some practice elements that bear on quality of representation are within the sphere of the Municipal Court's authority through local rulemaking to bring about better practices and outcomes. One example that both judges and attorneys raised was motions practice. The TTA team heard varying accounts regarding the consistency of written motions practice in the Municipal Court. Not consistently filing motions in writing misses a potentially important opportunity to preserve clients' records for appeal, especially as the Municipal Court is not a court of record. Local rules currently do not require written motions, but some judges have pushed to better document court proceedings by asking attorneys to file motions in writing. Taking on the additional work of writing and filing motions appears not to have been contemplated in determining the current contract structure and compensation levels. If this practice is to be formalized in local rules, the City should reevaluate the compensation scheme to consider the extra time that these motions will require.

Looking Ahead to the Revised Ten Principles

Finally, worth mentioning are several important elements that the updated *Ten Principles* will address that were not covered in the original publication, including:

- the need for sufficient and ongoing analytics capacity to assess system performance;
- access to resources for delivering holistic legal services, such as use of social workers;
- attentiveness to systemic issues of racial equity; and
- a call for statewide funding and oversight of indigent defense services.

Eugene can look to the original and the updated Ten Principles as well as the other NLADA and ABA standards mentioned as it makes future decisions about its indigent defense system.

⁴⁴ *Id.*

Chapter 5: Findings and Recommendations

The TTA Team's evaluation concludes with findings from the team's review and recommendations to guide Eugene's Municipal Court in its efforts to improve the City's indigent defense and justice systems.

The Eugene Municipal Court is to be commended for its commitment to keep pace with the ever-changing landscape of criminal justice in the United States. The structure and culture of the Court prioritize the people whom the Court serves. This priority is reflected in the friendly security personnel; the administrative staff who assist visitors with navigating the courthouse; and the prosecutors, defense attorneys, and judges who work together to ensure fairness, due process, and justice in Eugene. An overall environment of compassion and serving people with respect characterizes the culture of Eugene's Municipal Court. The Court's pursuit of outside expertise (through the BJA Sixth Amendment Initiative) to evaluate current defense structures and receive objective guidance into adopting best practices reinforces this impression.

Findings

1. Compared with many other municipalities in the U.S., Eugene, Oregon operates a professional municipal court that promotes public safety while protecting individual due process rights.

2. Eugene's municipal court system is demonstrably committed to striving to improve individual and community outcomes by connecting court-involved citizens to appropriate support services that address underlying needs which, left untended, contribute to repeat entanglement with the criminal justice system. The Community Court is particularly noteworthy, as is creation of the Problem Solving Docket and Mental Health Court. Services address homelessness, behavioral health, mental health, substance abuse, education, and unemployment. Limited to a service region of one catchment area, the Community Court serves a relatively small portion of Eugene.

3. Eugene is striving to further professionalize its court system by making the position of the Presiding Judge a full-time staff position, increasing the full-time staff size of the City Prosecutor's Office, and in securing passage of a payroll tax that will allow for additional justice system personnel and resources. The one function that notably continues to rely primarily on contract rather than staff positions is the indigent defense function.

4. Eugene's indigent defense contract model lacks sufficient independence. The current system of the Municipal Court administration directly selecting, contracting, and negotiating with contracted indigent defense counsel. That structure threatens the ability to provide zealous representation to clients as attorneys can feel pressure to mind the Court's favor in order to retain their contract to provide defense services. NLADA did not detect improper interference by the Municipal Court or the City in the operation and execution of indigent defense delivery, but the system lacks the proper safeguards to prevent such interference and to ensure independence of the indigent defense function.

5. The current indigent defense contract model lacks mechanisms for delivering oversight and quality control. Structurally and substantively, the current system has no oversight to ensure quality representation by contract indigent defense attorneys. There is no regular, systematic review of defense attorneys' performance. There is no independent monitoring of attorneys' performance. There is no provision for defense attorneys to participate in trainings to raise the quality of representation.

6. The Oregon State Bar (OSB) Performance Standard 5 that Eugene relies on to establish a maximum misdemeanor caseload for indigent defense contract attorneys is intended for application to a public defender office that has full-time attorneys who work exclusively on public defender cases and have a high level of staff support and clerical support. Such a structure “substantially increase[s] the ability of counsel to handle cases, thus permitting a larger per attorney workload than the contract model used in Eugene.” This is not the structure of the contract attorneys’ delivery system. Eugene’s system does not have full-time public defenders, as the contract attorneys can (and do) take on retained clients in addition to their indigent defense cases. Furthermore, Eugene’s contract attorneys do not have access to the kind of high-level support that is assumed in the OSB standards.

7. There is drafting confusion in Eugene’s indigent defense contract as to whether the maximum, per-attorney misdemeanor caseload standard is inclusive of both appointed and retained misdemeanor cases. Sec. 2.4 of the contract indicates that the maximum caseload includes retained cases, but Sec. 3.4 defers to Oregon State Bar Performance Standards 5, which doesn’t contemplate the inclusion of retained cases, as it is based on the Multnomah County public defender office (MPD). Although the contract attorneys reported that they did not feel overwhelmed with their caseloads, likely due in part to their ability to assign cases to sub-contracting attorneys, there is uncertainty over the standard’s intent.

8. Eugene’s Municipal Court does not have a policy of requiring written motions. This observation stands in tension with judges’ stated preference for improved documentation and preservation of court proceedings. The Court is not a court of record, and written motions are not required by court rule.

9. The amount budgeted for Eugene’s indigent defense services is routinely insufficient to meet actual costs. In 2019, indigent defense costs ran approximately 74 percent over the budgeted amount of nearly \$574,000. Indications are that this type of cost overrun occurs every year. Whereas law enforcement professionals, for example, can control their workload through exercising discretion in arrest and charging practices, the indigent defense function has no ability to proactively reduce caseload. It is constitutionally required to ensure access to effective assistance of counsel to all eligible persons.

10. The Court’s current accounting mechanism does not allow for easy examination of specific public defense expenditures, e.g., disaggregated expenditures on attorney, interpreter, investigator, and expert services. Expenditures on Eugene’s indigent defense system routinely go over budget, but accounting practices make it difficult to differentiate individual overage areas.

11. It is unclear if the contract defenders have full parity in compensation and resources with their prosecutor counterparts. This finding comes without review of the City Prosecutor’s budget and a comparison of defenders’ contract amounts with prosecutors’ salaries. Principle 8 of the ABA Ten Principles calls for resource parity between prosecution and defense, which extends beyond having equal levels of financial compensation. The difference in compensation and contracting schemes between the City Prosecutor’s Office and the contract defense firms makes it difficult to assess and compare the resources available to the prosecution and defense; i.e., the City Prosecutor staff are City employees with set salaries and benefits, whereas the contract defense providers are independent contractors who negotiate with the City for contract amounts that are meant to incorporate necessary resources. Further, it is unclear whether defense counsel has a comparable voice in justice system policy and practice.

12. Inherent in the flat fee system for compensation are incentives that may undermine zealous representation. Trial cases in particular yield low per-hour compensation. Flat fees do not adequately provide for necessary trial case activity including client preparation, motions work, court appearances, and presentation at trial. The flat-fee structure thus creates an incentive not to engage in time-consuming activity, even if that activity would improve the representation being rendered to the client.

13. In 2020, the flat-fee-per-disposition compensation model of the Eugene indigent defense contract presented an unanticipated dilemma when the COVID-19 pandemic sharply restricted misdemeanor case appointments and dispositions. With exception of the flat annual fee for Mental Health and Community Court work, indigent defense contract attorneys are paid per disposition. The contracted firms built their law practices on predictions from historic case flow trends of monthly appointments, closings and, therefore, revenue. When cases slowed to a trickle in March 2020, dispositions, and therefore, contractor pay, dropped precipitously. As their contracts allow, both contract firms opted to receive estimated monthly payments rather than get paid per disposition during this period. That mechanism requires quarterly reconciliation between what is paid and what was delivered. The decision left one firm with an amount of dispositions “owed” at the end of the 2020 contract year that would be impossible to deliver. Worth noting, the independent contractor status of indigent defense attorneys affected their pay differently than that for other core Municipal Court positions of presiding judge and City Prosecutor Office staff. These positions, and those of contracted judges, are subject to furlough or reduced hours in times of curtailed court operations. But they are not similarly burdened with “owing” on delivery of work that cannot be completed as they are not paid per disposition.

Recommendations

1. Eugene’s public defense system should comply with national and state standards and best practices, including the ABA Ten Principles of a Public Defense Delivery System, the NLADA Performance Guidelines for Criminal Defense Representation, and the Office of Public Defense Services’ Best Practices for Oregon Public Defense Providers. The delivery model that best aligns with national standards and best practices, and which the Eugene Municipal Court should ultimately adopt, is an institutional public defender model with an independent oversight entity. In particular, the system must be structured to ensure the independence of the defense function, and to provide meaningful oversight, supervision, and training without undue influence from the City’s executive and judicial authorities. An institutional public defender, in concert with an independent oversight board, is the best option to satisfy these criteria. The City and the Court can benefit substantially from the presence and advocacy of a dedicated public defender office and chief defender who can speak independently on behalf of the public defense function.

2. Even if Eugene does not immediately create a public defender office, it should create an independent oversight board for its indigent defense system and hire a dedicated staff person to carry out day-to-day duties. Such a board or committee can be modeled after recommendations for a Board of Directors in the Best Practices for Oregon Public Defense Providers, developed by the Quality

Assurance Task Force to the Oregon Office of Public Defense Services.⁴⁵ Phoenix, Arizona offers another model of an oversight committee with staff supporting municipal court contract attorneys in its Public Defender's Office.

3. Eugene should scrutinize its overall indigent defense budget needs and fully appropriate funds to meet the need for access to counsel and all associated services. Consistent budget overruns on indigent defense expenses indicate that the City's budgeting underestimates the investment needed in public defense. Further, the current system does not fully adhere to the ABA Ten Principles, and bringing the system into alignment with these standards will require additional investment. As part of this process, the City should re-evaluate its flat fee per case system for indigent defense attorneys to ensure it fully compensates activities required for zealous representation, including written motions and trial work. Cases in which there is clear demonstration of extraordinary effort should receive authorization for compensation beyond the standard flat fee. And consideration should be made for balance in the system, establishing parity in resources between the indigent defense function and the City Prosecutor's Office. The factors to consider in assessing resource parity include but are not limited to: overall budget; level of financial compensation for individual attorneys and support staff; office space availability and costs; access to support staff, including administrative support, paralegals, social workers, and investigators; health insurance and benefits; malpractice insurance; student loan forgiveness; access to technology; and influence on justice system policy and practice.

4. The Eugene Municipal Court should adjust accounting practices to allow for individual tracking of all categories of indigent defense services expense, including pay for contract attorneys, investigators, and experts. This way court administration will be better able to identify and respond to particular budget area over-runs.

5. Eugene should invest in a case management system that will allow for standardized tracking of public defense case data that can be easily and regularly reviewed. Ideally, the justice system should have an integrated case management system that defense attorneys, prosecutors, judges, and court staff all can use, which would reduce inefficiencies in processing cases. A single system would also facilitate broader review of justice system operations and provide new opportunities to assess the state of justice in Eugene. Short of a system-wide integrated case management system, Eugene should implement a single case management system that is used by all indigent defense providers to uniformly track activity by individual attorneys on all cases to understand overall workload demands and patterns. Indigent defense providers should be mandated to track and report standard data points to an independent oversight entity (or, in the absence of such an entity, to the Court Administrator).

6. Eugene should require all indigent defense providers to participate in annual training relevant to their municipal court practice. The practice of criminal law is not static, and all indigent defense providers should receive regular training to ensure they have knowledge and skills that match evolving demands of effective misdemeanor practice. At a minimum, defense attorneys should be given in-

⁴⁵ See OR. OFFICE OF PUB. DEFENSE SERVS., BEST PRACTICES FOR OREGON PUBLIC DEFENSE PROVIDERS (2010), <https://www.oregon.gov/opds/provider/StandardsBP/BestPractices.pdf>. The call for a Board of Directors is directed at the management of non-profit public defender offices and consortia used in the Oregon state indigent defense system. However, the rationale for a Board and the roles outlined are directly relevant to the Eugene contract system. Similar models are used for Managed Assigned Counsel systems in Lubbock and Travis Counties in Texas.

service days to attend trainings. Ideally, the resources provided to indigent defense providers should include a separate line item to defray expenses to attend trainings, including conference registration, travel, and lodging costs.

7. Eugene should refine the contract language used to describe the maximum caseload standard for contract defenders. Reliance on Oregon State Bar Performance Standard 5 is not appropriate for an independent contractor delivery system. And any caseload standard selected should reflect work on all legal work, including both appointed and retained cases. In addition, the Municipal Court should enforce the standard through monitoring of individual attorney appointments.

8. NLADA supports court expectations that there be improved motions and briefing practice from Eugene contract defenders. Because the TTA team heard inconsistent accounts on whether written motions are always filed, the recommended course of action is to amend the local court rules to clearly require them. That level of practice is necessary to fully protect clients' rights and is a suitable expectation in the increasingly professionalized Municipal Court. The most effective way to ensure compliance is through promulgation of local court rules. If contract pay does not adequately cover this work, consideration should be factored into revised contract amounts to do so.

9. Eugene should consider expanding the reach of the Community Court. Such a decision would necessitate investment into additional social service capacity, and into a larger space than is available at the public library. Those investments, though, may be offset through savings gained with fewer citizens repeatedly cycling through the Municipal Court due primarily to problems for which court sanctions carry little remedy, chiefly poverty and behavioral health issues.

10. Eugene should plan for continued disruption of court practice through pendency of the COVID-19 pandemic, and possible similar disruptions in the future. Those plans should make appropriate adjustments to address effect on indigent defense contract attorneys, and solicit input from existing contractors in considering alternatives.

Appendix: Eugene Municipal Court Administration's Assumptions for Calculating 2019 Public Defender Compensation Rates

a. TRADITIONAL COURT CASE

Assumed 1.5 hour increase in average case handling time to total of 4.46 hours due to introduction of policy body cameras and additional time to handle Springfield transport cases.

b. MENTAL HEALTH COURT (MHC)

Time after entry (covered by flat rate):

Assumes cap of 30 continues and approximately 60 participants annually; assumes 6 month program with 6 appearances. Staffing the monthly session requires 1 attorney 4 hours a month for 12 months @ \$65 an hour = \$3,120. Attorney is required to be present regardless of the number of participants. 1.25 hours required per participant for follow-up with mental health service provider and client during program (60 participants *1.25@ \$65 an hour = \$4,875).

Recommend \$8,500

Meetings: MHC does not have a weekly staffing at this time, however, the judge or other members of the MHC team may call meetings to discuss case specific or program related topics. (recommend \$65 per hr. for program related meetings)

*Hour estimates from current provider's monthly memos and hours reported on monthly billing.

c. PROBLEM-SOLVING DOCKETCOURT/AID&ASSIST

Currently the problem-solving docket averages 14 people each week. Court systems show an average of 15 appearances per participant (includes arraignment and all appearances). The estimated amount of time invested in each case is 5 hours. This includes all appearances, discovery review, and client meetings. 5 hrs per case @ \$65 per hour = \$325 per case/incident. In March 2017 the problem-solving docket averaged 4 dispositions per week.

d. COMMUNITY COURT

All cases resolved at Community Court are covered under the flat fee. All incidents that opt-in to Community Court regardless of entry date or successful completion are included in the flat rate. Incidents that do not opt-in will be paid under the per case rate model.

Requires a weekly 1 hr staffing at 9 am each week; legal assistant; and core team meetings 3 times a month (4.5 hrs*\$65*12= \$3,510); other meetings as required by CPO or Judge: Attorney is required to be available from 9 am - 3:30 pm every Friday (6.5 hrs); may require two attorneys on busy days or for seasonal peaks (6.5hrs*\$65*51 weeks = \$21,547.50) 2nd attorney all day Friday. Additional time is spent prior to the community court first appearance reviewing discovery, meeting with clients if available, and discussions with the CPO (approx 8 hours per week; assuming approx. 25 ppl on docket for program entry each week) (8 hrs*\$65*51weeks= \$26,520); Legal Asst every Friday (6.5 hrs*\$25*51 weeks = \$8,287.50) the legal assistant also spends approximately 16 hrs a week preparing files, checking conflicts and creating letters, and obtaining discovery for review (16hrs*\$25*51 weeks= \$20,400)

(51 weeks is used because there is no Community Court the week of Thanksgiving)
Recommend \$65 per hour for program related meetings, training, and travel of more than 5 hours a month.

