Members

Kristen Winemiller, Chair
Lisa Ludwig
Jennifer Parrish Taylor
Max Williams

Ex-Officio Member

Chief Justice Meagan Flynn

Executive Director

Jessica Kampfe

Public Defense Services Commission
Right to Counsel Subcommittee

Meeting will occur virtually.
October 20, 2023
4:00 PM – approx. 5:30 PM PST
Via Microsoft Teams Live Event*

This is a public meeting, subject to public meeting law and it will be digitally recorded. Remember to state your full name for the record, as it is required for making a record of the meeting. For action items, a roll call vote will occur, unless the chair directs otherwise. The chair shall read any motion into the record before a vote is taken. We are mindful of everyone's busy schedule, particularly public defense providers, and we will adhere to the agenda of business unless the chair directs otherwise.

MEETING AGENDA

Approx. Time	Item	Lead(s)
5 min.	Welcome	Chair Winemiller
5 min.	Opening Remarks	Chair Winemiller
5 min.	Action Item: • Approval of the August 11, 2023, Right to Counsel Meeting Minutes Attachment 1a	Subcommittee
10 min.	Overview of legislative timelines for 2024 Attachment 2a	Lisa Taylor
30 min.	Presentation on Criminal Justice Commission's Crisis Plan Report Attachment 3a, 3b, 3c, & 3d	Laurie Bender
10 min.	Discussion of objectives, agendas, and deliverables from RTC subcommittee	Chair Winemiller

**To join the Microsoft Teams Live Event meeting, click this link* https://teams.microsoft.com/l/meetup-join/19%3ameeting_ZjA4NjgyYjItNWVkNy00NTk3LWEyNDQtYmUyOTRjOTkxMjY0%40thread.v2/0?context=%7B%22Tid%22%3A%229b3a1822-c6e0-47c7-a089-fb98da7887be%22%2C%22Oid%22%3A%22110d9f80-a7c0-4ba5-b92a-9f1630040ede%22%2C%22IsBroadcastMeeting%22%3Atrue%2C%22role%22%3A%22a%22%7D&btype=a&role=a

Please make requests for an interpreter for the hearing impaired, or other accommodation to opds.info@opds.state.or.us within 48 hours of the meeting date.

Meeting dates, times, locations, and agenda items are subject to change by the PDSC – Right to Counsel Subcommittee; future meetings dates are posted at: https://www.oregon.gov/opds/commission/Pages/meetings.aspx.

Attachment 1a

Meeting Minutes

Meeting: Public Defense Services Commission (PDSC) Right to Counsel Subcommittee Meeting

Date & Time: August 11, 2023: 10:00 AM– to approx. 11:00 AM PST

Address/Platform: Meeting occurred virtually via Microsoft Teams Live Event
Link to Recording

Commissioners Present
Jennifer Nash, Chair
Kristen Winemiller
Chief Justice Meagan Flynn
Jennifer Parrish-Taylor
Lisa Ludwig

Presenting Staff
Jessica Kampfe, Executive Director
Laurie Bender, Chief Criminal Trial Counsel

---

1. **Welcome**
   Presented by Chair Nash

   Chair Nash welcomed everyone to the August 11, 2023, Right to Counsel Subcommittee of the Public Defense Services Commission.

2. ***Approve the July 14th, 2023, Right to Counsel Meeting Minutes**
   Presented by Chair Nash

   Commissioner Winemiller moved to approve the July 14, 2023, Right to Counsel meeting minutes as written. Commissioner Parrish-Taylor seconded the motion. The motion passed unanimously.

3. **Update on SB 337 plans from counties** (for more information regarding this topic please see transcripts beginning on page 2)
   Presented by Laurie Bender

   Mrs. Bender stated that the agency has participated in crisis team meetings in 15 jurisdictions. Most of the jurisdictions have had several meetings with a few that are working on a third meeting next week.

*Agenda item requires a vote by the commission

OJD has provided a data person for the meetings which has helped with the overview of the dashboard and providing additional information.

Increasing MAC has been another topic of discussion amongst various jurisdictions and how MAC can be increased. Ideas around the active warrant cases have been discussed as well. Some jurisdictions have adjusted their docketing which has been helpful based on the rules that Chief Justice Flynn recently enacted.

So far, OJD has received at least 13 draft plans for the jurisdictions that don't have crisis team meetings as well as the agency has received at least four draft plans for the jurisdictions that do have crisis plans. The hope is that everyone will have their draft plans by the 24th of August.

The Right to Counsel members further discussed other avenues that could be helpful such as changing the contracts, inviting other community stakeholder or partners, and long-term solutions.

Director Kampfe shared with the members the agency's next steps which includes training. The agency's initial role was to put forward guidance to the presiding judges. As the presiding judges are creating these crisis plans, the agency has been invited to participate in that process. Once the presiding judges submit their final crisis plans, they will go to the Criminal Justice Commission who will correlate the plans, and most likely look for the themes and those types of things that they can present. The next step will be for the agency to provide training which Mrs. Bender provided an update on.

Mrs. Bender stated that the training plan is due at the same time as the crisis plans are due, August 24th so there has been an established outline for the training plan. The agency intends to meet with the stakeholder group early next week to discuss the outline and add to it. The hope is to have a draft or a plan so that the commission can look at it on August 24th to bring forth what the plan will look like. The plan will be created based on the anticipation of what the agency has been hearing from individuals and what it will look like as far as providing training to the provider community. The training plan is being developed in consultation with the like of OCDLA and other defense organizations in the community.

The members discussed next meeting dates for September and October.

The meeting was formally adjourned.

*Agenda item requires a vote by the commission

Attachment 2a

Legislative Timelines for 2024

September 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27 Legislative Days	28 Legislative Days	29 Legislative Days	30

October 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1 NW State Employee	2 LFO Notice Due for	3	4	5	6	7
8	9 LFO Letters Due	10	11	12	13	14
15	16	17	18	19	20 RTC Meeting	21
22	23	24	25	26	27	28
29	30 CFO Budget	31				

November 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1 OPDC Members ann	2	3	4
5	6 Legislative Days	7 Legislative Days	8 RTC Meeting Legislative Days	9 Bill Request Deadline	10 Veterans' Day	11
12	13	14	15 Revenue Forecast	16 PDSC Meeting	17	18
19	20 LFO Letter of Intent Due for Jan Leg Days	21	22	23 Thanksgiving	24 Holiday	25
26	27	28	29	30		

December 2023

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1 Anticipated CFO Response S State Employees Postion Authority	2
3	4 LFO Letters Due for Jan Leg Days	5	6	7	8 RTC Meeting	9
10	11	12	13	14 PDSC Meeting	15	16
17	18	19	20	21	22	23
24	25	26	27	28	29	30

January 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1 PDSC becomes OPDC New Commissioners Take Office	2	3	4	5	6
7	8 Bill Return Deadline	9	10 Legislative Days	11 Legislative Days	12 Legislative Days Bill Drop Deadline	13
14	15	16	17	18 OPDC Meeting	19	20
21	22	23	24	25	26	27
28	29	30	31			

February 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5 Legislative Session B	6	7 Revenue Forecast	8	9	10
11	12	13	14	15	16	17
18	19	20 OPDC Meeting	21	22	23	24
25	26	27	28	29		

March 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5	6	7	8	9
10 Legislative Session E	11	12 Filing Day	13	14	15	16
17	18	19	20	21 OPDC Meeting	22	23
24	25	26	27	28	29	30

April 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15 Office of Economic Analysis (DAS) issues first public defense forecast	16	17	18 OPDC Meeting	19	20
21	22	23	24	25	26	27
28	29 Placeholder Intent Letters Due for June Leg Days	30				

May 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
			1	2	3	4
5	6 Placeholder Letters Due for June Leg Days	7	8	9	10	11
12	13	14	15 Comprehensive Public Defense Report Due	16 OPDC Meeting	17	18
19	20	21	22	23	24	25
26	27	28	29	30	31	

June 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
						1
2	3	4 Placeholder Legislative Days	5 Placeholder Legislative Days	6 OPDC Meeting Placeholder Legislative Days	7	8
9	10	11	12	13	14	15
16	17	18	19	20	21	22
23	24	25	26	27	28	29

July 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
	1	2	3	4	5	6
7	8	9	10	11	12	13
14	15	16	17	18 OPDC Meeting	19	20
21	22	23	24	25	26	27
28	29	30	31			

August 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
				1	2	3
4	5	6	7	8	9	10
11	12 Placeholder LFO Notice Due for Sept Leg Days	13	14	15 OPDC Meeting	16	17
18	19 Placeholder LFO Letters Due for Sept Leg Days	20	21	22	23	24
25	26	27	28	29	30	31

September 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19 OPDC Meeting	20	21
22	23	24 Placeholder Legislative Days	25 Placeholder Legislative Days	26 Placeholder Legislative Days	27	28
29	30					

October 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
		1	2	3	4	5
6	7 Placeholder LFO intent due for Nov Leg Days	8	9	10	11	12
13	14 Placeholder LFO Letters due for Nov Leg Days	15	16	17 OPDC Meeting	18	19
20	21	22	23	24	25	26
27	28	29	30	31		

November 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
					1	2
3	4	5 Placeholder Legislative Days	6 Placeholder Legislative Days	7 Placeholder Legislative Days	8	9
10	11	12	13	14	15	16
17	18	19	20	21	22	23
24	25	26	27	28 OPDC Meeting	29	30

December 2024

Sunday	Monday	Tuesday	Wednesday	Thursday	Friday	Saturday
1	2	3	4	5	6	7
8	9	10	11	12	13	14
15	16	17	18	19	20	21
22	23	24	25	26	27	28
29	30	31				

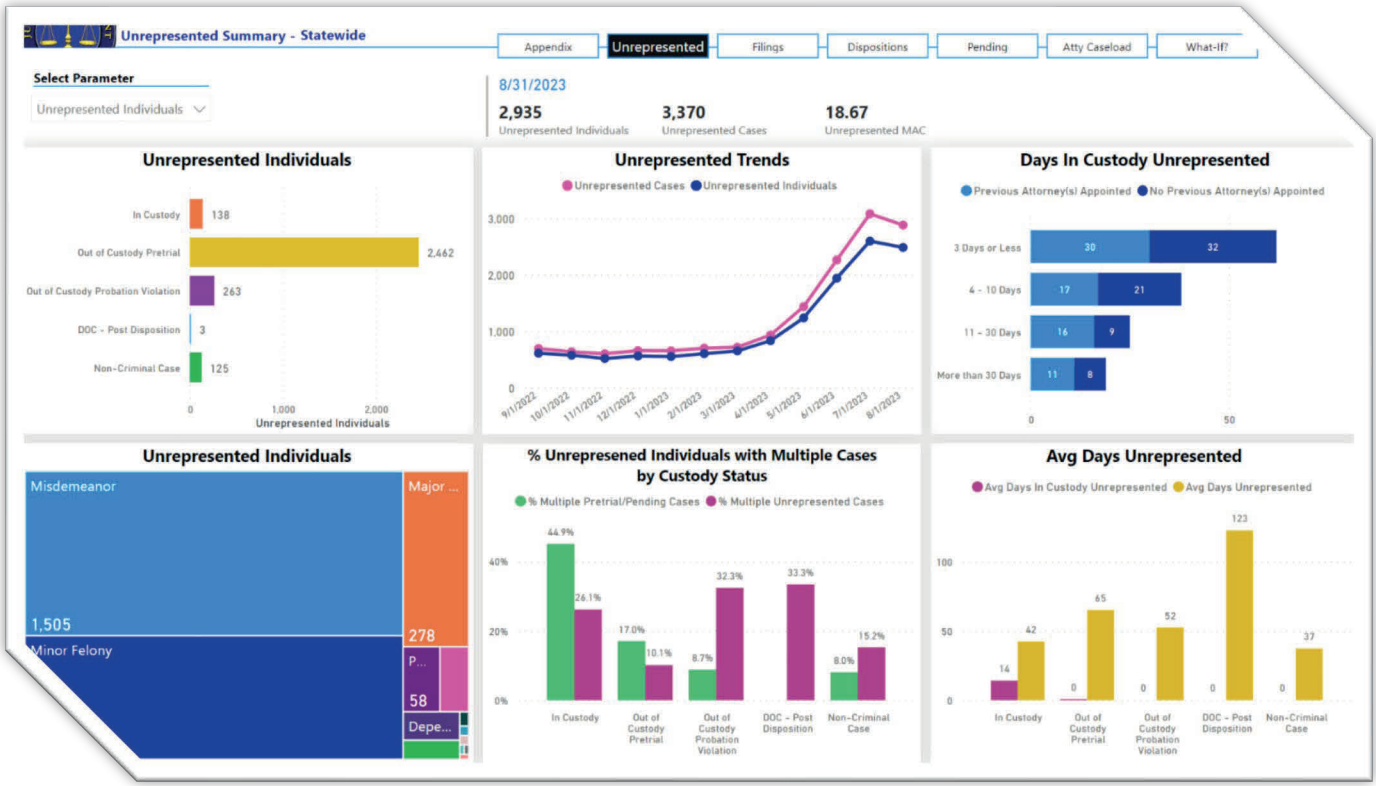
Attachment 3a
OSCA Report

Oregon Judicial Department

Office of the State Court Administrator

Summary of Circuit Court Unrepresented Defendant Crisis Plans

September 1, 2023



EXECUTIVE SUMMARY

Oregon's ongoing failure to provide representation to those with a constitutional right to counsel threatens the viability of our justice system by not only neglecting the constitutional rights of individuals facing prosecution, but also the rights and safety of crime victims and others in our communities. As of this date, approximately 3,000 people are currently charged with a crime without representation.

Chief Justice Order 23-024 and Senate Bill 337 (2023) directed the Presiding Judge of each judicial district in Oregon to create and implement an unrepresented defendant crisis plan to help resolve this crisis. The plans must prioritize representation for those in-custody, and then those who are out-of-custody. For the last two months, Presiding Judges in each judicial district (along with district attorneys, public defense providers, and the Office of Public Defense Services (OPDS) in many) have been working together to create these plans. This report summarizes the court processes, methods, themes, and conclusions from the meetings and plans themselves.

After SB 337 was passed, the Office of the State Court Administrator (OSCA) immediately began coordinating with the Criminal Justice Commission (CJC) and OPDS to meet the new law's requirements. The Oregon Judicial Department (OJD) worked with OPDS to share and integrate electronic court case management data from its Odyssey system and OPDS contract data to create a comprehensive dashboard. OSCA staff compiled data for each judicial district, created a planning template for Presiding Judges to use, and devoted data analysis and legal support to each crisis team or any Presiding Judge requesting support. In addition, the Public Defense Services Commission (PDSC) adopted guidance to assist the planning effort.

Over the course of July and August, Presiding Judges worked with community partners and the data to better understand the nature of the crisis in their jurisdictions and to develop the interventions and recommendations for their individual crisis plans. In addition to this summary, SB 337 directs the CJC to review the plans and report its findings to the legislature, no later than October 1, 2023.

The plan framework identifies four levers that impact the availability of counsel: (1) the number of public defense attorneys, (2) the capacity of those attorneys, (3) the time to reach case disposition (including system efficiencies), and (4) the number of case filings. In addition to the ongoing actions circuit courts have taken to improve court processes, the most common themes and clear messages in these plans call for adding more attorneys throughout the state and adjusting public defense contract terms to provide greater flexibility and transparency. Neither of these actions are within the control of circuit court judges. But judges, and particularly Presiding Judges, have been keenly aware of how services have been provided in their judicial districts, and where gaps and opportunities exist. Their plans provide insight into the problems unique to their own areas and possible roadmaps to improved services and outcomes.

Table of Contents

1 Background 1
2 Senate Bill 337 (2023) 3
3 OJD Process 4
3.1 Chief Justice Order 4
3.2 Crisis Team Meetings 4
3.3 Unrepresented Defendant Crisis Plans 5
4 Themes 5
4.1 Add Attorneys/Number of Attorneys 6
4.2 Attorney Capacity 6
4.3 Decrease Filings 8
4.4 Increase Dispositions 8
5 Data-Informed Decision Making 9
5.1 Data Dashboards 9
5.2 Data and Measuring Attorney Capacity 10
5.2.1 Maximum Attorney Caseload (MAC) 10
5.2.2 Limitations on Attorney Capacity 10
5.3 Data Limitations 10
5.4 Additional Capacity Needed to Address the Unrepresented Crisis 11
6 OCDLA's 2022 UTCR Proposals and Recent Recommendations to Crisis Teams 12
7 Next Steps 15
Appendix A: County Specific Explanations (a snapshot)
A.1 Multnomah
A.2 Jackson
Appendix B: Circuit Court Crisis Plans
B.1 Crisis Plans
B.2 Crisis Plan Attachments
Appendix C: OJD Resources
C.1 Chief Justice Order 23-024
C.2 Memo re: SB 337C Unrepresented Defendant Crisis Plans
C.3 SB 337 Unrepresented Crisis Plan Facilitator Guide
C.4 CJO 23-024, SB 337 Introduction PowerPoint
C.5 Unrepresented Crisis OJD-led Efforts

C.6 Transcript of Sen. Sollman remarks from June 9, 2023 Ways & Means SB 337 work session

Appendix D: PDSC/OPDS

D.1 Chief Justice Flynn Letter to PDSC Members and PDSC Contract Proposals to Address the Unrepresented Defendants Crisis

D.2 PDSC Crisis Plan Guidance

D.3 2022 PDSC Criminal Contract Template

D.4 2022 Addendum to PDSC Criminal Contract

D.5 Emergency Extension and Modification to 2022 PDSC Contract with Marion County Association of Defenders, LTD

D.6 2023 PDSC Draft Contract and Exhibit

Appendix E: OCDLA Uniform Trial Court Rules (UTCR) Proposals

E.1 (Former) Chief Justice Walters Letter to CJAC to Evaluate OCDLA's UTCR Proposals

E.2 Chief Justice Flynn Update on OCDLA's Proposals

E.3 UTCR Court Efficiencies Proposed vs. Recommended

E.4 Letter from OCDLA re: Crisis Plan Assistance (Washington County Example)

1 BACKGROUND

By statute, the Public Defense Services Commission (PDSC) is responsible for establishing and maintaining a system that ensures the provision of public defense services consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.[1] Oregon's public defense system has a long history of challenges including underfunding, an insufficient number of attorneys to handle the caseload, and a complex structure that does not provide sufficient oversight or financial accountability. In 2019, the Sixth Amendment Center (6AC) released its evaluation of trial-level public defense representation provided through the Office of Public Defense Services (OPDS).[2]

Public defense services are procured by PDSC through an array of contracts, administered by the OPDS, with public defender offices, private law firms, consortia of individual attorneys and law firms, and non-profit organizations. Prior to the 2019 contract cycle, cases were assigned a fixed-rate value and contractors were paid for each additional case handled. The system did not track the actual number of cases handled by individual attorneys, and thus PDSC/OPDS was unable to determine whether providers had sufficient resources and attorneys. Because the 6AC study concluded that, among other things, PDSC had no means of knowing whether Oregon's public defense providers have sufficient time to provide effective assistance of counsel and stated, "examples of excessive caseloads abound throughout the state", in 2021 the PDSC changed the way it contracted with public defense attorneys. The chart below shows the contracting approaches taken over the last three years.

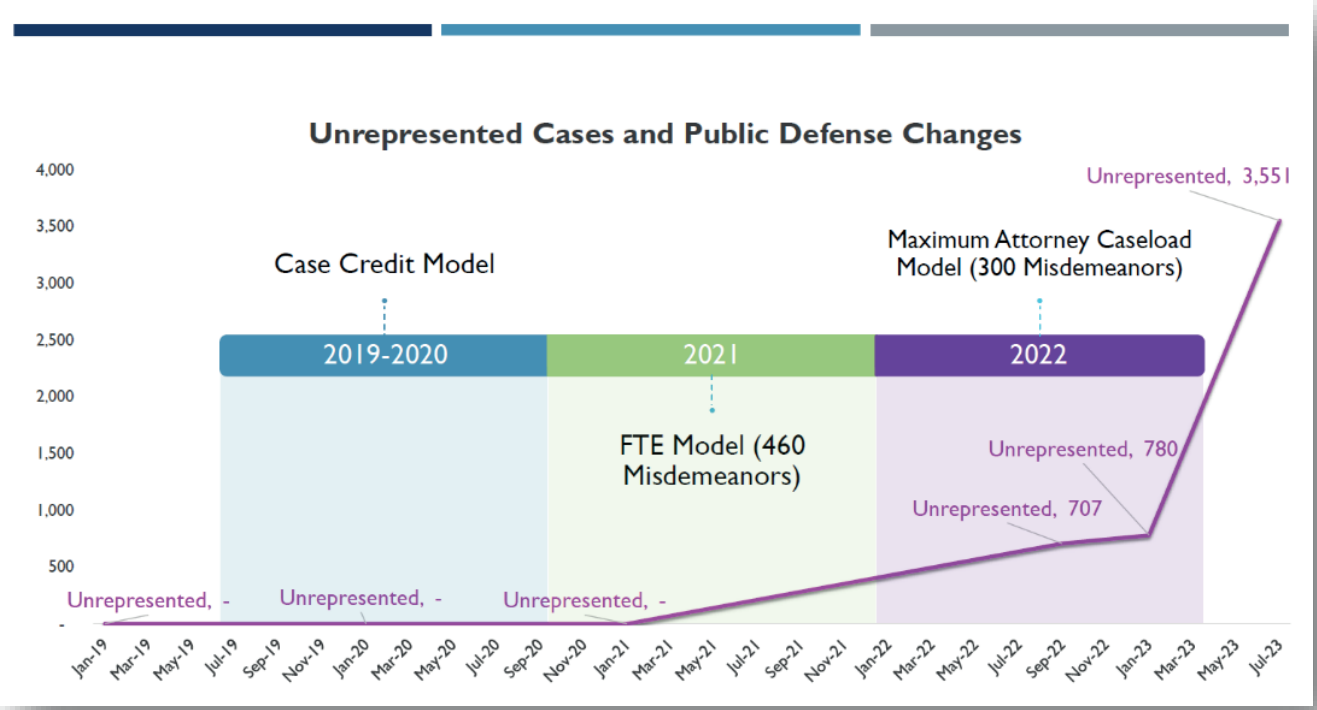
CASELOAD STANDARDS: OREGON'S APPROACH

	Pre-2021	2021	2022	2023-2025 DRAFT
Measure	Contracts did not include caseload limits —instead relied on a "case credit" or "credit" model.	% of 1.0 Full-Time Attorney (Annually)	Full-Time Attorney (Annually)	Full-Time Attorney (Annually)
Reference to Standard		Full-Time Equivalent (FTE)	Maximum Attorney Caseload (MAC)	Maximum Attorney Caseload (MAC)
Caseload Limitation		115% of NAC standards	Revised using ABA Oregon Study	Continued 2022 Methodology
Misdemeanor		**460**	**300**	**300**
Juv. Delinquency		230	132	132
Probation Violation		460	825	825

[1] See ORS 151.216 et. seq.

[2] Sixth Amendment Center (2019). *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services.* https://sixthamendment.org/6AC/6AC_Oregon_report_2019.pdf.

Unfortunately, the dramatic and abrupt reduction in contracted caseloads combined with attorneys leaving public defense and case processing slowdowns during the pandemic caused a sudden shortage of attorney capacity. The chart below highlights the exponential growth in the number of unrepresented individuals. Even as the number of criminal case filings decreased across the state, the number of unrepresented individuals – now at nearly 3,000 people – has grown. The number of unrepresented individuals increased significantly beginning in March 2023, as public defense attorneys reached their contracted Maximum Attorney Caseload (MAC) for the year.



Over the past two years, the Chief Justice, the circuit courts, and the Office of the State Court Administrator (OSCA) have made extensive efforts to identify and implement court efficiencies to alleviate burdens on litigants and the public defense system.

The attached "List of Oregon Judicial Department (OJD)-Led Actions to Alleviate Burdens on the Public Defense System" describes many of the initiatives, projects, and process and system changes that have occurred or are underway. (Appendix C.5) Some of these initiatives are statewide, while others focus on addressing issues at the local level. The vast majority required collaborative problem solving, and OJD appreciates both the suggestions made by stakeholders and their willingness to engage in critical, sometimes difficult, conversations.

Despite these efforts, and the efforts of others, the unrepresented defendant crisis continues. In response, the 2023 Legislative Assembly adopted Senate Bill 337 (SB 337) which, among other

provisions relating to Oregon's public defense system, required presiding judges to develop "unrepresented defendant crisis" plans.[3]

The legislature directed the PDSC "to work in cooperation with the [Oregon] Judicial Department [(OJD)] on the development of a data-driven approach to ensuring representation for financially eligible, unrepresented persons * * * across judicial districts, including, but not limited to, an analysis of actual provider capacity in each judicial district, by case type and qualification[.]"[4]

2 SENATE BILL 337 (2023)

SB 337 addresses immediate and long-term, systemic issues in the public defense system and provides funding to facilitate solutions. In addition, Sections 103 through 108 establish the requirements for each circuit court judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan (hereafter, "plan" or "crisis plan"). The bill passed both chambers of the legislature by June 21, 2023, and took effect on July 13, 2023, upon the governor's signature.

Each plan must first prioritize in-custody individuals, then those who are out-of-custody, and must be submitted to the Criminal Justice Commission (CJC) no later than September 1, 2023. In judicial districts with a total population of more than 100,000, Presiding Judges were directed to convene a crisis team to assist in the development and implementation of the plan. The teams were to be composed of at least the Presiding Judge, the district attorneys within the judicial district; and the OPDS executive director (or designee). Chief Justice Order (CJO) 23-024 expanded that directive so that any judicial district with 20 or more unrepresented persons also needed to convene a crisis team.

The bill also directed the CJC to review the plans and report its findings to the legislature no later than October 1, 2023, and required the PDSC to promulgate and disseminate guidance for the plans, develop a training plan for public defense providers specific to the unrepresented defendant crisis, and also report to the legislature no later than October 1, 2023.

The SB 337 budget report included the recommendation that crisis teams consider proposed system efficiencies intended to improve the timely processing of cases involving unrepresented individuals.[5] These system efficiencies aligned with proposals requested by Oregon Criminal Defense Lawyers Association (OCDLA) to modify the Uniform Trial Court Rules (UTCR). The OCDLA proposals were evaluated for applicability at the statewide level through the Chief Justice's Criminal Justice Advisory Committee (CJAC) and the UTCR committee process, as well as at the local level through crisis team meetings. Several recommendations were adopted in whole or in part, as discussed in more detail below in Section 6.

[3] SB 337 (Chapter 281 Oregon Laws 2023), Sections 103-108
[4] 82nd Oregon Legislative Assembly, Joint Committee on Ways and Means, SB 337, Audio Recording June 9, 2023, at 1:39:55 (comments of member Senator Janeen Sollman), https://olis.oregonlegislature.gov.
[5] Budget Report and Measure Summary, SB 337-C, June 9, 2023, page 6.

3 OJD PROCESS

3.1 CHIEF JUSTICE ORDER

Chief Justice Meagan Flynn issued CJO 23-024 on July 7, 2023. The order initiated the planning process before the effective date of SB 337, required use of available data and a consistent planning framework, directed public defense providers be invited to participate, and expanded the requirement for local crisis teams to include any judicial district with 20 or more unrepresented persons on the date of the order. In addition to judicial districts with a population of more than 100,000 (Multnomah, Washington, Clackamas, Lane, Marion, Jackson, Deschutes, Linn, Douglas, and Yamhill counties) the CJO created crisis teams in Benton, Clatsop, Coos/Curry, Klamath, and Lincoln counties.

3.2 CRISIS TEAM MEETINGS

OJD convened an internal crisis planning team within OSCA to assist courts in developing their plans and provide a planning framework to ensure statewide consistency in plan components. The OSCA team developed a planning template for use by all courts, developed court-specific data to illustrate local aspects of the crisis and estimate the impact of various actions, and worked collaboratively with OPDS to align the framework to PDSC's guidance for crisis plans. OJD's framework and PDSC's guidance centers on exploring "Four Levers" related to representation capacity: (1) the number of public defense attorneys, (2) the capacity of those attorneys, (3) the time to reach case disposition (including system efficiencies), and (4) the number of case filings. Changes to any of the levers can affect the unrepresented persons crisis.

The OSCA team provided staff support to courts, assigning an attorney and a data analyst to each judicial district. In addition, the OSCA team developed materials to support the Presiding Judges and crisis team members. Those materials included: a crisis plan facilitator guide, an introductory presentation, and court-specific data.

The crisis plan facilitator guide was created to assist Presiding Judges through the process of developing their plan. (Appendix C.3) Because the development was on a tight timeline and required swift discussion, decisions, and consensus (where possible), OSCA provided the facilitator guide to quickly communicate the requirements, resources, and plan outline.

The introductory presentation of state-level data and background provides an overview of the public defense system, changes to public defense contracting models, statewide data on filings, dispositions, and pending caseloads that can be used to understand the issues at play. (Appendix C.4)

Court-specific data contained OJD data showing unrepresented individuals within the judicial district, case filings and court clearance rates, manner, and time to disposition, pending caseload, and public defense contract data.

Presiding Judges began holding crisis team meetings shortly after the issuance of the CJO. The structure and participation in crisis team meetings varied significantly across the judicial districts, from the number of meetings to the mode (in-person or remote) and duration. For example, Jackson, Washington, Marion, and Multnomah counties met at least three times as an "official" crisis team, while others met once. All the crisis teams exchanged several versions of the draft crisis plans by email, with opportunity to comment. In total, Presiding Judges in the 15 judicial districts required to hold crisis team meetings, held 36 meetings between the weeks of July 17 and August 14, 2023. Discussions in almost all counties were

cooperative, robust, honest, and well-facilitated by the Presiding Judges or OSCA attorneys. Many crisis teams shared that the meetings clarified their local issues.

3.3 UNREPRESENTED DEFENDANT CRISIS PLANS

As required by CJO 23-024, each Presiding Judge submitted a crisis plan using the Unrepresented Crisis Plan Template form. The template is intended to provide a consistent format for reports, support a data-driven approach to identify the nature of the crisis in each judicial district, and create local data-informed plans with measurable and achievable goals to eliminate the current unrepresented population no later than July 1, 2025, but sooner where feasible.

Working through the crisis plan template form required crisis teams to use data to examine the current state of the crisis within their local judicial district, to document actions taken to address the crisis, including those in response to recommendations presented by OCDLA, the best practices courts and others are taking or will take, and identify interventions and recommendations to address the crisis. Interventions are those actions that are within the control of the crisis team, recommendations are those actions that are broader in scope or are outside the control of the Presiding Judge or local stakeholders. Crisis teams were instructed to describe each intervention or recommendation, identify which of the Four Levers would be impacted, and describe a measurable outcome for each, where possible. Last, crisis teams were expected to consider implementation, including an estimated start date, time to take effect, and needed funding (if known). For interventions and recommendations where data is incomplete or doesn't exist, crisis teams are encouraged to continue local conversations and begin or continue collecting relevant information.

The issues, barriers, and challenges leading to the local interventions and recommendations, while diverse in circumstance, carried common themes.

4 THEMES

Several common themes emerged in the judicial district crisis plans, even if approaches for how to solve the crisis varied by court location, judicial district population and size, and other unique factors. Below are some of the most common themes OJD identified in the court crisis plans. The most common recommendations are related to the levers of **Number of Attorneys** and **Attorney Capacity**. These are primarily recommendations because adding attorneys or increasing attorney capacity is within the purview of the PDSC rather than Presiding Judges or local stakeholders. Many of these recommendations require a change to the PDSC contracts. Some changes could help address the crisis in the short term, while others are longer-term solutions. Presiding Judges agreed that the current MAC model poses problems for providers, further explained in Section 5.2.1.[6] Defense attorneys noted that

[6] "Maximum Attorney Caseload" or "MAC" refers to the maximum number of cases associated with the percentage of time a contracted attorney provides to the PDSC. In the current 2022-2023 PDSC criminal contract, the MAC system represents the largest number of new cases where an attorney can provide legal representation in a one-year period. For example, a 0.5 FTE attorney has a MAC of 150 misdemeanor cases. The annual limit of new cases for a 1.0 FTE attorney is 300 misdemeanor cases per year, which corresponds to 25 misdemeanor cases per month. 1.0 MAC can also be an equivalent number of other cases, (e.g., Measure 11, Minor Felony) using the contract's case-weighting system.

the MAC model does not account for an attorney's individual capacity and others shared that it limits the ability of more experienced attorneys to handle a larger number of cases.

4.1 ADD ATTORNEYS/NUMBER OF ATTORNEYS

More public defense attorneys will allow PDSC to contract for representation in more cases. The following recommendations focus on recruitment of new attorneys and retention of existing (more qualified) attorneys.

- Attorney Recruitment. Multiple judicial districts highlighted the difficulty with attracting attorneys to smaller or rural areas (though Jackson County, the sixth largest county in Oregon, also struggles with this). Public defense providers shared that cost of living, housing availability, and other issues hinder recruitment efforts. However, the need for more attorneys is not just limited to smaller jurisdictions. Larger jurisdictions also struggle with having enough attorneys to meet the MAC required to represent individuals based on current and predicted future filings. Some specific suggestions to improve recruitment include:
    - Fellowships of a specified duration to supplement pay and create financial incentives for new or experienced attorneys to move to Oregon jurisdictions (similar to those created in the medical profession).
    - Partnership with law schools to support clinic work outside of the larger counties or counties in which the law schools are located, to give law students more public defense experience before graduating.
    - Mentorship for newly graduated and less-experienced attorneys.
- Better Compensation. Many crisis team members expressed support for higher pay for public defense providers. Some suggested parity with deputy district attorneys and others pointed to salaries of assistant attorneys general.
- Regional Conflict Team. In some jurisdictions with a limited number of public defenders (and even those with a sufficiently large number of providers – e.g., Lane County), the current unrepresented population consists entirely of cases where local attorneys cannot represent a client due to a conflict of interest ('conflict cases'). Many counties lack the resource of an attorney available to take these cases. A regional or statewide team would fulfill this need.
- Qualifications. Courts are concerned about a lack of attorneys qualified to represent persons accused of a felony, as well as the time it takes for less-experienced attorneys to be qualified by OPDS for certain case types. Increasing the number of qualified attorneys is challenging for many reasons including low attorney retention rates, as well as limited training and mentorship opportunities.

4.2 ATTORNEY CAPACITY

Attorney capacity interventions address the number of cases individual attorneys can accept pursuant to their PDSC contract. Increased capacity could be gained through prioritizing the assignment of cases to use attorney MAC more efficiently (e.g., ensuring felony-qualified attorneys are appointed on felonies before misdemeanors), as well as ways to reclaim attorney time (e.g., better administrative methods for payment and qualifications).

Changes to the PDSC contract model was the most common recommendation developed by the crisis teams. Though the theme remained consistent, ideas for how to implement the changes varied. It should also be noted that this is not a change OJD or circuit courts can make. It would have to be done by the PDSC with support from the legislature.

In response to these recommendations, Chief Justice Flynn sent a letter to the PDSC on August 23, 2023, to highlight areas in the crisis plans where contracts could be improved to immediately address the unrepresented persons crisis. (Appendix D.1) Some of the suggestions could be achieved immediately if PDSC were to waive certain contract provisions in at least some judicial districts. Others could make a difference in a slightly longer timeframe.

- Move to an open caseload or workload model. This would allow a more accurate reflection of an attorney's caseload at a given time. Many plans addressed this through suggestions that included time-to-disposition standards in contracts to promote cases moving through the system rather than stagnating.
- Increase the current MAC limit.
- Allow work outside of the PDSC contract. Permit attorneys contracting for 1.0 MAC to take work outside of the PDSC contract, if they have capacity to take additional cases.
- Local variation. Help attract attorneys to more rural and frontier counties by providing incentives (as is seen in the medical community).
- Recognize seniority. Currently, all attorneys are paid the same rate by PDSC. While contractors can choose to pay more experienced attorneys a higher rate, PDSC support would be beneficial.
- Make use of all available contractor capacity. This could involve allowing attorneys to take cases in excess of any contractual cap or monthly limit and ensuring attorneys receive compensation for these cases with no or limited administrative hurdles. Additionally, the PDSC could expedite the process to amend the compensation for qualified attorneys to provide representation in cases involving more serious criminal charge than what is included in the existing contractual agreement between PDSC and the provider.
- Preserving and prioritizing MAC. Ensure available MAC capacity is not reduced by voluntary case transfers to another attorney within the same firm (i.e., different lawyers in the same firm should not receive MAC credit for handling the same case).
- Requiring contractors to allocate capacity according to priorities set by the local court. This would help implement court crisis plans and prioritize in-custody defendants. Additional ways to preserve and prioritize MAC can occur by having attorneys withdraw from representation when a case has been inactive because the defendant failed to appear and is subject to an arrest warrant. Specifically, withdraw from the case after a specified number of days (e.g., 60 days) and/or reduce case credit for shorter durations of representation in these cases.
- Increase capacity through other available resources. An example may include authorizing a payment or MAC credit for limited representation to in-custody individuals (e.g., only at arraignment) or for specialized dockets such as early disposition dockets.
- Limiting full-value contracts. Only those willing and able to handle a full-contract caseload under MAC contracting model should receive full-value contracts (i.e., only paying full-time compensation if the attorney represents persons in a full-time MAC caseload).

- Handling Appointments for Individuals on Warrant status differently. In some counties judges are currently (or considering) removing attorney appointments in cases where defendants who have been on warrant status for 30/60/90 days. Based on data from OJD, approximately 70% of individuals on warrant status return to court within 60 days.
- Payment Process Overhaul. Many attorneys noted that they either they do not seek hourly cases, or they do not seek reimbursement for costs, due to payment processing delays at OPDS. Ideas to address delays generally included improved payment approval processes.
- Lack of Standards for Open Caseload Limits. In some larger jurisdictions, contract providers stop taking cases if they feel that the attorneys in their group have reached the maximum cases that they can reasonably or ethically handle. This is further explained in Section 5.2.2. There are no objective criteria for what constitutes a reasonable open caseload limit. This makes it hard for OPDS to predict attorney capacity and the number of attorneys needed to handle the forecasted number of cases.

4.3 DECREASE FILINGS

Reducing filings lowers the number of cases entering the court system, thereby reducing the need for public defenders. These interventions focus on ways to reduce filings or move cases out of the criminal court system. Projected increases in filings also need to be considered.

- Decreased Filings. In many jurisdictions, district attorneys have decreased filings either due to district attorney staffing shortages or to respond to the public defense crisis. Many expressed a willingness to continue to use discretion in filing to reduce the number of cases moving through the judicial system.
- Reducing Low-Level Misdemeanors to Violations. In many jurisdictions, district attorneys are charging cases as violations or diverting cases away from the criminal justice system to decrease the number of cases that require attorney representation.
- Specialty Court Dockets. Referring people to dockets in which attorney contract MAC is not used on a per-case basis could increase provider capacity to take more serious cases. This could also be considered in the Attorney Capacity lever.
- Pre-filing/Law Enforcement Assisted Diversion programs. These types of programs prevent defendants from entering the system while also providing resources to address behavioral health or other challenges that contribute to the person committing a crime.

4.4 INCREASE DISPOSITIONS

Increasing the number of cases that close or decreasing the time cases are in the court system will reduce the open caseload burden on public defenders. Closing cases faster frees up public defender time for other cases. Interventions in this area include system efficiencies, and ways to resolve cases more efficiently.

- Remote Appearance Options. Courts across Oregon have increased their use of remote appearances to increase efficiencies with case resolutions.
- Settlement Conferences. Many courts are increasing their use of settlement conferences to increase early disposition of cases, to expedite plea negotiations and avoid a trial.

- Better Jail/Prison Access. Multiple providers expressed frustration about the difficulty accessing clients who are in custody. Improvements to the jail access, prosecutors reducing the time in providing discovery, and data sharing were all suggested.
- Early Resolution Dockets. The creation of early resolution dockets in which attorney contract MAC is not used on a per-case basis could increase provider capacity to take more serious cases. This could also be considered in the Attorney Capacity lever.

5 DATA-INFORMED DECISION MAKING

OJD continues to work closely with OPDS to provide data that Presiding Judges and crisis team members need to identify in-custody and out-of-custody unrepresented individuals, manage efficient appointment of counsel, inform their crisis plans, and improve contract oversight by OPDS. Statewide, system partners discussed how OPDS could more accurately track MAC availability, primarily by capturing start dates and end dates for contract amendments and when attorneys are added to and removed from contracts, and tracking attorney qualification and representation capacity.

5.1 DATA DASHBOARDS

OJD adopted statewide business processes for data entry into the Odyssey case management system on August 22, 2022, to accurately track and report the number of unrepresented defendants. Implementation of the business process allowed OJD to begin tracking individuals who are eligible for but without a court-appointed attorney and provide the data to OPDS. For purposes of reporting:

- A person is assessed for eligibility for court-appointed counsel through OJD's Application Contribution Program (ACP) financial eligibility assessment, which is based upon the eligibility criteria established by the PDSC.
- At the time of arraignment, the court requests representation for those who are financially eligible for court appointed counsel (criminal cases only); courts follow local process to determine if an attorney is available (contact local consortium/public defender, contact eligible attorneys from local bar list, contact OPDS).
- If the court determines that no attorney is available, OPDS is added to the appointment order and entered into the court's case management system as the placeholder attorney of record for the unrepresented individual.
- When an attorney is identified for the unrepresented individual, the court issues an order appointing the attorney; the OPDS entry in the court's case management system is inactivated, and the new attorney record is added.

OJD's unrepresented defendant and Odyssey case management data, combined with the public defense contract data, enabled OJD to create statewide and court-specific data dashboards. Data included Odyssey case management system on case filings, pending cases, and attorney appointments with information from jails on in-custody defendants and public defense contract data.

5.2 DATA AND MEASURING ATTORNEY CAPACITY

5.2.1 MAXIMUM ATTORNEY CASELOAD (MAC)

MAC is the limit on the number of cases for which an attorney may provide legal services in a one-year period, defined in the 2022 PDSC Legal Services Contract for Criminal Case Types. (Appendix D.3) MAC is similar in concept to full-time equivalency (FTE), but in the 2022-23 contracts also represent the maximum number of cases that an attorney can take. [7] MAC calculations assume that cases with more serious charges will be more complex and more time-consuming than those with less serious charges. The current PDSC contract indicates providers can take a maximum of one MAC (300 misdemeanor cases) per year or weighted equivalent of other case types.

OJD's dashboards calculated the total MAC for each district's appointments since the beginning of the contract cycle, which began at the start of FY 2023, and the MAC needed for the unrepresented defendants in each judicial district.

5.2.2 LIMITATIONS ON ATTORNEY CAPACITY

In addition to the contractual MAC limitations, all attorneys have an ethical obligation to provide "competent representation," which "requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation." There are no standardized, objective criteria in the PDSC contracts that define what any particular attorney can manage, and it can vary from attorney to attorney. Because the contracts do not distinguish between the caseload an attorney takes and the contracted MAC, it is impossible for OPDS to predict how many attorneys are needed to represent forecasted caseloads.

5.3 DATA LIMITATIONS

Data limitations came up frequently at crisis team meetings:

1. **Inability to account for whether attorneys were available for the entire year:** Public defense contract data does not include attorney start dates, end dates, or leave dates in their database. The data also do not include start and end dates for contract amendments in their database. This means that a full-time attorney who was not hired until late in the contract period, or who was on leave for part of year, shows in the data as having a full MAC capacity for the year rather than an amount that is pro-rated for their actual availability. The true prorated contract MAC is critical to identifying attorney capacity and producing accurate forecasts of attorney need. OPDS is currently working on modifying their database and data entry protocols to provide this information as soon as October 1, 2023.
2. **Inability to predict attorney capacity:** MAC does not accurately measure attorney capacity. For example, an experienced attorney may be capable of handling more than 300 misdemeanor cases in a year, but a new attorney in their first year might provide representation in far fewer cases. Several providers specifically noted that the public defense offices in Oregon's largest

[7] "FTE" or "full-time equivalent" describes the percentage of time an attorney is providing for public defense work. For example, an attorney with a .5 FTE is giving 50% of their time to public defense work. The current (2022-2023) contract does not use the term FTE, but it will be included in the '23-'25 contracts.

counties hire many attorneys early in their career and serve as a training ground for those new lawyers, many of whom leave relatively quickly for other opportunities to advance their careers.

3. **Lack of consideration for total open caseload:** The PDSC contract only gives weight to cases appointed in the current contract period – it does not apply weight to cases still open from prior contract periods, so the attorney's total caseload is not captured in their MAC for the year.
4. **Lack of time-to-disposition data tracking:** As seen in Section 4 discussing common themes, if PDSC is to transition to a workload or open caseload model, understanding the time it takes to represent each client would be necessary. Establishing a standard time to disposition for each case type identified in the PDSC contract would promote case resolution and avoid stagnation of the caseload.

These data limitations meant crisis teams did not have precise information regarding actual attorney capacity. For example, Multnomah and Washington Counties, both of which have hundreds of unrepresented defendants, appear to have more than enough contracted capacity in the public defense contract data to both represent the defendants who currently lack attorneys and take new filings. And in fact, if all attorneys were able to take a full MAC caseload, there would be enough attorney capacity to provide representation for all eligible individuals. This is not to say that individual attorneys should take more cases than they are capable of managing, but rather simply that the capacity limitations of individual attorneys, which are not visible in the data or in the contracts, contribute to the significant and growing gap in services. Transparency in actual caseload expectations would drastically improve the state's ability to contract for enough attorneys to provide representation for every eligible individual.

Another opportunity for additional transparency in contracts and in the data is the length of time each attorney is dedicated to public defense work under a particular contract. OPDS is working on tracking attorney start and end dates under future contracts and contract amendments in their database, which will provide more accurate data on attorney capacity in the future. True transparency, however, will require the PDSC to develop a method of contracting that includes precise and enforceable caseloads metrics based upon actual attorney capacity.

5.4 ADDITIONAL CAPACITY NEEDED TO ADDRESS THE UNREPRESENTED CRISIS

OJD can calculate the amount of annual attorney MAC needed to provide counsel for all the unrepresented individuals statewide by applying PDSC's case weights to the number of cases waiting for appointment of counsel. As of August 31, 2023, there were 2,935 unrepresented persons and a total of 3,289 cases. This work requires an additional 17.58 MAC. (Table: Unrepresented Cases and Annual Attorney MAC Needed)

This means that it would take at least an additional **seventeen full-time attorneys an entire year** to address the current number of unrepresented defendants in Oregon today based on the PDSC contract model.

This estimate assumes attorneys can take a full caseload and does **not** account for travel time and other challenges relating to representing defendants in multiple jurisdictions, so any plan to address the crisis in rural jurisdictions would require either part-time positions hired locally, or regional providers who take smaller caseloads due to the need to work in multiple courts, across judicial districts. Additionally, these cases require advanced qualifications, and the need would not be met by hiring brand new, inexperienced attorneys.

As the unrepresented list has grown rapidly over time, additional attorneys would also likely be needed to keep up with the growth in the unrepresented list, absent a decrease in case filings (which already are down 21% compared to FY 2019) or an increase in the ability of existing providers to take additional cases.

Attorney qualification levels do not directly map to case types. The levels of criminal attorney qualification from highest level to lowest are as follows:

- Murder
- Major Felony
- Minor Felony
- Misdemeanor
- PCR/Habeas
- Civil Commitment

While attorneys at the misdemeanor level can only take misdemeanor cases, attorneys qualified at any higher level may take cases at that level and any level below it (for example, Major Felony qualified attorneys can take Major Felony, Minor Felony, and Misdemeanor cases).

To illustrate the scale of the problem relative to contract attorneys available by highest qualification, the chart below shows the increase in annual attorney caseloads required statewide to resolve the current unrepresented crisis. In reality, not all attorneys will have capacity to take additional cases, and attorney resources and qualifications vary by judicial district. However, there may be opportunities for some attorneys to provide representation in additional cases, especially in the Minor Felony and Misdemeanor case types.

Unrepresented Cases and Annual Attorney MAC Needed
For Circuit Court Cases Covered by the OPDS Criminal Contract
As of August 31, 2023

Case Type	Unrepresented Cases	Capacity Needed (MAC) for Unrepresented Cases	Number of Attorneys by Highest Qualification	Additional Cases Per Year, Per Attorney, to Resolve Unrepresented Crisis
Murder	2	0.33	170	<1
Major Felony & M11	335	3.09	209	1.60
Minor Felony	1,208	7.28	78	15.49
Misdemeanor	1,683	5.57	81	20.78
PCR/Habeas	58	1.29	9	6.44
Civil Commitment	3	0.01	4	<1
Total	**3,289**	**17.58**	**551**	

6 OCDLA's 2022 UTCR Proposals and Recent Recommendations to Crisis Teams

Each judicial district's crisis plan includes information about action(s) the district has taken related to OCDLA's proposals to modify the Uniform Trial Court Rules (UTCRs). Some of OCDLA's proposals have

been adopted, while others were partially adopted, withdrawn by OCDLA, not recommended for adoption, or still under consideration

In the Fall of 2022, OCDLA submitted several proposals to the Chief Justice with the aim of facilitating case disposition and increasing defense attorney capacity.[8] Those proposals addressed the following areas:

- UTCR 4.010: Time for Filing Pretrial Motions in Criminal Cases;
- UTCR 4.020: Scheduling of Status (Non-Substantive) Appearances;
- UTCR 4.040: Procedure for Requesting and Scheduling Certain Appearances;
- UTCR 4.060: Motions to Suppress Evidence;
- UTCR 4.130: Remote Appearance in Lieu of Transportation; and
- UTCR 7.010: Pleas, Negotiations, Discovery, and Trial Dates in Criminal Cases.[9]

Prior to the UTCR Committee's October 2022 meeting, former Chief Justice Walters sent a letter directing the UTCR Committee to work with the Chief Justice's Criminal Justice Advisory Committee (CJAC) to evaluate the UTCR and other OCDLA proposals. After the UTCR Committee also circulated the proposals for public comment.[10]

In early 2023, the CJAC convened the Case Processing Subcommittee, which reviewed OCDLA's proposals over the course of several meetings and submitted its feedback to the UTCR Committee. At the UTCR Committee's Spring 2023 meeting they considered each proposal, along with the CJAC subcommittee's feedback and public comment. After robust discussion, the UTCR Committee sent its feedback and recommendations to the Chief Justice for review and final determination.[11]

The UTCR Committee recommended adoption of one new rule – UTCR 4.130 (Remote Appearance in Lieu of Transportation), renumbered to UTCR 4.040 – which permits the parties to agree that a defendant in custody may appear by remote means at a proceeding to resolve multiple cases, when the appearance is required in a court not located in the county in which the defendant is in custody (unless the court finds good cause to require in-person appearance). The Chief Justice adopted UTCR 4.040 effective August 1, 2023.

The UTCR Committee also partially agreed with another OCDLA proposal – amending current UTCR 7.010(2) to expressly permit parties to present plea agreements up to and including the day of trial. The Chief Justice adopted a modified version of UTCR 7.010(2), which more simply removes plea agreements and negotiations from the type of activity that must be completed pursuant to certain

[8] The Uniform Trial Court Rules Committee is made up of 14 members including six circuit court judges, one trial court administrator, and seven attorneys from various practice areas across the state.
[9] OCDLA withdrew the portions of this proposal that required the state to provide an initial plea offer and granted continuances when stipulated by the parties prior to its consideration by the UTCR Committee.
[10] Former Chief Justice Walters requested that the proposals be sent out for public comment without recommendation to give the CJAC Case Processing Subcommittee time to conduct a preliminary review of the proposals and provide feedback in the form of a written report.
[11] The UTCR Committee makes recommendations to approve, disapprove, or modify proposals, which the Chief Justice or the Supreme Court considers when making a final determination to approve or disapprove a proposed change. With the exceptions of UTCRs relating to contempt and *pro hac vice* status, all UTCR recommendations are presented to the Chief Justice.

deadlines. That modified rule is intended to remove the deadlines that were previously applicable to plea negotiations and agreements, but without inadvertently encouraging parties to delay resolving cases.

Finally, although the UTCR Committee did not recommend amending UTCR 4.010 (Pretrial Motions), the Committee recommended by consensus that the CJAC Case Processing Subcommittee continue to consider that proposal, considering any insights gained from Multnomah County Circuit Court's Omnibus Hearings Pilot project. The subcommittee met on March 23, 2023, and May 25, 2023, in part to continue discussion of the proposed amendment to UTCR 4.010. Based on feedback that received from the subcommittee and others, the Chief Justice adopted a modified version of UTCR 4.010, intended to allow early resolution of pretrial motions in appropriate cases, including motions which may be dispositive or which, once ruled upon, may assist parties in reaching tentative plea agreements prior to trial. Amended UTCR 4.010 allows a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If so requested, the hearing must be held at least 7 days before trial, absent good cause. That amendment became effective on August 1, 2023.[12]

OCDLA also submitted several other proposals which the UTCR Committee did not recommend for approval. Those include:

- UTCR 4.020 (new) – Allowing parties to file a form in lieu of attending a status conference or other status appearance. There was some concern from judges that holding status conferences is necessary because it helps to move cases along in a way that might not occur if parties were allowed to simply submit a form. Status conferences provide an opportunity for judges to learn more about the status of the case and to prioritize cases for trial and provide an opportunity for defendants to meet with their attorneys.
- UTCR 4.040 (new) – Allowing parties to schedule certain hearings by email. Courts had several concerns with allowing parties to email hearing requests that would normally become part of the case file. There were concerns about notification of opposing parties and the court workload involved with adding the emails to the case file. There were also concerns about misdirection of the emails and the possibility that parties might include confidential information that would be better protected as part of a confidential case filing. Following the UTCR Committee meetings, the CJAC Case Processing Subcommittee recommended development of a criminal case scheduling form, which is still under consideration.
- UTCR 4.060 (repeal) – Repealing the rule governing motions to suppress (this proposal was withdrawn by OCDLA during the interim work period).
- UTCR 7.010 (amendments) – Setting discovery deadlines in criminal cases, requiring the state to provide an initial plea offer, and allowing continuances by party agreement (the latter two proposals were withdrawn by OCDLA during the interim work period). The motion to set discovery deadlines did not receive a second in the committee. The committee heard concerns from the Oregon District Attorneys Association (ODAA) that district attorney offices might need more resources to comply with the proposed discovery deadlines and that this proposal was therefore more appropriate for consideration by the legislature. OJD will continue to evaluate other system-wide improvements and efficiencies in criminal cases – either by OJD or particular courts, or

[12] In addition to the newly adopted UTCRs, Chief Justice Flynn directed the UTCR Committee to evaluate any public comment received on the amendments to UTCR 4.010 and 7.010 at the October 19, 2023, UTCR meeting. Further modifications to those rules could be proposed by Committee members at that time.

through other pathways, such as through legislative planning that could lead to creation of a body of Oregon Rules of Criminal Procedure.

Following the passage of SB 337, Chief Justice Flynn issued an order directing every circuit court to immediately develop an unrepresented defendant crisis plan. In addition, Chief Justice Flynn, and the OSCA planning guidelines emphasized, among other things, the importance of including an evaluation of the actions each court has taken in relation to OCDLA proposals.[13]

Although courts had already started their work to develop those plans, OCDLA sent letters to courts in August 2023, which included new efficiencies proposals for courts to consider. (Appendix E.4) Notably, some of the proposals overlapped or expanded on the previously submitted UTCR proposals. There also were new proposals, some of which focused on other public safety system stakeholders.

In line with Chief Justice Flynn's and OSCA's direction, many courts indicate in their crisis plans that they have already implemented proposals similar to OCDLA's UTCR proposals, are in the process of implementing the recent changes to UTCR 4.010, 4.130, and 7.010, or that the new proposals are not needed in the particular district. Nearly all judicial districts indicate in their plans that they have taken at least one action related to the areas addressed in the OCDLA proposals, with the most commonly shared actions pertaining to remote hearings. Judicial districts worked closely with public safety partners to facilitate the use of remote hearings during the COVID-19 pandemic and are working to continue expanding the use of remote hearings. Some counties have Supplementary Local Rules that address remote hearings or allow for an adult in custody at the county jail or Department of Corrections to appear by remote means.

As to the new OCDLA proposals, several courts already were contemplating or discussing many of these topics – including courts that did not in receive the letter – with their public safety partners or crisis teams. Given the scope and systemwide impact of many of the new OCDLA proposals, many courts recommended evaluation at the statewide level – rather than judicial district by judicial district – to allow for thorough discussion and shared decision-making among stakeholders and policymakers, as well as evaluation of a consistent and efficient approach for implementation.

7 NEXT STEPS

The public defense system is severely compromised, with a growing number of individuals who have a right to counsel but remain unrepresented across the state. The need for accurate and reliable data continues and is necessary to make data-informed decisions to address the current crisis and ensure representation in the future. OJD is committed to continuing its efforts to work efficiently at the local level and to working with OPDS and providers to develop comprehensive data sets that provide the agency and Commission with real-time data to better understand current capacity, produce accurate forecasts, and ensure that each person entitled to court appointed counsel has representation as required by law.

[13] In the Budget Report to Senate Bill 337, it was noted that crisis teams should evaluate efforts to improve the timely processing of the cases of unrepresented defendants, such as discovery and plea timelines, jail visitation hours, scheduling processes for hearings, and access to remote proceedings.

APPENDIX A: COUNTY SPECIFIC EXPLANATIONS (A SNAPSHOT)

A.1 MULTNOMAH

Multnomah County is Oregon's most populous county with criminal filings that are triple those of the next largest county, and was one of the first judicial districts to feel the impact of defense counsel shortages starting in summer 2021. By January 2022, both public defender organizations in Multnomah County, Metropolitan Public Defender (MPD) and Multnomah Defenders Inc. (MDI), had notified the court that they were unable to take all the new minor felony appointments in the county because of excessive caseloads. Since then, the court has been working collaboratively with defense providers and the Multnomah County District Attorney's office to resolve the crisis.

Several factors make Multnomah County unique. Murder and major felony cases make up a higher percentage of the criminal workload than in other counties and those cases take more resources and longer to resolve. In fiscal year 2023, the number of misdemeanor case filings was less than 35% what they were in 2019 while the number of felony case filings is over 110% what they were in 2019. Additionally, Multnomah County has a large population with untreated mental health, behavioral health, and/or substance abuse issues and housing insecurity. Finally, the Multnomah County District Attorney's office has noted that it still has several hundred unfiled cases that it intends to file once there are enough defense attorneys to handle them.

Two of the primary issues that Multnomah County identified in their crisis plan are (1) an insufficient number of public defense attorneys, specifically felony-qualified attorneys, and (2) a lack of sufficient data about and tracking of public defense caseload and workload recommendations in Multnomah County's crisis plan include suggestions for changes in many areas of the criminal justice system in Multnomah County to improve efficiency and to better track public defense workload. One recommendation is that PDSC contract for and ensure that there are enough public defenders to meet the need of the county based on national metrics and a realistic prediction of how many cases each attorney should be able to handle in a contract year. The plan also recommends that OPDS regularly monitor, audit and review compliance with the public defense contracts and know how many cases each attorney is handling at any given time, and that defense providers report their capacity on an ongoing basis to OPDS and the court.

OJD data shows that to provide an attorney for each of the unrepresented individuals in Multnomah County as of August 11, 2023, the county would need 3.15 additional "full caseloads" as defined in the 2022 PDSC Criminal Contract over the next 12 months. However, as the court notes in its crisis plan, many of the attorneys employed at nonprofit public defender law firms in Multnomah County are currently unable to reach their contractual maximum (MAC), as described in PDSC's criminal contracts, due to limitations related to each individual attorney's representation capacity.

A.2 JACKSON

Jackson County is currently (and frequently) the county with the highest number of unrepresented individuals in the state. All members from the crisis team agreed that Jackson County is unique in the number of cases filed each year in comparison to the number of available attorneys. Jackson County is the sixth most populous in Oregon but has trouble recruiting and retaining attorneys as effectively as the other similarly situated counties. Crisis team members discussed ideas for attracting new and experienced attorneys. The primary concern for defense providers and crisis team members in Jackson County is that their compensation is not adequate. The team highlighted the disparity in pay between DOJ attorneys and public defense providers, noting that it is difficult to attract public defense attorneys to the area when the pay is so disparate. Defense providers expressed concern about losing attorneys to other parts of the state where the pay is greater.

Additionally, many providers and team members shared that the monthly MAC and the contracted MAC was arbitrary, and contractually prevented many providers from representing additional individuals accused of a crime. Many defense provider team members shared a desire to accept/represent more clients but are unable to do so due to the MAC limit and lack of prompt and appropriate compensation. Many providers also highlighted the difficulty in taking on the hourly appointments. Time spent on the administrative process to take hourly cases, delay in payment, and the need to legitimize or justify qualifications were some of the reasons providers indicated they were hesitant to accept hourly cases (this was shared in other counties as well). Finally, the team also noted that while Jackson has lost a small number of defense providers since 2019, the criminal case count has also decreased, even as the county maintains one of the highest volume criminal dockets in the state.

APPENDIX B: CIRCUIT COURT CRISIS PLANS

B.1 CRISIS PLANS

Judicial District 01	Jackson County
Judicial District 02	Lane County
Judicial District 03	Marion County
Judicial District 04	Multnomah County
Judicial District 05	Clackamas County
Judicial District 06	Umatilla and Morrow Counties
Judicial District 07	Sherman, Wasco, Gilliam, Wheeler, and Hood River Counties
Judicial District 08	Baker County
Judicial District 09	Malheur County
Judicial District 10	Union and Wallowa Counties
Judicial District 11	Deschutes County
Judicial District 12	Polk County
Judicial District 13	Klamath County
Judicial District 14	Josephine County
Judicial District 15	Coos and Curry Counties
Judicial District 16	Douglas County
Judicial District 17	Lincoln County
Judicial District 18	Clatsop County
Judicial District 19	Columbia County
Judicial District 20	Washington County
Judicial District 21	Benton County
Judicial District 22	Jefferson and Crook Counties
Judicial District 23	Linn County
Judicial District 24	Grant and Harney Counties
Judicial District 25	Yamhill County
Judicial District 26	Lake County
Judicial District 27	Tillamook County

JUDICIAL DISTRICT 01 – JACKSON COUNTY

Presiding Judge: Benjamin M. Bloom

Trial Court Administrator: Tina Qualls

Crisis Team Members: Presiding Judge Benjamin Bloom, Tina Qualls, Matthew Rowan, Beth Heckert, Don Scales, John Hamilton, Clint Obom, Christine Herbert, Jordon Huppert, Judge Kelly Ravassipour, Melissa Chochran

OSCA Staff: Jordan Bates, Rachel Woods

Meeting Dates: July 18, 2023, August 1, 2023

BACKGROUND

The 1st Judicial District has had a public defender crisis for nearly 3 years. The crisis is the result of a combination of related and unrelated factors that when combined has created a shortage of local attorneys available for court appointment. The stakeholders in the criminal justice system in the 1st Judicial District have a collaborative working relationship between the court, the public defense providers, and the District Attorney's Office.

The interventions/recommendations listed below are in order of priority, with a substantial increase in compensation being the highest priority recommendation.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- Jackson County will follow the new UTCRs 4.010 and 7.010, which went into effect on August 1, 2023.
- The court already allows parties to request all hearings via motion, and some by email.
- Jackson County permits remote appearances when they are in line with court protocols.

BEST PRACTICES

The Southern Oregon Public Defender (SOPD) and consortium attorneys have prioritized attorney appointments based on the seriousness of the charges, in-custody status, and case age.

ACTIONS TO DATE

In December of 2021, the SOPD and consortium attorneys advised the court that many of their attorneys would be out of MAC by March of 2022, for the year. Through collaboration the 1st Judicial District was able to triage the unrepresented list until July of 2022 with the start of a new contract year. In December of 2022, the 1st Judicial District was again in a crisis for representation. The court conducted several meetings with SOPD, consortium attorneys, OPDS, and the District Attorney's Office seeking resolutions. OPDS advised the court to begin adding defendants to the unrepresented list and they would find attorneys to represent this group statewide. OPDS was not able to provide out-of-county attorneys to assist with the 1st Judicial Districts' unrepresented list. OPDS then developed an hourly rate plan that they would pay

attorneys to represent defendants on the unrepresented list. On May 26, 2023, Jackson County met with representatives from OPDS, Chief Justice Meagan Flynn, SCA Nancy Cozine, and local providers to learn more about the public defense crisis in Jackson County. OPDS data and OJD data on MAC was discussed during this meeting. The 1st Judicial District presently has over 500 unrepresented defendants on the current list despite multiple meetings and efforts to reduce caseloads, including early resolution conferences, remote appearances, and recruitment efforts. The 1st Judicial District has taken the following actions to reduce the crisis of unrepresented defendants:

- Conducted early settlement conference dockets to resolve criminal cases.
- Provided settlement conferences to resolve criminal cases with the most serious charges, cases which are generally scheduled for multi-week jury trials.
- Maintained the remote capability for proceedings to promote efficiency for the court, public defenders, district attorneys, and out-of-county attorneys.
- Conducted recurring meetings and encouraged ongoing communication between the Presiding Judge, public defenders, and the District Attorney's Office to address trends in case processing issues, changes to their capacity, and opportunities for ongoing efficiencies and improvement.
- The court continues to accept change of pleas up to the day of trial for good cause reasons.
- The District Attorney in Jackson County has begun a practice of reducing some C-level misdemeanors to be treated as violations.
- Some Jackson County Consortium attorneys have agreed to take cases on the unrepresented list at the hourly rate.
- The court began setting trial dates within 60 days at pretrial.
- Requesting that the District Attorney's Office provide possible trial dates to keep cases moving.
- The court began setting out-of-custody unrepresented arraignments out two months.

ATTACHMENT(S)

- Jackson County Intervention Data

INTERVENTION / RECOMMENDATION 1

Recommend to OPDS/PDSC and the legislature to adjust public defense provider compensation – increase pay for all attorneys, comparable to DOJ attorneys.

Many attorneys leave public defense work to take better paying jobs, and to find opportunities that provide better benefits. Advocate for incentives such as tuition reimbursement, loan forgiveness, and supplemental compensation in rural and underserved communities. Build pay around seniority as well as difficulty of each case type.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

By adjusting compensation, more lawyers will start and remain in criminal defense work. Will allow for more supports, additional staff, and improve working conditions.

Performance Measurement:

Identify number of attorneys who begin criminal defense work and the number of years those attorneys remain. Will need to be a long-term solution.

Resources:

Advocacy, legislative support, financial support. Dedication by OPDS to negotiate appropriate contracts that support long-term public defense work at a financial level that leads to better recruitment, training, and longevity by providers.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Increase attorney capacity.

The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys. Recommend to OPDS/PDSC and the legislature to increase/redetermine MAC (or remove):

- Redetermine and/or assess contract guidelines associated with ethical maximums and MAC to best meet current practice. This should not be a one-size-fits-all model.
- Allow all providers to take privately retained work. Current contract does not permit 1 FTE attorneys to take on additional work.
- Statewide proposal to be done in a way that does not incentivize taking on more than ethically capable. Of note, many Jackson County providers indicate they do not feel ethically limited based on the current MAC and believe they are capable of handling higher case numbers.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system. Allows attorneys to determine capacity and caseload without arbitrary limits. Attorneys with more experience may be able to have a higher caseload than those with less.

What-If? Projections:

In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Jackson County, the need is 2.50 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed: *See attachment for numbers.*

Annual Case Assignment for 1.0 FTE:

Murder	6
Jessica Law	6
Measure 11	45
Major A/B felonies	138
Minor felonies	165
Misdemeanors	300
Probation violations	825
Civil commitment	230

~OR~

In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by 14%. This contract cycle, attorneys in Jackson County have taken 4,956 public defense cases over 13.36 months, meaning per month, attorneys are currently able to take 371 cases. Currently, there are 616 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in Jackson County would have to take 422 cases a month, for an increase of 14%. Jackson County has 26 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county. This would result in the following increases based on current caseloads: *See attachment for numbers.*

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Jackson County would be addressed over twelve months' time.

Performance Measurement:

- Decrease in number of individuals on unrepresented list.
- No unrepresented defendants by September 2024.
- Poll attorneys to determine if quality of life and length of time in practice increases as they have more autonomy.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Recommend to OPDS/PDSC and the legislature relating to technology/payment integration:

- OPDS to provide upfront payments to attorney trusts and attorneys provide invoices to OPDS for funds pulled from the trust each month.
- OPDS to provide timely payments to attorneys through a seamless system.
- OPDS to provide funding to hire additional administrative support positions to support attorneys statewide.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

- Reduce attorney time spent on administrative tasks to allow more time to focus on client centered work.
- Receipt of consistent and predictable payments.
- Attorneys should be paid promptly and through a more efficient system that decreases administrative tasks.

Performance Measurement:

Determine if cases are resolved more quickly, and if attorneys are retained by provider firms for longer.

Resources:

Funding and support from OPDS, legislature, and technology expertise.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Recommend to OPDS/PDSC and the legislature implementation of better recruitment and training strategies.

Implement strategies to increase recruitment so that more people apply to work as public defense providers in counties that need it. Ideas to increase applicants include:

- Posting job openings on job recruitment websites and geotargeting of job postings through search engines.
- Partner with law schools to create clinics in counties outside of Lane, Marion, and Multnomah.
- Advocate for increased pay and benefits (see intervention 1).

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase number of public defense providers to ensure that defendants will have access to constitutionally required counsel.

Performance Measurement:

More attorneys are able to take on cases while allowing those with experience to have a balanced workload. Measure the number of attorneys/MAC and track whether it increases with these recommendations/interventions.

Resources:

- Funding to pay for job recruitment websites and more sophisticated job posting strategies so that potential candidates can find those opportunities online.
- Funding needed from legislature to fund public defense work.
- Resources from law schools to invest in clinics.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

The court will analyze where terminating the appointment of attorneys after a defendant is on warrant status for 60 days is constitutionally permissible and will create more MAC while ensuring that attorneys are compensated for their work. Alternatively, the court will consider whether to grant attorney withdrawal after the same period of time helps resolve the current crisis.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney ethical capacity and a reduction in number of unrepresented individuals.

What-If? Projections:

OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Jackson County, as of August 10, 2023, there are 456 open appointments over 60 days for cases in warrant status. *See attachment for detailed data.*

Performance Measurement:

Reduction in the number of individuals on warrant status over 60 days with appointed attorneys.

Resources:

Business process change. Collaboration with and communication to defense providers.

Time to Take Effect:

More work needs to be done to determine if this is feasible.

Was there community consensus on this intervention?

No

Minority Viewpoints:

Defense providers indicate they are still completing work on the cases in which a client is on warrant status, and are frustrated at the idea of not being appropriately compensated for their work. The court is considering whether this intervention will be effective.

INTERVENTION / RECOMMENDATION 6

Case resolution:

- DUII/diversion session – OPDS to reimburse attorneys through the hourly rate or provide out-of-county attorneys for the session.
- Case resolution conference – Can OPDS assign 2-3 OPDS attorneys to appear twice a year for a scheduled case resolution conference? The OPDS attorneys would be paid out of the hourly rate. The conference would be developed in partnership with the District Attorney's Office and local defense providers.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

Free up MAC by having OPDS attorneys available. Preserve Jackson County attorney MAC.

What-If? Projections:

DUII/diversion session: In Jackson County in FY 2023, cases where the most serious charge is a misdemeanor Driving Under the Influence of Intoxicants represented 2.6 MAC. In FY 2023, 16% of all misdemeanor filings were resolved by predisposition programs or specialty court participation. We anticipate that providing a diversion session may result in up to 0.42 MAC available for more serious, complex matters.

Case resolution conference: This intervention will not create additional MAC but may reduce caseloads and increase ethical capacity.

Performance Measurement:

Measure the number of cases that resolve at these conferences without using up MAC.

Resources:

Judges available to preside over the docket and district attorneys and defense attorneys available and willing to participate.

Timeframe:

Start Date: October 2, 2023

End Date:

Time to Take Effect:

Unclear when OPDS attorneys will be available to assist.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 7

Data analysis and research – recommend OPDS improve collection of certain data.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Conducting comprehensive data analysis and research on the criminal justice system's inefficiencies can help identify specific areas that need improvement and inform evidence-based policy changes.

Resources:

OPDS should have accurate monthly data for stakeholders, legislators, and attorneys to determine case MACs and workload for each county. OPDS and OJD should utilize the data to determine trends in each county for system improvement.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 8

Recommendation to OPDS/PDSC re the Regional OPDS Trial Team (Douglas and/or Jackson County).

As of August 22, 2023, Jackson County has the highest number of unrepresented individuals in the state, with 576 unrepresented individuals. More attorneys are needed immediately to address the crisis and bring in capacity for representation.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Decrease in the number of unrepresented defendants, an increase MAC for current local providers, and more attorneys hired.

Performance Measurement:

How many unrepresented defendants remain after attorneys are added? Does the number remain consistent?

Resources:

Dedicated attorneys from OPDS in Jackson County.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

There was consensus about adding attorneys, but also concern about disparity in pay between the attorneys working on this team and those who are current providers.

INTERVENTION / RECOMMENDATION 9

Prioritize representation/appointment for clients in custody, and then for clients based on seriousness of charge.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

- Decrease in the number of unrepresented defendants who are in custody and the unrepresented with the most serious charges.
- Improve community safety by resolving the most serious cases for those who are out of custody.

Performance Measurement:

Measure the number of unrepresented defendants in custody before and after this intervention.

Resources:

Coordination with jails to ensure accurate data, and coordination with attorneys to determine availability. Utilize pretrial services to determine the number of unrepresented individuals who are without counsel.

Timeframe:

Start Date: July 3, 2023

End Date:

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 10

Recommend that arraignment be handled by a duty attorney under contract with the PDSC.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Arraignment docket could be handled by single attorney. While this action is outside of the court's authority, increasing attorney capacity is an intervention that may address the unrepresented individual's crisis. This attorney will have time to talk with in-custody individuals and Release Assistance Officers prior to arraignment, increasing the possibility of the court having information needed to make a release decision at arraignment, reducing the need for additional court hearing(s). It will also free up capacity for attorneys to work their assigned cases.

What-If? Projections:

Identifying a duty attorney for arraignment is not best practice and does not support vertical representation. However, due to the crisis of unrepresented individuals, it may be worthwhile as a temporary intervention that could free up capacity of more experienced attorneys.

Performance Measurement:

Reduction in the number of individuals on the unrepresented list, fewer continuances, and increased time to disposition.

Resources:

Policy and business process change.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 02 – LANE COUNTY

Presiding Judge: Jay A. McAlpin

Trial Court Administrator: Elizabeth Rambo

Crisis Team Members: Presiding Judge Jay A. McAlpin; Brad Litchfield, Attorney; Brook Reinhard, PDSLC; Chris Parosa, Chief Deputy DA; Judge Debra K. Vogt; Erika Hente, Oregon Law Center; Felipe Alonso, Lane Co. Bar Assoc.; Lt. Greg Rice, LCSO; Karen Stenard, Lane Co. Juvenile Lawyers Assoc.; Laurie Bender, OPDS; Patty Perlow, DA; Rebecca Gouge, LCDC; Reid Kajikawa, PDSLC; Sarah Stewart, Kids First

OSCA Staff: Conor Wall

Meeting Dates: August 2, 2023; August 16, 2023

BACKGROUND

The crisis in Oregon's public defense system reflects, and is impacted by, stress in the entirety of Oregon's justice system. Any "solution" to one crisis without also paying attention to issues in the system as a whole is, at best, temporary. The crisis in Oregon's public defense system is part of a larger crisis that has been years in the making. Oregon's system-wide crisis has been caused by, among other things, a massive generational shift as an entire generation of attorneys has retired without adequate numbers of experienced attorneys to replace them; substantial changes in the law (both from legislation and from Oregon's appellate courts); and the legal system taking on an increased role in "catching" Oregonians who fall through the cracks in the social service net. All of these factors were exacerbated by the COVID-19 pandemic.

We have long known that the retirement of the "Baby Boomer" generation of attorneys would seriously impact the legal profession. Over the past twenty years, numerous commentators warned that looming retirements would result in many areas of the state struggling to find adequate numbers of attorneys for all practice areas. There was also concern that due to a number of economic factors, including the fact that the 2008 Recession severely restricted the number of new attorneys entering the legal workforce, there were inadequate numbers of attorneys gaining experience to meet future demand for legal services. Although the massive generational shift and loss of experience was foreseen, how badly it would be exacerbated by the COVID-19 pandemic was not. The sudden loss of experienced lawyers across the state in all practice areas combined with long-term inattention to problems in Oregon's public defense system has magnified the impact of this shift and is a major contributor to Oregon's public defense crisis.

Oregon law has changed dramatically over the past decade. Many of those changes have resulted in increased workloads—sometimes dramatically increased workloads—for attorneys and courts. The US Supreme Court's ruling in *Ramos v. Louisiana*, and the Oregon Supreme Court's ruling in *Watkins v. Ackley*, have increased the number of post-conviction relief cases that need court appointed attorneys. *Ramos/Watkins* cases are one example of a type of case that did not take up public defense resources 5 years ago. Similarly, the increase in "plain error"

returns from the court of appeals has resulted in corresponding increases in the number of criminal cases on remand pending before the circuit court and which need court appointed counsel.

Some changes in the law do not directly impact OPDS contractors but have nevertheless exacerbated the public defense crisis. For example, Senate Bill 397 made it easier to set aside criminal convictions. The number of set-aside requests filed in Lane County Circuit Court has increased by nearly 700% since the bill's passage. Many of those set-aside requests were filed by experienced criminal law attorneys who once contracted with OPDS but, due to the combination of the shortage of attorneys and the increase in legal work in all practice areas, have more retained work than they can handle and no longer provide public defense services through OPDS.

Finally, Oregonians are seeking social services at historic levels. At some point, many of those Oregonians find themselves involved in the criminal justice system. The circuit court, public defense attorneys and the District Attorney's Office have each dedicated resources to diversion and monitoring programs. These programs are designed to address social service issues like substance abuse, trauma, and behavioral health in the criminal justice system. These programs are valuable, resource intensive, and the need for them is growing. As the need for these diversionary and monitoring programs increases, further strain will be placed on judicial, prosecutorial, and public defense resources.

The public defense crisis looks different in each judicial district. Lane County's crisis currently consists of: (1) a small number of unrepresented defendants (at this time, these defendants are exclusively unrepresented due to ethical conflicts with local OPDS contracted attorneys); (2) a shortage of experienced attorneys prepared to be assigned serious criminal cases; and (3) a large number of unfiled misdemeanor and lower-level felony cases which, if filed in the future, may overtax our current capacity.

Currently, Lane County has 9 defendants who qualify for court appointed counsel and are not represented. Only one defendant is in custody. A local attorney, who does not contract with OPDS, has agreed to represent that defendant at the higher hourly rate. However, even though this attorney is highly experienced, she still cannot be appointed until she finishes with the OPDS qualification process. The remaining cases are out of custody and are either felonies (including Measure 11 cases) or post-conviction relief cases. Each unrepresented defendant is an individual with whom PDSLC and the defense consortium have an ethical conflict. Some are difficult to work with which makes attorneys reluctant to volunteer to represent them.

Lane County has been able to manage and maintain a low number of unrepresented persons due to a number of factors. First, Lane County Circuit Court's case load management system allows for efficient and flexible resolution of criminal cases. Second, Lane County's public defense attorneys effectively and responsibly managed their caseloads to avoid "front loading" and have generally maintained capacity throughout the contract year. Third, the Lane County District Attorney's Office is experiencing an employment crisis and—for reasons separate from the public defense crisis—have instituted a temporary policy of not filing some cases.

The Lane County Circuit Court has 15 judges and approximately 100 employees. Lane County's bench is not immune to the demographic shift facing all other employment fields. The majority of Lane County judges have been on the bench for less than a decade and one third have come to the bench during or after the COVID-19 pandemic. Over the past twenty years, the bench has experienced one hundred percent turnover.

The Lane County bench values hard work, collaboration, and innovation. These organizational traits, when combined with the current Lane County judges' unique breadth of experience, leave the bench well positioned to weather this period of transition and crisis. Of the 15 current judges, 11 practiced criminal law as attorneys at some point in their legal careers, including four with experience as public defense providers. Ten judges were civil litigators with six of those also having criminal law experience. Four judges have extensive experience in domestic relations cases prior to coming to the bench.

Lane County's public defense services are provided by three entities: Public Defender Services of Lane County (PDSLC), Lane County Defense Consortium, and the Lane County Juvenile Lawyers Association.

PDSLC is a nonprofit law firm comprised of 33 attorneys who exclusively represent clients who qualify for court-appointed counsel. Like the court, PDSLC has seen one hundred percent turnover of attorneys in the past twenty years. There is only one attorney who has been a member of PDSLC for more than ten years. In 2022, the legislature appropriated $12.8 million to hire more attorneys to handle public defense cases in select counties. This appropriation has allowed PDSLC to expand from 26 to 33 attorneys. PDSLC attorneys are highly committed to the ethos of public defense work. Recent successful recruitments have led to the hiring of a number of smart, hard-working, and committed attorneys. However, due to difficulty in recruiting experienced defense counsel, most of the new PDSLC attorneys are currently only qualified to handle misdemeanor and minor felony cases. PSSLC's leadership has increased the office's focus on training those attorneys and is committed to training and mentoring.

The Criminal Defense Consortium consists of nine private attorneys who contract to provide representation for defendants who cannot be represented by PDSLC. Most (but not all) Consortium member attorneys also take retained legal work including criminal, domestic relations, and personal injury. This breadth of litigation experience benefits their public defense clients, the court, and the community. Consortium attorneys are very experienced and skilled advocates. Unfortunately, this means that Consortium members have the easiest path to leaving contracted public defense work and the Consortium has lost more members than they have been able to add over the past few years. The members who remain value public service and, at the same time, are aware of the legal fees that they are sacrificing by taking public defense cases. Also, representing public defense clients limits their availability to take cases in other areas of law, like domestic relations, where attorneys are also desperately needed.

The Juvenile Lawyers Association represents juveniles in delinquency matters and parents and children in dependency matters. While Senate Bill 337 seems to exclude providers of public defense services in juvenile court from its scope, providing qualified, caring attorneys for qualifying parties in juvenile court is vital for achieving positive outcomes for at-risk children. Reducing childhood trauma and abuse directly leads to long-term reduction of criminal case filings in adult court. The public defense crisis has also impacted juvenile cases. The Juvenile Lawyers Association reached capacity and we were forced to have counsel from other counties take cases for a time. At other times, Lane County juvenile lawyers had to take cases in other counties. Additionally, Lane County had a long-standing practice of maintaining attorney appointments for children and youth in guardianships. After OPDS stopped compensating attorneys for that work, we ended that program, which left vulnerable children and youth without effective oversight from DHS or the court. The main struggle for Lane County's Juvenile Lawyers Association is OPDS' competing pay structures for juvenile attorneys. Attorneys in surrounding counties are part of the Parent Child Representation Program (PCRP) while the Juvenile Lawyers Association is not. The PCRP attorneys in neighboring counties receive about twenty percent more pay than an attorney

doing the same work in Lane County. This makes new attorney recruitment particularly difficult because an attorney from Eugene can travel less than an hour to four surrounding counties and benefit from more manageable caseloads and increased pay.

Prosecution of criminal cases in Lane County Circuit Court is the responsibility of the Lane County District Attorney's (LCDA) Office. LCDA is currently experiencing an employment crisis. Over the past two years, LCDA has lost 14 Assistant District Attorneys (ADAs) from a criminal division which is funded for only 24 attorneys, a turnover rate of approximately sixty percent. This has forced remaining ADAs to absorb more and more cases leading to further resignations. New ADAs have been hired but like with PDSLC, they tend to be eager but inexperienced. Consequently, LCDA announced that it would no longer prosecute many misdemeanor crimes, any felony property crime that is not presumptively a prison sentence, any driving while suspended cases, or any failure to register as a sex offender cases. The percentage of criminal cases referred from local law enforcement that are filed in circuit court has shrunk from roughly 75% of referrals filed to approximately 40% of referrals filed. Unfortunately, these cases are the exact class of cases that new ADAs and new PDSLC attorneys have historically handled in order to gain experience to become qualified to take more serious cases. Further, the proliferation of digital evidence (in the form of law enforcement body camera videos and surveillance videos in commercial and private properties) and coordination challenges between law enforcement agencies has led to frustrating discovery delays. These delays further increase ADA workloads, hampers competent representation by defense counsel, and causes unnecessary delay in case resolution.

(See attached data review packets: (1) Lane County Circuit Court SB 337 Unrepresented Crisis Plan Data Review; and (2) Lane County Circuit Court SB 337 Unrepresented Crisis Plan Data Review: Juvenile Dependency and Termination of Parental Rights Cases.)

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- UTCR 4.010

1. **Require omnibus hearings one week prior to trial. UTCR 4.010 adopted August 1, 2023.**

   Lane County Circuit Court already had a process in place that allowed for early omnibus hearings prior to this proposal.

   Prior to the implementation of UTCR 4.010, the Lane County Circuit Court had a long-standing process to set omnibus hearings upon request of the attorney. In the two years prior to August 1, 2023, the court received 79 requests for omnibus hearings, in less than five percent of those cases, there was a request that the hearing be set prior to trial. After implementation of UTCR 4.010, the court will continue to allow omnibus hearings to be set prior to trial on requests submitted pursuant to that rule.

2. **Set a briefing schedule for omnibus motions and responses.**

   Lane County Circuit Court already has a process in place prior to the proposal for complex criminal matters. On the request of the parties or on the court's own motion, the court assigns complex criminal matters to a specific judge. That preassigned judge sets a briefing schedule. In all other criminal matters, our Supplemental Local Rules provide for timelines for motions, hearings, and trials. Requiring a briefing schedule is redundant and a waste of resources.

- UTCR 4.020 Proposals

  1. **Allow parties to submit a form two days in advance and in lieu of appearance a status conference or other nonsubstantive court appearance.**

     This process is unnecessary in Lane County. The court does not set nonsubstantive appearances.

     It is a court management best practice to ensure that every proceeding has a purpose necessary to move a case forward. The court only provides three dates for criminal cases: (1) an arraignment date; (2) a "35-Day Call" date; and (3) a trial date. Any additional appearances are at the request of or necessitated by the parties. At each hearing, substantive work occurs.

  2. **Require the court to allow remote appearance at a status conference or other nonsubstantive appearance unless the technology is not available.**

     This process is unnecessary in Lane County. The court does not set nonsubstantive appearances.

     It is a court management best practice to ensure that every proceeding has a purpose necessary to move a case forward. Additionally, Lane County Circuit Court has worked hard to incorporate technology that allows for remote appearances and freely grants requests to appear remotely when other parties' substantive rights are not impacted.

- UTCR 4.040 Proposal

  1. **Allow parties to request certain hearing types (release hearing, release revocation hearing, request to modify terms of release, change of plea or sentencing, or similar appearance) by email and require the court to set the hearing as soon as practicable or on a date stipulated by the parties.**

     Lane County Circuit Court has an alternative and more effective process in place. We have a long-standing business process that allows attorneys to call the calendar clerk to select dates for hearings. For simple scheduling of matters, phone calls are much more efficient than email. When scheduling, phone calls allow for real-time confirmation of dates and availability. Email, because it is asynchronous, is time-consuming and impracticable when selecting dates on multiple constantly changing calendars.

     Many hearing types require a more formal motion practice. This is not formality for the purpose of formality. Motions provide the court with vital information in a familiar and digestible package. Motions provide notice to opposing parties so the court can gather and weigh multiple competing positions. Motions preserve a record for appeal that cannot be replicated by other mediums of communication. And filing motions does not allow for "insider knowledge" where an attorney knows how to email court staff, but a self-represented litigant does not. This is an "Access to Justice" issue that public defense providers and district attorneys generally do not have to concern themselves with but, due to the high number of self-represented litigants in other practice areas, the court concerns itself with constantly. Further, the court, not attorneys or the legislature, must be allowed to manage how the court receives and processes information and requests. Multiple mediums of communication create the risk of

system and cognitive overload which runs a high risk of important matters falling through cracks.

The court can find efficiencies in clarifying lines of communication between parties and the court. In this crisis plan, the court is forming an inter-partner communications workgroup to discuss, clarify, and publish best practices for different forms of communication with the court.

- UTCR 4.130 Adopted August 1, 2023, as UTCR 4.040

  1. **Upon agreement of the parties, when, as a result of negotiations, an in-custody defendant intends to resolve cases in more than one jurisdiction, any appearance required in a court, other than the court of jurisdiction in the county in which the defendant is in custody, shall be by remote means unless good cause is shown.**

     Lane County Circuit Court will follow the approved UTCR. However, the use of the word "shall" unnecessarily ties the Court's hand and places the final determination of a mode of appearance with the parties. Practices that remove the trial court's necessary discretion are not a best practice to serve the diverse needs of the community and litigants. Additionally, any rule that combines (1) a mandate that the trial court act in a specific way with (2) a modifier like "unless good cause is shown" doesn't make sense. If the trial court acts contrary to the mandate, to whom is the trial court required to show "good cause?" Decisions of the trial court should be appealable to the higher courts and the higher courts should have the ability to provide a remedy. This rule violates that precept.

- UTCR 7.010 - Recommendations

  1. **Set timelines for discovery in criminal cases.**

     Our crisis plan establishes a discovery workgroup to discuss, collaborate and resolve issues related to discovery, discovery timeliness, and other issues.

  2. **Require the state to provide an initial plea offer at first appearance or within the first 30 days.**

     The District Attorney is part of a separate branch of government, and the court must avoid overreaching into the administration of other branches of government. Whether or not to make offers, engaging in negotiations, and settling cases is the responsibility of the elected District Attorney. The Lane County Circuit Court provides a structure within which those activities occur, but we should not take on the role of directing those activities for a co-equal branch of government.

  3. **Allow plea agreements and negotiations to continue up to and including the day of trial.**

     Lane County Circuit Court already allows for plea agreements and negotiations to continue up to and including the day of trial.

  4. **Allow continuances by agreement of the parties.**

     Stipulation weighs heavily when considering a continuance, but it cannot be the only consideration. Automatically granting continuances just because they are stipulated gives control over case-load management to attorneys. As mentioned previously, this

is not a best practice for a fair and efficient court case-load management system. I strongly urge the legislature to leave case load management in the hands of the courts.

BEST PRACTICES

In addition to the information provided in the Actions Already Taken section, other best court practices are already in effect to ensure we track attorney caseloads accurately. This includes tracking unrepresented individuals. Monitoring changes to the number of unrepresented individuals over time, and efficient use of attorney resources:

1. The court follows best practices for Odyssey business processes and data entry. We add the Jessica's Law charge modifier; ACP eligibility, verifications, and recommendations; we add attorneys; unrepresented individuals; and monitor and resolve errors with unrepresented individuals.
2. Generally, the court prioritizes assignment of counsel. Specifically, the court prioritizes case assignments by custody status, crime seriousness, and length of time unrepresented.
3. The Court actively and constantly monitors criminal caseflow management to reduce the number of hearings and ensure hearings are meaningful.
4. PDSLC and the Consortium coordinate conflict representation and substitution quickly and efficiently which saves time and resources.

See also "Actions to Date," below.

ACTIONS TO DATE

- For decades, Lane County Circuit Court has prioritized fair and efficient resolution of cases. In collaboration with our community partners, we have developed an innovative and efficient approach to caseload management which results in Lane County consistently resolving cases and freeing up defense attorney capacity.
- Lane County Circuit Court has been an early innovator in implementing diversionary programs that resolve cases early and reduce future criminal case filings.
- Lane County Circuit Court prioritizes appointment of attorneys for unrepresented defendants who are in custody. We proactively monitor the status of unrepresented defendants and closely evaluate defense provider capacity to forecast future representation needs.
- Lane County Circuit Court inactivates attorney appointments on cases where the defendant has been on warrant status for more than 6 months.
- We regularly receive feedback from community partners on how to improve case management and efficiency and look for ways to adopt recommendations.
- Lane County Circuit Court has consulted with community partners to strategically process case backlogs developed during the pandemic. Lane County Circuit Court is open to evidence-based innovations to better provide judicial services. For example, we have partnered with the National Center for State Courts to take part in innovative pilot programs, like a differentiated case management system for juvenile dependency cases.

Lane County Circuit Court has a long history of thinking collaboratively and innovatively about trial court caseload management. A court with a healthy caseload management system efficiently moves all types of cases through the court system in a manner that addresses the needs of litigants, protects their rights, and reaches resolutions of their cases with minimum unnecessary delay. A healthy caseload management system directly impacts attorney workload by providing varied modes of case resolution to assists attorneys in resolving pending cases in the manner that is most appropriate for each case, thereby freeing up attorneys to take new cases.

In Lane County, our criminal case management system is simple and effective. The court provides three certain dates for all criminal cases: (1) an arraignment date; (2) a pretrial conference date; and (3) a trial date. Any additional appearances are at the request of or necessitated by the parties.

At arraignment, a defendant is informed of the charges they are facing, receives a court-appointed attorney, and is given a date to return to court that is approximately 35 days in the future. Between arraignment and the next court appearance, it is expected that discovery has been turned over, follow-up investigation has occurred, and an offer of resolution has been made and conveyed to the client.

At the pretrial conference date, the court is available to either take a change of plea, provide additional time for negotiation or investigation, or facilitate a settlement conference. All criminal cases get a settlement conference with a judge at the pretrial conference prior to being set for trial. If parties believe a more involved settlement conference is necessary, the court's local rules allow for that. If parties believe that a criminal case is particularly complex, the court's local rules allow for the assignment of a particular judge to manage that case. In this way, Lane County's system allows for differentiated treatment of criminal cases directed by each case's individual need.

Trial dates are selected by the attorneys. On trial days, each Lane County judge (except judges assigned to a specialty docket like juvenile) are either available for trial or already in trial. Trials that report ready to begin are assigned to an available judge.

This system has developed over time through a collaborative process involving the court, the criminal defense bar, and the District Attorney's Office. It has provided fair, efficient, and timely resolution of criminal cases for decades. It provides parties with structure and a limited number of court appearances that they can use as benchmarks or signposts to guide their own case management process; it also provides flexibility for more (or less) court involvement as each individual case warrants.

Lane County's case management system has resulted in our jurisdiction being consistently among the best courts in the state at timely disposition of cases; has allowed us to dispose of our "COVID backlog" quickly and relatively easily; and, I believe, has helped Lane County weather the impacts of the public defense crisis. However, adherence to this system, while providing benefits to litigants, requires each individual judge in Lane County to surrender a degree of autonomy and personal control over their schedule that judges in other counties enjoy. The success of the system would not be possible without a judicial culture that emphasizes hard work and public service. Further, OCDLA's proposals (and threatened interference from other branches of government on OCDLA's behalf) threatens the efficiency of this system.

Additionally, Lane County Circuit Court has been a leader in implementing diversionary programs that reduce criminal case filings. Our first treatment court (then called "drug court") became operational in October 1994 and was one of the first 20 substance abuse treatment courts in the

United States. Building on the success of that initial treatment court, we continued to innovate by creating a recovery and progress court (RAP court), which was the first juvenile substance abuse treatment court in Oregon. In the last decade we have added a veterans' treatment court to provide services focused on the unique challenges faced by those members of our community who have served in the military and who may continue to bear the burden of trauma. We also have a mental health treatment court which seeks to divert members of our community from the criminal system who may be otherwise law-abiding but for the lack of mental health treatment. These treatment courts seek to address the enormous social costs of substance abuse, trauma and lack of mental health treatment while also diverting them from an increasingly strained criminal justice system.

In addition to the treatment courts, we have also instituted a differentiated case management system for our juvenile dependency cases. This ensures increased face-to-face interaction between our juvenile judges and families involved in the juvenile dependency system. This allows the court to monitor each parties' progress toward resolving the problems that brought them before the court and, at times, has forestalled the filing of criminal charges, acting as an informal diversion program.

Not only have we sought to better serve our community through treatment courts and better systems in juvenile cases, but we've also begun innovating to better serve defendants who have been found unfit to stand trial. In response to both the increase and the complexity of aid and assist cases on our criminal docket, we have created a behavioral health docket. This docket was created in response to a similar PDSLC proposal, and would have failed without the cooperation and buy-in of the Consortium attorneys and the District Attorney's Office. The goal of the docket is to manage aid and assist cases as they move from the court to the Oregon State Hospital and back more efficiently, create relationships with community partners, and create a structure to respond to any further legal changes to the legal requirements related to the restoration process.

The Lane County Circuit Court is also mindful that we are entrusted with both statutory and constitutional mandates to provide services across all legal practice areas. We manage numerous dockets in addition to criminal cases including domestic relations, civil litigation, and probate. We know better than anyone else the delicate ecosystem that is a trial court. Thoughtless implementation of an intervention in one practice area can have an unintended consequence in our services in another. And, as concerning as the number of unrepresented criminal defendants is, that number is far overshadowed by the tsunami of self-represented litigants in other practice areas. The impacts of unrepresented parties in, for example, a custody matter ripple out into the community in serious and unseen ways. To help manage this workload, we have instituted status conferences and judicially led settlement conferences that includes self-represented litigants in family law cases. We know that children fare better after divorce if parents are able to reach agreement rather than going through an adversarial process. Since offering these status conferences and judicially led settlement conferences we have seen an increase in amicable resolutions. Implementation of proposals focused only on the public defense crisis puts these important programs at risk. I am deeply concerned that changes in judicial availability resulting from processes forced on the trial court would have negative consequences on these opportunities for the public to have their matters timely resolved. The trial courts have the experience, knowledge, and breadth of vision to best manage judicial workflow.

As the public defense crisis began to grow, Lane County undertook additional action to avoid or reduce the likelihood of experiencing a crisis of unrepresented defendants while trying to avoid interventions that might hurt attorneys and litigants (including self-represented litigants) in other

practice areas. We have dedicated staff time to prioritize appointment of attorneys for unrepresented defendants who are in custody, proactively monitor the status of unrepresented defendants and closely evaluate defense provider capacity to forecast future representation needs. We began inactivating attorney appointments on cases where the defendant has been on warrant status for more than 6 months.

The court regularly solicits feedback from criminal justice system stakeholders on how to improve case management and efficiency. We have ongoing consultations with stakeholders to strategically process case backlogs, including warrants, that developed during the pandemic.

INTERVENTION / RECOMMENDATION 1

Community Partner Workgroups Form workgroups comprised of a broad spectrum of community partners. Each workgroup proposing specific solutions to the Lane County Presiding Judge that will address the unrepresented persons crisis by increasing system efficiencies. The specific groups are as follows:

1. Education: This workgroup will collaboratively devise a training curriculum for less experienced attorneys that would improve their qualification status from misdemeanor and minor felonies to major felonies.
2. Communication with the court: This workgroup will identify situations where modes of communication other than formal motion is appropriate. Additionally, this workgroup will draft a rule or business process that publicly explains those situations.
3. Discovery: This workgroup will identify barriers to timely discovery, collaboratively attempt to remove those barriers and provide a mechanism for efficient and timely resolution of discovery disputes.
4. Behavioral Health (aid/assist & civil commitments): This workgroup will synthesize the lessons learned from the initial year of the Court's Behavioral Health docket and formalize business processes.

Lever(s) Impacted:

Dispositions; Other

Lever not mentioned above:

Though this intervention primarily addresses system efficiencies and dispositions, it will also address the other levers.

Intended Outcome or Goal:

During our crisis team meetings, team members discussed general areas for improvement in the court system. The Team identified: (1) education; (2) communication with the court; (3) discovery; and (4) behavioral health as areas where efficiencies would be mutually beneficial. Each workgroup has a specific mandate. Each group is to propose potential solutions to the Presiding Judge for consideration. For example, groups will plan to discuss, clarify, and publish best practices for different forms of communication with the court and the use of technology; discuss issues related to discovery and discovery timeliness; and analyze whether CLEs, trainings, or other materials may support enhanced knowledge for the local bench and bar. It may be that new or modified SLRs result from these workgroup proposals. By bringing together defense providers, prosecution, court staff, and other interested parties, the goal will be to open communication and

come up with solutions before bigger problems arise and to continue to collaborate to improve system efficiencies.

What-If? Projections:

This intervention will not impact MAC directly, but improving the processes for communicating with the court, discovery, and behavioral health cases should reduce the workload and stress on defense attorneys and thereby free up ethical capacity to take cases. Improving education for less experienced attorneys will ultimately have a positive impact on MAC available by increasing retention, and, just as importantly, increase the number of attorneys availability to take major felony cases.

Performance Measurement:

1. Measure objective and subjective benchmarks for new attorneys as they progress toward becoming felony or major felony qualified over a certain period of time.
2. Measure time to dispositions and measure whether time to disposition efficiencies corollate to implemented proposals.

Resources:

Dedicated time of local practitioners and the court.

Timeframe:

Start Date: September 1, 2023

End Date: December 31, 2023

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Conflict resolution team.

Form an ongoing conflict resolution team comprised of the Lane County Circuit Court Presiding Judge (Judge McAlpin), a representative from Public Defender Services of Lane County (Brook Reinhard), and a representative from the Lane County Defense Consortium (Rebecca Gouge) (and consult with a representative of Oregon Public Defender Services (Laurie Bender) as needed) to discuss, prioritize, and resolve the conflicts list by reaching out to attorneys identified by the conflict resolution team as capable of handling these conflict cases.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increased communication, prioritization, and resolution of conflict cases.

What-If? Projections:

If attorney capacity is available locally, the conflict resolution team would be available to seek attorneys to address the conflict need. Based on crisis team conversations, in Lane County, 100% of individuals on the unrepresented list are currently identified as conflict cases. As with the 2021-2023 caseload, conflict counsel is expected to be necessary in the 2023-2025 caseload.

Performance Measurement:

Reduction in number of conflict cases on the unrepresented list and the length of time that a defendant is on the list.

Resources:

Time spent by the Lane County Circuit Court Presiding Judge and representatives from Public Defender Services of Lane County, Lane County Defense Consortium, and Oregon Public Defender Services. This is not a small matter. The court and the administrators of PDSLC and the Consortium are very busy and local attorneys will need convincing and support. This task, by rights, should be the responsibility of OPDS but the team acknowledges that local intervention may be more effective.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Local coordinator for attorney appointments. The coordinator, an OJD employee, will identify available qualified attorneys with capacity, assist the court in prioritizing appointment (considering custody status of individuals in need of counsel, and qualifications) identify and coordinate appointment to conflict counsel, monitor adults in custody (AIC) and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney capacity, system efficiencies; reduction in number of unrepresented individuals.

Performance Measurement:

Reduction in number of unrepresented individuals.

Resources:

Position and funding for coordinator in Lane County.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

End representation of defendants on warrant status.

Terminate appointment of attorney if defendant is on warrant status for failure to appear of noncompliance with release conditions after 60 days.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney ethical capacity and accurately reflect the number of unrepresented individuals with active cases.

What-If? Projections:

In Lane County as of August 10, 2023, there are 166 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

Number of appointments on warrant status:

Murder:	1	(Defendant is at the Oregon State Hospital and terminating appointment may not be appropriate.)
Measure 11:	1	
Major Felony:	20	
Minor Felony:	74	
Misdemeanor:	66	
Civil Commitment:	0	
PCR:	0	

Since MAC is based on appointments rather than open appointments, terminating appointments on warrant status will not increase the amount of MAC available. Those appointments, however, are worth 1.0 MAC, which is a high-end estimate of the amount of ethical capacity that may be freed up through this intervention.

Performance Measurement:

A reduction in the number of individuals on warrant status over 60 days with appointed attorneys.

Resources:

Statewide business process change.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

Increase attorney capacity The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increasing attorney capacity is the most likely intervention that will address the unrepresented individuals crisis. An increase in attorney capacity can be obtained through additional workload for existing attorneys or by adding additional contract attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys would also have the effect of adding attorneys to the system.

What-If? Projections:

In this scenario, we assume that the Lane County District Attorney will eventually eliminate the no file list as soon as practicable.

If misdemeanor filings return to the levels from FY 2019 and 2021 (1,925 misdemeanors per year), an additional 2.0 MAC would be required.

Minor felonies and major felonies are also down compared with FY 2019 and 2021, so if those return to prior levels while Measure 11 filings (way up in FY 2023 compared with prior years) remain unchanged, an additional 5.1 MAC would be required.

If all three types of filings rebound, and attorneys are currently at their ethical capacity, Lane County would be short 7 attorneys.

Lane County currently has surplus MAC with 30.5 contracted MAC for FY 2023 and only 23.3 MAC worth of filings so, in theory, has enough attorneys to cover such an increase should such an increase occur. In practice, though, it is unlikely that Lane County attorneys could absorb such an increase.

Performance Measurement:

Elimination of the unrepresented list.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Was there community consensus on this intervention?

No

Minority Viewpoints:

This recommendation was mentioned but not discussed in-depth during our crisis team meetings. Currently, MAC capacity is only a problem as it relates to more serious felony cases. That may change if the District Attorney begins to file more misdemeanor or minor felony cases.

INTERVENTION / RECOMMENDATION 6

Legislative removal of time barriers to alternate dispositions. Some statutes require that alternative dispositions occur at the beginning of a criminal case. For example, ORS 161.566 allows a prosecuting attorney to elect to treat a misdemeanor as a violation but only if the election is made "orally at the time of the first appearance of the defendant[.]" The same is true for some felonies being treated as misdemeanors under ORS 161.570(2). Elimination of the requirement that the election occur at the first appearance of the defendant would allow attorneys to utilize this tool later in the process, freeing up defense attorney capacity.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Free up attorney capacity and provide more flexibility in resolving criminal cases.

What-If? Projections:

Allowing alternative dispositions later in cases will not impact MAC, but may free up ethical capacity by enabling cases to settle more quickly.

Resources:

Legislative action.

Was there community consensus on this intervention?

No

Minority Viewpoints:

This recommendation was not discussed at our Crisis Team meeting. ODAA and OCDLA will weigh in during the legislative process.

INTERVENTION / RECOMMENDATION 7

Legislative clarity on dismissals in the furtherance of justice.

ORS 135.755 gives the court the authority to dismiss a criminal case in the furtherance of justice but does not provide any guidance to the court on what considerations should be taken into account when making this decision. Courts' use of this statute varies from county to county. It is unclear whether requests to dismiss cases due to the absence of an available attorney would use this statute, but it would be helpful for the legislature to provide guidance on what factors the court may consider. I recommend looking at New York Criminal Procedure Law Section 210.40. While not a perfect fit for our current situation, the list of ten factors New York courts must consider when dismissing a criminal case "in furtherance of justice" is a good starting point for a discussion that balances the rights of defendants, victims, and community safety.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Clarity and consistency.

Resources:

Legislative action.

Was there community consensus on this intervention?

No

Minority Viewpoints:

This recommendation was not discussed by our Crisis Team. The idea did not occur to me until after I read the Federal District Court's Opinion in the litigation involving unrepresented defendants in Washington County. I anticipate that the defense bar may object to a court weighing any other factor against a defendant's right to counsel. I also anticipate that prosecutors may object to a statute that is relatively toothless being given more enforceable effect in a way that arguably reduces their discretion.

JUDICIAL DISTRICT 03 – MARION COUNTY

Presiding Judge: Tracy A. Prall

Trial Court Administrator: Linda Hukari

Crisis Team Members: Presiding Judge Tracy Prall; Brendan Murphy, Chief Deputy DA; Christine Breton, OPDS; Linda Hukari, TCA; Olcott Thompson, MCAD; Paige Clarkson, DA; Shannon Wilson, PDMC

OSCA Staff: Jordan Bates; Stephanie Guerena

Meeting Dates: July 17, 2023; July 28, 2023; August 16, 2023

BACKGROUND

In July 2021, the Public Defender of Marion County (PDMC) advised the court they had no capacity to accept Ballot Measure 11 cases a few days in July and all of August or September. While the Marion County Association of Defenders (MCAD) lawyers were able to take up the slack, they then became overloaded by September. The influx of attorneys predicted by OPDS in prior discussions with legislators did not materialize. Marion County struggled to find attorneys available for appointment through the end of that year and into 2022. Despite multiple meetings with OPDS leadership, efforts to reduce caseloads including mass settlement dockets for both in-custody and out-of-custody defendants, and recruitment efforts, the crisis continued to build. By March of 2022, following another round of settlement conferences, we felt some relief. It was, however, short lived. Contract limitations prevented attorneys from accepting more cases and many attorneys left MCAD and PDMC. The limitations on defense attorney availability for appointments have continued for over two years.

In March 2023, OJD began working on a data dashboard that included the attorney's qualifications, number of open appointments (including weighted case value), the attorneys contracted MAC, and MAC remaining. The judges use this data to determine which attorneys have contract capacity for in-custody appointments. While there are currently over 140 unrepresented individuals facing criminal charges in Marion County, none are in custody.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Marion County already practiced or has implemented the following OCDLA recommendations:

- Sets omnibus hearings pretrial as long as the motion is filed by the pretrial motion deadline.
- The court allows email requests to schedule hearings, including status conferences, release hearings, and changes of plea.
- Permits parties to present plea agreements up to and including the day of trial.
- The court generally sets a court hearing on motions to continue unless both parties stipulate to the continuance.

- The court encourages global resolution between counties and has organized and arranged settlement conferences, pleas, and sentencings for defendants with cases in multiple jurisdictions with some parties appearing remotely.
- The court provides opportunities for formal half-day settlement conferences several days each week to resolve in-custody criminal cases with the most serious charges.
- Allows out-of-county attorneys to appear remotely for status conferences.

BEST PRACTICES

Marion County already practiced or has implemented the following best practices:

- Odyssey Business Processes:
    - Adding Jessica's Law charge modifier following the business process;
    - ACP eligibility, verifications, and recommendations;
    - Adding attorneys and removing attorneys that withdraw;
    - Appointing OPDS as attorney of record to unrepresented individuals; and
    - Monitoring and resolving errors on the Unrepresented Individuals dashboard.
- Prioritize attorney appointments based on custody status, seriousness of the charge(s), length of time unrepresented, and finally on case age.
- Remove attorney appointment case credit 180 days after a warrant is issued.
- Remove attorney when final judgment entered in the court register.
- Preserve felony qualified attorney MAC for felony cases.

ACTIONS TO DATE

Marion County has taken the following actions to date:

- Engaged in regular meetings with OPDS to discuss public defense providers concerns, identify potential solutions and prioritize appointment to in-custody defendants.
- Weekly meetings with stakeholders, including leadership from the District Attorney's Office, MCAD and PDMC, for over a year to discuss attorney availability and case resolution strategies.
- Developed protocols to prioritize public defender assignments, maximize appointments to attorneys with contract capacity, prioritize appointment to cases in highest case qualification, prioritize appointment to in-custody and person crimes cases.
- Presiding Judge oversight of arraignment dockets and attorney appointments to ensure consistency.
- Utilized Odyssey data and lists from prosecution and defense to identify cases potentially ready for settlement.
- Conducted several rounds of out-of-custody mass settlement dockets to increase opportunities for early resolution with a focus on cases 180 days old or older.

- Conducted several rounds of in-custody mass settlement dockets inside the jail focusing on cases 180 days old or older.
- Organize and arrange settlement conference, plea, and sentencing for defendants with cases in multiple jurisdictions.
- Allow out-of-county defense attorneys to appear remotely for status conferences.

ATTACHMENT(S)

- DA Crisis Plan Worksheet
- MCAD Crisis Plan Worksheet
- PDMC Crisis Plan Worksheet
- Court's Crisis Plan Worksheet

INTERVENTION / RECOMMENDATION 1

Increase attorney capacity/add attorneys.

The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.

What-If? Projections:

In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Marion County, the need is 1.73 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed:

OPDS Category	Capacity Needed (attorney FTE)	Total # of additional cases for new attorneys
Measure 11	0.04	2
Major Felony	0.08	11
Minor Felony	0.44	72
Misdemeanor	0.20	60
Probation Violation	0.04	29
PCR/Habeas	0.93	42

Performance Measurement:

Dashboards will track a reduction in unrepresented individuals.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate for increasing contract MAC. Unpredictable for increasing number of attorneys.

Was there community consensus on this intervention?

No

Minority Viewpoints:

PDMC - Public Defenders are not in favor of increasing the contract MAC. Public Defenders propose a workload model.

OPDS - Oregon has an insufficient number of public defenders to provide adequate representation to the thousands of people charged with crimes each year. Increasing caseload limits to permit already overburdened public defenders to take more cases will not solve the problem. Instead, it could lead to increased turnover and more difficult recruitment. OPDS supports hiring additional attorneys and is actively engaged in workforce development.

INTERVENTION / RECOMMENDATION 2

Coordinator for attorney appointments.

Local or regional coordinator for attorney appointments. The coordinator, an OJD employee, will identify available qualified attorneys with capacity, assist the court in prioritizing appointment (considering custody status of individuals in need of counsel, and qualifications) identify and coordinate appointment to conflict counsel, monitor AIC and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney capacity, system efficiencies; reduction in number of unrepresented individuals.

What-If? Projections:

This intervention will not create additional MAC, but will allow the current MAC resources to be used more effectively.

Performance Measurement:

Dashboard will track a reduction in number of unrepresented individuals.

Resources:

Position and funding for coordinator.

Timeframe:

Start Date: November 1, 2023

End Date:

Time to Take Effect:

2-3 months for recruitment and training.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

PDSC/OPDS agrees with the proposed intervention in concept, however, the agency recommends that it contract with a local, neutral Case Assignment Administrator, who works collaboratively with the court, OJD, contract, and non-contract providers to provide qualified counsel to indigent criminal defendants. Pursuant to ORS chapter 151, the legislative grant of authority to the PDSC to regulate and provide for the appointment of counsel does not authorize the creation and funding of an OJD employee to serve as a local or regional coordinator for attorney appointments.

INTERVENTION / RECOMMENDATION 3

Cite and release warrants.

Increase or maintain use of cite and release warrants.

Lever(s) Impacted:

Attorney Capacity

Lever not mentioned above:

In-custody appointments.

Intended Outcome or Goal:

Reduce the number of in-custody defendants.

What-If? Projections:

This intervention will not create additional MAC, but will reduce the number of unrepresented in custody individuals. It will also allow current MAC resources to be used more effectively.

Performance Measurement:

Unrepresented individuals dashboard will track success.

Resources:

- Business process change.
- Need priority list and possibly amendments to Pretrial Release Presiding Judge Order.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Warrants

Terminate appointment of attorney at 30 days if individual is on warrant status for failure to appear and return individual to unrepresented list – judicial discretion for exceptions.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney ethical capacity, reduction in number of unrepresented individuals.

What-If? Projections:

OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Marion County as of August 10, 2023, there are 561 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

Number of appointments on warrant status

Murder	1

Measure 11	15
Major Felony	69
Minor Felony	168
Misdemeanor	308

Performance Measurement:

Dashboard will track a reduction in the number of individuals on warrant status over 30 days with appointed attorneys.

Resources:

Business process change.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

No

Minority Viewpoints:

OPDS does not agree with OJD that removal of attorneys from cases in warrant status will result in a significant saving in MAC and expects other legal challenges to the policy, if adopted, which will cost additional attorney time and effort reducing the overall attorney availability to accept cases. If the policy is adopted, however, OPDS recommends certain safeguards be put in place to protect clients and attorneys. First, that the court be required to provide notice to the client and attorney prior to removing the attorney from a case to allow time for the attorney to object. Second, that the court wait until the warrant has been active for 120 days to exclude the bulk of warrants which are returned. Third, that all removals happen via court order to preserve judicial transparency and to provide the attorneys an official withdrawal date from the case.

Under current contract terms, this removal will not trigger partial credit. Even if it did, it risks taking up additional MAC if the person on warrant status returns and the previous attorney is unavailable to take it and so a new attorney receives full credit for the same case. Finally, it would make forecasting nearly impossible, as an attorney would not know whether or not they will get full weight for a case until the end of the year from when the warrant was issued. For ethical capacity, this proposal assumes that attorneys are still dedicating a significant portion of their work time to cases on warrant status which is generally not the case where a client has been in warrant status for more than 30 days. Removal of an attorney from a case they are not actively working on does not give the attorney any additional time to accept other cases. Where attorneys are actively working on cases in warrant status, this policy expects the attorney to ask the court not to remove them under the judicial discretion. It is therefore unlikely that this will open up ethical capacity.

INTERVENTION / RECOMMENDATION 5

Arraignment attorney.

Arraignment is handled by a duty attorney under contract with the PDSC.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Arraignment docket can be handled by single attorney. This attorney will have time to talk with in-custody individuals and Release Assistance Officers prior to arraignment, increasing the possibility of the court having information needed to make a release decision at arraignment, reducing the need for additional court hearing(s). It will also free up capacity for attorneys to work their assigned cases.

What-If? Projections:

This intervention will not create additional MAC, but will free up capacity for attorneys to work on current caseloads.

Performance Measurement:

Dashboard will track reduction in the number of individuals on the unrepresented list, fewer continuances, increased time to disposition.

Resources:

- Policy change.
- Business process change.
- Similar to specialty court docket appearances – inside a contract or hourly.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

1-3 months to recruit and train an attorney or attorneys for this role.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Attorneys will only agree to do it if specifically funded through a contract or hourly. Need coordinator to have access to conflict information.

INTERVENTION / RECOMMENDATION 6

Semi-annual mass settlement dockets on in and out of custody cases to increase attorney capacity.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Reduce caseloads and increase capacity.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Dashboard tracking results from time of implementation and comparing to dispositions form same quarter in earlier years to determine success.

Resources:

Policy change.

Timeframe:

Start Date: November 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Consensus on the concept but concern about capacity. It's a big lift. Concern these dockets are Inefficient and create incentive to delay; may be barrier to resolution; resource intensive and should be occurring naturally with efficient court process.

INTERVENTION / RECOMMENDATION 7

Implement a rolling minimum workload model set and paid based on experience/qualifications.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increase capacity. Attorneys accountable to carry a minimum workload set and paid based on experience/qualification. Will attract more attorneys to the practice.

What-If? Projections:

Eliminates MAC standards.

Performance Measurement:

Dashboards will track a reduction in the number of unrepresented individuals.

Resources:

PDSC policy and contract change.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Team consensus on some form of workload model.

Under HB 2003 the legislature has tasked PDSC with implementing a workload model consistent with regional and national best practices: "The workload of appointed counsel must be controlled to permit effective representation. Economic disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel must be avoided. The commission may develop workload controls to enhance appointed counsel's ability to provide effective representation."

INTERVENTION / RECOMMENDATION 8

Standardized pretrial expectations: discovery complete, offers exchanged, witness contact, investigation and evaluations complete.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Improve case disposition rates to increase attorney capacity.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Dashboard will track timely resolution/disposition rates and a reduction in number of unrepresented individuals.

Resources:

Business process change.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 9

Pay increased rate based on experience of attorney.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Add and retain attorneys, especially major felony qualified attorneys able to accept in-custody major felony, Measure 11, Jessica's law, and murder cases.

What-If? Projections:

No MAC projection.

Performance Measurement:

Dashboard to track number of attorneys and decrease in unrepresented individuals.

Resources:

- Financial.
- Business process change.
- Contract change.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

General agreement attorneys should be paid commensurate with experience and performance; not dependent on contract model (MAC versus workload).

PDSC/OPDS introduced 4 attorney rates (misdemeanor, minor felony, major felony, murder) in the 2022-2023 contracts, replacing the previous uniform rate for all attorneys. These rates are not strictly based on the attorney's experience, but rather what level of case they are both qualified for and contracted for. This was introduced to incentivize attorneys to both increase their qualifications and take the most serious cases for which they are qualified. Under this system, a murder-qualified attorney who only wants to handle misdemeanor cases will be paid less than a murder-qualified attorney handling murders, even if they have similar years of experience.

INTERVENTION / RECOMMENDATION 10

Pay underlying trial attorneys for work on post-conviction cases.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Attorneys will be willing to increase their qualifications to take major felonies, Jessica's Law, and murder cases if they will be paid for work on case in post-conviction litigation.

What-If? Projections:

No MAC projection.

Performance Measurement:

Dashboards will track Increase in number of attorneys seeking higher qualifications and decrease in in-custody unrepresented individuals.

Resources:

Financial; business process and contract change.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

3-6 months for lawyers to seek and achieve higher qualification.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

OPDS was not aware of attorneys unwilling to take more serious cases due to concerns over post-conviction relief. However, OPDS is aware of the additional costs and time a trial attorney must invest for these cases.

INTERVENTION / RECOMMENDATION 11

Continue early disposition program resolutions – recently expanded to Class C felonies.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Reduce appearances and increase capacity by resolving cases quickly.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Dashboard will track number of early disposition program resolutions filed.

Resources:

As district attorneys stop filing crime by category and increase prefiling diversionary programs, cases appropriate for early disposition program resolution will become lessened.

Timeframe:

Start Date: August 1, 2023

End Date:

Time to Take Effect:

In effect.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 12

Utilize prefiling diversionary programs:

- Law Enforcement Diversion (LEED)
- Mobile Crises Unit
- Community Outreach Services Referral

Lever(s) Impacted:

Filings; Attorney Capacity

Intended Outcome or Goal:

Reduce cases filed in criminal process.

What-If? Projections:

Nonperson misdemeanors account for 34% of criminal case filings or 9.0 MAC.

A 5% reduction in the number of misdemeanor cases filed and needing representation would result in a savings of 0.53 MAC. A reduction of 7% would result in a savings of 0.74 MAC.

Performance Measurement:

Programs have to individually track – we won't know what isn't referred to the court.

Resources:

- Funding/Resources.
- Upscaling and staffing availability.

Timeframe:

Start Date: August 1, 2023

End Date:

Time to Take Effect:

In effect.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 13

Expand specialty courts and prison diversion programs:

- Veteran Court

- Drug Court
- Mental Health Court
- STAR Court
- Fostering Attachment
- 416 Program

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Create appropriate offramps to address underlying causation of crime. Requires early recognition and accountability, leading to early disposition. Early disposition increases attorney capacity.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Dashboards will track attorney capacity while CJC data will track recidivism rates of participants.

Resources:

Funding/grants/resources mostly already in place.

Timeframe:

Start Date: August 1, 2023

End Date:

Time to Take Effect:

In effect.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 14

Review of how eligibility for court appointed attorney is verified locally in Marion County Circuit Court process and ensure statewide qualification standards are in line with national standards.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Ensure that net of court appointed attorney eligibility is not cast too wide, capturing individuals NOT eligible for funding. Will ensure public defense resources are only provided to those who qualify. Will reduce caseloads.

What-If? Projections:

This intervention will not create additional MAC, but may reduce caseloads and MAC needed.

Performance Measurement:

Audit will ensure only qualified individuals receive a court appointed attorney.

Resources:

- Marion County will audit the internal business process and ensure staff are complying.
- Additional support from OJD and OPDS to ensure statewide qualification standards are in line with national standards.
- OPDS cooperation in the audit process because they are charged with establishing the guidelines.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

30-60 days to begin audit of process and draft report.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

The process of determining who is eligible for a court appointed attorney is shared between the PDSC and OJD. The PDSC is tasked with establishing the standards and guidelines regarding the financial eligibility of individuals for an attorney under ORS 135.050, 151.485, and 152.216. OJD oversees the Application Contribution Program (ACP) for determining whether individuals applying for an attorney meet the PDSC's guidelines.

The statewide eligibility standard adopted by the PDSC is a two-pronged means test. First, any individual whose income falls below the federal food stamp guidelines (130% of the federal poverty level) will generally qualify. (As of October 2019, the Federal food stamp gross income eligibility level for a family of four is $33,480 per year.) If an applicant's income exceeds food stamp standards, they may still be eligible for a court-appointed attorney if their available income and assets are insufficient to hire an attorney based on the Private Attorney Fee Schedule. It's important to note that these rates would not include the cost of investigation, case experts, and possibly even the cost of taking a case to trial. Finally, separate from the PDSC's standards, under ORS 125.050(2)(B), individuals may also be found eligible for a court-appointed attorney

where the court finds substantial and compelling reasons why the applicant is financially unable to retain adequate representation.

These standards do seem in line with national standards, however due to varying arraignment practices, further affected by the legacy of COVID-19, it is unsurprising that ACP results may differ across the state. Not all jurisdictions are able to process applications prior to an individual's arraignment when the court is tasked with appointing an attorney. It is unclear how consistently these cases are followed to ensure the applications are later filed and screened. Even if these applications are received later, it is difficult and possibly harmful to the case to extract an attorney after they have begun working on it.

While it is easy to point to a few outliers of individuals perceived to be too well-off to qualify for a public defender, either they met the PDSC standards and those perceptions were wrong, or else there was an issue with the application veracity or process. Rather than undergo an entire system overhaul to address these situations, the court may always seek further information regarding an individual's eligibility or revisit the issue later in the case. See ORS 135.050, ORS 151.485, ORS 151.487(5).

INTERVENTION / RECOMMENDATION 15

Secretary of State Audit of OPDS.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Monies intended to recruit and retain attorneys go to attorneys. Qualification standards followed. Ensure high-quality services to indigent defendants. Transparency will encourage attorneys to contract with OPDS and the legislature to appropriately fund OPDS.

What-If? Projections:

No direct impact on MAC.

Performance Measurement:

Track type and number of attorneys seeking OPDS qualification.

Resources:

Circumstances have changed significantly since the August 2022 audit by a private firm. This recommendation would involve a Secretary of State Auditor and have a financial impact.

Time to Take Effect:

Audit can be requested immediately.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

OPDS was recently audited by a private firm. The report was released August 8, 2022.

INTERVENTION / RECOMMENDATION 16

Proposal to consider in the future: Public Defense Unit Funding Model "PDU" Funding Model instead of "MAC" contracts to supply all necessary staff, investigators, overhead costs, benefits, liability insurance, software and equipment, technology supports, training, compliance, and oversight.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

- Adequate resources and workforce support for public defense attorneys.
- Additional administration, investigation, mitigation, and client support to free up more existing attorney capacity.
- Added existing attorney capacity to represent clients.

What-If? Projections:

Eliminates MAC standards.

Performance Measurement:

Monitor the workload and caseload reports for cases assigned to "PDU" funded attorneys. Document any change in existing attorney capacity.

Resources:

Contract change, financial.

Time to Take Effect:

Present terms to the PDSC and OPDS in August and September. Attorney reporting, shared data, and analysis of existing attorney capacity from October 2023-January 2024. Prepare data for long-term funding request and implementation in short session.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Original proposal was for PDU funding model for nonprofit public defense offices only. Consortiums and full-time contracted attorneys should receive the same.

Rollout timeline - would need to be approved by the PDSC and are unlikely to be ready to launch by the start of the 2023 contracts on October 1. However, if approved a roll-out prior to the 2025 contract cycle could be explored.

INTERVENTION / RECOMMENDATION 17

Marion County Pilot Program for Hourly Billing or Workload Contract Model for 2023- 2025: - Competitive contract process. - Minimum productivity requirements. - Allow private contractors and nonprofit public defense contracts to differ. - Hourly billing for private attorneys and time keeping for nonprofit public defenders. - Adjust for employer vs. contract costs and expenses.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Accurate forecasting of Public Defense needs and early identification of potential shortages. Adequate resources and workforce support. Provide improved data and analysis for OPDS about the work being done for each client prior to disposition. Improve oversight and accountability. Education of Legislature: Granular data needed to understand public representation in totality.

What-If? Projections:

Eliminates MAC standards.

Performance Measurement:

- Ongoing hours worked reported to OPDS.
- PDSC/OJD partnership in documenting minimum hours spent on every client matter.
- Granular data sharing to identify the work performed by public defense attorneys and the different areas where unnecessary work may be occurring (e.g., multiple needless court appearances, full preparation of trials that are dismissed within one week of trial setting, absorption, conversion, and management of multi-agencies discovery).

Resources:

- Contract changes.
- OJD and OPDS need to increase IT and data systems funding. Increase funding for all Marion County Providers including “seed money” $150,000 - $300,000 to encourage new public defense offices, firms, or consortiums to come to the county.

Timeframe:

Start Date: October 1, 2023

End Date:

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Rollout timeline - promising ideas and mirror the system the legislature is envisioning in the future under SB 337 but would need to be approved by the PDSC and are unlikely to be ready to launch

by the start of the 2023 contracts on October 1. However, if approved a roll-out prior to the 2025 contract cycle could be explored.

INTERVENTION / RECOMMENDATION 18

DUII Diversion and DV Deferred Sentence docket.

Individuals eligible for diversion or deferred sentences are fast tracked to specialized dockets with dedicated attorney (perhaps the arraignment attorney).

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Increase disposition rates and attorney capacity.

What-If? Projections:

In Marion County, cases where the most serious charge is a misdemeanor Driving Under the Influence of Intoxicants represent 2.69 MAC. In 2022, 21% of all misdemeanor filings resolved by predisposition programs or specialty court participation.

We anticipate that by adding a specialty DUII Diversion and DV Deferred Sentence docket may result in up to 1.2 MAC available for more serious, complex matters.

Performance Measurement:

Dashboards track disposition rates and attorney capacity.

Resources:

Dedicated attorney (perhaps the arraignment attorney) paid a special hourly contract rate (min $85/hr to cover salary and overhead). Judge resource. Business process change.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate upon signing contract.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

PDSC/OPDS has consistently supported the use of diversion and deferred sentencing programs. This intervention raises two concerns: First, what would happen if the individuals declined the program? They would need to be reassigned to another attorney. Second, attorneys are required to remain on a case until final disposition on diversion and deferred sentencing cases. Caseload

levels would need to be monitored to make sure it doesn't reach an unmanageable number of clients to ensure all clients are still being adequately represented.

INTERVENTION / RECOMMENDATION 19

Efficient discovery management systems:

- Centralized and uniform process for larger offices to receive discovery.
- Bates stamp for all discovery.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Processing of discovery at a quicker pace and earlier review with client (during week of initial appointment, if possible). Earlier dispositions with full review of discovery. Meaningful appearances, increased disposition, increased attorney capacity.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

- DA data of all discovery provided to PDMC and MCAD.
- PDMC centralized uniform data of receipt of discovery.
- DA and defense attorney feedback on ease of use and reference of Bates Stamp materials.

Resources:

- Financing for systems that effectively "talk" to each other allowing for electronic production of discovery.
- Additional data and IT funds from OPDS.
- Adjust internal workflow of discovery.
- Adjust tracking tools and generated reports.

Time to Take Effect:

Initial funding in October, system upgrades within 12 months.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

All agree this is a good idea, implementation may be complex given the technology needs.

INTERVENTION / RECOMMENDATION 20

Pay private bar attorneys hourly commensurate with market ($200-$300) for the work they actually do based on experience and qualifications.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increased cases handled by existing attorneys and retain them, attract new lawyers and retain them.

What-If? Projections:

No MAC projection.

Performance Measurement:

Retain and attract attorneys. Dashboard will track number of cases handled and number of attorneys in system.

Resources:

- Financial.
- Contract change.
- Legislative approval.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate upon implementation for retention, attracting new attorneys will take time.

Was there community consensus on this intervention?

No

Minority Viewpoints:

MCAD - Overhead is 2/3 of what you bring in. Adequate pay will bring in more attorneys. Attorneys keep time now need common time keeping system. Common cloud-based data base. Realtime knowledge of what cases atty has and how much time they are spending.

OPDS - agrees that all public defenders should be paid rates commensurate with market rate. SB 337 states: "SECTION 96. (1)(a) The Oregon Public Defense Commission shall conduct a survey and economic analysis to establish a formula for the commission to use to calculate an hourly pay rate, taking into account overhead expenses, market rates and regional differences in

the cost of living, for appointed counsel who are not employees of the commission or a nonprofit public defense organization."

OPDS's legislatively approved budget for the 2023-2025 biennium has been approved, and additional funds for enhanced hourly rates would require further legislative approval.

INTERVENTION / RECOMMENDATION 21

OPDS allow contract attorneys to be paid hourly on noncontract cases if they are in compliance with contract terms (currently monthly minimums) and to pay the lawyers Increase staffing and administration costs.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase the number of cases handled by existing attorneys.

What-If? Projections:

This intervention will not create additional MAC, but will reduce the number of unrepresented individuals.

Performance Measurement:

Reduction in unrepresented individuals.

Resources:

- Financial.
- Contract change.
- Staffing.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

No

Minority Viewpoints:

Barrier to attorneys being willing to take cases out of contract is time to payment. Less than 10 OPDS staff to handle all accounts for the state.

OPDS - Attorneys who are at MAC limit but still feel they can ethically take on more cases can take cases through the hourly rate program, as can new attorneys interested in taking public defense cases. Attorneys who are paid hourly rather than under contract are expected to cover overhead and staffing costs out of that hourly pay.

As of August 18, the PDSC Accounts Payable processing time is 32 days. The agency is in the process of procuring and implementing a Financial Case Management System which will result in improved financial and business processes and streamlined billing.

In recognition of these demands on contract administrators, contracts currently include an additional 5% pay on top of their contract specifically to support administrative and reporting requirements.

INTERVENTION / RECOMMENDATION 22

OPDS streamline paying interpreters.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Increase the number of interpreters and, therefore, their availability to assist with case disposition, which will increase attorney capacity.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Track number of interpreters in the system, disposition rates, and number of unrepresented individuals.

Resources:

Change in OPDS policy and practice to remove barriers to speedy payment. Streamline process and increase staff.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate upon implementation. 2-6 months to hire more staff.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 23

OPDS pay extra for bilingual attorneys.

Lever(s) Impacted:

Dispositions; Add Attorneys

Intended Outcome or Goal:

Increase the number of bilingual attorneys which will increase the speed at which they can meet with their clients (no interpreter must be scheduled) and resolve cases.

What-If? Projections:

This intervention will not create additional MAC, but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Track number of bilingual attorneys in the system and disposition of non-English speaking defendants.

Resources:

- Contract change.
- Recruitment.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate upon implementation. Recruitment of new attorneys will take time.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 24

OPDS provide funding for training and supervision of all public defense providers.

Lever(s) Impacted:

Dispositions; Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Training will allow attorneys to operate more efficiently increasing their capacity, will attract more lawyers because they see they will get the training they need to be successful. Supervision will allow attorneys to continue to learn and, therefore, operate more efficiently increasing their

capacity, will attract more lawyers because they see they will get the help (supervision) they need to be successful.

What-If? Projections:

This intervention will not create additional MAC but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Track actual funding of training and supervision. Track the number of lawyers who utilize these opportunities and the increased number of cases they take.

Resources:

This will take existing experienced lawyers out of representing clients (they will be handling fewer cases) but in the long run (3 to 5 or so years) the number experienced/highly qualified of attorneys in the system should increase.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate upon implementation.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

National best practices require supervision and training as a part of public defense practice. Principle 7 of the National Association for Public Defense Foundational Principles (2017) states:

"Appropriate Supervision of All Public Defense Lawyers and Other Public Defense Professionals Is Essential, Public defense providers must provide regular and timely supervision as needed of all lawyers and other professionals. The objective of supervision is to assure that all defense services provided by lawyers are competent within the meaning of rules of professional conduct and effective pursuant to prevailing professional standards. Accordingly, supervision should determine if sufficient time, thought, and resources are being devoted to a wide variety of defense tasks, such as interviewing and counseling of clients, securing pretrial release of incarcerated clients, completion of fact investigations prior to formulating recommendations about plea agreements, formal and informal discovery is conducted, and preparation for pretrial hearings, trials, and sentencing proceedings. Supervision should also include continuous monitoring of lawyer workloads to assure that all essential tasks of defense representation are being completed."

INTERVENTION / RECOMMENDATION 25

DA Business Process change to streamline restitution process.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

While statute allows 90 days to finalize restitution, resolving restitution issues at the time of sentencing would allow defense attorneys to close their cases earlier.

What-If? Projections:

This intervention will not create additional MAC but should reduce caseloads and increase ethical capacity.

Performance Measurement:

Track judgements amended to add restitution after original sentencing to see a reduction in such amendments.

Resources:

Business Process change.

Timeframe:

Start Date: November 1, 2023

End Date:

Time to Take Effect:

90 days from implementation.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Parties agree with the concept.

JUDICIAL DISTRICT 04 – MULTNOMAH

Presiding Judge: Judith H. Matarazzo

Trial Court Administrator: Barbara Marcille

Crisis Team Members: Presiding Judge Judith H. Matarazzo; Judge Cheryl Albrecht; Judge Michael A. Greenlick; Barbara Marcille, TCA; Neal Japport, Deputy TCA; Deena Farole; William G. White; Mike Schmidt, DA; Jeff Howes, MCDA; Aaron Knott, MCDA; Stacey Reding, MDI; Carl Macpherson, MPD; Grant Hartley, MPD; Jon Sarre, Portland Defense Consortium; David Hayes, OPDS

OSCA Staff: Lindsey Detweiler; Rachel Woods

Meeting Dates: July 12, 2023; August 1, 2023; August 15, 2023

BACKGROUND

In early January 2022, Metropolitan Public Defenders (MPD) announced that they would temporarily cease taking appointments on any felonies in Multnomah County, and by the end of January 2022 Multnomah Defenders Inc. (MDI) also ceased taking any felony appointments in Multnomah County. By April 2022, both MPD and MDI also ceased taking misdemeanor appointments. At times there have been over 600 people facing criminal changes who have not had an assigned lawyer in this county; most have been defendants who are released from custody. The limitations on defense attorney availability for appointments have continued for over 18 months, and there are currently still over 400 unrepresented individuals facing criminal charges in Multnomah County. There are also many cases which have been dismissed due to multiple reappearances without an available attorney to represent the defendant and potentially hundreds of cases which the Multnomah County District Attorney's Office (MCDA) has not yet presented to a grand jury due to the lack of available defense attorneys; these cases may still be filed and would exacerbate the shortage. Stakeholders, including leadership from MPD, MDI, the Portland Defense Consortium, MCDA, OPDS, and the court, have been meeting multiple times per month since the crisis began to explore solutions.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- Created a process for scheduling early omnibus motion hearings in misdemeanor cases, expanding on our previous procedure for felony cases.
- Created remote proceedings chart and process to appear through counsel at many types of misdemeanor and felony hearings.
- We have not specifically reduced the number of check-in appearances and time spent at “mass” dockets; however, the number of times at which defense counsel must appear at a docket is within their control. If they are in excellent communication with their client, the client in a felony may only need to appear at arraignment and plea or trial. A client in a misdemeanor case isn’t required to appear at all, but in the absence of a waiver, would

only be required to appear at arraignment and trial. Attorneys in felony cases would submit a written report for each time a case is on a presiding call docket which is reported on by a single attorney appearing for a firm. Attorneys in misdemeanor cases will be required to appear at a pretrial conference. There are other types of dockets and needs, such as diversion, release hearings, or treatment courts, but these are not "mass" status check dockets. Given the Presiding Judge Order (PJO) permitting many remote appearances and appearance through counsel, the court does not see a need to reduce the number of "check-in" appearances.

- Time standards: The court strives to follow the Time to Disposition Standards put in place by the Oregon Supreme Court in 2019. The court does not view those as outdated.
- Increase use of remote hearings: PJO 2201-00006 adopted a robust system of remote proceedings and consent to appear through counsel.
- Discovery deadlines: Our current misdemeanor rules impose discovery deadlines. In felonies, our case management conference system in Measure 11 cases seeks to address and facilitate the discovery process. The District Attorney's Office has experienced significant issues with their discovery desk but are improving and adopting a case management system. The court has urged the District Attorney's Office to provide more timely discovery and to review at regular intervals whether new reports have been filed by police but not communicated to the DA. Once their improvements are in place, we can review whether it makes sense to impose discovery deadlines.
- DA-created plea negotiation deadlines have been eliminated by UTCR.

BEST PRACTICES

- Working with Sheriff's Department to address available staffing for court hearings to minimize transport delays for hearings and trials.
- Exploring and implementing increased use of remote appearances to reduce in-person court appearances. Invested in additional video conference equipment in the jails and main courthouse; provided iPads for use by inmates in custody for remote appearances.
- Conducted a two-week pilot to test restructuring the felony arraignment docket to allow more time for attorney-client communications and evaluate feasibility. Identified obstacles to implementing this on a permanent basis; working with justice system partners to overcome barriers to allow for further refinements.
- Working to develop a process to consolidate cases as early as possible—preferably at arraignment—to reduce the appointment of multiple attorneys to a single individual.

ACTIONS TO DATE

- Met weekly with OPDS to identify priorities for appointment and discuss individual cases to assist matching defendants with appropriate attorneys. Actively seek attorneys to represent unrepresented individuals, prioritizing in-custody defendants.
- Actively monitoring defendant/public defender status (daily) – total days without attorney and whether they are approaching statutory timelines.
- Actively monitoring and communicating with all in-custody unrepresented defendants.

- Developed protocols to prioritize public defender assignments, maximize assignments to higher risk cases, and minimize cases with no public defender assigned.
- Worked with stakeholders to minimize constitutional deficiencies when unable to appoint counsel, such as agreed upon release provisions.
- Expanded scope of specialized Resolution Dockets to increase opportunities for case closure by plea or trial.
- Assigned Senior (retired) Judges for specialized settlement and case management dockets focusing on serious crime types.
- Worked with court data and lists from prosecution and defense to identify cases potentially ready for settlement and facilitated settlement where possible.
- Sending court-issued email reminders to lawyers regarding call and trial dates to encourage more timely disposition.
- Issued temporary 30-day grace period from court appearances for new attorneys and newly felony-qualified attorneys.
- Consolidated felony morning call dockets to reduce number of appearances.
- Cross-trained OJD staff to allow for early resolution of cases in the Justice Center.
- Worked with District Attorney's Office to improve discovery practices (DA developed new reminder system to ensure timely discovery).
- Assigned consistent judicial officer to arraignments (rather than using usual rotation schedule) for better oversight of appointment and arraignment process.
- Created daily capacity review for appointments at misdemeanor arraignments to direct appointment capacity to higher priority cases.
- Added new staff analyst position to focus on criminal case data analysis and evaluation and implementation of procedural changes.
- Restructuring misdemeanor docket to increase opportunities for early communication and prompt resolution.
- Created a process for defendants to appear through counsel at various proceedings, including most status proceedings in felony and misdemeanor cases.
- Expanded opportunity for omnibus motions beyond dispositive motions to be heard in advance of trial.

ATTACHMENT(S)

- Multnomah Template Responses 8.17.23
- Addressing OJD Recommendations to Increase Attorney Capacity in Multnomah

INTERVENTION / RECOMMENDATION 1

Please see the “Multnomah SB 337 Letter to Chief Justice Flynn”, dated August 23, 2023, for a complete list of our recommendations and additional context that we feel is important for the CJC and the legislature to understand. The file size for the letter was too large to attach to this form.

JUDICIAL DISTRICT 05 – CLACKAMAS COUNTY

Presiding Judge: Michael C. Wetzel

Trial Court Administrator: Debbie D. Spradley

Crisis Team Members: John Wentworth, DA; Chris Owen, Deputy DA; Shannon Kmetic, CIDC; Kevin Leik, CIDC; David Hayes, OPDS

OSCA Staff: Rachel A. Woods

Meeting Dates: August 1, 2023

BACKGROUND

For many years, indigent defense services in Clackamas County have been provided by the Clackamas Indigent Defense Corporation (CIDC), a nonprofit defense consortium. CIDC currently has approximately 27 independent defense lawyers, each of whom run their own firm or solo practice. Because each practitioner is responsible for his or her own overhead, this consortium model maximizes system efficiencies by encouraging lawyers to minimize costs and emphasize productivity. In part because of the independence fostered by this model, we generally have lower defense lawyer turnover than other models, giving us a more experienced bench of lawyers. We are also able to deal with conflicts of interest and lawyer withdrawals efficiently since each provider is separate and distinct from each other for conflict-of-interest purposes. Finally, in large part due to the professionalism of our District Attorney/DDAs as well as defense counsel, we have a collegial practice environment. In short, we have a model that works, lawyers want to be here, and structural changes would not only be unwanted, but likely counterproductive.

Currently, we do not have any in-custody defendants who are being held on Clackamas County cases who are without lawyers. Each day there is a lag, and it does take a few days to get a lawyer assigned. In addition, a few cases show up on the dashboard for individuals who are out of custody on our case or cases, but who are being held in another jurisdiction or are on warrant status. When we identify an individual in custody without a lawyer, that situation is immediately brought to the Presiding Judge's attention, an email is sent to the CIDC administrator and president, and counsel is quickly identified and assigned.

We currently have roughly 400 out-of-custody defendants without lawyers. Lawyers for these individuals are being assigned on a first-in-first-out method, so that the oldest cases receive lawyers before newly filed cases.

It should be noted that we currently have 11 full-time judges, although based on population we should have at least 14 (we also have one referee, who handles our juvenile docket, though we should probably have more). Every day we manage our dockets to provide the best service possible to those seeking justice with less than adequate resources.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

None. As mentioned above, we already have an effective and efficient system. We have a community court, a robust treatment court program, and effective docket management tools (discussed below). The Presiding Judge does not believe it is appropriate, for comity and separation of powers reasons, to attempt to influence the charging and prosecuting decisions of the independently elected district attorney. In short, as discussed in more detail below, we need more lawyers, pure and simple.

BEST PRACTICES

A stand in CIDC lawyer is at every arraignment, in custody and out of custody, and court appointed attorney applications are provided to every defendant. We utilize a case management system in lieu of an omnibus hearing where the state makes its best offer and cases are resolved or set for trial. Discovery and an offer are provided prior to the case management hearing. In February 2023, we implemented a trial readiness call and final resolution docket to address criminal cases set for trial the next week. We stack trials and allow day of trial pleas, though most of the last-minute pleas are now being made at the final resolution docket, which frees up judges for other work.

ACTIONS TO DATE

As mentioned above, we have a very efficient and effective system. That is likely why we were last amongst the major counties in the state to experience an unrepresented defendant problem. Even before CIDC's contract hit maximum MAC, the Presiding Judge, Chief Criminal DDA and CIDC Administrator met a number of times to discuss and implement actions to lessen the problem. The DA's office will extend violation treatment for misdemeanors in appropriate circumstances and the bench is dealing with certain non-custody probation violations (community service etc.) at arraignment without the need for appointment of a defense attorney. An early resolution docket was discussed but not implemented as we did not get good reports from other counties, and it creates potential ethical problems for our defense lawyers.

INTERVENTION / RECOMMENDATION 1

We need more lawyers assigned to CIDC in its upcoming contract. As noted in the letter by Kevin Leik attached, we reasonably need 31.2 MAC, though are currently contracted for only 24.7 MAC. This leaves a shortfall of 6.5 MAC. If each 1.0 FTE MAC costs OPDS or its successor approximately $215,000 annually, the total cost for the biennium for 6.5 FTE would be approximately $2,795,000. This is less than 2.8% of the $100 million the legislature just dedicated to public defense. Clackamas County has almost exactly 10% of the total population of the state of Oregon (July 2022 census numbers – Clackamas County 423,177; Oregon 4,240,137). This is not a big ask. ODPS or its successor needs to contract for the lawyers we need.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney

capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.

What-If? Projections:

In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Clackamas County, the need is 1.23 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed:

	Capacity Needed (attorney FTE)	Total # of additional cases for new attorneys
Major Felony	0.05	7
Minor Felony	0.37	61
Misdemeanor	0.78	234
Probation Violation	0.03	21

Annual Case Assignment for 1.0 FTE

Murder	6
Jessica Law	6
Measure 11	45
Major A/B felonies	138
Minor felonies	165
Misdemeanors	300
Probation violations	825
Civil commitment	230

Performance Measurement:

Decrease in number of individuals on unrepresented list. No unrepresented defendants by September 2024.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Timeframe:

Start Date: September 1, 2023

End Date: September 1, 2025

Time to Take Effect:

Contract taking effect September 1, 2023

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 06 – UMATILLA AND MORROW COUNTIES

Presiding Judge: Daniel J Hill

Trial Court Administrator: Irma Solis

Crisis Team Members: The Sixth Judicial District is not required to have a crisis team and does not have one.

OSCA Staff: Stephanie Guerena

Meeting Dates: Not required to hold a meeting.

BACKGROUND

The Sixth Judicial District has several public defender organizations. Each have been consulted on the crisis. The court has also coordinated with the DA's and the Local Public Safety Coordinating Councils (LPSCCs) of both counties in our district (Umatilla and Morrow). The risk of unrepresented persons is low at this time.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

None, our practices are consistent OCDLA recommendations.

BEST PRACTICES

Local Public Defense Organizations communicate with the court regularly, we plan to continue this open communication to allow for coordination in the event our Public Defense Organizations determine that they will be meeting their cap prior to the month ending.

ACTIONS TO DATE

The Presiding Judge has coordinated with the public defender organizations, DA's, and LPSCCs for both counties in the district (Umatilla and Morrow).

ATTACHMENT(S)

- PJO 23-007 Unrepresented Persons FINAL
- PJO 23-007 (Amendment 1) Unrepresented Persons

INTERVENTION / RECOMMENDATION 1

Local Public Defense Organizations will advise the court when they are within 10% of meeting their capacity.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Public Defense Organizations will communicate with the court to coordinate next steps, while prioritizing defendants consistent with SB 337 and the Chief Justice Order (CJO).

What-If? Projections:

This intervention will not create additional MAC, but will allow the current MAC resources to be used more effectively.

Performance Measurement:

Performance will be tracked by Public Defense Organizations (PDO) not running out of capacity prior to cycles ending.

Resources:

Resources are Local Public Defense Organizations communication with the court. Limitations are anticipated to be the monthly cap, impact on our district remains to be seen.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 07 – HOOD RIVER, GILLIAM, SHERMAN, WASCO, AND WHEELER COUNTIES

Presiding Judge: Karen Ostrye

Trial Court Administrator: Rian Beach

OSCA Staff: Rachel Woods

Meeting Dates: The 7th Judicial District is not required to engage in Crisis Team Meetings. We are in regular communication with our defense firm and administrator of our consortium.

BACKGROUND

The 7th Judicial District is very different than other districts of our size. We have FIVE counties in our district, three of which are extremely rural and remote. Our most rural counties include Gilliam, Sherman, and Wheeler Counties. Each of those three counties have one lawyer that lives there, the county's District Attorney (DA). All the other lawyers that typically represent defendants in Gilliam, Sherman and Wheeler Counties travel from Hood River and Wasco Counties. Hood River is a four hour round trip from Wheeler County. The only reason that we have not had significant difficulties appointing lawyers in our three rural counties is because our defense firm requires coverage of the entire district as a condition of any defense lawyer's employment with that firm. Even defendants who do not qualify for a court-appointed attorney find it very difficult to locate one willing to travel the distance involved.

Our consortium of conflict attorneys is managed by the same administrator. Again, without this commitment of covering the entire district we simply would not have lawyers for criminal defendants in Gilliam, Sherman, or Wheeler Counties and would quickly be in the crisis category. This district could easily face the same difficulties as Klamath County.

Currently, we have 7 unrepresented defendants. Two are in custody. In one case, OPDS was appointed in March of 2023. That defendant remains in custody without counsel on several charges in Wasco and Sherman Counties the most serious of which is attempted murder. The other in custody defendant has been without counsel since OPDS was appointed in April of 2023. All of our unrepresented defendants, both in and out of custody, have explicit conflicts with both our public defense law firm and our consortium lawyers.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

For the most part, the OCDLA recommendations were already in place.

BEST PRACTICES

- Keep current practice of open communications and problem-solving approach to issues as they arise.
- Continue to allow remote appearances.

- Continue to allow plea negotiations and changes of plea until the day of trial.

ACTIONS TO DATE

The stakeholders in the 7th Judicial District criminal justice system maintain a collaborative problem-solving culture. We have been fortunate to have a defense firm and consortium dedicated to seeing that defendants in our community are not without counsel.

The 7th Judicial District has taken the following actions to avoid or reduce the likelihood of creating a crisis of unrepresented defendants.

- Dockets in all of our five counties are staggered so that lawyers are not put in the position of having to be in two places at the same time.
- We routinely allow lawyers to appear in nonevidentiary criminal proceedings remotely.
- We allow negotiations to occur up until the day of trial.
- We routinely allow lawyers to resolve their cases prior to their next set court date when they are ready to do so.
- The judges in our district have reached out by letter to targeted private, qualified, defense lawyers, asking them to take cases. (This did not result in any appointments).
- Once OPDS is appointed on a case, we call, we write, we regularly follow up and remind the agency of our defendants. (This did not result in any appointments).
- We offer judicial settlement conferences.
- We routinely allow for docketing changes to accommodate attorney availability.

The data indicates that our case filings have increased over time, 13% since 2022. Some of our attorneys have gone over MAC at the beginning of the contract year as a result of serious cases. As the contract period progressed, those cases were resolved. Attorney caseloads were monitored and, for the first time since the consortium was created, consortium attorneys were assigned cases that were not a conflict for the primary contract firm in order to spread the cases more evenly and help reduce the primary contractor's load. Our issue is capacity. Anything in the current or proposed contacts that make it more difficult for our defense firm and/or consortium to attract and retain more attorneys will have the effect of creating a crisis. As can be seen by the length of time that our in custody unrepresented defendants have been in jail without counsel – it is extremely difficult to get lawyers to come out to our area to accept jobs or to take cases as criminal defense lawyers.

ATTACHMENT(S)

- 7th District Intervention Data

INTERVENTION / RECOMMENDATION 1

Recommend that the local contracts be carefully scrutinized to avoid any provision that will make it more difficult to attract and retain lawyers in this district. As stated above, this district is distinct from any other district in this state and should be treated as such in order to avoid future crisis. Recommend defense lawyers not be prohibited from accepting retained work. Hood River and the surrounding area probably have one of the highest housing costs in the state. A recent article

listed the median price of a home in the Hood River area as above $800,000. Anecdotally, one of the judges in our district who came to the bench after working in this area for our primary defense contract firm stated that he likely would not have taken the job if the same prohibition were in place at the time he was considering moving to this area. Understanding this may be a problem in other areas, it has not been a problem in our district. This policy change intended to solve issues in other areas is a barrier for this district to increase capacity. Recommend PDSC and Oregon Legislature reconsider statutory limitation on public defense service contracting with private firms/consortiums. At the very least, primary defense firms and consortiums should be on the same timelines. It is already a challenge to entice criminal practitioners to take jobs or cases in this geographical area. Any limitations that create uncertainty for potential candidates are a barrier to increasing attorney capacity. Again, the ONLY REASON we have lawyers representing defendants in our three rural counties is because our primary defense firm requires coverage of those counties as a condition of employment. If they can't hire lawyers because of an uncertain future, we will have a crisis in our district. Recommend PDSC adopt pending case model (open workload) so that the MAC standard and ethics can be viewed as they should be, different and distinct. Recommend PDSC permit an attorney to go over the MAC standard when the attorney is ethically able to do so. Recommend PDSC assure that policy changes in one jurisdiction do not harm dissimilar jurisdictions.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Attracting and retaining lawyers will increase capacity and prevent unrepresented defendants. Reconsidering the prohibition on primary contract firms accepting retained work in our district will avoid a policy change in another district that will harm our district, where it is not a problem. This reconsideration will also recognize the extreme difference in the cost of living in our district and will avoid unnecessary barriers to increasing capacity. Reconsidering the statutory limitations of public defense service contracting with private firms will create more certainty for defense firm employers and for applicants considering working as public defense lawyers in our district. Things have been working very well in our district so far. Any changes that negatively impact our ability to increase attorney capacity should be avoided. A pending case model will be a true measure of what size of caseload an attorney is actually working. Additionally, this model will have the effect of encouraging case disposition for the lawyers and the court. Permitting attorneys to go over the MAC standard when the attorney is ethically able to do so recognizes the real differences between things such as ability, experience, and complexity.

What-If? Projections:

In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by less than 1%. This contract cycle, attorneys in the 7th District have taken 2,622 public defense cases over 13.7 months, meaning per month, attorneys are currently able to take 191 cases. Currently, there are 15 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in the 7th District would have to take 193 cases a month, for an increase of less than 1%. The 7th District has 60 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out of county.

This would result in the following increases based on current caseloads based on 13.7 months:

Case type	Current Represented Cases	Current Unrepresented Cases	Proposed % increase
Civil Commitment	11	0	0%
Jessica's Law	4	0	0%
Major Felony	83	3	4%
Measure 11	43	1	2%
Minor Felony	403	7	2%
Misdemeanor	1,688	4	0%
Murder	2	0	0%
Probation Violation	366	0	0%
Specialty Court	22	0	0%

Performance Measurement:

- Easier to maintain lower caseload for our defense lawyers.
- Improved ability to attract new lawyers to this area.
- Assure continued representation for defendants in our three very rural counties by continuing the successful model that has avoided the crisis thus far.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 08 – BAKER COUNTY

Presiding Judge: Matthew B Shirtcliff

Trial Court Administrator: Amy Swiger

Crisis Team Members: Judge Matthew Shirtcliff, Presiding Judge; Amy Swiger, TCA; Greg Baxter, District Attorney; Kati Dunn, Elkhorn Public Defenders/Eagle Cap Defenders; Kyra Rohner, Elkhorn Public Defenders; Will Thomson, Elkhorn Public Defenders; Robert Whitnah, Defense Attorney; Bob Moon, Defense Attorney; Leah Serrano, Elkhorn Public Defenders

OSCA Staff: Tiffany Quintero, Stephanie Guerena

Meeting Dates: August 1, 2023, 2:30-4:00pm

BACKGROUND

Based on the data, Baker County is not in a "crisis" situation involving unrepresented defendants. However, the court is experiencing a growing list of unrepresented defendants who are out-of-custody and, due to local provider conflicts, do not have an attorney. (Currently this includes one in-custody.)

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Our local practices have been consistent with the OCDLA recommendations. The court continues to employ remote hearings whenever possible.

BEST PRACTICES

- Developing coordination between our neighboring county contractors and working with the courts to ensure there is capacity for conflict coverage.
- Developing an unrepresented list for our county and a master list for Eastern Oregon to utilize within our region for providers.

ACTIONS TO DATE

When the local contractor is unavailable due to each provider having a conflict, we reach out to neighboring county providers (Union and Malheur) for coverage. The court has been able to successfully reduce our unrepresented population by directly contacting providers. (Recently, the court had five unrepresented individuals out-of-custody.)

INTERVENTION / RECOMMENDATION 1

- District Attorney's Office reviewing policy of filing criminal Failure to Appear charges and trying a practice of filing Order to Show Cause in lieu of Failure to Appear, to reduce case counts.

- Developing a coordinated plan with the individual consortiums in Eastern Oregon to ensure providers have additional cap for conflict cases to support another county's unrepresented population due to due to consortium conflicts.
- Continue work to develop a regional conflict coordinator that can contact and assign representation from OPDS contractors that have available MAC for those unrepresented individuals deemed to be a conflict for the primary consortium(s).

Lever(s) Impacted:

Filings; Attorney Capacity

Intended Outcome or Goal:

Primary contractor has sufficient MAC and able to cover case specific conflicts in other counties.

Other Eastern Oregon providers offer the same conflict coverage.

What-If? Projections:

During FY 2023, the District Attorney's Office filed 15 cases where the most serious charge was Failure to Appear. These 15 cases represent 0.06 MAC. This intervention will not create additional MAC but will allow the current MAC resources to be used more effectively.

Performance Measurement:

- Track data to ensure our primary provider stays under MAC.
- Track data regarding time to appointment for conflict cases that must go to other providers.

Resources:

Continue to utilize data from OJD regarding time to appointment for conflict cases that require out of county attorneys.

Timeframe:

Start Date: 8/2/2023

End Date:

Time to Take Effect:

Immediately

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 09 – MALHEUR COUNTY

Presiding Judge: Lung S Hung

Trial Court Administrator: Marilee Aldred

Crisis Team Members: Presiding Judge Lung Hung; David Goldthorpe, DA; Jordon Huppert, OPDS; Kathleen Dunn, Public Defender; Marcus Oatman, Public Defender; Gary Kiyuna, Public Defender; Cole Sahleen, Public Defender; David Carlson, Public Defender; Renee Denison, Public Defender

OSCA Staff: Conor P. Wall

Meeting Dates: August 1, 2023; August 14, 2023

BACKGROUND

Malheur County has historically had a low unrepresented count, even though we have always been on the cusp of not having enough public defenders. That changed in April of 2023 when attorneys' contracts were maxed out and the court lacked attorneys for appointment in May and June of 2023. The problem continues for the following reason:

- Malheur County lacks the judicial and courthouse resources to handle its caseload.
- Malheur County lacks public defense resources to handle its caseload.
- As the court triaged cases, criminal defendants that traditionally had one attorney through their various cases, were assigned to multiple other attorneys, creating attorney conflicts later on.
- Case caps are currently decided based on yearly cases, rather than current pending cases.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- Omnibus Hearings Set Pretrial: Malheur County sets omnibus hearings pretrial as long as the motion is filed by the pretrial motion deadline.
- Scheduling of Status Hearings: The goal of this request is so attorneys do not have to sit through long "cattle call" status hearings where many cases that are heard do not involve the attorney. While we did not adopt the proposal, our criminal motion docket is set up so that time slots are generally assigned a particular attorney or law firm. While there will be many cases heard in one particular time slot, they all involve the same defense counsel or defense firm. Per SLR 4.081(4), defense attorneys are permitted to appear at arraignments, status hearing and trial calls without the filing of any motion or any notice to the court. Attorneys may file a short form, no motion needed, to appear remotely for all other hearing types.
- Email Request for Hearing: The court does not permit this.

- Require Oral Arguments on Motion to Postpone: The court generally sets a court hearing on motions to continue.
- Global Resolution Between Counties: This court generally permits remote appearances to various counties, if requested by the parties.
- Pretrial Dismissal: The court will entertain any motion filed by parties. Pretrial motions to dismiss due to lack of evidence would require a statutory change.
- Pretrial Discovery: Many of the changes requested would require a Uniform Trial Court Rule (UTCR) or statutory amendment. Discovery is a problem in our county. The court addresses it when it is brought to the attention of the court.

BEST PRACTICES

See Actions to Date.

ACTIONS TO DATE

- The court adjusted the court docket to try to have cases involving one attorney or one law firm heard in the same block of time. This helps defense counsel in not spending their entire day at court.
- The court permits plea negotiations up to the Friday before trial to allow parties maximum flexibility in negotiations. The trial call or trial status hearing was moved to the earlier part of the day on Friday so attorneys will get earlier notice of which trial is, in fact, going to trial.
- The court has worked with the District Attorney's Office to come to an agreement that, if a plea offer is going to be given, they will send out plea offers at least the week prior to a defendant's entry of plea. This agreement was with the understanding there will be exceptions to the general rule.
- Per SLR 4.081(4), defense attorneys are permitted to appear in person or remotely at arraignments, status hearings, and trial calls without the filing of any motion or any notice to the court. Attorneys may file a short form, no motion needed, to appear remotely for all other hearing types.
- Worked with Community Mental Health Provider to contract with an agency for rapid evaluation of criminal defendants that are in custody with aid and assist issues. Protocol and forms have been established. Now evaluations are completed within 14 days of request, rather than months later.
- Held a meeting in April of 2023 with the criminal bar as the pending crisis was coming. Worked with defense bar to keep the court updated on numbers and discussed various triage options.
- District Attorney held off on out-of-custody case filing during crisis from April through June of 2023.
- Since July of 2023, the court has triaged appointments. While all in-custody individuals get an immediate attorney appointment, we limit the number of out-of-custody throughout the month. This delay at the beginning of the month in appointing for out-of-custody is

intended to assure that we have enough MAC remaining at the end of the month to appoint for in-custody. That way we don't spend all our MAC at the beginning of the month so we can assure all in-custody throughout the month get attorney appointments.

ATTACHMENT(S)

- 2023 Proposed HB 2497 – Courthouses for Small Counties
- 2023-07-27 Spreadsheet – Case Filings per Judge

INTERVENTION / RECOMMENDATION 1

New Courthouse: Our current courthouse only has one courtroom that can handle jury trials even though we have 2 judges. We do not have a jury assembly room. This greatly limits our ability to process cases. Also, current courthouse is limited in space for attorneys and clients to meet privately. A new courthouse would provide such space.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

New Courthouse

What-If? Projections:

None under current model. Increasing judicial resources would provide an immense increase in MAC if OPDS went to a current pending cases model.

Performance Measurement:

The Presiding Judge (PJ) needs to initiate the process. The PJ will have to work with all stakeholders, including OJD, legislature, and county commissioners. In 2023, the PJ worked with local legislators to propose a bill to allocate state money to begin the planning process for a new courthouse. See attached proposed House Bill 2497. The bill did not pass.

Resources:

Cost is a barrier. State funneling through OJD. May require county resources also.

Timeframe:

Start Date: 10/2/2023

End Date:

Time to Take Effect:

Many years

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Additional judicial position.

As shown in the attached 337 data review for Malheur County, we have 1,443 cases filed to date in 2023 that involve public defense. We have 2 judges, which means 722 cases per judge. We have the highest case count per judge in the state. The next judicial district has 100 less per judge. The top five are:

1) Malheur - 722
2) Clackamas - 621
3) Washington - 620
4) Jackson - 605
5) Benton – 594

For a complete list of all judicial districts see attached spreadsheet. It is clear Malheur County needs a third judge. In addition, dependency cases also use public defender resources. Malheur County has a very high count of dependency filings compared to its population. To date, we have 75 dependency filings for a population of 32,000. For comparison, Deschutes has 77 filings for a population of 201,000 and Multnomah has 284 filings for a population of 803,000.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

New judicial position.

What-If? Projections:

Having an additional judge would enable Malheur County to reduce its time to disposition and pending caseload. Reducing pending caseloads would increase attorney's ethical capacity and will also increase attorney availability if OPDS moves to an open caseload model.

Performance Measurement:

New judicial position.

Resources:

The presiding judge will need to work with OJD to seek a legislative bill to provide Malheur County a new judge.

Timeframe:

Start Date: 10/2/2023

End Date:

Time to Take Effect:

Unknown

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Work with OPDS:

- Move from yearly cap model to pending case model.
- Incentivize attorneys to take more serious cases.
- Permit attorneys to go over cap to represent clients they have previously represented on multiple occasions.

This will require a change at OPDS, but the local court and OJD can support these changes by assisting OPDS in pushing for these changes and maintaining a strong database permitting easy analysis of the data.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

- A pending case model will be a true measure of an attorney's ethical ability to accept cases. Such model will encourage the parties and the court to assure cases are disposed of in a timely manner to manage active caseloads.
- Incentivizing attorneys to take more serious cases will assist the court disposing of cases faster which will benefit the bar and the court.
- The current method of appointing only available attorneys, rather than keep attorneys consistent with repeat clients, causes conflict. Malheur County has only four providers. If all four providers represent a certain defendant, if that defendant becomes a victim in a new case, all of Malheur County's local counsel cannot represent the new criminal defendant even if they have room within their cap.

What-If? Projections:

Going to current pending case MAC model would allow the court to manage its dockets to manage available pending MAC. Allowing attorneys to go over MAC for repeat clients would increase MAC availability.

Performance Measurement:

- Pending case count model implemented.
- Financial incentives for attorneys taking more serious cases implemented.
- Reduction in attorney conflicts.

Resources:

OJD and local court database upkeep and improvements. Legislative desire to provide funding. OPDS work in implementing the changes.

Timeframe:

Start Date: 10/2/2023

End Date:

Time to Take Effect:

Unknown

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Work with jail to address defense counsel concerns regarding visitation. Defense bar generally have access to clients in jail. Jail does not generally limit access to clients except during head counts and inmate lunch time. T concerns defense counsel expressed were:

- Only 2 visiting rooms.
- Not sure inmates always get message to call attorneys.
- Not able to hand inmates documents, must be mailed.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

Come to solutions with jail regarding attorney concerns.

What-If? Projections:

Improved processes for attorneys to contact their clients in jail will not impact MAC but would reduce the amount of time attorneys need to spend attempting to communicate with their clients and thereby free up ethical capacity to take additional cases.

Performance Measurement:

Agreement on resolving concerns where possible.

Resources:

- PJ and jail lieutenant time to discuss issues.
- Training of jail deputies regarding proposed solutions.

Timeframe:

Start Date: 10/2/2023

End Date:

Time to Take Effect:

Immediate upon agreement

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

The court will facilitate a meeting between the DA and public defenders to implement strategies to create more efficient process for criminal cases. Everyone, the court, DA, and public defenders, will recognize any agreement will require the efforts and compromise by all. Creating a more unified structure with clear expectations will benefit both parties and the court. The court, DA, and public defender representatives agree to:

- 2 or more meetings to work diligently towards an agreement.
- Signing a memo of understanding once an agreement is reached.
- The court sign either Presiding Judge Orders or amend the SLR as necessary to comply with the agreement.

The memo of understanding should contain agreements as follows:

- Setting discovery and offer deadlines for in-custody defendants.
- Setting discovery and offer deadlines for out-of-custody defendants.
- Assuring there is a recognition obligations are reciprocal to all parties.
- For out-of-custody defendants setting up a system where a status hearing is the first hearing after arraignment.

Allowing defense counsel to cancel the first hearing with the submission of letter reports to the court the matter is on track and a status hearing is set. On track would include discovery has been given and received, plea negotiations have begun, counsel has met with client, there are not issues that need the court's assistance, etc. The letter would further request a plea hearing with a requested time period for the hearing.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

A stipulated efficient pretrial case management plan.

What-If? Projections:

More efficient processes for criminal cases will not impact MAC but would reduce attorney workloads and thereby free up ethical capacity to take more cases.

Performance Measurement:

A stipulated efficient pretrial case management plan.

Resources:

Court, DA, and public defender time and effort in drafting plan. Everyone's efforts to adhere to the plan.

Timeframe:

Start Date: 10/2/2023

End Date:

Time to Take Effect:

The plan should be achievable within six months. Time is needed to meet and come to an agreement; then to implement the plan and for the docket to catch up.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 6

Malheur County has 5.2 MAC available. Our case counts require 7.4 MAC. See attached 337 data. The PDSC should increase the annual caseload limits in contracts with public defense providers and contract for additional attorneys.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increase from current capacity of 5 attorneys to the equivalent of 7 attorneys.

What-If? Projections:

According to data that OJD received from OPDS, Malheur County providers contracted for 4.9 MAC for FY 2023. During the same period, Malheur received 7.3 MAC of filings, excluding post-conviction relief and habeas corpus cases, which are handled statewide. This suggests a need for an additional 2.4 MAC.

Performance Measurement:

No unrepresented defendants.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Timeframe:

Start Date: 10/2/2023

End Date:

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 10 – UNION AND WALLOWA COUNTIES

Presiding Judge: Thomas Powers

Trial Court Administrator: Michelle Leonard

Crisis Team Members: Judge Thomas Powers, Presiding Judge; Tina Routt, Court Manager; Michelle Leonard, Trial Court Administrator; Kati Dunn, Elkhorn Defenders Atty. Consortium Admin.; Leah Serrano, Elkhorn Defenders Consortium Admin.; Stephanie Beedle, Attorney Admin Staff; Jared Boyd Attorney Admin Staff; BJ MacCartney, OPDS

OSCA Staff: Tiffany Quintero, Rachel Woods

Meeting Dates: July 10, 2023; August 9, 2023

BACKGROUND

Until July 1, 2022, we had no difficulty finding counsel for indigent defendants except in limited instances where we had to appoint outside of our local consortium due to conflicts. On July 1, 2022, OPDS dissolved our local consortium. The dissolution of our long-standing consortium resulted in a loss of available defense counsel in this jurisdiction. The OPDS decision to dissolve our consortium, entering a new contract with new providers and a new administrator, was made despite our history of never experiencing a shortage of attorneys leading to defendants being unrepresented—even when MAC was imposed.

This shift in mid-2022 was not a smooth transition and created significant problems for existing public defense providers, as they attempted to transition into the new contract and administrative structure. It also created administrative, scheduling, and case management challenges for the courts in both Union and Wallowa counties. At least one potential new defense lawyer opted not to provide services in this jurisdiction because of the disruptions related to the new contract. Another existing provider was not included in the new contract, and although he ultimately contracted independently with OPDS for services, that aspect of the transition was disruptive. One of the five full-time equivalent defense positions ended up being "covered' by a mix of four to five lawyers from other jurisdictions, unfamiliar with local court practices and procedures, and based in offices outside this judicial district thereby creating problems of client contact and court appearances. The administrator assigned to our district is trying to manage multiple consortia for multiple judicial districts. This is causing considerable lag to a process that was successful, but now has created more chaos and frustration than is necessary.

Also, pre-July 1, 2022, our local consortium had a predisposition program whereby a defense attorney would be onsite once a week to represent defendants and resolve cases with the district attorney's representatives at out-of-custody arraignments. The predisposition program allowed the court to quickly resolve matters with minimal use of court-appointed attorney time, and without using up MAC credits. This program no longer exists in the current contract.

In short, the problems with public defense representation in this judicial district, to the extent that it is a crisis, is largely the product of OPDS decisions relating to the current contract, several of its provisions, and the administrative structure it imposed.

We encountered our first unrepresented crisis in May of 2023, when the contract administrator informed the court that attorneys were at, or nearly at, capacity based on MAC. By the end of June 2023, we were informed that all available capacity under the contract was used up, leaving us with 20 unrepresented individuals. Most of those defendants were provided counsel in early July, but our attorneys were capped again by approximately July 17, 2023. We ended the month with 11 unrepresented individuals. These 11 individuals were assigned lawyers in August, based on additional capacity, or were appointed at hourly rates.

It is worth noting that most of the providers in this judicial district, including all four public defense lawyers who were members of the pre-2022 consortium, have been willing to take cases at an hourly rate, in excess of their MACs, indicating that the MAC numbers may be artificially lower than the workloads the individual attorneys ethically can manage. The timely and diligent provision of services by those lawyers, in this court's estimation, indicates that "ethical capacity" is in fact greater than the MAC numbers suggest.

Although not directly related to the shortage of public defense lawyers and their ability to take cases, it bears mention that in this two-judge judicial district, one judge is disqualified from all criminal matters in both counties, such that Judge Powers is assigned all criminal and juvenile delinquency matters in both counties. That situation does create additional scheduling challenges on top of the public defense issues.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

This District has largely adopted most of the OCDLA proposals with no objections for the most part.

We do object to allowing parties to schedule hearings by email. It is not appropriate for the court to act on cases outside of the record. Using court staff to do things in cases outside of the record, not only creates confusion as one cannot track why things might be happening, it inappropriately puts the onus on already burdened court staff to create the attorneys' record. That is not our role, nor should we adopt practices that put us in that position. We realize attorneys are busy, but the reality is they only have a portion of our cases, and our staff have 100% of the cases to manage. Taking shortcuts is a dangerous game.

It is Judge Powers' position that motions to postpone will be critically viewed.

We agree that every effort to determine pretrial hearings should be made early in the proceeding. Motions need to be filed for that to occur timely.

We typically allow parties to continue negotiating plea deals after entry of "not guilty" pleas and the setting of trial dates. It is the expectation that late agreements to settle a case should be announced at the pretrial conference in a case, 1-2 weeks before trial. Trials are typically stacked in priority order, and at pretrial, cases intending to settle are resolved by immediate entry of a plea, even if sentencing is setover. That way any remaining cases will truly be trial-ready, and there is confidence that settled cases will not need a trial because of the guilty plea(s) entered. It is also expected, however, that the parties and counsel take seriously their ability to timely enter pleas at the first plea setting, and although motions for additional time are typically granted given good cause, sticking to plea deadlines will ultimately free up attorney and court resources by

avoiding multiple setovers and hearings in a case. Also, reducing the need to stack cases for trial. This makes the court's limited trial capacity more available to those cases not amenable to settlement.

BEST PRACTICES

- Keeping caseloads as even as possible between attorneys.
- Prioritize cases.
- Pre-disposition program (when available).
- Assigning all unrepresented defendants an attorney at the beginning of each month pursuant to priority and severity criteria.
- Solid internal business processes following local and statewide best practices.

ACTIONS TO DATE

We have setup case management systems to evenly distribute caseloads between lawyers. Court staff are spending extra time to regularly work with consortium administrative staff to stay on top of the appointments.

Consortium members participate in an “On Call” rotation schedule. This schedule rotates on a weekly basis and each member of the consortium is required to stand-in during all arraignments, even if capped. They are not appointed to the cases at hand but do provide assistance at first appearances. If the attorneys are capped, OPDS is added as the attorney as per current protocol.

At the end of each month or at a time deemed appropriate, all consortium members receive a list of unrepresented individuals and are asked to consider taking cases above their cap. This practice reduces the number of cases that roll over into the next month. For July of 2023, we started with 11 unrepresented defendants. After this process, we only had to setover four of those 11 cases into August. This process will be necessary going forward to prevent the snowball effect of unrepresented defendants "rolling over" from month-to-month.

In-custody and individuals with severe crimes are priority cases, as are juveniles. We also prioritize assigning counsel in dependency cases, per statute.

Docketing is strictly governed for case timeliness and efficient use of counsel’s time when allowable. When setting multiple cases, we group attorneys' matters together. Our cases do not linger waiting on court dates. We have managed to reasonably maintain time to disposition standards through the period of COVID-19 restrictions, despite the availability of only a single judge available for these matters in a two-judge judicial disctrict. Our court staff has worked creatively and diligently to manage our docket, and cases do move forward in a timely manner.

We do seek and get support from OJD with the occasional provision of senior judges so that Judge Powers is able to handle other priority matters, including his duties as Presiding Judge.

For many years, we have had an "unavailable date" program where participating attorneys submit, and keep current, their unavailable dates to the court. We manage this within our two-county district. In return, the attorneys are assured that when we are scheduling outside of court, their unavailable dates will be considered, so long as we are not barred by statutory limitations. If a hearing is scheduled on a date the attorney had listed in their unavailable dates with docketing staff and it is not barred by statutory time limitations, the court will reset without a motion to

continue. If an attorney who received a notice for a court proceeding finds they are unavailable, and they have not notified the court in advance, the attorney is required to file a motion to continue. This process dramatically reduces the filing of motions to continue due to attorney scheduling conflicts, and avoids the burden on staff of resetting hearings and juggling the docket.

ATTACHMENT(S)

- Union Wallowa Intervention Data

INTERVENTION / RECOMMENDATION 1

Our current processes have kept us from falling into a crisis designation. However, if we do drop into that category the following actions will be taken:

- Work with the district attorney and current public defender consortium on some form of pre-disposition program to resolve cases earlier.
- Work with the defense bar and District Attorney's Office on increasing the number of settlement conferences.
- Bring in Plan B judges to conduct mass settlement conferences.
- Asking existing lawyers to take cases above their MAC but within their ethical capacity.
- Encourage OPDS to promptly appoint, and pay at hourly rates, those attorneys taking cases above their caps.
- Additional recommendations would be: Increase both attorney MAC and the number of attorneys willing to follow our local processes in our area.

Currently, when we get out of area attorneys, they are quite often expecting we change our processes for them, this has proven to be disruptive given that we are extremely limited on judicial resources.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

- Have few to no cases on the unrepresented list at the end of each month.
- Never have unrepresented defendants in-custody, except for brief periods following an attorney withdrawal.
- Move cases along without overburdening the judge.
- Not be required to micromanage the process all the time.

What-If? Projections:

I have attached the data packet provided by OJD analysts.

Our recommendations in terms of combating the current unrepresented population are short term solutions. We need to increase the MAC and add attorneys. We would not need to ask for the attorneys at the end of each month to take cases above their MAC.

Performance Measurement:

The number of unrepresented each month would be nonexistent. We have already created enough protocols and business processes to achieve that goal. We do not need any more protocols, we just need cooperation, a raise in MAC, and everyone working toward success.

Resources:

- Have - We are tracking our own spreadsheets
- Have - SharePoint sites and dashboards
- Need - Fully functional predisposition program and the MAC to run it.
- Barrier - Not everyone is interested in the efficiency or success of this process.
- Barrier - lack of locally manage consortium as it was pre-July 2022. This would allow the court to get back to a time where we did not have to manage this process so excessively, and our local attorneys could have a more consistent and cohesive program.

Timeframe:

Start Date: 7/1/2023

End Date:

Time to Take Effect:

We have no intention of ending any of our practices, they have worked in our favor for many years and are working now.

Was there community consensus on this intervention?

No

Minority Viewpoints:

We are not in an intervention status yet.

JUDICIAL DISTRICT 11 – DESCHUTES COUNTY

Presiding Judge: Wells B Ashby

Trial Court Administrator: Angie Curtis

Crisis Team Members: Judge Wells Ashby, Presiding Judge; Angie Curtis, Trial Court Administrator; Rebecca Williams, ACP Coordinator; Joel Wirtz, Deschutes Defenders; Dylan Potter, Bend Attorney Group; Raun Atkinson, Atlas Law Group; Steve Gunnels, District Attorney

OSCA Staff: Tiffany Quintero, Stephanie Guerena

Meeting Dates: July 24, 2023

BACKGROUND

As of July 20, 2023, Deschutes County had four unrepresented defendants in five cases. Two of those defendants are in-custody and the remainder are out-of-custody. The number of unrepresented defendants in the county has remained low, but for June 2023, when the number spiked due to conflict cases.

Of the two pretrial defendants in-custody without an attorney appointment, one is a Measure 11 case where all local attorneys have an explicit conflict. The other is an individual who is in-custody for a civil commitment – extreme risk case where all local attorneys also have an explicit conflict. The court is working with OPDS to identify qualified attorneys. The reasons for these two cases being without attorney appointments are due to case-specific circumstances.

In Deschutes County, cases filed decreased 2.8% over the previous year. Although overall case filings decreased, there was a significant increase in civil commitment case types. This differs from statewide trends where cases filed increased 1.4% with increases across most case types. Similarly, the overall attorney MAC needed to cover the case filings decreased in FY 2023. There is a decreased need for felony and misdemeanor cases, but an increased need for civil commitment cases.

Deschutes County saw a 27.7% increase in dispositions and a 27% increase in clearance rate during FY 2023. Deschutes County's decreased case filings and increased dispositions helped to keep the number of unrepresented individuals from becoming as severe as it did in many jurisdictions during FY 2023.

There is 11.9 MAC remaining in the current extended contract. The MAC needed to cover the current unrepresented cases is 0.02. The data suggests there is enough MAC to cover the current unrepresented cases and new case filings, but that may be complicated by the unrepresented case types, attorney conflicts, substitutions, and high attorney caseloads.

The intended outcome or goal of this plan is to retain and recruit public defenders. The stakeholders of the 11th Judicial District make the following recommendations to achieve that goal.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

The 11th Judicial District has the following practices in place:

- Reduce multiple court appearances by increasing length of time between initial appearance and entry of plea.
- Continue to allow plea negotiations until trial, no plea deadlines.
- Presiding Judge completed a week-long mediation training through the National Judicial College and subsequently began offering formal settlement conferences for cases with serious charges. Significant settlement conferences are conducted almost weekly, reducing numbers of multi-day trials.
- Continue to offer remote hearings.

BEST PRACTICES

- Deschutes County currently follows the best practices for Odyssey data entry.
- If we experience a reduction in public defense capacity, we will prioritize attorney appointments based on the seriousness of the charge(s), in-custody status, and case age.
- We will consider removing attorney appointment if a warrant is issued.

ACTIONS TO DATE

The stakeholders in the criminal justice system in Deschutes County have a collaborative culture between the court, the public defense providers, and the District Attorney's Office. This culture of respectful problem-solving and communication has enabled the 11th Judicial District to resolve most issues as they arise.

Deschutes County has taken the following actions to avoid or reduce the likelihood of creating a crisis of unrepresented defendants:

- Extended the length of time between arraignment/initial appearance and entry of plea to provide time for attorneys to meet with their clients and gather information in an effort to reduce unnecessary hearings.
- Moved the trial readiness docket from the Thursday to Tuesday the week before trial (two days earlier).
- Conducted mini-settlement conference dockets to resolve criminal cases with less serious charges.
- Provide formal settlement conferences, almost weekly, to resolve criminal cases with the most serious charges, cases which are generally scheduled for multi-week jury trials.
- Maintained remote proceedings to promote efficiency and allow public defenders to work on other matters while waiting for their cases to be called on large dockets.
- Conduct recurring meetings and encourage ongoing communication between Presiding Judge, public defenders, and the District Attorney's Office to address trends in case processing issues, changes to their capacity, and opportunities for ongoing efficiencies and improvement.

- Consulted with stakeholders to strategically process case backlogs, including warrants, that developed during the pandemic.

INTERVENTION / RECOMMENDATION 1

Be cautious about implementing policy changes to improve the public defense crisis in one judicial district that might create a crisis in another district.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Retain public defenders.

Resources:

The 11th Judicial District will utilize the data dashboards provided by the Oregon Judicial Department to monitor progress on these performance measures.

Time to Take Effect:

Ongoing

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Create more flexibility in contracting for public defense providers to recognize the actual amount of time it takes to replace and hire attorneys (more than 60 days).

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Contract modification that increases times before the contracted rate is reduced.

Resources:

PDSC contracting adjustment.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Update contracting to acknowledge the higher cost-of-living in some areas of the state and remove livability barrier.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase number of attorneys interested in public defense, to include areas with higher cost-of-living.

Performance Measurement:

- Improved time to disposition.
- Reduction in case backlogs.
- Reduction in motions to continue.
- Reduction in number of cases with unrepresented defendants.

Resources:

PDSC contracting adjustment.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Consider loan forgiveness for attorneys who provide public defense services through conflict contracts and/or consortia.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase number of public defense attorneys.

Performance Measurement:

Reduction in number of cases with unrepresented defendants.

Resources:

Statutory change.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

Increase Attorney Capacity – The PDSC should contract for additional attorneys in Central Oregon.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

While this action is outside of the court's authority, increasing the number of attorneys is the most likely intervention that will address the unrepresented individuals' crisis. An increase in attorney capacity can be obtained by adding additional attorneys to the system. Hiring and/or developing additional qualified attorneys for the various case types increases local capacity to handle conflict cases.

What-If? Projections:

In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Deschutes County, the need is 0.01 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

Annual Case Assignment for 1.0 FTE

Murder	6
Jessica Law	6
Measure 11	45
Major A/B felonies	138
Minor felonies	165
Misdemeanors	300
Probation violations	825
Civil commitment	230
PCR/Habeas	45

As of July 20, 2023, there were 6 unrepresented public defense cases. Several of these are PCR cases where attorneys are always assigned by OPDS, but out-of-county.

Performance Measurement:

- Decrease in number of individuals on unrepresented list.

- No unrepresented defendants by September 2024.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 6

Create regional conflict resolution teams.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Allow the conflicts coordinator(s) to locally seek out attorneys in the region for neighboring counties to address conflict cases.

What-If? Projections:

If attorney capacity is available within the region, the conflicts coordinator would be available to seek attorneys in neighboring counties to address the conflict need. Based on crisis team conversations, in Deschutes County, 100% of individuals on the unrepresented list are identified as conflict cases. As with the 2021-2023 caseload, conflict counsel is expected to be necessary in the 2023-2025 caseload.

To eliminate the number of unrepresented individuals (effective August 10, 2023), and handle the forecasted caseload for 2023-2025, the following additional attorney capacity is needed to manage conflicts:

Between July 1, 2022, and August 29, 2023, there were 79 public defense cases were taken by hourly or out of county attorneys in Deschutes County. These cases represent 0.46 MAC.

OPDS Case Category	Out of County Appointments	Total MAC
Misdemeanor	53	0.18 FTE
Probation Violations-Criminal	10	0.01 FTE
Minor Felony	7	0.04 FTE
Civil Commitment	5	0.02 FTE
Major Felony	2	0.01 FTE
Measure 11	1	0.02 FTE

Murder	1	0.17 FTE
Total Cases	**79**	**0.46 FTE**

Performance Measurement:

- Reduction in number of conflict cases on the unrepresented list.
- Reduction in the length of time that a defendant is on the list.

Resources:

- Funding for conflict attorney capacity.
- Funding for conflict coordinator.
- Change in policy.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 7

Hire local or regional coordinator(s) for attorney appointments, particularly in districts with a high number of conflicts.

The coordinator would ideally be an employee of OPDS, who has sufficient capacity and expectations of timely and responsive work on these cases. Identifying and contracting with attorneys is the responsibility of OPDS, not OJD. If it is determined that regional coordinators would be employees of OJD, additional capacity (FTE) would be required within OJD to perform these duties. The local or regional coordinator will identify available qualified attorneys with capacity, assist the court in prioritizing appointment (considering custody status of individuals in need of counsel, and qualifications), identify and coordinate appointment to conflict counsel, monitor adults in-custody (AIC) and unrepresented defendants that may qualify to be released, to prioritize those AIC that will remain in-custody.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

- Increase attorney capacity.
- Increase system efficiencies.
- Reduce the number of cases with unrepresented defendants due to conflicts of interest.

What-If? Projections:

This intervention will not create additional MAC, but will allow the current MAC resources to be used more effectively. It should reduce or eliminate the number of unrepresented individuals due to conflicts.

Performance Measurement:

Reduction in number of unrepresented individuals.

Resources:

Position authority and funding for regional coordinator(s).

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 8

If required, terminate appointment of attorney at 60 days if individual is on warrant status for FTA and return individual to unrepresented list. If this becomes required, it will be critical for OPDS and OJD to agree on the period at which attorneys are removed from their appointment once an FTA warrant is issued. This will avoid conflicting direction to attorneys from the local court and OPDS regarding removal from these appointments.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

- Increase attorney ethical capacity.
- Reduce the number of cases with unrepresented defendants.

What-If? Projections:

OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Deschutes County, as of August 10, 2023, there are 140 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

Case Category	Number of appointments on warrant status
Major Felony	12
Minor Felony	25

Misdemeanor 103

This intervention will not create additional MAC, but will reduce attorney caseloads and increase ethical capacity.

Performance Measurement:

Reduce the number of defendants on warrant status over 60 days with appointed attorneys.

Resources:

Business process change.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

There was consensus on this if OJD and PDSC can agree on the point at which attorneys would be removed from cases after an FTA warrant has been issued (60 days vs. 180 days). It is challenging for public defense attorneys when OJD and PDSC give conflicting directives.

JUDICIAL DISTRICT 12 – POLK COUNTY

Presiding Judge: Norm R. Hill

Trial Court Administrator: UnCha Kim

Crisis Team Members: Presiding Judge Norm R. Hill; A. Hernandez, OPDS; Aaron Felton, DA; Andrew Bridge; C. Breton, OPDS; K. Hupy, OPDS; Luke Miller; Matt Jarvis; Matt Wilson, ADA; Scott Howell; Steve Walls; Tim Park; UnCha Kim, TCA

OSCA Staff: Conor Wall; Lindsey Detwiler; Rachel Woods; Tiffany Quintero

Meeting Dates: July 24, 2023; August 14, 2023

BACKGROUND

Near the end of the 2022-2023 fiscal year, Polk County saw a brief rise in the number of unrepresented defendants due to a lack of available MAC in the contract cycle. Collaboration with providers and OPDS allowed us to resolve some of the backlog of cases without appointed counsel. Most remaining cases resolved on July 1, 2023, when defense attorneys once again had contractual capacity to take additional cases. The remaining cases where defendants are without counsel are due to all local providers having conflicts.

The number of yearly criminal case filings have remained rather consistent for the past few years after a decline in 2020 with a slight increase in 2023. The District Attorney's Office believes that new case filings are likely to increase in the next year or two. They predict an increase in cases because the office has filled an attorney vacancy, and they expect to have the capacity to charge additional cases.

Defense providers in the county believe that they will have the capacity to meet the future needs for criminal representation in Polk County for the following two reasons: (1) some misdemeanor attorneys have recently or will soon become felony qualified, and (2) defense providers are in the process of adding additional defense attorneys.

BEST PRACTICES

Create a docket designed to facilitate early case resolution with limited judicial assistance. Require all decision makers (assigned attorney, client, and victim) to either be present or easily reached by phone. The court offers limited intervention – in a settlement conference-like setting to ascertain whether the cause can be resolved. The docket facilitates face-to-face negotiations with all interested parties. If the case can be resolved, the court has the ability to accept a plea or pleas and sentence the defendant on the same docket.

ACTIONS TO DATE

We collaborated with OPDS and a local provider to create a process to allow that provider to take cases outside the contract so long as the provider had the ethical capacity to accept appointments

outside the contractual maximum. This was intended to be a temporary measure to allow the appointment of attorneys near the end of the 2022-2023 fiscal year.

Other interventions were implemented prior to the passage of SB 337, see below.

ATTACHMENT(S)

- PJO 23-002

INTERVENTION / RECOMMENDATION 1

Create a docket designed to facilitate early case resolution with limited judicial assistance. Require all decision makers (assigned attorney, client, and victim) to either be present or easily reached by phone. The court offers limited intervention – in a settlement conference-like setting to ascertain whether the cause can be resolved. The docket facilitates face-to-face negotiations with all interested parties. If the case can be resolved, the court has the ability to accept a plea or pleas and sentence the defendant on the same docket.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

Increase attorney availability to work on cases that are more serious or that are definitely headed for trial by resolving those cases that do not need to go to trial. Eliminate wasted trial dates, attorney time, and other wasted resources that are spent because the parties are not communicating efficiently enough to resolve cases.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

The percentage of cases that resolve without being set for trial.

Resources:

Identify attorneys to staff the increased early resolution docket, a judge to preside over the docket, and court staff to manage the docket.

Time to Take Effect:

Already Implemented

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Changes to the attorney assignment process for Jessica's Law cases. Currently, most cases, including Jessica's Law cases, are assigned to providers based upon the day of the week.

Recommend changing the process as follows: create a list of all attorneys, regardless of firm, group, or consortium, that are qualified and have the ability to handle Jessica's Law cases. As Jessica's Law cases are filed, the attorneys are assigned individually based on who is next on the list and no longer assigned based upon the attorney/firm/consortium of the day.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Distribute the Jessica's Law cases that consume more MAC across the available defense providers in the county.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

The percentage of Jessica's Law defendants who are unrepresented at any point due to lack of attorney availability.

Resources:

Staff to create and monitor the list.

Time to Take Effect:

14 days

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Recommend that OPDS permit a higher contractual MAC for more experienced attorneys who have the ethical capacity to take more cases than 300 MAC.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Permit attorneys who want to and have the ethical capacity to do so to contract with PDSC for more than 300 MAC, which would add overall attorney capacity in the county.

Performance Measurement:

Track the available MAC in the judicial district; measure individual defense attorney MAC increases.

Resources:

This recommendation is outside the control of OJD.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Recommend that the OPDS make it simpler for attorneys to take additional cases on an hourly basis above their contracted MAC and at any point in the contracting cycle.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Entice attorneys to take additional cases on an hourly basis above what they are currently contracted for when they have the ethical capacity and desire to do so.

Performance Measurement:

The number and percentage of attorneys who take cases on an hourly basis above what they have contracted for.

Resources:

This recommendation is outside the control of OJD.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

Recommend that OPDS amend future contracts to allow attorneys to be relieved from representation of a defendant that had had no contact with the attorney without the full case credit being counted against the attorney's MAC. This would allow the court to relieve any attorney of representing a defendant that has had no contact with the court or the attorney for 28 days or more (as measured from arraignment going forward). That will free up that attorney to take on another case.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney capacity.

Performance Measurement:

Percentage of attorney MAC that is freed up based upon relief from cases where defendants have not have any contact with the attorney.

Resources:

This recommendation is outside the control of OJD.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 6

Polk County schedules the first pretrial conference on out-of-custody cases approximately 6 weeks after arraignment. At that time, attorneys often report issues obtaining discovery, issues or delays getting approval from OPDS for nonroutine expenses (i.e., private investigator services, expert funding, or different kinds of evaluations) and lack of contact by the defendant. Resolving those issues at the 6-week mark functionally delays the resolution of the case and leaves the case on the attorney's caseload without any practical movement towards resolution. Recommend moving the first pretrial conference to 4-weeks after arraignment. Four weeks will be ample time for the attorney to meet with the defendant, identify any missing discovery, identify any nonroutine expenses necessary and request them and to know whether any delays in funding are apparent. The move itself will not resolve those issues but will allow the court to intervene sooner – either by request or *sua sponte* – to address the issues raised above.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney capacity.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

The percentage of cases that are resolved quicker by limited judicial intervention

Resources:

Training of staff on new procedure and staff to implement the changes.

Time to Take Effect:

Up to 60 days to allow for previously set hearings to filter through.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 7

Recommend that OPDS prioritize funding requests to favor cases with defendants that are in custody, favor requests for expert witnesses, favor requests based on the age of the case and favor requests based on the severity of the charges. Recommend OPDS recruit new hires to ensure that they are staffed at the level necessary so that no funding requests are delayed due to lack of staff.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Reduce attorney and court time waiting on funding requests to be approved.

Performance Measurement:

Percentage of cases that resolve faster based on efficient OPDS procedures.

Resources:

Potential new hires, staff to complete internal audit and create prioritization policies.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

No

Minority Viewpoints:

This recommendation was not raised at the meeting so we don't know whether we will have consensus.

INTERVENTION / RECOMMENDATION 8

Issue a Presiding Judge's (PJ) Order that requires each public defense service provider to report quarterly* to the Trial Court Administrator (TCA) the following:

- The number of attorneys that still have MAC
- How much MAC is available for each attorney
- What are their qualifications for those attorneys (i.e., can handle misdemeanors and minor felonies, but not major felonies)

- Any facts known to the provider that could affect the attorney's MAC or availability (extended vacations, medical leave, etc.)

The TCA then distributes that information to the PJ and others as appropriate.

*Can be modified to require monthly or weekly reports as we close in on the end of the contract period.

Lever(s) Impacted:

Other

Lever not mentioned above:

Data/Information Gathering

Intended Outcome or Goal:

Allow the court to prepare for any upcoming shortage in attorney MAC by prioritizing attorney appointments as necessary or take other action as appropriate.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

Number of days/weeks/months in advance that the Court knows of pending MAC shortfalls.

Resources:

TCA/PJ/Hearings Referee to draft PJO, TCA to receive and distribute information as necessary, providers to keep up to date data of attorney MAC.

Time to Take Effect:

Up to 14 days.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 9

Work with providers to identify those attorneys that can handle Measure 11 and major felony cases. Recommend that they develop a procedure that protects those attorneys' availability to handle those cases by not needlessly burning through their MAC with lower-level cases that other attorneys could handle.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Ensure that the attorneys that have the qualifications and willingness to handle higher level or large count cases have the MAC available to accept those cases as they arise.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

Number of qualified attorneys with MAC available to accept higher level or large count cases.

Resources:

Providers to create procedures in-house.

Time to Take Effect:

Up to 30 days.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 10

Work with providers and OPDS to develop a training process to allow newer attorneys to gain the requisite experience to enable them to be able to handle higher level cases.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increase the number of attorneys qualified and willing to handle serious cases.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

The increase in the number of attorneys qualified and willing to handle serious cases.

Resources:

Individuals from OPDS and each provider to create a process; attorneys willing to be trained.

Time to Take Effect:

Up to 6 months.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 11

Propose eliminating one out-of-custody arraignment docket. Polk County has two out-of-custody arraignment dockets each week. Each docket requires the appearance of an attorney to assist with arraignments. We no longer have such a volume of cases that would justify two separate dockets. Propose citing defendants to appear 30 minutes ahead of the start of the out-of-custody arraignment docket. Defendants are cited by law enforcement or released from custody to appear at the time the arraignment docket is set. However, the docket rarely starts on time as court staff need time to interview defendants for eligibility for court appointed counsel, to process the applications and create the appropriate orders for the arraignment judge. Staggering the appearance time and the docket start time (for example, cite defendants to appear at 2:30 p.m. for a 3:00 p.m. docket) would allow time for the staff to complete their work so that the docket can start on time. This would keep the attorneys required to be at arraignment from sitting around waiting for the staff to complete their work.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Decrease the number of hours attorneys spend in court at arraignments.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

The decrease in attorney hours spent at arraignment.

Resources:

Staff time to eliminate the extra docket and to notify law enforcement of the change.

Time to Take Effect:

90 days

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 12

Prioritize appointment of lawyers to cases*

Prioritize the appointment of lawyers on cases to address the more needy and the most vulnerable defendants first.

Suggested priority list:

- In-custody cases;
- Civil commitments;
- Out-of-custody RAD defendants;
- Out-of-custody Measure 11 and major felony;
- Out-of-custody domestic violence (misdemeanor and felony) and sex cases (non-Measure 11);
- Out-of-custody minor person felony (presumptive prison);
- Out-of-custody minor property felony (presumptive prison);
- Out-of-custody DUIIs;
- Out-of-custody minor person felony (presumptive probation);
- Out-of-custody minor property felony (presumptive probation);
- Out-of-custody person misdemeanors;
- Out-of-custody non-person misdemeanors;
- Out-of-custody contempt; and
- Out-of-custody parole violations.

*Adjustments can be made as needed

Lever(s) Impacted:

Other

Lever not mentioned above:

Triage Appointment Priority

Intended Outcome or Goal:

Ensure that in custody defendants have counsel.

What-If? Projections:

There is no analysis that expects an increase in new attorney MAC available.

Performance Measurement:

The number of in-custody defendants that are without counsel.

Resources:

Staff to track attorney MAC and prioritize appointment of counsel.

Time to Take Effect:

Once the court is notified attorney MAC is in danger of running out before the end of the contract period.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 13

Recommend OPDS conduct periodic internal audit to discover any in house reasons for delays in approving funding requests.

Lever(s) Impacted:

Other

Lever not mentioned above:

OPDS Operating Efficiency

Intended Outcome or Goal:

Reduce attorney and court time waiting on funding requests to be approved.

Performance Measurement:

Percentage of cases that resolve faster based on efficient OPDS procedures.

Resources:

This is outside of OJD control.

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

No

Minority Viewpoints:

This recommendation was not raised at the meeting so we don't know whether we will have consensus.

JUDICIAL DISTRICT 13 – KLAMATH COUNTY

Presiding Judge: Andrea M Janney

Trial Court Administrator: John Powell

Crisis Team Members: Andrea Janney, John Powell, Tuesday Herring, Fawna Anderson, Nancy Harrington, Sarah Dougherty, Jeff Hedlund, Scott Carter, Phil Studenburg, Stephanie Tuttle, Lori Bender, Jordan Huppert, Tammy Worthington

OSCA Staff: Michael Hsu, Stephanie Guerena

Meeting Dates: August 1, 2023; August 15, 2023

BACKGROUND

The 13th Judicial District has had a public defense crisis since the beginning of 2023. There are a variety of factors that have contributed to this problem. The local defense consortium was dissolved a few years ago and we have approximately ten privately contracted defense attorneys available to represent our indigent defendants. We simply lack a sufficient number of qualified attorneys to represent the number of defendants in our county. This crisis is complicated by the fact that we have not had a district attorney since approximately October 2022, and there are only two full time deputy district attorneys working in the District Attorney's Office. Despite these issues, we have a strong, collaborative relationship between the court system, defense providers, and the District Attorney's Office. We have been working tirelessly to ensure the criminal justice system continues to function as efficiently and fairly as possible.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Klamath County will follow the new UTCR's 4.010 and 7.010 that went into effect on August 1, 2023. The court already allows parties to request all hearings via motion, and some by email.

Klamath County permits remote appearances in virtually all circumstances when they are aligned with court protocols.

BEST PRACTICES

The attorney appointment coordinator prioritizes appointments based on in-custody status, seriousness of the charges, number of pending cases, and case age.

ACTIONS TO DATE

The court became aware of the local defense crisis in approximately February 2023. Once aware of the issue, the court immediately met with representatives of OPDS. The court also discussed the matter with Chief Justice Meagan Flynn and SCA Nancy Cozine. We set up meetings with our bench, defense counsel, and the District Attorney's office to discuss ideas and strategies to address the issue. We were advised by OPDS to appoint "OPDS" as the attorney to add the

defendant to a statewide unrepresented list. This action did not result in our defendants obtaining representation.

OPDS then began offering an hourly rate plan to local attorneys who agreed to represent defendants on the list. We are fortunate to have an attorney appointment coordinator who is employed through a defense provider's contract to coordinate all attorney appointments in our district. She has been able to monitor the unrepresented list and appoint available attorneys based on custody status and case type. The 13th Judicial District currently has 79 unrepresented defendants, none of which are in-custody. This is a significant decrease compared to our numbers in late spring.

The 13th Judicial District has taken the following actions to reduce the unrepresented defendant crisis:

- Ongoing discussions with defense counsel and the District Attorney's Office regarding charging decisions, settlement dockets, and alternative resolutions.
- The interim district attorney has begun charging some low-level misdemeanors as violations to avoid the appointment of counsel. There have also been offers made at the time of arraignment to treat the charge as a violation if the defendant chooses to plead guilty at arraignment.
- Some defense counsel have been willing to appear at arraignments to offer legal advice for "fast track" changes of pleas in low-level cases and diversion eligible DUII's. This has allowed for more cases to be resolved at arraignment without using attorney MAC.
- Continued implementation of case flow management strategies to reduce caseload and prevent backlog.
- Judicial settlement conferences available for all major felonies.
- Increased court availability for changes of plea.
- Docket/calendar changes to accommodate attorney availability.

Our continuous efforts to address the crisis have resulted in slight decline in the number of unrepresented individuals in our district, but the problem is ongoing. Data indicates that we simply do not have enough attorney MAC available to meet the needs of our indigent defendants.

INTERVENTION / RECOMMENDATION 1

Attorney Recruitment and Retention - Recommendation to OPDS/PDSC and the legislature for better recruitment and retention strategies.

- Law schools should offer clinics/practical experience opportunities in rural communities.
- Law schools should teach practical skills regarding solo practice.
- Offer incentives for rural practitioners.
- Aggressive recruitment (in-person and online) and promotion of public defense work.

At a local level, the bar association and individual attorneys should actively recruit new attorneys by attending law school functions, participating in alumni functions, and offering mentoring opportunities.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

A sufficient number of public defense providers will be available to meet the needs of our community.

What-If? Projections:

No MAC projection.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 2

Recommend that OPDS/PDSC include line-item additions to contracts that allow attorneys to provide docket specific services to defendants without using full MAC. For example, include 0.05 MAC for DUII diversion court. The attorney would only be advising diversion eligible defendants regarding their options and helping them enter the diversion program. Another option is to include a 0.05 MAC for quick arraignment settlements/dispositions. An attorney may receive compensation for helping to resolve minor matters at arraignments without using full MAC.

In the alternative, attorneys could be offered hourly compensation for participation in these proceedings without using MAC.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

The goal would be to allow for simple, non-complex representation for specific dockets where a defendant can receive representation for a limited matter without being "appointed" an attorney. The attorney would still be compensated for their work, but that work would not rise to the level of full case representation resulting in more attorney MAC for more serious, complex matters.

Ultimately, the goal would be for defendants to receive appropriate legal advice and the cases for the cases to resolve quickly and easily.

What-If? Projections:

In Klamath County, cases where the most serious charge is a misdemeanor Driving Under the Influence of Intoxicants represent 0.74 MAC. In 2022, 17% of all misdemeanor filings resolved by predisposition programs or specialty court participation.

We anticipate that by adding the additional 0.05 MAC for docket specific services to defendants this may result in up to 0.5 MAC available for more serious, complex matters.

Performance Measurement:

Measure or track the rate of disposition achieved by the attorneys performing these specific duties against the rate of disposition when an attorney is fully appointed to the same case type. This may require a different business process for data entry depending on how the attorney is paid (0.05 MAC or hourly). The case will need to reflect that an attorney was present and provided the service, but a full appointment was not made.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Create and implement rapid or fast-track dockets to resolve cases quickly. Specifically, create a DUII diversion court where diversion eligible defendants can receive appropriate legal advice from a qualified defense attorney and then decide whether to enter the DUII diversion program. (See above recommendation regarding line-item compensation for attorneys).

Create a fast-track docket for low-level, non-person misdemeanors that can be resolved with minimal court and attorney time. For example, said cases can be set out of arraignments for the nearest Friday morning. A defense attorney, district attorney, and judge would be available to resolve the case. Offers would be made available. Defense attorneys could review discovery and advise the client. Pleas could be taken that day, if appropriate. If the case cannot be resolved with a plea, an attorney could be formally appointed, and the case set out for appropriate dates.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

The intended goal would be for low-level, non-person misdemeanors to be resolved quickly without using excess attorney MAC. The defense attorney would be appropriately compensated (see above Line-item contract suggestion) for providing competent advice on cases that can be quickly resolved. This would avoid creating a backlog of minor cases and using attorney MAC.

What-If? Projections:

Non-person misdemeanors account for 40% of criminal case filings or 3.7 MAC. Less than 1% of these cases were resolved by bench or jury trial.

We anticipate that by adding the additional 0.05 MAC for docket specific services to defendants along with a fast-track docket process that resolves cases without the need to appoint public defense attorneys, may result in up to 1.5 MAC available for more serious, complex matters.

Performance Measurement:

Track timeliness of disposition of fast-track cases versus traditional appointments. This intervention would require the creation of a new session on our court docket and ensuring judicial and attorney availability. There may need to be training regarding data entry to ensure attorneys are properly credited for their services.

Timeframe:

Start Date: 10/2/2023

End Date:

Time to Take Effect:

Immediate - once attorney compensation is resolved.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Recommend that the District Attorney's Office consider changes in filing types. Specifically recommend filing some low-level misdemeanors as violations, instead of crimes. This would eliminate the appointment of an attorney.

Make sure offers are available at the time of arraignment. In the alternative, recommend that violation treatment is offered at arraignment, if there is a public defender available at arraignment to resolve cases (see above recommendations re line-item compensation).

Lever(s) Impacted:

Filings; Attorney Capacity

Intended Outcome or Goal:

Less filings requiring attorney representation will leave attorney MAC available.

What-If? Projections:

A 5% reduction in the number of misdemeanor cases needing representation, would result in a savings of 0.22 MAC. A reduction of 7% would result in a savings of 0.32 MAC.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 5

Implementation of "global settlement days" to resolve backlog of cases. Our courts will implement a once monthly settlement day where a judge will be available all morning to resolve cases. There will be a deputy district attorney available who has made offers on all scheduled cases. Attorneys will have the opportunity to meet with clients and negotiate with the District Attorney's Office. If an agreement is reached, a judge will be available to accept the plea and resolve the case.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

The goal is to resolve cases that are not appropriate for trial and ultimately lessen the workload on attorneys. If an attorney's caseload can be lessened significantly through settlement dockets, their ethical MAC should be increased, and they may be able to competently represent more clients.

What-If? Projections:

This intervention will not create new MAC, but will decrease caseload and hopefully increase ethical MAC.

Performance Measurement:

Track the number of cases that are resolved during these settlement dockets. We can then assess the impact on attorney caseload.

Timeframe:

Start Date: 10/30/2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 6

Increase Attorney Capacity - The PDSC should increase the caseload limits in contracts with public defense providers or contract for additional attorneys.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

While this action is outside the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.

What-If? Projections:

In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by 5%. This contract cycle, attorneys in Klamath County have

taken 2,635 public defense cases over 13.5 months, meaning per month, attorneys are able to take 195 cases. Currently, there are 103 unrepresented public defense cases.

To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in Klamath County would have to take 204 cases a month, for an increase of 5%. Klamath County has 10 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county.

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Klamath County would be addressed over twelve months' time.

Additional data is included as an attachment.

Performance Measurement:

- Decrease in number of individuals on unrepresented list.
- No unrepresented defendants by August 16, 2024.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directions resources to alleviating the crisis.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 7

Local or regional coordinator for attorney appointments. Our district believes this should be an independent contractor with PDSC. The 13th Judicial District currently has a local coordinator who is paid through an OPDS contract with one provider. The money for this position was added to an attorney's contract and that attorney oversees the coordinator. We believe this coordinator should be able to independently contract with PDSC to provide this service for the judicial district. The coordinator will identify available qualified attorneys with capacity, assist the court in prioritizing appointments, (considering custody status of individuals in need of counsel, and qualifications) identify and coordinate appointment of conflict counsel, monitor adult in custody (AIC) and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

- Increase attorney capacity through system efficiencies
- Reduce the number of unrepresented individuals.

Klamath currently has an attorney appointment coordinator, and she has been instrumental in our ability to reduce the number of unrepresented individuals. We believe each judicial district should have an independent attorney appointment coordinator.

What-If? Projections:

This intervention will not create additional MAC, but will assist in prioritizing current MAC resources.

Performance Measurement:

Reduction in number of unrepresented individuals.

Resources:

Position and funding for a coordinator.

Time to Take Effect:

Already in effect – immediate.

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 14 – JOSEPHINE COUNTY

Presiding Judge: Robert S Bain

Trial Court Administrator: Trina A Swaja

Crisis Team Members: Judge Robert S. Bain, Presiding Judge; Trina Swaja, Trial Court Administrator; Jennifer Scott, Court Supervisor; Lisa Chapman, Court Supervisor; Jocelyn Friend, Court Analyst; Josh Eastman, District Attorney; Holly Preslar, Josephine County Defense Lawyers; Joe Maier, Josephine County Public Defenders

OSCA Staff: Tiffany Quintero, Rachel Woods

Meeting Dates: August 14, 2023

BACKGROUND

As of August 15, 2022, Josephine County has three out-of-custody cases all for the same defendant and one in-custody murder case without an attorney appointment. The reasons for these cases being without attorney appointment is due to case-specific circumstances. Josephine County has been able to maintain a low number of unrepresented persons due to the collaborative efforts of the local public safety stakeholders.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Omnibus Hearings Set Pretrial: Josephine County sets omnibus hearings pretrial as long as the motion is filed timely.

Plea up to the day of trial: Josephine County allows pleas up to, and including, day of trial.

BEST PRACTICES

Josephine County currently engages in the following best practices:

- Local public defense organizations communicate with the court regularly, we plan to continue this open communication to allow for coordination in the event that our public defense partners determine that they will be meeting their cap prior to contract end.
- The court follows the best practices for Odyssey business processes and data entry.
- Continue to offer remote hearings and created a standard form to make it easier.
- Remove attorney when 60 days has passed after final judgment.
- Policy to remove attorney after 30 days for failure to appear (FTA) warrants without order to remove.

ACTIONS TO DATE

The circuit court, the District Attorney's Office, and the public defense providers in Josephine County have a collaborative working relationship. This culture has allowed the 14th Judicial District to resolve issues as they arise and maintain a low number of unrepresented persons.

- The court ensures resources are dedicated to case dispositions, including having judges available to resolve cases by plea or trial, and encourages timely disposition by allowing a defendant to change their plea on the day of trial.
- The court permits plea negotiations up to the day of trial, to allow parties maximum flexibility in negotiations.
- The court is available to ratify plea negotiations to aid in case settlement.

INTERVENTION / RECOMMENDATION 1

- Recommend PDSC and/or Oregon Legislature pay criminal attorneys (defense providers and district attorneys) more. Pay equity among all providers of criminal defense, will incentivize attorneys to remain in criminal defense and will attract new lawyers into the profession. OPDS should provide timely payments to attorneys through a seamless system.
- Recommend PDSC and Oregon Legislature reconsider statutory limitation on public defense service contracting with private firms and consortiums that would prohibit OPDS from contracting with private firms starting July 1, 2025, and extend that prohibition to include consortiums after July 1, 2027. Experienced criminal defense attorneys are already leaving or considering other legal career path opportunities. The 14th Judicial District stands to lose many public defenders if consortiums are eliminated.
- Recommend PDSC adopt a pending case model (open workload), to replace yearly cap model (MAC). Redetermine and/or assess contract guidelines associated with ethical maximums and MAC to best meet current practice. This should not be a one size fits all model.
- Recommend PDSC increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.
- Recommend PDSC permit attorneys to go over cap to represent clients they have previously represented on multiple occasions.
- Recommend PDSC develop outreach efforts to recruit new criminal attorneys from in and out of state law schools.
- Recommend PDSC develop training and shadowing opportunities for non-criminal attorneys.
- Be cautious about implementing policy changes to improve the public defense crisis in one judicial district that might create a crisis in another district.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

By adjusting compensation, more people may be interested in working criminal justice. More attorneys equal more attorney capacity. By continuing to retain consortia model for public defense contracting attorneys have flexibility to handle both private and public defense work and help with conflict case management. A pending case model will be a true measure of an attorney's ethical ability to accept cases. Such model will encourage the parties and the court, to assure cases are disposed of in a timely manner to manage active caseloads.

While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system. This will result in:

- Continuity with clients for better outcomes.
- Retaining and recruiting criminal attorneys.
- Retaining local court flexibility to work together with our local stakeholders to create a system that works for that court.

What-If? Projections:

- Improved time to disposition.
- Reduction in case backlogs.

Performance Measurement:

- Improved time to disposition.
- Decrease the number of individuals on unrepresented list.
- Reduction in case backlogs.

Resources:

- Additional funding from the legislature.
- OPDS work in implementing the changes.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Terminate appointment of attorney at 30 days if individual is on warrant status for FTA and return individual to unrepresented list.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney ethical capacity, reduction in number of unrepresented individuals.

What-If? Projections:

OJD acknowledges that, because of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity. Terminating appointments will reduce the number of cases appointed to attorneys.

Performance Measurement:

Reduction in the number of individuals on warrant status over 30 days with appointed attorneys.

Resources:

Business process change.

Timeframe:

Start Date: 9/5/2023

End Date:

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 15 – COOS AND CURRY COUNTIES

Presiding Judge: Martin E Stone

Trial Court Administrator: Thomas Lankford

Crisis Team Members: Judge Martin Stone, Presiding Judge; Thomas Lankford, Trial Court Administrator; Stacey Lowe, Director SWOPD; Paul Frasier, District Attorney; Josh Spansail, District Attorney; Robert Manske, SWOPD; Lori Schmidt, Coos Juvenile Consortium; Rick Inokuchi, Curry Consortium; Christine Breton, OPDS

OSCA Staff: Michael Hsu, Tiffany Quintero, Stephanie Guerena

Meeting Dates: July 25, 2023, at 12:00 pm; August 7, 2023, at 12:00 pm

BACKGROUND

The 15th Judicial District has had a public defense crisis for nearly two years. The number of unrepresented has fluctuated during that period. As of August 22, 2023, in Coos, there were 35 defendants waiting for attorney assignment on criminal cases and three juvenile proceedings with unrepresented parties. Five of these defendants are in-custody.

SWOPD provides indigent defense work in Coos County. The office has two vacancies that need to be filled, but has experienced difficulties in recruiting and retaining lawyers. The crisis is the result of a shortage of private attorneys available for appointment in conflict cases in which the Southwestern Oregon Public Defense (SWOPD) office (seven lawyers, two vacancies) or the Curry County Consortium (three lawyers) cannot take.

The District Attorney Office's in both counties have struggled for many years to hire and retain attorneys, due in part to the inability to offer competitive salaries. The Coos County District Attorney is currently short of prosecutors.

Coos County had a functioning criminal consortium for many years, which was available to take conflict cases. The consortium declined to renew a contract with OPDS due to contract requirements, communication difficulties with OPDS, and timely payment of fees and costs.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- Omnibus hearings are set no sooner than seven days before trial if requested in the pleading. The practice in Coos County, had been to set these hearings on the Monday before the trial day.
- Remote communication is available for attorneys to appear for arraignments, release hearings, status hearings and trial settings.

BEST PRACTICES

- Our judicial district continues to follow best practices for Odyssey data entry.

- Our judicial district continues to follow ACP eligibility and verification requirements.
- Our judicial district relies on OPDS to prioritize assignment of attorneys based on custody status, crime seriousness, and length of time unrepresented.

See actions to date for other examples of practices followed in our district.

ACTIONS TO DATE

The court has taken several actions to reduce the number of unrepresented individuals, including:

- Met with public safety stakeholders, including representatives from OPDS, to discuss ways to provide representation.
- Track and monitor defendant status, including total days without a lawyer and approaching statutory timelines for those in-custody.
- Conduct weekly status hearings for those in-custody and communicate with OPDS the urgency of attorney assignment considering statutory timelines.
- Extended the time between arraignment and trial setting to provide more time for defense counsel to investigate and resolve cases.
- Extended negotiation times, for good cause, after trial has been set.
- Accepted negotiated pleas up to the day before trial for good cause.
- Stopped setting single day jury trials in Coos County on Fridays to allow more time for defense counsel to resolve other cases.
- Modified local practice in Coos County to accept no contest pleas on misdemeanors and low-level felony charges that previously required a guilty plea.
- Expanded use of remote appearances by attorneys for arraignments, release hearings, status conferences and trial settings.
- Trial court administrator is currently working with sheriff and OPDS to arrange secure remote conferencing between attorneys and defendants in custody. This pilot project is ongoing with a roll-out in the next 3-6 months in Coos and Curry counties.
- Special set court appearances for out-of-county attorneys.
- Removed attorneys after case in warrant status for several months.
- Scheduled settlement conferences to resolve cases with the most serious charges, using senior judges to handle conferences if the local judges are unavailable.

ATTACHMENT(S)

- Coos/Curry Intervention Data

INTERVENTION / RECOMMENDATION 1

- The Coos County district attorney will be reviewing existing intakes and considering whether to treat certain misdemeanors as violations. If defendants appear and plead to the violations, this will decrease the need for appointed counsel. The court has asked the district attorney to review the existing list of unrepresented defendants and evaluate

whether any have charges the state would consider for violation treatment. The Coos County district attorney is willing to implement an e-discovery procedure to provide defense counsel remote access for discovery of documents. This will depend on staff availability at the District Attorney's Office.

- SWOPD must continue efforts, with the assistance of OPDS, to recruit two attorneys to fill the vacancies in their office.
- The court will consider removal of attorneys from cases in warrant status for more than 30 days. Removal will free up ethical and contract capacity for defense attorneys.
- The court in Coos County will consider whether to modify the seven-day deadline for decisions in deferred sentences.
- Recommend that OPDS increase/improve communications with private counsel inside and outside of this judicial district. OPDS must communicate case information, including names and criminal charges, for the defendants on the unrepresented list weekly with private counsel who are available to handle cases on an hourly basis.
- Recommend that OPDS assign one attorney to appear remotely for release hearings after SWOPD has withdrawn due to a conflict. That will provide the in-custody defendant a prompt release hearing, rather than waiting until OPDS has assigned an attorney for the entire case.
- Recommend that OPDS increase efforts to recruit private lawyers, inside and outside of the judicial district, to take conflict cases and provide training to attorney staff related to reporting requirements.
- Recommend that PDSC fund administrative support positions to assist attorneys statewide who are providing defense services.
- Recommend that PDSC replace MAC with an open workload model that will permit counsel to manage caseload to their ethical capacity. If attorneys have capacity, allow them to take additional cases.
- Recommend that OPDS expedite decisions on funding approval for expert witnesses. Cases with aid and assist issues in this district are often delayed until counsel has received approval from OPDS to employ an evaluator.
- Recommend that OPDS address the concerns expressed by private counsel in this district:
    - The need to identify a single point of contact at OPDS with authority to make timely decisions.
    - Streamlining the written agreements and documents required of private counsel so that attorney and staff can make productive use of time.
    - Providing prompt payment of fees and costs, including expert witness fees.

  These and other concerns have caused private counsel in our district to stop providing services on conflict cases.
- Recommend that OPDS not require attorneys to take cases in other districts that would impact capacity to take cases within this district.

- OPDS must communicate to out-of-county attorneys, the adjustments the court in this judicial district has made to accommodate defense counsel, such as remote appearances, extended times to resolve cases and special settings for pleas and sentencings.

Lever(s) Impacted:

Dispositions; Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

- Resolve cases quickly to free up defense counsel to accept more appointments.
- Identify private counsel willing to take conflict cases SWOPD cannot take.

What-If? Projections:

The actions our district has taken to date and interventions/recommendations set forth above are short term remedies. The long-term solution is to fill the two vacancies at the SWOPD office and for OPDS to recruit three or four lawyers in or out of the district who will handle conflict cases. That configuration was successful in the past.

Performance Measurement:

- Track improvement in time to disposition.
- Track warrant cases and removal of attorneys in warrant status.
- Monitor case filings to track number of misdemeanor cases given violation treatment.

Resources:

- Additional staff time will be required for the court to track and monitor the performance measures identified above.
- Additional district attorney staff needed to facilitate e-discovery mentioned above.

Timeframe:

Start Date: September 4, 2023

End Date:

Time to Take Effect:

Ongoing

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.

What-If? Projections:

In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by 4%. This contract cycle, attorneys in Coos/Curry County have taken 1,598 public defense cases over 13.7 months, meaning per month, attorneys are currently able to take 116 cases. Currently, there are 51 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in Coos and Curry counties would have to take 121 cases a month, for an increase of 4%. Coos and Curry counties has 10 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county.

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Coos and Curry counties would be addressed over twelve months' time.

Additional information specific to case type is included in the *intervention attachment*.

Performance Measurement:

- Decrease in number of individuals on unrepresented list.
- No unrepresented defendants by September 2024.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 3

Regional conflict resolution team.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Let the conflicts coordinator locally seek out attorneys in the region to address conflict cases.

What-If? Projections:

If attorney capacity is available within the region, the conflicts coordinator would be available to seek attorneys in neighboring counties to address the conflict need. Based on crisis team conversations, in Coos and Curry counties, 100% of individuals on the unrepresented list are identified as conflict cases. As with the 2021-2023 caseload, conflict counsel is expected to be necessary in the 2023-2025 caseload.

To eliminate the number of unrepresented individuals (effective August 23, 2023), and handle the forecasted caseload for 2023-2025, the following additional attorney capacity is needed to manage conflicts:

Measure 11	0.07 FTE
Major felony	0.05 FTE
Minor felony	0.07 FTE
Misdemeanor	0.09 FTE
Probation violation	0.01 FTE

Performance Measurement:

Reduction in number of conflict cases on the unrepresented list and the length of time that a defendant is on the list.

Resources:

- Funding for conflict attorney capacity
- Funding for conflict coordinator.
- Change in policy.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 4

Terminate appointment of attorney at 60 days if individual is on warrant status for FTA and return individual to unrepresented list.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

- Increase attorney ethical capacity.
- Reduction in number of unrepresented individuals.

What-If? Projections:

OJD acknowledges that, because of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Coos and Curry counties as of August 10, 2023, there were 57 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

Measure 11	2 cases
Major felony	4 cases
Minor felony	16 cases
Misdemeanor	35 cases

Performance Measurement:

Reduction in the number of individuals on warrant status over 60 days with appointed attorneys.

Resources:

Business process change.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 16 – DOUGLAS COUNTY

Presiding Judge: Kathleen E Johnson

Trial Court Administrator: Christina Parazoo

Crisis Team Members: Judge Kathleen Johnson; Richard Wesenberg, District Attorney; Erik Swallow, Director, Umpqua Valley Public Defender; Christine Breton, OPDS; Andrew Johnson, consortium member; Casey Drehr, law firm attorney; Carol McCurry, consortium member; Jimmy DeVecchio, private attorney

OSCA Staff: Michael Hsu, Stephanie Guerena

Meeting Dates: July 27, 2023

BACKGROUND

Umpqua Valley Public Defender (UVPD) has had great difficulty filling attorney vacancies, and that is much of the problem. Not only do many people prefer more urban areas, but there is a shortage of attorneys in general. (The district attorney also has several unfilled vacancies due to no applicants.) Another issue appears to be that public defenders are not paid adequately for the work they do, especially in comparison to state attorneys doing comparable work.

When positions are filled, it tends to be less experienced attorneys who cannot handle felonies. There also appears to be a lack of active efforts by OPDS to cure the problem. We learned at this meeting that they had stopped sending out lists of unrepresented individuals to attorneys who may be able to take hourly work.

We have one law firm with attorneys that handle both criminal and juvenile dependency matters. A partner in the firm has indicated that they do not intend to hire more attorneys for criminal work because she understands that OPDS will no longer be contracting with law firms after the next contract cycle, and she is not willing to invest in hiring and training if her contract will be ending.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

The recommendations do not change the way our judicial district does business. For example, we seldom do omnibus hearings on the morning of trial, preferring instead to resolve the issues in advance.

BEST PRACTICES

Our district has long had a track consisting of predictable regular hearings, with a different track for in-custody than out-of-custody defendants. This plan was created with the input of the stakeholders, both prosecution and defense, and has worked well.

ACTIONS TO DATE

The courts cannot cure the attorney shortage. We have, however, increased the ability of out-of-town attorneys to appear remotely. We have also accommodated defense attorneys, who appear from out of the area, by allowing longer setovers when requested to provide them more time to meet with their clients.

Judges have caused emails to be sent to certain defense attorneys to ask them to consider taking certain cases. As Presiding Judge, I have sent the list of in-custody defendants to several lawyers in the hopes they will agree to represent them. This has had some success, but is not enough to make a significant impact in reducing the number of unrepresented defendants.

INTERVENTION / RECOMMENDATION 1

Early Disposition Docket: Upon notification from OPDS that they have contracted for a defense attorney to handle the docket as a specialty court (i.e., the attorney will not receive case credit for each case, but will contract to handle all cases at a set compensation), we will implement an early disposition docket track to encourage low-level misdemeanors to resolve early. At present, the plan is that any case in which the most serious charge is B & C misdemeanors or non-person Class A misdemeanors (excluding DUII and FTA), will be diverted to a set docket structured for early disposition. The district attorney will be asked to include an offer with discovery, or in any event, no later than 7 days before the case is set on the docket. The parties will be allowed time to negotiate, and changes of plea will occur at that time so that the case is cleared quickly.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Remove these cases from the caseload of other attorneys, allowing them to work on their more serious cases, and remove consideration of the diverted cases in determining their contractual and ethical capacity. We estimate that this will divert approximately 40 cases per month from the other attorneys' caseloads. The actual number of cases that would have qualified for this docket January through July 2023, was: 189 Class A misdemeanors, 54 Class B misdemeanors, and 37 Class C misdemeanors.

What-If? Projections:

At the current rate of case filing, this would free up the equivalent of approximately 480 misdemeanor cases (the equivalent 1.6 FTE attorney) per year, less the case credit or MAC negotiated by OPDS for coverage of this docket as a specialty court.

Performance Measurement:

We can calculate the actual savings in MAC by computing the number of cases resolved on this docket.

The court will need to set a process for early identification and scheduling of qualified cases. We will also need a process for tracking outcomes. The district attorney will need a business process to ensure that offers are made earlier than the first appearance.

Resources:

The court will need to create specified docket times that are known and predictable. The district attorney will need to agree to make offers early, and will need to provide an attorney with authority to negotiate at the set docket times. I am most concerned about the resources of the District Attorney's Office given their current staffing levels, but he has committed to try to make this work.

Timeframe:

Start Date: September 1, 2023

End Date: December 31, 2024

Time to Take Effect:

Dependent upon OPDS providing a specialty court attorney. Can continue for as long as it is beneficial.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Decrease the time that an attorney is contractually required to continue to represent a defendant who fails to appear (FTA) from 180 days to 90 days.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Based upon information provided in our crisis team meeting, it is my understanding that when a defendant is on warrant status, the attorney still considers that case as part of their ethical cap for approximately 6 months. This representation is considered when computing ethical case capacity. In our judicial district, the public defender's office stopped taking cases based upon reaching their ethical capacity, not their contractual capacity.

What-If? Projections:

In our district, only 11.68% of defendants return between the 90th and 120th day after a warrant is issued. Because every attorney is free to calculate their ethical case limit, and to determine the weight to give cases in warrant status in that calculation, it is not possible to calculate at this time. It will, however, ensure that attorneys are spending their time and energy on those individuals who show up to court.

Performance Measurement:

See above.

Was there community consensus on this intervention?

No

Minority Viewpoints:

This is a PJ recommendation, so it was not presented to the team, however, discussion was had about removal at earlier stages. It is not deemed efficient at this point in time.

INTERVENTION / RECOMMENDATION 3

OPDS needs to consider whether FTA cases should be contracted at a full case credit. There is little or no discovery or investigation required, and the charges are typically resolved as part of a global resolution. The work required is substantially less than other A misdemeanors and C felonies and should not be given the same weight.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase available MAC by weighting cases according to work required on the case.

What-If? Projections:

The state filed 48 felony failure to appear cases and 57 misdemeanor cases through July 31, 2023. If the case weights were reduced to 50% of their current weight, that would have saved approximately 0.48 MAC this calendar year.

Performance Measurement:

The number of FTAs filed locally and statewide can be determined and the MAC savings easily calculated.

Resources:

OPDS investment in recognizing the need to address this matter.

Time to Take Effect:

Next contract cycle if adopted.

Was there community consensus on this intervention?

No

Minority Viewpoints:

This was not discussed in detail. I do not know the entire team's viewpoint. However, it is unlikely anyone is going to argue that these cases involve a significant investment of defense attorney time.

INTERVENTION / RECOMMENDATION 4

OPDS should provide a website or periodic email with information about unrepresented cases in each district. Attorneys in the crisis team meeting indicated that when they were willing to take hourly work, they had no list or other resource, by which they could look, to see which cases they

might be able to take. The OPDS attorney indicated that they used to send this out, but some attorneys complained, so they stopped doing it. There are likely non-contract/hourly attorneys who would step in if this information was readily available for review. Because this information is critical to share, our judicial district has agreed to create a mailing list and share the information regularly (the precise interval is currently undecided).

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increase communication with attorneys who may be willing to take a few hourly cases as time in their private practice allows.

What-If? Projections:

No MAC projection.

Performance Measurement:

Unknown

Resources:

OPDS must collect and publish in the manner they deem appropriate. I encourage a website or SharePoint so that out attorneys can browse nearby counties.

Time to Take Effect:

Dependent on OPDS.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

Add at least 1.5 FTE criminal defense lawyers in the 16th Judicial District in Douglas County. Discontinue the current plan to cease contracting with law firms, which discourages current firms from hiring and training new defense lawyers.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase the attorneys available to defend individuals.

What-If? Projections:

According to current statistics, Douglas County needs an additional 1.15 FTE attorneys to cover the unrepresented defendants. Common sense and reason tell us that turnover, illness, vacations, family leave, and other events will require that we have more lawyers available than

the actual need so that representation is uninterrupted when attorneys find reason to be absent for a period.

Performance Measurement:

The effectiveness would be evident in the reduction in number of unrepresented defendants.

Resources:

OPDS must contract with more lawyers.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 17 – LINCOLN COUNTY

Presiding Judge: Sheryl Bachart

Trial Court Administrator: Sally Bovett

Crisis Team Members: Judge Sheryl Bachart; Guy Greco, Consortium Administrator; Lanee Danforth, DA; Matthew Martin, defense counsel; Chris Shaffner, DDA; Jenna Wallace, DDA; Kristina Kayl, defense counsel; Laurie Bender, OPDS; Peter Perlot, defense counsel; Mary Flatt, defense legal asst; Kathryn Benfield, defense counsel; Melissa Miner, OJD analyst

OSCA Staff: Michael Hsu, Tiffany Quintero, Stephanie Guerena

Meeting Dates: August 19, 2023, 1:30 – 4:30 pm; August 26, 2023, 11:00 am (Greco); August 26, 2023, 3:30 – 4:30 pm (Wallace, Danforth, Howard, Perlot, Martin)

BACKGROUND

Lincoln County has a local defense consortium (Lincoln County Defenders) comprised of eight defense attorneys. In early 2023, the court was notified by the administrator of the local contract that many of these attorneys were reaching their MAC. In April 2023, some attorneys had reached their MAC and could not take new cases. By May 2023, all attorneys had reached their MAC and no new appointments could be made. This was the first time Lincoln County experienced persons who qualified for court appointed counsel, but no attorney was able to be appointed by the court. Two attorneys within the consortium took a limited number of cases at the hourly rate offered by OPDS. Less than 20 cases were picked up by two out-of-county defense attorneys. During the term of the contract extension, all attorneys reduced their capacity to take cases in one form or another. Three attorneys who are qualified to take Measure 11 offenses are no longer accepting appointments for Measure 11 cases. One defense attorney declined the contract extension and is not accepting any appointments during this extension period. One attorney reduced MAC by 50%, others reduced MAC by 10% to 25%. The current MAC allowed is far below the original contracted amount prior to the contract extension, exacerbating the defense crisis in Lincoln County.

On July 1, 2023, attorneys were appointed for all in-custody defendants. To preserve MAC, the remaining unrepresented were prioritized considering the age of the case and seriousness of the charges. MAC was quickly reached in July given the number of in-custody unrepresented who needed to be appointed counsel. On August 1, 2023, there were fewer unrepresented in-custody and MAC has been reached for all attorneys by the week of August 24, 2023. There are approximately 150 unrepresented defendants in Lincoln County, none are in-custody. (OJD reports persons in-custody for Lincoln County, but the defendants are not being held of the cases identified in the report. Lincoln County is working to resolve the discrepancy in reporting)

In Lincoln County, filings have increased 7.7% over the previous year, with misdemeanor and juvenile delinquency cases accounting for the increase. There were decreases in all other case types. The number of active pending cases has remained relatively consistent. Cases resolved

by plea negotiations and pre-disposition programs have increased over the previous fiscal year. Time to disposition rates in Lincoln County are better than statewide averages. Lincoln County does not have a significant number of cases for which outside counsel has to be found due to conflicts.

Contract limitations on defense attorney availability for appointments is the major contributing factor to the unrepresented crisis in Lincoln County. Seven of the eight defense attorneys under the contract have over 10 years' experience. All are major felony qualified. Some of the reasons defense attorneys have expressed they contract for less than FTE include:

a) They do not wish to work at FTE and want to take on retained work.

b) The experienced attorneys feel they are not appropriately compensated based on their level of experience and expertise.

c) They feel there is no financial incentive to take more complex cases.

A combination of these factors has resulted in attorneys reducing their MAC under the contract. Only one attorney expressed the current MAC was also their ethical capacity. All other attorneys expressed, based on their skill and experience, they could ethically manage larger caseloads, however, there is no incentive to do so under the terms of the current contract.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Lincoln County already implemented the following OCDLA proposals:

- Lincoln County modified its SLR's to allowed for more remote appearances by counsel and defendants. Defense counsel may appear for all status hearings by remote means.
- Parties are permitted to present plea agreements up to and including the day of trial for good cause.
- The court sets hearings by remote means for defendants in-custody in other jurisdictions and those in the custody of DOC.
- Omnibus hearings are set in advance of the trial date. Parties routinely use email to request setovers of status hearings or schedule plea hearings. Judicial settlement conferences are encouraged and regularly scheduled.
- The court consults with defense counsel in scheduling status hearings to ensure adequate time for review of discovery and scheduling of client meetings. This reduces the number of status hearings held.

BEST PRACTICES

Lincoln County has already implemented the following best practices:

- Prioritizing appointment of counsel for in-custody defendants.
- Conducting regularly scheduled review of cases to make sure any in-custody defendant may be able to be safely released.
- Scheduling regular status hearings on out-of-custody defendants to reduce the likelihood of failure to appear warrants on pending cases. For in-custody arraignments, if a defendant is to be conditionally released, appointment of counsel is deferred. Prioritization

of appointment of counsel to preserve MAC so attorneys may be appointed to all in-custody cases in the month.

- Structured sanctions by probation officers are encouraged to resolve probation violations.
- Steps already taken to develop and implement an Early Disposition Docket.
- Law Enforcement Assisted Diversion (LEAD). Program in Lincoln County to divert people with mental illness from the criminal justice system before cases are filed by the District Attorney's Office.
- Aid/Assist Docket utilized for cases for persons with mental illness to be monitored while on conditional release and waiting for appointment of counsel. Oftentimes, once these defendants are stabilized and engaged in community resources, the criminal charges are dismissed.

ACTIONS TO DATE

Lincoln County has taken the following actions/interventions to address the unrepresented crisis:

- The court prioritizes appointment of counsel for in-custody defendants.
- The administrator of the local consortium (Guy Greco) provides the court with daily updates of each attorney's MAC. The court notifies defense counsel by end of business each day of new appointments. The court also maintains an internal spreadsheet of all unrepresented persons. The court analyzes the daily report on MAC in appointment of counsel.
- For those in-custody, hearings were scheduled every three weeks to update defendants on availability of counsel and case review for potential release. Trials were set for all in-custody defendants within 60-days. For out-of-custody defendants, hearings are scheduled every 4-6 weeks to update defendants on availability of counsel. On July 1, 2023, appointments were made to cover all in-custody defendants. The same was done on August 1, 2023, appointing counsel to all in-custody defendants. Judicial settlement conferences are encouraged and regularly utilized to resolve cases.
- Defense counsel is allowed to appear at all status hearings and non-evidentiary omnibus hearings by remote means.
- The court consults with defense counsel in scheduling of status hearings to ensure adequate time for review of discovery and scheduling of client meetings. Class C misdemeanors are regularly reduced by the DA to violations at the time of arraignment.
- In addition to the five already existing specialty courts, the court implemented an aid/assist docket to monitor defendants charged with lower-level misdemeanors and suffering from a mental illness. Some on this docket are unrepresented, but able to be released to this docket to connect them with services.

INTERVENTION / RECOMMENDATION 1

Implementation of an Early Disposition Docket (EDP): The first goal of this docket is to reduce the backlog of unrepresented cases. After the backlog is addressed, the EDP would preserve MAC by assigning a single defense attorney to the EDP docket and maximize MAC for all attorneys on

the contract. Cases identified for this docket would be lower-level misdemeanors and felonies. Discovery will be provided in advance of the EDP hearing and offers made to encourage settlement. If a defendant wishes to resolve a case, plea and sentencing will occur the same date of the EDP hearing. DUII diversions may also be added to this docket.

To address the backlog, the DA will review the list of unrepresented cases and identify cases appropriate for this docket. Those cases that may be assigned to this docket will be assigned a single attorney and that attorney will receive a certain contracted MAC for that docket, like a specialty court assignment. This preserves MAC for less complex cases which may be resolved short of trial. The PJ met with DA and defense counsel and prepared an outline of the EDP docket. In addition, Mr. Greco agreed (if approved by OPDS) to work pro bono on this docket for the cases with OPDS currently appointed as counsel. This would greatly reduce the backlog.

There is no way Lincoln County can resolve the backlog of unrepresented given the current MAC limitations. If MAC continues at current levels, the EDP is a viable intervention to preserve MAC. If the attorneys continue at reduced MAC beyond the contract extension period, this intervention is vital to address the ongoing shortage of attorney capacity. If Mr. Greco is approved by OPDS to be assigned the EDP docket to address the backlog of unrepresented cases, Lincoln County's backlog may be resolved within six months. Given the reduced MAC for all attorneys, there is no way the backlog may be addressed without bringing in counsel outside the local consortium.

Lever(s) Impacted:

Filings; Attorney Capacity

Intended Outcome or Goal:

By assigning a single attorney with an agreed upon MAC for the assignment to the EDP docket, overall, MAC will be preserved. In other words, it would reduce the caseloads for other consortium attorneys. This would free up other attorneys within the consortium to take more cases. If Mr. Greco is allowed to be assigned the EDP to address the backlog in Lincoln County, the backlog of unrepresented should be resolved within 6 six months of implementation of the EDP. Faster resolution of cases can clear many of the misdemeanor cases that account for the increase in filings.

What-If? Projections:

It is anticipated Lincoln County could work through the backlog of cases of unrepresented persons within 6 six months of implementation. By continuing the EDP, lower-level misdemeanor and felony cases may be more efficiently resolved, preserving MAC, and freeing up counsel for more complex cases. It is a strategy to increase attorney capacity without adding attorneys.

Performance Measurement:

Cases will be identified as EDP at the time of arraignment and entered as such in Odyssey. Resolution of those cases can be easily monitored and tracked within Odyssey. The DA will identify those cases already filed which will be moved to the EDP docket. Data will be collected to identify disposition of each case on the EDP docket. Lincoln County will measure the number of cases that are assigned to the EDP docket.

Resources:

Resources needed include analyst for our county, defense counsel (already identified) and judges to staff the EDP docket.

Timeframe:

Start Date: October 2, 2023

End Date:

Time to Take Effect:

Results should be available 30-days after implementation.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Modification to procedures at the jail for client visits. Currently, defense counsel are unable to conduct client visits by remote means. In addition, electronic discovery is unable to be viewed by clients in-custody without the presence of counsel. Adults in-custody (AIC) need to be provided a confidential, secure space to communicate by remote means with counsel. AIC's are issued i-pads currently. Procedures need to be implemented to allow AIC's to review discovery on the i-pads. Jail visitation hours also need to be expanded for counsel to meet with clients. Currently, it is taking longer to resolve cases because of limited access to AIC's and the lack of the ability to meet by remote means with clients.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

- Result in increased time to disposition and clearance rates.
- Increase attorney's ability to take more cases and contract for higher caseloads with OPDS.

What-If? Projections:

If defense counsel can make more efficient use of client conference time, cases may be resolved more quickly. If the OPDS moves to an open caseload model, this would free up MAC and allow attorneys to take more cases.

Performance Measurement:

Identify time to disposition and clearance rates for individual attorneys before and after implementation of this intervention.

Resources:

Resources are needed through Lincoln County Jail to implement. The Presiding Judge has met with the sheriff to discuss the logistics of implementing this intervention. County resources have been identified. The Presiding Judge will work collaboratively with county officials to implement.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

3 to 6 mos after implementation

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Compensate defense counsel based on their experience level and expertise. While this action is outside the court's authority, compensating defense counsel based on experience will incentivize attorneys to increase attorney capacity. Lincoln County has seven very experienced defense attorneys in the consortium and one new attorney. All, but the newest attorney, are qualified to handle caseloads above the 300 MAC and monthly limits. Only one attorney expressed being at ethical capacity. Other attorneys expressed working below ethical capacity, but contracted reduced MAC because there was no financial incentive to take more complex, serious cases. Attorneys at MAC have continued to take retained cases which also corroborates that attorneys are not at their ethical capacity. PDSC should change the structure of the contract to compensate more experienced attorney at a higher rate. MAC should also be higher for experienced attorneys and lower for less experienced attorneys.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increasing attorney capacity is the most likely intervention that will address the unrepresented crisis in Lincoln County. Under the terms of the current contract there is no incentive for experienced attorneys to increase attorney capacity.

What-If? Projections:

According to the data analysis for Lincoln County, the MAC needed to cover the unrepresented cases is 0.48 FTE. However, this information does not consider the reduced MAC during the contract extension period. It is unknown if attorneys will return to pre-contract extension MAC in October.

Performance Measurement:

MAC can be tracked through OJD. This data can also be provided by the local administrator of the contract. All active cases are already tracked by the contract administrator.

Resources:

No additional resources would be needed for implementation. This would be a contract modification by OPDS.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

30 days after implementation

Was there community consensus on this intervention?

No

Minority Viewpoints:

Attorneys have not agreed to increased MAC, but those attorneys on the crisis team agreed their compensation should be reflective of their experience and there should be a financial incentive to take more serious cases.

INTERVENTION / RECOMMENDATION 4

OPDS contract modification to a workload model. When the court assigned cases on July 1, 2023, many were resolved within the first 2 weeks of assignment. Many cases resolve after the first client meeting. A workload model would be more reflective of the actual caseload and capacity of an attorney. As a lawyer resolves cases the lawyer can take more cases depending on their real-time capacity, and not based on a static number of cases they are allowed to take per month. MAC should be measured by OPEN active cases. Active cases are already measured by the contract coordinator. For example, when a case is opened and closed within 2 weeks, that attorney should be able to take on another case because they have capacity to do so. As cases are closed out, MAC is freed up. Measuring MAC by cases being opened in not an accurate reflection of the attorney's capacity to take cases.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

The goal of the open caseload model is to increase individual attorney capacity to take more cases. The static MAC number, measuring only cases as they are opened, is not capturing the attorney's ability to provide adequate representation. Nor is the model truly reflecting the active caseload of attorneys. Case counting is somewhat arbitrary and not reflective of actual attorney

capacity. If MAC is adjusted to reflect a workload model, attorney capacity will be increased overall. New assignments can be made as cases resolve.

What-If? Projections:

If MAC is increased using the existing attorneys within the consortium, Lincoln County would not have an unrepresented crisis.

Performance Measurement:

Active cases are already reported to the administrator of the consortium. OJD can track when cases are opened and closed. This data could be used to create a workload model.

Resources:

A contract modification is needed to implement this change.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediately upon implementation

Was there community consensus on this intervention?

No

Minority Viewpoints:

While there is consensus that the MAC is not a true reflection of the attorney's capacity to take cases, there is not consensus that the contract should be modified to a workload model. Members of the consortium agreed on increased compensation based on types of cases, not a workload model.

INTERVENTION / RECOMMENDATION 5

Add attorneys Recommendation that PDSC engage in better recruitment and training strategies. Lincoln County Defenders is comprised of experienced attorneys. When those attorneys retire or leave the practice, there are no new attorney to take their place.

1. If staff attorneys are hired by OPDS, they should be assigned to Lincoln County. Lincoln County has struggled to recruit and retain defense counsel. The cost of living is extremely high in Lincoln County and since there is not a public defender's office in this county, new attorneys must rely on mentoring by other lawyers who are already busy with their own practices.
2. Job openings should be posted on job recruitment websites. Postings may be geotargeted through search engines. In other words, utilize recruitment strategies used in the private sector.
3. Provide benefits as part of employment package.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase the number of defense attorneys within Lincoln County.

What-If? Projections:

If attorneys are assigned to Lincoln County this would add to the overall MAC to meet the needs of this county.

To eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Lincoln County, the need is 0.48 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below. It is noteworthy that this mathematical equation is an underestimate of the need for contracts going forward due to the information provided in the "background" section, including that providers have requested to reduce MAC.

The following additional attorney capacity is needed:

Major Felony	0.03 FTE for 4 cases
Minor Felony	0.13 FTE for 21 cases
Misdemeanor	0.31 FTE for 92 cases
Probation Violation	0.01 FTE for 6 cases

Annual Case Assignment for 1.0 FTE

Murder	6
Jessica Law	6
Measure 11	45
Major A/B felonies	138
Minor felonies	165
Misdemeanors	300
Probation violations	825
Civil commitment	230
PCR/Habeas	45

Performance Measurement:

Caseloads would be more diversified amongst attorneys and individual caseloads reduced. Overall, MAC increased for this jurisdiction.

Resources:

- OPDS has already identified it will recruit and hire a trial team. This would require OPDS assigning some of those lawyers within the trial team to Lincoln County. Funding would be needed to pay for job recruitment websites and more sophisticated posting strategies.
- Mentoring of new lawyers by experienced attorneys within the consortium.

Timeframe:

Start Date: October 1, 2023

End Date:

Time to Take Effect:

Immediate

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 18 – CLATSOP COUNTY

Presiding Judge: Dawn M McIntosh

Trial Court Administrator: Julie L Vredeveld

Crisis Team Members:

INVITED: Presiding Judge Dawn McIntosh; Judge Beau Peterson; Judge Kirk Wintermute; Julie Vredeveld, TCA; Kris Kaino, Consortium Administrator; Maryann Murk, Defense Attorney; Lane Borg, Defense Attorney; Stacy Rodriguez, Defense Attorney; Ron Brown, District Attorney; Dawn Buzzard, Chief Deputy DA; Scott McCracken, Deputy DA; Matt Phillips, Sheriff; Thomas Teague, Jail Commander

IN ATTENDANCE: Presiding Judge Dawn McIntosh; Judge Beau Peterson; Judge Kirk Wintermute; Julie Vredeveld, TCA; Kris Kaino, Consortium Administrator; Maryann Murk, Defense Attorney; Lane Borg, Defense Attorney; Scott McCracken, Deputy DA; Matt Phillips, Sheriff; Thomas Teague, Jail Commander

OSCA Staff: Michael Hsu, Stephanie Guerena, Tiffany Quintero

Meeting Dates: August 2, 2023

BACKGROUND

Clatsop County does not have a local public defender office and has, for many years, successfully operated with a consortium/private bar contract model. We have several experienced, committed and hardworking attorneys who, until recently, were able to provide quality representation to all of our indigent criminal defendants despite the chaos at OPDS.

In April 2023, Clatsop County unexpectedly lost one full time defense attorney because of personal issues. Notwithstanding that event, due to the commitment and hard work of our remaining attorneys, as of July 20, 2023, Clatsop County had only two unrepresented individuals waiting for appointment of counsel. Both individuals were in that position because all remaining local attorneys had conflicts.

The number of criminal cases filed in 2023 in Clatsop County decreased 2.3% over the previous year. Similarly, the overall attorney MAC needed to cover the cases filed decreased slightly in FY 2023. Clatsop County saw a 5% increase in dispositions and a 7% increase in clearance rate during FY 2023. Clatsop County's decreased case filings and increased dispositions and clearance rate in FY 2023 helped to keep the number of unrepresented individuals down.

With practices detailed below that had been implemented to address COVID backlogs and the looming OPDS issues, as of July 13, 2023, Clatsop County had reached a clearance rate of 100 percent and we were optimistic that with continued attention, we would avoid the indigent defense crisis that had become evident in other parts of the state.

During the week prior to our August 2, 2023, crisis team meeting, a longtime member of the defense consortium unexpectedly and without notice to the Court, his colleagues, or his clients, left the area and is no longer practicing in Oregon. He left over 70 active cases, including 13 defendants in custody, without counsel and launched us into the middle of the crisis we are facing today. At present, we are down to only five contract attorneys. Recruitment of new lawyers has proven to be extremely difficult given the cost of living, contract uncertainty, and lack of confidence in OPDS.

According to the OJD dashboard data, as of August 24, 2023, there were 68 unrepresented individuals in Clatsop County with 78 cases. One of the unrepresented individuals show as in-custody. Another two in-custody unrepresented defendants should be added.

While the data dashboard suggests there is enough remaining MAC to cover the current unrepresented cases and new case filings – it is inaccurate. As of August 21, 2023, all consortium attorneys had reached their monthly MAC under the current contract extension. Additionally, one of the attorneys, whose MAC is included on the OJD dashboard, is contracted solely for Adult Treatment Court and is not available for appointment to other cases.

Finally, while we continue to explore additional strategies and procedures to deal with the current crisis, this crisis was brought on in large part by changes in OPDS policy that were, at best, poorly planned and implemented. As such, any real solution to the fundamental problems will require significant policy change and further legislative action which we can only recommend.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

In addition to the outlined actions to date, Clatsop County has taken the following actions related to the OCDLA recommendations/UTCR proposals:

- Adopted a Presiding Judge Order (PJO 2023-03) continuing the availability of remote appearances for attorneys and clients.
- Continued our practice of hearing pretrial motions well in advance of trial.
- Consulted with local attorneys who indicated they preferred our current practice of requiring negotiated pleas to be completed by docket call to the OCDLA proposal as it would have resulted in multiple cases being left on for trial on the same day. While discouraged, day of trial plea agreements are evaluated for good cause on an individual basis by the trial judge and allowed when appropriate.
- Continued our practice of entering specific orders at the Case Management Conference setting deadlines for discovery and motions when necessary.

BEST PRACTICES

In addition to the outlined actions to date, Clatsop County has already adopted the following Best Practices:

- Prioritizing case assignments by custody status, crime seriousness and length of time unrepresented.
- Monitoring attorney MAC and ethical capacity to preserve qualified attorney availability for more serious cases.

- Following the appropriate Odyssey Business processes to assist in tracking attorney caseloads, unrepresented individuals and changes over time, and use attorney resources most efficiently

ACTIONS TO DATE

Clatsop county has taken the following actions:

- Remote and hybrid hearings: Clatsop County Circuit Court moved to remote hearings early in the pandemic. Our partners, including the criminal bar, have indicated that holding hearings this way saves time, which they can then dedicate to other client work. We continue to handle arraignments, case management conference and many other hearings by video. Despite being a small court, Clatsop County is the 5th highest OJD user of Webex hearings (Exhibit A). As of July 2023, we have hosted over 2,000 Webex hearings serving over 15,000 participants (Exhibit B).
- Settlement conferences/increased use of senior judges: We currently schedule approximately 25 settlement conference days per year, frequently utilizing senior judges who are particularly skilled in settlement. This has allowed us to resolve a substantial number of cases. Of the 117 settlement conferences scheduled during the past three years, 96 cases were fully settled prior to trial.
- Flexibility in scheduling: During the restricted court operations necessitated by the pandemic, we began allowing attorneys to request resets by email rather than requiring formal motions. We have continued to work with the attorneys to adjust schedules and avoid unnecessary court hearings.
- Violation treatment: Judges encourage the treatment of appropriate misdemeanor cases as violations at arraignment.
- Triaging attorney appointments/reserving major felony attorney capacity: We are in daily communication with our consortium administrator and OPDS monitoring attorney MAC and ethical capacity so that cases are assigned in order of priority.
- Outreach to qualified local private attorneys: Judges have continued to reach out to qualified local attorneys regarding their willingness and ability to take on some public defense work.
- Outreach to district attorney re: data related to case dispositions: We have shared relevant data with the district attorney about case dispositions so that they can use the data to examine certain office practices related to charging and plea negotiation.
- Increased judicial oversight re: discovery and pretrial offers: Judges inquire about the status of discovery and plea negotiations at Case Management Conference and enter specific deadline orders where appropriate.
- Outreach with Sheriff: Judges met with the Sheriff and jail commander to discuss solutions to problems attorneys were encountering involving communication with in-custody clients. The jail is moving forward on both interim and long-term solutions that will make attorney jail visits more efficient.
- Attorney status hearings in unrepresented cases: We are scheduling regular attorney status hearings for all unrepresented defendants.

ATTACHMENT(S)

- Clatsop County Exhibits

INTERVENTION / RECOMMENDATION 1

OPDS should permit attorneys with ethical capacity to take cases over the current monthly MAC restrictions and in excess of the yearly weighted MAC limits. OPDS should guarantee contract overage payments to attorneys who do so without requiring them to seek exceptions for individual cases.

The existing MAC model exacerbates the problem of lack of representation and does nothing to address the underlying issues of attorney workload and adequate representation. It does not take into account attorney experience or variations in case complexity and resolution times that effect an individual attorney's ability to handle cases.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney capacity. Dramatic reduction in number of unrepresented individuals.

Performance Measurement:

Active open caseload data is currently available through Odyssey/OJD and the consortium administrator. Continued monitoring of unrepresented numbers and case outcomes will demonstrate whether this intervention is effective.

Resources:

OPDS policy change.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

OPDS should continue to contract with local private bar members and consortiums for indigent representation, particularly in rural areas of the state. Moving to public defender offices and an hourly payment only model as currently planned will significantly reduce the availability of experienced and qualified attorneys in Clatsop County and other rural areas. Announcement of the planned change for the next contract cycle has already had a negative impact on recruitment of new attorneys.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increase ability to recruit and retain qualified and experienced attorneys.

What-If? Projections:

Data shows that consortium attorneys frequently achieve better client outcomes than public defender offices. Existing problems with payment processing at OPDS lead to little confidence from private bar attorneys that an hourly pay model will result in timely, reasonable payment.

Maintaining the practice of contracting with qualified local private bar attorneys will increase available attorneys and reduce the number of unrepresented individuals.

Resources:

Legislative action/Policy change from OPDS.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

OPDS future contracts should allow attorneys to join a consortium with less than .5 FTE. OPDS should waive the current contract restriction and allow qualified attorneys to accept cases through a consortium without committing to .5 FTE.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Qualified local attorneys who are willing to assist with the unrepresented crisis could quickly be assigned cases through the current consortium contract without being required to take a substantial number of individual cases or deal with cumbersome administrative processes and delayed payment for their services.

What-If? Projections:

We have qualified local defense attorneys who currently handle only retained cases that have indicated a willingness to assist. This change would have an immediate impact and reduce the number of unrepresented individuals in Clatsop County.

Performance Measurement:

Reduction in unrepresented individuals.

Resources:

OPDS policy change/waiver of current contract term.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

OPDS should authorize the appointment of juvenile dependency attorneys to criminal cases for current clients when the attorney is otherwise qualified and has the ethical capacity to do so.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Allowing attorneys who are already representing a parent on a dependency case to handle criminal cases for their client when they are qualified to do so will increase attorney efficiency and result in better service to clients.

What-If? Projections:

This intervention will not create additional MAC, but will allow the current MAC resources to be used more effectively.

Resources:

OPDS policy change/waiver of current contract term.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 5

Improve attorney communication with in-custody clients.

Since the recent opening of a new jail in Clatsop County, attorneys report a significant increase in the amount of time they are devoting to communication with their in-custody clients. Reasons for this include structural issues with the attorney visitation area and the further distance from the courthouse. As a result, cases are taking longer to resolve and taking up more attorney time.

Modifications to the attorney visiting booths are underway. Jail is working on developing processes for attorneys to be able to meet with, share electronic discovery with, and obtain signatures remotely from their in-custody clients in a secure and confidential manner.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Reducing the amount of time attorneys are required to spend at the jail will increase attorney efficiency and ethical capacity.

What-If? Projections:

This intervention will not create additional MAC, but will free up capacity for attorneys to work on current caseloads.

Performance Measurement:

Time to disposition decrease and attorney reporting of more available ethical capacity.

Resources:

Jail equipment and staffing.

Time to Take Effect:

In process. Likely to see immediate results when remote procedures are in place.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 6

District Attorney's Office to provide standard pretrial offers at the beginning of a case.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Communication of standard pretrial offers at the beginning of a case will allow more straightforward cases to progress quickly toward resolution or trial.

What-If? Projections:

This intervention will not create additional MAC, but could reduce caseloads and increase ethical capacity.

Performance Measurement:

- Decrease in time to disposition.
- Reduction in number of appearances per case.

Resources:

District attorney and defense attorney capacity and buy-in.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 7

Add a social worker/case manager to the consortium contract to assist clients with navigating resources, obtaining treatment and other non-legal concerns that currently require substantial attorney time. Add specific stand-alone funding for administrative support to the consortium contract that does not reduce attorney compensation.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Increased attorney ethical capacity, improved service for clients, reduction of time spent in custody and reduced recidivism.

What-If? Projections:

This intervention will not create additional MAC, but will free up capacity for attorneys to work on current caseloads.

Performance Measurement:

- Increase in attorney ethical capacity.
- Recidivism rate and reduction of time spent in-custody.
- Decrease time to disposition.

Resources:

Funding/OPDS contract modifications.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 8

Modification of current pretrial release criteria in PJO 2023-09 to reduce the number individuals held in custody pending arraignment.

Lever(s) Impacted:

Other

Intended Outcome or Goal:

Reduction in number of unrepresented individuals in custody

What-If? Projections:

This intervention will not create additional MAC, but will reduce the number of unrepresented in custody individuals. It will also allow current MAC resources to be used more effectively.

Performance Measurement:

Reduce number of in-custody unrepresented individuals.

Timeframe:

Start Date: October 2, 2023

End Date:

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 9

District attorney to send probation violation warning letters giving probationers an opportunity to regain compliance prior to filing the Order to Show Cause on probation violation matters.

Lever(s) Impacted:

Filings; Attorney Capacity

Intended Outcome or Goal:

Reduced probation violation filings. Allowing defendants to resolve alleged violations prior to filing will provide better service to clients and reduce court time for attorneys and community partners.

What-If? Projections:

This intervention may not create additional MAC, but could reduce caseloads and increase ethical capacity.

Performance Measurement:

Reduced probation violation proceedings filed Increased attorney capacity.

Resources:

Coordination with parole and probation office, DA buy-in and staff time.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 10

Oregon should provide more incentives to attorneys taking on public defense work such as housing stipends, student loan relief and free continuing education.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase available attorneys.

What-If? Projections:

No MAC projection.

Performance Measurement:

More attorneys become public defense providers.

Resources:

- Legislative action/OPDS policy changes.
- Funding.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 11

Resolve problems with the statewide behavioral health system.

Lever(s) Impacted:

Filings; Dispositions; Attorney Capacity

Intended Outcome or Goal:

Address ongoing systemic problems with services, housing, and other needs so that mental health concerns are adequately addressed in the community rather than the criminal justice system. Increase access to supportive housing, inpatient and outpatient mental health and substance abuse treatment.

What-If? Projections:

No MAC projection.

Performance Measurement:

- Decreased fitness to proceed filings.
- Decreased multiple case defendants and nuisance misdemeanor crimes.
- Decreased unrepresented individuals.

Resources:

- Statewide commitment and financial resources.
- Additional support for rural communities with few service providers.
- Additional state hospital beds.
- Additional other residential facilities.
- Legislative action on changes to civil commitment statutes.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 12

Require attorney withdrawal and closure of cases that are in warrant status more than 60 days.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Increase attorney capacity.

What-If? Projections:

This intervention will not create additional MAC, but could reduce caseloads and increase ethical capacity. It also allows for the current MAC resources to be used more effectively.

Performance Measurement:

- Increased attorney capacity.
- Decreased unrepresented individuals.

Resources:

OPDS policy change/waiver of current contract provision.

Was there community consensus on this intervention?

Yes

Minority Viewpoints:

Defense attorneys did not agree that this would improve capacity. Expressed concern about current contract terms requiring attorneys to keep cases open for 180 days.

JUDICIAL DISTRICT 19 – COLUMBIA COUNTY

Presiding Judge: Michael T Clarke

Trial Court Administrator: Crystal J Reeves

OSCA Staff: Rachel Woods

BACKGROUND

Columbia County, historically, has had a low number of unpresented defendants. In the last year, there have been anywhere from one to five defendants without counsel at a time. In those instances, the local consortiums have been unable to accept the appointments because each attorney had a conflict (in some situations, multiple attorneys have already represented the defendant and withdrew from representation). A few attorneys have not been able to accept new cases because due to medical leave, but when they returned, were able to accept cases where the defendant had been unrepresented. The communication from the consortia has not always been clear about why they cannot assign a case or when attorneys are on medical leave. The court is not always aware of the different factors leading to the defendant remaining without counsel.

When defendants are not represented, the court holds regular status hearings. Out-of-custody defendants usually are seen every two weeks, but in-custody defendants will have at least two status checks a week to ensure they are prioritized for representation. The court has reviewed and released defendants, when appropriate, where an attorney was not appointed.

While we are not required to convene a crisis team or hold a crisis team meeting, we did meet with the local consortia administrators and the interim district attorney to discuss the current issues we are experiencing and address whether we should anticipate a crisis happening. We have heard rumors of defense attorneys leaving the area or not renewing their contracts; however, the consortia administrators were not aware of any attorneys planning to leave.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Several of the recommendations from OCDLA would create inefficiencies for the court, such as allowing attorneys to email requests for continuances. We allow attorneys to email requests to set certain hearings, but this has historically been an issue and cause of inefficiency for court staff.

The court has historically held omnibus hearings prior to trial, preferring to have issues resolved ahead of time. Motions that are filed shortly before trial are heard the morning of, only when there is no time in the docket for a full-motion hearing. We also allow pleas to be entered the day of trial.

We continue to allow remote appearances for most hearings and set up reoccurring Webex sessions that are posted on our website, so attorneys do not need to search their email. We do require attorneys and defendants to appear in person for pretrial conferences because of communication issues. Prior to 2023, attorneys were allowed to appear remotely for pretrial

conferences, and the defendants were not required to appear due to COVID. Many hearings were setover because attorneys had not had contact with their clients. Defendants would appear in person and were frustrated because their attorney was not present, and some defendants reported not having contact with their attorney prior to the hearing.

BEST PRACTICES

- Actively monitoring unrepresented cases.
- Revised criminal caseflow management to reduce number of hearings and ensure hearings are meaningful.
- Continue to hold many hearings remotely without requiring a motion.
- The court follows best practices for Odyssey business processes and date entry.

ACTIONS TO DATE

In 2021, we began holding jury trials again, while complying with all COVID related policies. We continue to hold jury trials regularly. We increased the number of trials we set each week because cases were often resolving shortly before or the morning of trial. In 2022, we studied our criminal caseflow management and instituted a new caseflow management plan, as well as restructured our dockets. We eliminated dockets that were limited to status checks or setting future dates to help reduce the number of hearings set in criminal cases. We changed our pretrial conferences to make them more substantive hearings, rather than simply a time to schedule the next hearing Defendants can now do a plea and sentencing at the pretrial conference.

INTERVENTION / RECOMMENDATION 1

Increased communication between the consortia and the court when an attorney cannot be assigned. The consortia have agreed to more clearly indicate when a case cannot be assigned due to explicit conflicts and when attorneys are unavailable due to medical leave. The court will, at times, check with consortia when a defendant is unrepresented to see if the case can be assigned locally, rather than waiting for the private bar through OPDS.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Reduce time to assigning an attorney.

Performance Measurement:

We have already begun increasing communication and have reduced our unrepresented defendant numbers down to one defendant.

Timeframe:

Start Date: August 4, 2023

End Date:

Time to Take Effect:

Immediately for current issues. Expect to see if long term it is successfuly over a period of 4-6 months.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 2

Regular communication and meetings among court, consortia, and District Attorney's Office regarding issues in the system.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Incremental improvements to overall criminal case flow and addressing concerns of current defense bar to retain defense attorneys. While we do not currently have a crisis, the court, consortia administrators, and interim DA have agreed to continue to openly communicate and collaborate so we can prevent a crisis.

Performance Measurement:

Increase dispositions to help reduce backlog of cases for defense bar.

Resources:

The elected DA recently stepped down and there is a DOJ attorney acting as interim DA until the Governor appoints. The interim DA is limited in what changes he can do, and it is possible that whoever is appointed may have a different opinion.

Timeframe:

Start Date: August 4, 2023

End Date:

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 20 – WASHINGTON COUNTY

Presiding Judge: Kathleen J Proctor

Trial Court Administrator: Richard E Moellmer

Crisis Team Members: Judge Kathleen Proctor, Presiding Judge; Judge Oscar Garcia, Chief Criminal Judge; Judge Maalik Summer, LEC Judge; Richard Moellmer, TCA; Mary Bruington, MPD-Washington County Executive Director; Rob Harris, ODAC Administrator; Joe Beck, ODAC Administrator; Nate Law, Cornerstone Law Group Administrator; Grant Burton, Hillsboro Law Group Administrator; Ron Ridehalgh, Ridehalgh & Associates Administrator; Kevin Barton, District Attorney; Pat Garrett, Sheriff (and/or Jail and Court Security designees); Nate Gaoiran, Community Corrections Director; David Hayes, OPDS Deputy Criminal Trial Counsel

OSCA Staff: Lindsey Detweiler, Conor Wall

Meeting Dates: Tuesday, August 1, 2023, 4:00-6:30pm; Friday, August 4, 2023, Noon-1:00pm; Wednesday, August 16, 2023, Noon-1:00pm; Monday, August 21, 2023, 4:30-5:30 pm

BACKGROUND

Washington County (and Multnomah and Marion Counties) have been 'ground zero' for Oregon's unrepresented defendant crisis for more than two years. Washington County has tended to have among the most in-custody unrepresented defendants. These unrepresented in-custody defendants include major felony and Measure 11 cases.

Local public defense service providers – Metropolitan Public Defender (MPD), Washington County; Oregon Defense Attorney Consortium (ODAC); and various private firms and attorney contractors – routinely state they are unable to accept new appointments for contractual and ethical limit reasons. "Cutoffs" are more common later in the month and towards the end of OPDS contract periods. Additionally, conflicts and charges that are outside of a lawyer's contract, create attorney withdrawals. Attorney withdrawals can happen early in a case or later after discovery. These withdrawals may make it harder for those defendants to get a lawyer.

Criminal defendants may have cases in multiple counties with a different attorney in one or more counties, and no attorney in our county.

Local criminal justice system leaders in Washington County have met a few times since the crisis began to try to mitigate the problem. This crisis team planning is a continuation of those efforts.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- Reduce Criminal Defense Attorney Time Spend at Mass Dockets. See "Stagger scheduling of Mass Dockets" under Attorney Capacity interventions below.
- OCDLA Recommendation: Fewer required court appearances for attorneys and clients. See "Schedule fewer hearings" under Attorney Capacity interventions below.

- OCDLA Recommendation: Expand jail visitation times for defense counsel to meet with their clients. The Washington County Sheriff is currently working with a new vendor to offer improved communication (telephone and video conferencing) technology for remote attorney-client jail visits. Jail deputy staffing levels continue to create challenges for expanding in-person attorney-client jail visitation hours.

BEST PRACTICES

Focus on priority appointments of limited criminal defense attorneys based on custody status, crime seriousness and length of time unrepresented, Washington County PJO 331. A new PJO will be completed to comply with the Federal Order timelines of 10 days.

ACTIONS TO DATE

- We have convened and participated in regular local criminal justice system leader and community partner meetings to share information, innovate, and make needed system changes and improvements. OPDS representatives participate and contribute during unrepresented defendant crisis planning, problem-solving discussions, and decision making. Chief Justice Meagan Flynn and SCA Nancy Cozine attended a past unrepresented defendant planning in-person meeting.
- Our system partners have participated in several successful "Wingspan" case settlement dockets, for both pandemic backlogged cases and OPDS-assigned/unrepresented cases.
- Our court created a docket to track and monitor OPDS-assigned unrepresented defendants, in- and out-of-custody.
- OPDS data dashboard errors and omissions were identified and have been fixed. Both OPDS and our local court now have more accurate information about who still needs defense attorneys.
- Early in the crisis, we provided feedback on the OPDS website, which they used to improve formatting and content. The changes make it easier for interested attorneys to understand how to get started with criminal defense.
- We have weekly meetings between court leaders and OPDS representatives regarding the unrepresented crisis, generally, and getting attorneys assigned to specific cases that have been identified as needing prioritization due to the custody status, type of case, or possible aid and assist issues.
- OPDS has participated in hearings on specific cases regarding OPDS responsibility to identify and assign defense attorneys.
- Created a single attorney withdrawal docket to establish consistency and expectations among the bar as to requests for withdrawal, and identify areas of concern regarding discovery and communication. Permissive requests have decreased.
- Reach out to individual attorneys and firms, including private lawyers, to find representation for those in-custody.
- We have advocated for an OPDS-employed case assignment coordinator position to be hosted by the court.

- Brainstorm ideas for addressing Oregon's unrepresented defendant crisis with other Presiding Judges and Trial Court Administrators around the state, especially peer courts, including Multnomah, Clackamas, Marion, Lane, Jackson, and Deschutes.
- Facilitated court-convened Washington County Unpresented Defendant Crisis Forum and Ethics CLE on June 2, 2023, to share information and ideas with local public defense service providers.
- Testified before the Oregon Legislature about Washington County's unrepresented defendant crisis.
- Presiding Judge met with local State Senator individually, recently, and previously, at legislative breakfast and made the point for pay equity.
- Issued PJO 331 [attached] prioritizing defense attorney case assignments (custody status, crime seriousness and length of time unrepresented), consistent with CJO 23-024 implementing SB 337. This will be amended, in light of the Federal Order, which reduces in-custody time to 10 days without a lawyer.
- Court has been having to "judge appoint" lawyers who are out of contract MAC, requiring OPDS to pay hourly contract rate.

ATTACHMENT(S)

- PJO 23-331

INTERVENTION / RECOMMENDATION 1

Pay equity among all models for criminal defense.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Increased compensation for defense lawyers will incentivize attorneys to do public criminal defense, and will encourage those who are doing it to continue and to increase their skills.

What-If? Projections:

Pay equity among all providers of criminal defense, will incentivize attorneys to remain in criminal defense and will attract new lawyers into the profession. Criminal public defense lawyers typically make less money and have less benefits than the prosecution. The pay disparity currently incentivizes public defenders to move to private criminal defense once they have the experience and qualifications to handle higher level felonies or leave criminal defense altogether. In addition to the lower pay, they feel they are treated with less respect in the courtroom than their counterparts.

Intended outcome: More lawyers will stay in public defense. More lawyers will be attracted to public defense.

Performance Measurement:

Measure whether the increase in pay increases the number of lawyers and capacity.

Resources:

- Make recommendation to OPDS, PDSC, and Legislature.
- Continue to support the premise that all parts of the system must work well for the system to be the constitutional and democratic system we all want. Pay equity will require a great deal of organization, planning, and comprehensive contracting by OPDS to receive the funding necessary to lead to pay equity.
- Currently, it appears when a lawyer is contracted for lower-level felonies but is qualified to take higher level felonies, they are paid at the lower rate when they have a case on which they have been appointed, but the indictment later charges a higher-level felony. Attorneys are withdrawing from these cases. Attorneys should be paid out of contract for the higher-level felony if they keep the case and are qualified. OPDS pays an hourly rate for lawyers who take cases outside their current MAC caseload. That higher hourly rate is set to expire September 30, we need that to continue.

Time to Take Effect:

Now, soon, and in the longer term.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Have one person/entity (OPDS) be responsible in our county, located locally, for coordinating and analyzing attorney availability, conflicts and recommending appointments with transparency.

Lever(s) Impacted:

Attorney Capacity; Other

Lever not mentioned above:

Retain Attorneys

Intended Outcome or Goal:

Will likely increase attorney capacity because there will be less confusion about appointments and who has been contacted to take cases.

What-If? Projections:

This will likely retain lawyers by increasing trust in the system and this will be fairer to criminal defendants and less confusing for everyone to understand how attorneys are appointed to cases.

Performance Measurement:

Increased trust in the system. More attorneys willing to take cases if they feel the system is administered fairly and equitably.

Resources:

OPDS needs to get buy in from PDSC. Court can help with drafting a job description and providing space.

Time to Take Effect:

Anytime

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Return ECR eligible cases back to ECR.

Lever(s) Impacted:

Dispositions

Intended Outcome or Goal:

More defendants will have the opportunity to resolve their cases early through a plea deal and will free up attorneys to work on other cases, thereby reducing the number of cases without attorneys.

What-If? Projections:

For defendants and cases that are ECR eligible if the defendant either:

1) did not have the opportunity to receive an ECR offer; or
2) did not take that opportunity, and the case is now on the OPDS docket, the defendant is given the opportunity to participate in ECR at their next OPDS appearance.

This will make use of an infrastructure currently in place and should be accomplished fairly quickly.

Performance Measurement:

Track the cases that resolve in ECR and how the unrepresented numbers are affected.

Resources:

PDSC, Oregon Legislature, and local criminal justice system partners.

Time to Take Effect:

Already happening, immediately, and longer term.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Recruit, hire, develop and retain talented criminal defense attorneys.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Additional criminal defense attorneys.

What-If? Projections:

If all lawyers currently taking cases were allowed to exceed their MAC and get paid, the attorney crisis would be greatly reduced. However, we also need to add lawyers and support lawyers gaining qualifications to take higher level cases. Private attorney bar should be tapped to take indigent cases at higher hourly rate.

Performance Measurement:

- More criminal defense attorneys.
- Increased contract and ethical limit capacity.
- Is turnover down?

Resources:

PDSC, Oregon Legislature and local criminal justice system partners.

Time to Take Effect:

Longer term.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION #

INCREASE NUMBER OF ATTORNEYS: More public defense attorneys equal more capacity. These interventions and recommendations focus on ways to bring in new attorneys and retain the attorneys already in the system.

- Pay Equity for Public Defenders. Recommend PDSC and/or Oregon Legislature pay criminal defense attorneys more. Consider pay escalator (e.g., +25% premium pay) for each week criminal defendants remain in-custody and unrepresented.
- Recommend PDSC adopt Open Workload Model, informed by soon-to-be-released new National Public Defense Workload Standards, to replace maximum attorney capacity (MAC). Re-examine current MAC methodology (how counting open cases from prior contracts, FTA and bench warrants, non-trial work such as treatment courts) and ethical limitation criteria. Re-run conflict checks to determine if they have resolved (e.g., conflict attorney left firm).
- Treat defense attorneys better – Washington County has a bad reputation. Criminal defense attorneys deserve respect and appreciation for performing their often-challenging constitutional role.

- Recommend PDSC and Oregon Legislature reconsider statutory limitation on public defense service contracting with private firms and consortiums beginning in July 2025. Experienced criminal defense attorneys are already leaving or considering other legal career path opportunities.
- Recommend PDSC develop training and shadowing opportunities for non-criminal attorneys.
- Recommend PDSC and/or Oregon Legislature pay for 2nd Chair to increase existing criminal attorney qualifications to provide representation to defendants/clients with higher level and more serious charges.
- Recommend PDSC develop outreach efforts to recruit new public defenders from in- and out-of-state law schools.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Goal is to eliminate the defense attorney crisis.

What-If? Projections:

To eliminate the number of unrepresented individuals (effective August 23, 2023), additional attorneys could be added. In Washington County, the need is 1.61 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed:

Measure 11	0.16 FTE for 7 cases
Major Felony	0.31 FTE for 43 cases
Minor Felony	0.76 FTE for 125 cases
Misdemeanor	0.29 FTE for 88 cases
Probation Violation	0.09 FTE for 72 cases

Annual Case Assignment for 1.0 FTE in the 2022 PDSC Criminal Contract

Murder	6
Jessica Law	6
Measure 11	45
Major A/B felonies	138
Minor felonies	165
Misdemeanors	300
Probation violations	825
Civil commitment	230

Performance Measurement:

- All criminal defendants who cannot afford their own lawyer will have a court-appointed lawyer.
- Decrease in number of individuals on unrepresented list.
- No unrepresented defendants by September 2024.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Time to Take Effect:

Now, soon and in the longer term.

Was there community consensus on this intervention?

No

Minority Viewpoints:

Overall consensus with some disagreement on details.

INTERVENTION / RECOMMENDATION 6

PDSC/OPDS/OJD - someone, develop, maintain, and disclose accurate data for OPDS, courts and lawyers to use to understand which lawyers are available to take cases. Currently, accurate date is not available making it very difficult to know who to appoint to cases.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Fair distribution of cases among available attorneys.

What-If? Projections:

This intervention will not impact MAC availability, but will allow the court to use existing MAC more effectively and reduce the time the defendants do not have attorneys by quickly identifying and appointing attorneys who have availability to take on additional cases.

Performance Measurement:

More criminal defendants will have lawyers, including all those who are in custody and those who are out of custody.

Resources:

Need accurate reporting by lawyers and OPDS should maintain the data and make it available to judges and OJD.

Time to Take Effect:

As soon as possible.

Was there community consensus on this intervention?

No

Minority Viewpoints:

I believe all agree that accurate data is important. There may be disagreement about the details of who compiles it, reporting requirements, how it is used, etc.

INTERVENTION / RECOMMENDATION #

Revise current PJO that prioritizes in-custody defendants over other types of cases due to Federal Order.

Lever(s) Impacted:

Other

Lever not mentioned above:

This must be done to comply with defendant's constitutional rights and comply with Federal Order.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 21 – BENTON COUNTY

Presiding Judge: Locke A Williams

Trial Court Administrator: Chris C Westfall

Crisis Team Members: Locke A Williams, PJ; Chris C. Westfall, TCA; Laurie Bender, OPDS; John M. Haroldson, DA; John C. Rich, BCLDC; Alex Rich, BCLDC

OSCA Staff: Tiffany Quintero, Lindsey Detweiler, Stephanie Guerena

Meeting Dates: August 17, 2023

BACKGROUND

The 21st Judicial District has one public defense consortium, the Benton County Legal Defense Consortium (BCLDC), which currently has seven members and commitments from two new attorneys to join the new contract. As of August 23, 2023, we have 116 out-of-custody unrepresented individuals, and 0 in-custody unrepresented individuals.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

None specifically.

BEST PRACTICES

See description of Actions to Date.

ACTIONS TO DATE

Since mid-2022, the 21st Judicial District has emphasized the scheduling of criminal settlement conferences, which has led to a noticeable increase in case resolutions. Since approximately May 2023, when the availability of court appointed attorneys reached crisis levels, the 21st Judicial District has been assigning OPDS on cases and setting them out for future appearance. We created a special time on our docket on the first two Mondays of each month for these unrepresented setovers. The court works closely with BCLDC daily, to identify and appoint available attorneys. Priority is given to in-custody individuals first, followed by individuals charged with class A and other serious felonies, and person misdemeanors. We have released defendants from custody more frequently than we would like to avoid holding individuals without counsel.

INTERVENTION / RECOMMENDATION 1

Add additional attorneys to the BCLDC for the new OPDS contract.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Hiring and/or developing additional attorneys will eliminate the number of unrepresented individuals.

What-If? Projections:

BCLDC is reportedly adding two new attorneys to their 2023-2025 contract which will increase the number of attorneys from seven to nine. This will add 2.0 MAC.

As of August 29, 2023, there were 117 unrepresented individuals in 158 cases. This represents 0.68 MAC.

Case Weight Category	Unrepresented MAC
Misdemeanor	0.36
Minor Felony	0.25
Major Felony	0.05
Measure 11	0.02
Total Unrepresented	**0.68**

If BCLDC adds two additional attorneys for 2.0 MAC, this should provide enough attorney capacity for the current unpresented individuals and new cases filed during the contract period.

Performance Measurement:

We will monitor monthly appointments to track and project future coverage needs.

Resources:

We do not anticipate any additional resource needs at this time.

Timeframe:

Start Date: October 1, 2023

End Date: June 30, 2025

Time to Take Effect:

Immediate results expected.

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 22 – CROOK AND JEFFERSON COUNTIES

Presiding Judge: Annette C Hillman

Trial Court Administrator: Christa L Papke

Crisis Team Members: Judge Annette Hillman, Presiding Judge; Christa Papke, Trial Court Administrator; William Condron, 22nd Circuit Defenders LLC; Jennifer Kimble, 22nd Circuit Defenders LLC; Kari Hathorn, District Attorney

OSCA Staff: Rachel Woods

Meeting Dates: August 3, 2023; August 14, 2023; August 22, 2023

BACKGROUND

Currently, we do not have unrepresented defendants in our jurisdiction. We have had some pending appointments of conflict attorneys or murder qualified attorneys. Those have been assigned by OPDS within an average of 10 days. Our indigent defense services are comprised of the 22nd Circuit Public Defenders LLC, a non-profit defense consortium, made up of independent defense lawyers responsible for their own practice. This model is successful because it allows for attorney independence, giving us experienced lawyers and the ability to process conflicts of interest and lawyer withdrawals much more efficiently across two counties.

Due to the professionalism of the defense counsel, we have a collegial practice environment ensuring representation of indigent clients. In addition, the administration of the consortium is done by the consortium and not by the court, as other jurisdictions are experiencing. Our defenders generate monthly workload reports, and, for the two counties, the lowest individual attorney workload is 59 cases (misdemeanor approved only although felony approval is being pursued), and the highest is 147 cases (primarily low weighted cases, as that attorney is dependency but not felony approved). The average workload for the two counties is 106.75 cases. In Crook County the average workload is 113.28. In Jefferson County it is 95.4.

Filings are down in Jefferson County as the District Attorney's Office has been short staffed for deputy district attorney positions. They have filled those positions, so filings should start to increase soon. However, if Jefferson filings do not come up in the next couple of months, the consortium will consider assigning some Crook County cases to Jefferson County attorneys, in an effort to balance out the averages in the two counties. Our defense consortium tries to weigh the workload for each attorney, not only by state qualification level, but also by that attorney's actual experience/ability to resolve cases efficiently and to try them effectively if they do not resolve. Therefore, those attorneys who are capable of a higher effective output without compromising quality of representation, take more cases. This has allowed us to reduce the risk of having unrepresented clients.

In addition, despite being the consortia model, less experienced attorneys team up with senior attorneys to assist them to gain experience and trial skills to be approved for higher case type assignments. This mentor model has allowed us to effectively use less experienced attorneys to

handle lower-level cases, but at the same time assure that clients are getting experienced input on their cases. Further, despite being sole practitioners, the consortium review daily dockets and in-custody lists to have attorney's designated, as much as possible, prior to arraignments. Those attorneys often have represented the individual clients in the past. So, a significant component of avoiding unrepresented clients has been to avoid assignments that create conflicts in the future. Our community partners in the 22nd Judicial District work to problem solve and collaborate. We are fortunate to have a defense model of attorneys dedicated to ensuring defendants are represented by legal counsel.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Our local practices and implemented actions to date, have been consistent with the OCDLA recommendations.

BEST PRACTICES

- Includes the actions to date.
- If we experience unrepresented defendants, we will prioritize assignment of counsel by in-custody status, the seriousness of charges, length of time unrepresented, and age of case.
- Continue with Odyssey business processes and data entry including the review of data for accuracy.

ACTIONS TO DATE

The Court has taken the following steps to ease the potential of a crisis of unrepresented defendants including:

1. Allowing remote appearance by counsel.
2. Ensuring counsel can access to in-custody clients remotely at jails.
3. Docketing lawyer specific pretrial days and times to reduce their court appearances.
4. Allowing for continuances generously and docket changes to accommodate attorney schedules.
5. Informal and formal judicial settlement conferences.
6. Accepting pleas during pretrial hearings up to the commencement of trial.
7. District attorney issuing standard plea offers for low level offenses.
8. Notice sent to defendant by the DA encouraging the defendant to get into compliance with probation prior to the DA filing a Motion to Revoke Probation, triggering appointment of counsel.
9. Continue open communication, accepting and implementing problem solving recommendations.

INTERVENTION / RECOMMENDATION 1

- Recommend PDSC continue consortia model for public defense and employ, either a case model or increase MAC, based on level of experience and qualifications.

- Recommend allowing attorneys the contractual ability to exceed the increased MAC standard when attorney is ethically able to do so.
- Recruit and retain attorneys in rural areas and adopt a mentor model for new attorneys to assist with establishing and supporting a solo practice.
- Recommend PDSC not implement statewide policy changes without considering the impact to local jurisdictions. If PDSC converts consortia model to hourly rates, those rates should be comparable to private retained bar in the jurisdiction where the attorneys are practicing avoiding continual loss of attorneys to private practice. Student Loan Forgiveness be expanded to those attorneys in the consortia model if attorneys work in public defense for 10 years to recruit and retain attorneys.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

- Increasing attorney capacity is necessary to address the unrepresented defendant crisis.
- Recruiting new attorneys ensure a continuation of defense services in the future.

Performance Measurement:

Need data for available MAC in judicial district and measure individual defense attorney MAC increases and/or need data for case model. PDSC share accurate data with OJD.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 23 – LINN COUNTY

Presiding Judge: Thomas A McHill

Trial Court Administrator: Jim Belshe

Crisis Team Members: Thomas McHill, Circuit Court; Michael B. Wynhausen, Circuit Court; Doug Marteeny, District Attorney; Michelle Duncan, Sheriff; Maureen Robb, Parole and Probation; Michael Lowery, Defenders; Joseph Elwood, Defenders; Shallon Halttunen, Linn-Benton County Bar President

OSCA Staff: Lindsey Detweiler, Rachel Woods

Meeting Dates: August 8, 2023; August 18, 2023

BACKGROUND

As of August 4, 2023, there were six unrepresented individuals in-custody in Linn County. Over the past few weeks, this number has fluctuated between as few as three individuals to as many as seven. Most of these persons are accused of misdemeanor offenses and/or are in-custody in other counties, without having made appearances in Linn County Circuit Court. Currently, the highest priority for the appointment of attorneys is either cases pending civil commitment or persons in-custody. The court has continued this prioritization for many months. The bench and bar have agreed that essentially budgeting attorney appoints to reflect those priorities can be manageable into the future.

On this same date, there were 151 unrepresented individuals out-of-custody pretrial awaiting the appointment of attorneys. The court has been setting future appearances for those individuals until available counsel can be appointed for representation.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

The court has, even prior to the COVID pandemic, made use of technology in making efficient use of time. The court maintains mass dockets, our "duty courts," which are designed to have appearances for status conferences, arraignments, and other appearances. However, if the parties do not believe that an appearance is necessary in moving the case, the attorney may simply remove the case from the calendar and arrange for another appearance. These communications do not require the filing of a motion and can be accomplished by telephone. Thus, the proposed OCDLA recommendations on this approximate point are not necessary in Linn County.

Additionally, the proposal requiring advanced filing and the scheduling of hearings on motions are arranged by the court, usually if a case is set for trial. Unless there is a specific need, motions to suppress are scheduled well ahead of trial. Court appearances, for the purpose of scheduling hearings on motions, are also regularly set by email. Linn County has maintained these practices for many years and an additional UTCR is not necessary.

With respect to other recommendations, Linn County's local rule provides that after a case is scheduled for trial, no further negotiations are allowed unless there is good cause shown. The court's long-time practice has been to schedule several cases, criminal and other, on the same day. We realize that events may occur prior to trial which do support a good cause finding. This also provides an opportunity to resolve cases, leaving one case to be tried on a docketed day.

Any other consideration for UTCRs or other rules to be applied statewide should be evaluated carefully to consider local practices which achieve the same purposes. SLRs would appear to adequately provide notice to parties as to the practices of local courts.

BEST PRACTICES

Since before the COVID pandemic, Linn County Circuit Court has worked to find ways to reduce court appearances and to work with the bar, both defense and prosecution, to reserve and manage resources. The use of remote appearances, early intervention by making offers to settle early in a case where appropriate, and respecting the relative roles of participants, has long been respected by the court. We believe that these efforts are best practice.

The court also recognizes the professional ethical needs of counsel in considering an appropriate number and nature of cases, for which an attorney can provide competent and professional service. Notwithstanding this recognition, the court and members of the bar disagree with the studies that seem to create a lid on the number of cases that an attorney may contractually accept without the attorney's personal evaluation and consideration of the attorney's ethical and professional capabilities.

The court believes that best practices recognize the individual capability of an attorney. The court has adopted best practices which attempt to recognize the need to protect the rights of persons charged with crimes, while looking for ways to reduce court appearances or allowing remote appearance, which allow an attorney the ability to work in the office and appear only for cases as those cases come before the court.

ACTIONS TO DATE

Members of the bench and bar have been actively, since at least late-2022, working on methods to plan for what became this crisis. Linn County has, by PJ order, long recognized the efficiencies in the use of remote methods of appearances. Unless an in-custody defendant objects, all routine appearances are accomplished by video means. These appearances include the taking of pleas and the imposition of sentences.

The court and parties have scheduled two mass dockets, which are intended to try to resolve cases early in the life of the case. Linn Defenders, the local consortium, has requested funding from OPDS for four defense attorneys to assist in these dockets where the lawyers will have advanced discovery and offers for resolution of the cases from the district attorney.

Linn County has several programs which divert cases from the criminal justice docket. Family Treatment Court, Adult Drug Treatment Court, and a program designed to divert individuals with mental health issues, the Yellow Line, are in place. The treatment courts have proven to be successful in providing treatment and reducing recidivism. The Yellow Line program is fairly new, but it is hopeful that the same will be true in providing treatment for individuals who otherwise would be in the system.

ATTACHMENT(S)

- PJO on Proceedings March 12, 2021
- PJO on Remote Proceedings December 4, 2020
- Linn County Intervention Data

INTERVENTION / RECOMMENDATION 1

The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.

Lever(s) Impacted:

Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.

What-If? Projections:

Between FY 2022 and 2023, there was an increase in filings over the previous year by 12%. Over the same period, dispositions increased by 9.8%. To cover the unrepresented cases in Linn County as of August 11, 2023, major felonies require an additional 0.08 MAC, Measure 11s require an additional 0.07 MAC, and probation violations require an additional 0.06 MAC. Minor felonies and misdemeanors require the most additional MAC, needing 0.32 and 0.25 additional capacity respectively. Although dispositions in Linn County are increasing, filings continue to outpace dispositions and there is still a considerable amount of MAC needed to cover the current unrepresented cases.

Data as of August 4, 2023, however, indicates that there may be additional MAC available to Linn County under the current contract extension. Increasing caseloads may make the recruitment of additional attorneys to the consortium less vital to the maintaining of resources for appointment.

Allowing contracting attorneys, the contractual ability to accept more than 300 MAC each year, subject to the attorney's ethical responsibility in accepting cases, will help in these projections.

Performance Measurement:

Decrease in unrepresented defendants who are out of custody within 30 days of appearance. In-custody defendants should be appointed counsel, if they financially qualify, at the first court appearance. The impact on appointing attorneys for unrepresented out-of-custody defendants will be to those attorneys and their monthly MAC.

Resources:

Generally, the resources needed to adequately address this issue are outside of the scope of the court's authority and within the control of OPDS. However, under current conditions, the bench and bar are cooperating in prioritizing the appointment of attorneys under the current limitations. The court supports directing needed resources to alleviate these issues.

Timeframe:

Start Date: September 1, 2023

End Date: February 15, 2024

Time to Take Effect:

Hopefully within 30 days.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 2

Terminate the appointed representation of a defendant who has failed to appear in court, which results in the issuing of a warrant and has not re-entered the system within 60 days. As a corollary, the court supports a reconsideration as to the use of techniques, such as the point system, to provide attorney capacity more adequately. OPDS should either eliminate any point system or find a different way of budgeting attorney capacities.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

The court realizes that the current contract between consortium attorneys and the PDSC are beyond the control of the court. We also realize that this recommendation may not impact those contractual obligations and limitations. However, allowing attorneys to terminate the professional relationship with defendants, who are outside of the system for a shorter period than the PDSC contract provides, can increase the contractors to ethically take more cases and preserve MAC. Attorneys are subject to the Code of Ethics in determining their professional capacity for handling cases.

What-If? Projections:

As of August 1, 2023, Linn County had a total of 194 cases in open appointment warrant status. In Linn County, active warrants are currently up 123% from the number of warrants in 2022. Of the present cases, 38 were in warrant status for up to 30 days and 26 of the cases were in warrant status for up to 60 days. That leaves 130 cases in open appointment warrant status greater than 60 days. As those cases may "return" to non-warrant status, there will be the need, presumably, for appointment. However, allowing the termination of representation for cases in warrant status beyond 60 days, can free up more MAC which might not otherwise be available for ethical considerations.

Performance Measurement:

Reduction in the number of cases in warrant status beyond 60 days and/or the ability to preserve MAC in cases where a defendant has failed to appear, resulting in the issuance of a bench warrant, which remains outstanding for more than 60 days.

Resources:

Business processes.

Time to Take Effect:

This depends, in part, on a restructure of the PDSC contract with attorneys.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 3

Linn County will continue to use, and increase the use of, the court's early resolution program with limited-scope defense attorneys to counsel defendants, pending funding support for attorneys who provide this limited representation.

Lever(s) Impacted:

Dispositions; Attorney Capacity

Intended Outcome or Goal:

Early intervention in cases where offers can be made to defendants, will result in earlier disposition of cases. Thus, the workload of appointed counsel can be reduced, increasing attorney capacity.

What-If? Projections:

The program is early to make accurate projections as to its success. Currently, two sessions are planned, pending approval of funding by PDSC, to have defense counsel available for limited review and representation.

Performance Measurement:

Performance measure will depend upon the reduction of cases needing appointment of counsel. An element of the performance measure will be how many defendants accept the early offers.

Resources:

Court docket time will need to be available to promptly resolve the cases in which defendants accept early offers to resolve the cases. The Linn County District Attorney supports the program.

Timeframe:

Start Date: August 30, 2023

End Date:

Time to Take Effect:

The maintaining of the program may be dictated by its success. Results will be available, partially, after the early resolution sessions in August and September, 2023.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 4

Linn County recommends that the PDSC and the legislature increase pay for public defense providers to attract defense attorneys to Linn County, and to retain those attorneys. Linn County also supports the need for attorneys who are prosecutors in the county.

Lever(s) Impacted:

Add attorneys

Intended Outcome or Goal:

Increased attorneys will increase the MAC available for court appointments by contracted attorneys.

What-If? Projections:

Currently, it appears that an additional one or two attorneys will cover current MAC with enough availability for increased projections in filings.

Performance Measurement:

Increased MAC availability monthly to allow for quicker appointment for out-of-custody defendants.

Resources:

The resources needed to meet this recommendation are outside of the court's ability to control. However, the court supports the recommendation.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

This depends on whether the recommendation is adopted by PDSC and/or the Oregon Legislature.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 5

The court will continue to reach out to members of the local bar association and to non-criminal defense attorneys to encourage taking public defense cases. The court will explain to interested attorneys how to be approved and paid by OPDS for the representation of individuals.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

The goal is to encourage more involvement with local bar members, as to supporting the criminal justice system, which requires the constitutional right to be represented in criminal cases. Even attorneys who are willing to represent persons who are accused of misdemeanors and/or minor felonies can reduce the necessity of the court appointing public defense attorneys who can then focus on more serious cases

What-If? Projections:

There are no realistic projections available, as this recommendation requires the voluntary participation of members of the local bar association. The court has previously reached out to civil attorneys with some results reported.

Performance Measurement:

Increased participation of attorneys who are willing to represent mainly out-of-custody defendants, who qualify for court appointed counsel, thus increasing capacity of attorneys to represent financially qualified persons.

Resources:

This may require OPDS to simplify the process of qualifying persons who want to represent defendants. This resource is outside the scope of the court's resources.

Timeframe:

Start Date: October 2, 2023

End Date:

Time to Take Effect:

This is dependent on the volunteerism of the local attorneys. Outreach will be no later than indicated.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 6

The court will reach out to defense consortium attorneys to identify attorneys who are willing, and able, to take more than 300 MAC cases and would agree to get on OPDS's hourly list once the attorney has reached the attorney's contract maximum.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

This intervention will allow the appointment of attorneys, not only to increase the attorney's availability for representation, but also to allow the appointment of those attorneys more frequently, instead of rationing their appointments throughout the month.

What-If? Projections:

This intervention depends on the ability of the contract attorneys to negotiate with the PDSC, the attorney's contract limitations. This is beyond the control or ability of the court.

Performance Measurement:

Performance measures depend on the ability of consortium attorneys to deal with PDSC contractual limitations. Some of the consortium attorneys have been able to accept such appointments at an hourly rate, but have indicated that they are contractually required to have used their MAC before such an arrangement has been approved.

Resources:

Resources are outside of the court's ability to start this intervention. Consortium attorneys would need to reach out to PDCS to allow for hourly rates to apply in cases before the end of a budgeted month. However, the court supports this intervention, as it will assist in the application of budgeted time during the month.

Timeframe:

Start Date: October 2, 2023

End Date:

Time to Take Effect:

Start of the intervention is dependent on negotiations between defense attorneys and PDSC.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 7

The court has adopted prioritization of cases for the appointment of counsel. As of this date, the court has not adopted a Presiding Judge Order, but judges and members of the bar have agreed that the highest priority is to provide for appointed counsel for civil commitments and persons who

remain in-custody. Consideration of appointment for persons who are out-of-custody will take into consideration the age of the case, the nature of the case with higher priority to cases charging felony or misdemeanors involving victims, and any other factors which may be reasonable in raising the priority of an individual case.

Lever(s) Impacted:

Other

Lever not mentioned above:

With the proposed changes in the PDSC contract, which calls for MAC being budgeted over a month rather than over the year, the court needs to prioritize the appointment of counsel.

Intended Outcome or Goal:

The immediate goal is to provide attorneys for those persons in-custody. That goal has already been largely accomplished. The further goal is to provide for the appointment of counsel for those persons who are out-of-custody, but the resources available need to be prioritized monthly. Ultimately, it is the goal to provide to those persons who qualify for attorneys, but are now something of backlog of persons out-of-custody, while preserving the priority of appointing attorneys for persons who remain in-custody.

What-If? Projections:

As of August 15, 2023, there are five persons in-custody in Linn County for whom attorneys need to be appointed. At least two of those persons have been incarcerated in other jurisdictions and have most likely, not appeared on their Linn County cases. The court considers that the need for in-custody persons has been met, as this number fluctuates daily, depending on whether local in-custody persons have appeared in court.

The real concern is dealing with the 163 persons reported out-of-custody on August 15, 2023, who await the appointment of attorneys. Projections on this number is difficult to determine at this point, except to note that the number of persons out-of-custody needing attorneys has dropped somewhat since August 1, 2023, when it was reported that 189 persons out of custody were awaiting court appointed attorneys.

Performance Measurement:

The court has reduced the number of out-of-custody appointments for approximately 30 persons withing two weeks in August. This number will depend, in large part, on monthly filings, which can result in the use of MAC to a greater or lesser extent for a particular month. As noted, the bench and bar have already considered the priority in cases for the appointment of attorneys.

Resources:

Resources are provided by PDSC in its contractual relationship with consortium attorneys. While prioritizing cases for appointment, the court can manage the limited resources, to some extent. Any increase in MAC available to the appointment of counsel for additional cases is outside of the scope of the court's control.

Timeframe:

Start Date: August 15, 2023

End Date:

Time to Take Effect:

This will be an ongoing intervention.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 8

The court will continue to review and adopt the use of remote appearances to free up more court docket time for cases and to allow attorneys fewer required court appearances.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

The outcome of this continued review is to increase attorney capacity by further reducing court appearances, which do not move the case forward. As a part of this intervention, the court will continue the use of remote appearances, which pursuant to a PJO, favor the use of remote appearances for court appearances such as arraignment, other pretrial court appearances such as status checks, and sentencing unless a defendant objects to remote appearance.

What-If? Projections:

It is difficult to enter projections as the ultimate result of this intervention. Hopefully, we can see more MAC available to attorneys because they can appear remotely without sitting in court.

Performance Measurement:

In the long run, we would hope to measure any additional time available to attorneys, but this will be difficult to quantify. Such information is not available to the court.

Resources:

No additional resources are identified. The court has continued to support the use of remote appearances.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Difficult to measure when this intervention may take effect. In fact, the results might not be measurable by the court.

Was there community consensus on this intervention?

No

INTERVENTION / RECOMMENDATION 9

Linn County's Parole and Probation should examine whether local sanctions, not involving court proceedings, can be used for, what the department sees as, minor infractions. This will be subject to district attorney review on a case-by-case basis.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

The intended outcome is to reduce the necessity of the court appointing attorneys to represent persons who are on probation for minor allegations of probation violations.

What-If? Projections:

At present, there are no accurate projections as to how many cases that this recommendation might affect.

Performance Measurement:

Reduction of attorney appointments for persons who are alleged to be in minor violation of their probation.

Resources:

Parole and probation and the district attorney will need to consult as to cases appropriate for allegations of minor violations of probation conditions.

Timeframe:

Start Date: October 2, 2023

End Date:

Time to Take Effect:

Difficult to gauge the time in which this recommendation might take to reduce the need for appointed counsel.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 24 – GRANT AND HARNEY COUNTIES

Presiding Judge: Robert S Raschio

Trial Court Administrator: Samantha Dowell

OSCA Staff: Lindsey Detweiler, Stephanie Guerena

Meeting Dates: Not required to hold a meeting.

BACKGROUND

The data is consistent with our district not currently having a crisis.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

None. Our practices have been consistent with OCDLA recommendations.

BEST PRACTICES

Each county has a primary contractor, and acts as the other county's conflict provider. Based on our caseloads, we don't anticipate a substantial issue. We have developed close working relationships with other attorneys within our region, that are approved by OPDS to cover conflict cases, beyond these 2 firms. We have appropriate results in cases handled by these attorneys and see no basis for intervention.

ACTIONS TO DATE

When the Harney primary contractor was over his limit, the court confirmed the qualified status of an associate in that firm and began appointing cases to him to ensure continuity of representation. For higher level crimes, we shifted to appointing cases to the Grant primary contractor until the end of the cycle.

ATTACHMENT(S)

- Executed PJO 23-004

INTERVENTION / RECOMMENDATION 1

1. Our judicial district needs a large portion of our primary contractor's MAC.
2. We recognize the need for more accurate data, so the court is implementing a new PJO and SLR related to notice/change of representation within each firm, with the following language:
    - Under current statutory law, the court must keep track of the specific attorney representing an indigent client for collection of workload data. For each of the public defense contractors who have more than one attorney assigned to individual cases, this order is required to assist the court in collecting data for addressing the

indigent defense caseload issues created under the current contact structure and limitations.

- Upon assignment of an indigent case, the court will issue an 'Order Appointing Counsel' naming the attorney and bar number of the attorney which the firm is assigning to the case.
- If the case is reassigned to another attorney in the firm, the substituting attorney shall file a "Notice of Change of Representation" with the court within five judicial days of the change of representation within the firm. The notice shall contain the attorney's name as listed with the Oregon State Bar, the attorney's bar number, the email addresses to where all court notices are to be sent, the mailing address and phone number of the assigned attorney. The notice will be filed and served on the other parties to the case.
- The case credits assigned at appointment shall be subtracted from the first attorney's caseload numbers and added to the newly assigned attorney's caseload numbers.
- The court shall allow the contracted case credits for the appointment of the firm pursuant to their contract with the Oregon Public Defense Service Commission (PDSC), and its successor agency, the Oregon of Public Defense Commission (OPDC). The court shall not allow double counting of the case credits when the case is reassigned internally.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Our judicial district needs a large portion of our primary contractor's MAC.

What-If? Projections:

The intervention will not create additional MAC, but will allow the current MAC resources to be used more effectively.

Performance Measurement:

Primary contractors not running out of MAC before the end of the cycle.

Resources:

Attorneys need to be given directions through a CJO or PDSC order that they will not take cases in other jurisdictions that eliminate their ability to provide services to their primary contracted jurisdiction.

Time to Take Effect:

There is no active intervention on our part other than issuing the SLR.

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 25 – YAMHILL COUNTY

Presiding Judge: Ladd J. Wiles

Trial Court Administrator: Mandi M. Montgomery

Crisis Team Members: Presiding Judge Ladd Wiles; Brad Berry, District Attorney; Christine Breton, OPDS; Mandi Montgomery, Trial Court Administrator; Michael Videtich, PD Consortium Executive Director

OSCA Staff: Kimberly Rose, Stephanie Guerena

Meeting Dates: July 26, 2023

BACKGROUND

Yamhill County, the 25th Judicial District, has historically had a low unrepresented count and currently has three persons (all out-of-custody) that do not have representation. Typically, a defendant ends up without representation when defense attorneys have a conflict. The number of unrepresented persons spiked in early February 2023, likely in response to the Ramos/Watkins (nonunanimous jury verdict) decisions. The number of unrepresented persons has fallen since then; although case numbers are slightly elevated over the end of 2022. Even though the county has lost a total of five public defenders over the last year, Yamhill County has been able to maintain a low number of unrepresented persons due to the collaborative efforts of the local public safety stakeholders.

Presiding Judge Ladd Wiles convened a crisis team, as required in Senate Bill 337 and Chief Justice Order No. 23-024, as the 25th Judicial District has a population of more than 100,000 persons. The crisis team intends that the recommendation included in this plan will avoid future significant increases in the number of unrepresented persons.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Yamhill County has done with following with respect to OCDLA recommendations related to the unrepresented crisis:

- Will follow the changes to the UTCR adopted by the Chief Justice (effective August 1, 2023) to UTCR 4.010 (Omnibus Hearings), 4.040 (Remote Appearances in Lieu of Transportation), and 7.010 (Plea Agreements and Negotiations). These changes resulted from a proposal developed by the Oregon Criminal Defense Lawyers Association (OCDLA) that was submitted to the UTCR Committee in 2022.
- Yamhill County has a Supplementary Local Rule (SLR 4.005) on settlement conferences that addresses some of the issues of concern for OCDLA. This includes requiring the substantial completion of discovery prior to a settlement conference and requiring the presence of the district attorney or a designee with authority to resolve the case at the settlement conference.

- Continue to offer remote hearings, including for in-custody defendants (See SLR 4.081).

BEST PRACTICES

Yamhill County currently engages in the following best practices:

- Prioritizing attorney MAC consistent with case priorities identified in the PDSC crisis plan guidance.
- The court follows the best practices for Odyssey business processes and data entry.
- Continues to offer remote hearings.

ACTIONS TO DATE

The circuit court, the District Attorney's Office, and the public defense providers in Yamhill County have a collaborative working relationship. This culture has allowed the 25th Judicial District to resolve issues as they arise and maintain a low number of unrepresented persons.

Yamhill County has taken the following actions to avoid or reduce the number of unrepresented persons:

- The court utilizes weekly status hearings when a defendant has not had an attorney to identify an attorney who could take the case. The Trial Court Administrator communicates with the Office of Public Defense Services (OPDS) before each status hearing.
- The court generates a weekly report that identifies persons/cases without representation and provides the report to the district attorney and public defense providers.
- The Presiding Judge will contact individual attorneys to help facilitate appointments.
- The court ensures resources are dedicated to case dispositions, including having two judges available to resolve cases by plea or trial, and encourages timely disposition by allowing a defendant to change their plea on the day of trial.
- The District Attorney's Office works to provide discovery to the defense in a timely manner and ensures attorneys comply with timelines specified in office policy.

INTERVENTION / RECOMMENDATION 1

Increase Attorney Capacity – The PDSC should contract for additional attorneys.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented defendant crisis. An increase in attorney capacity can be obtained by adding additional attorneys to the system. Hiring and/or developing attorneys has the effect of adding attorneys to the system.

What-if? Projections:

To eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Yamhill County, the need is 0.03 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below. By adding this additional capacity, the current unrepresented crisis in Yamhill County would be addressed in twelve months' time.

Additionally, Yamhill County identified the need to add attorneys to avoid future increases in the number of unrepresented persons, particularly in major felony cases.

The following additional attorney capacity is needed:

Minor Felony	0.01	1
Misdemeanor	0.00	3
Probation Violation	0.00	2
PCR/Habeas	0.02	1

Annual Case Assignment for 1.0 FTE:

Murder	6
Jessica Law	6
Measure 11	45
Major A/B felonies	138
Minor felonies	165
Misdemeanors	300
Probation violations	825
Civil commitment	230
PCR/Habeas	45

Performance Measurement:

- Decrease in number of individuals on unrepresented list.
- No unrepresented defendants by September 2024.

Resources:

The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Presiding Judge to discuss with the district attorney and Executive Director of public defense consortium, approaches to cases in warrant status and whether the court should terminate the appointment of an attorney after an agreed upon number of days that an individual is on warrant status for FTA and return the individual to the unrepresented list.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

If there is agreement among the members of the crisis team on an approach to cases in warrant status, then the intended goal or outcome is to increase attorney ethical capacity and reduce the number of unrepresented individuals.

What-if? Projections:

OJD acknowledges that, because of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Yamhill County, as of August 10, 2023, there were 72 open appointments for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows.

Number of appointments on warrant status by case type:

Jessica's Law	1
Measure 11	0
Major Felony	5
Minor Felony	25
Misdemeanor	41
Civil Commitment	0
PCR	0

Performance Measurement:

Reduction in the number of individuals on warrant status with appointed attorneys.

Resources:

Court business process change.

Was there community consensus on this intervention?

Yes

JUDICIAL DISTRICT 26 – LAKE COUNTY

Presiding Judge: David M. Vandenberg

Trial Court Administrator: John Powell

Crisis Team Members: None

OSCA Staff: Tiffany Quintero, Stephanie Guerena

Meeting Dates: None required. Informal discussions with all partners at various times for input and information.

BACKGROUND

No "crisis" at the present time. Unrepresented defendants are PCR/habeas corpus cases and OPDS has been contacted for attorney assignment. Local attorneys do not handle these cases and are not contracted to take these cases. Other delays in appointments experienced in Lake County were cases where all local attorneys were conflicted.

We have experienced an increase in filings and have a small backlog of cases. One local attorney is seeking a district attorney appointment, which would cause a loss of Lake County's most experienced court appointed lawyer.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

Our practices are consistent with OCDLA recommendations. We continue to allow remote appearances whenever practicable.

BEST PRACTICES

We should be able to appoint attorneys with our existing attorneys. Should an attorney quit taking cases or all attorneys be conflicted we look to neighboring counties and OPDS to find attorneys.

ACTIONS TO DATE

We have reached out to OPDS when conflicts caused an unavailability of attorneys. Eventually, attorneys from other locations were appointed.

INTERVENTION / RECOMMENDATION 1

- Review court practices regarding warrant status cases (from resignation in 6 months to 60 days).
- Revise show cause filings to include detailed explanation for resolution so cases may be resolved prior to court hearings, reducing appointments.
- Seek additional MAC for increase in cases.
- If needed, work with the District Attorney's Office to review policy for filing Failure to Appear and Contempt matters.
- Recruit additional providers to the area.

Lever(s) Impacted:

Filings; Dispositions; Attorney Capacity; Add Attorneys

Intended Outcome or Goal:

Continue to have attorneys available with sufficient MAC to cover all cases. Have out-of-county attorneys available for conflict matters.

What-if? Projections:

If our available attorneys do not change, all defendants seeking an attorney should have one available.

Performance Measurement:

All defendants being represented in a timely manner.

Resources:

OJD dashboard. Coordination with OPDS.

Timeframe:

Start Date: September 1, 2023

End Date:

Time to Take Effect:

Immediately

Was there community consensus on this intervention?

No

JUDICIAL DISTRICT 27 – TILLAMOOK COUNTY

Presiding Judge: Jon R. Hill

Trial Court Administrator: Christopher Hamilton

OSCA Staff: Tiffany Quintero, Stephanie Guerena

BACKGROUND

As of July 31, 2023, Tillamook County did not have any unrepresented defendants. Unlike other courts, Tillamook County has not experienced an unrepresented individual crisis. There has only been a single individual unrepresented in a murder case, which required an attorney appointment from outside the local consortium contract due to conflicts.

In Tillamook County, cases filed decreased 3.5% over the previous year. This decrease occurred over all case types except for civil commitments and delinquency cases. This contrasts with statewide cases filed, which increased 1.4% with increases across most case types.

Tillamook County saw a 4.2% increase in dispositions and an 8% increase in clearance rate during FY 2023. In the past two fiscal years, Tillamook County's clearance rate was above 100%. A clearance rate above 100% is usually associated with the court successfully working through a backlog of cases in need of disposition.

In Tillamook County, the MAC for the current contract period of July 1, 2022 – September 30, 2023, is 4.88. The MAC currently used is 3.34, which is below the target of 4.23. The current MAC used is also below the original contracted amount prior to the contract extension. This may be explained by lower case filings because of understaffing at the District Attorney's Office and Measure 110.

ACTIONS TAKEN TO DATE ON OCDLA RECOMMENDATIONS

- Tillamook County will follow the new UTCRs 4.010 and 7.010, which went into effect on August 1, 2023.
- The Tillamook bench also works daily to accommodate the needs of attorneys to allow remote and hybrid appearances by counsel, as in the normal course of the local business practices.

BEST PRACTICES

- Tillamook County has identified an out-of-county attorney that is willing to take conflict cases, should the need arise.
- The Presiding Judge should be consulted and notified prior to contract changes with local consortium attorneys. This notification will alleviate any confusion with appointments during court proceedings.

ACTIONS TO DATE

- The dockets were separated from a master docket schedule to individual docket schedules for each judge.
- In an effort to eliminate scheduling conflicts, consortium attorneys have set weeks and times within a week in each courtroom.

INTERVENTION / RECOMMENDATION 1

Be cautious about implementing policy changes to improve the public defense crisis in one judicial district that might create a crisis in another district.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Retain public defenders.

What-if? Projections:

No MAC projection.

Performance Measurement:

Attorneys retained.

Resources:

The 27th Judicial District will utilize the data dashboards provided by the Oregon Judicial Department to monitor progress on these performance measures.

Timeframe:

Start Date: August 17, 2023

End Date:

Time to Take Effect:

Ongoing

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 2

Update contracting to acknowledge the higher cost-of-living in some areas of the state, and remove livability barrier.

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increase number of attorneys interested in public defense, to include areas with higher cost-of-living.

What-If? Projections:

No MAC projection.

Performance Measurement:

- Improved time to disposition.
- Reduction in case backlogs.
- Reduction in motions to continue.

Resources:

PDSC contracting adjustment.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 3

Better recruitment and training strategies – implement strategies to increase recruitment so that more people apply to work as public defense providers in counties that need it. Ideas to increase applicants include:

- Posting job openings on job recruitment websites and geotargeting of job postings through search engines.
- Partner with law schools to create clinics in counties outside of Lane, Marion, and Multnomah counties.
- Advocate for increased pay and benefits (consider tuition reimbursement, loan forgiveness, relocation reimbursement).

Lever(s) Impacted:

Add Attorneys

Intended Outcome or Goal:

Increased number of public defense providers.

What-If? Projections:

No MAC projection.

Performance Measurement:

Measure number of attorneys and the increased MAC.

Resources:

- Funding to pay for job recruitment websites and more sophisticated job posting strategies so that potential candidates can find those opportunities online.
- Funding needed from legislature to fund public defense work.
- Resources from law schools to invest in clinic.

Time to Take Effect:

To be determined.

Was there community consensus on this intervention?

Yes

INTERVENTION / RECOMMENDATION 4

Regional coordinator to address conflict cases.

Lever(s) Impacted:

Attorney Capacity

Intended Outcome or Goal:

Allow the court to locally seek attorneys in the region and neighboring counties to address conflict cases.

What-If? Projections:

This intervention will not create additional MAC, but will allow the current MAC resources to be used more effectively.

Performance Measurement:

- Conflict cases on the unrepresented list are resolved.
- Improved time to disposition.
- Reduction in case backlogs.
- Reduction in motions to continue.

Resources:

Change in policy.

Was there community consensus on this intervention?

Yes

APPENDIX B: CIRCUIT COURT CRISIS PLAN

B.2 CRISIS PLAN ATTACHMENTS

Judicial District 01	Jackson County
Judicial District 03	Marion County
Judicial District 04	Multnomah County
Judicial District 05	Clackamas County
Judicial District 06	Umatilla and Morrow Counties
Judicial District 07	Sherman, Wasco, Gilliam, Wheeler and Hood River Counties
Judicial District 09	Malheur County
Judicial District 11	Deschutes County
Judicial District 12	Polk County
Judicial District 15	Coos and Curry Counties
Judicial District 18	Clatsop County
Judicial District 20	Washington County
Judicial District 23	Linn County
Judicial District 24	Grant and Harney County

Recommended Intervention

<table>
<tr><td>Recommendation</td><td>Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.</td></tr>
<tr><td>Lever</td><td>Attorney Capacity OR Add attorneys</td></tr>
<tr><td>Intended Outcome or Goal</td><td>While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.</td></tr>
<tr><td>What if analysis</td><td>In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Jackson County, the need is 2.50 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed:
<table>
<tr><th></th><th>Capacity Needed (attorney FTE)</th><th>Total # of additional cases for new attorneys</th></tr>
<tr><td>Measure 11</td><td>0.04</td><td>2</td></tr>
<tr><td>Major Felony</td><td>0.30</td><td>41</td></tr>
<tr><td>Minor Felony</td><td>0.98</td><td>161</td></tr>
<tr><td>Misdemeanor</td><td>1.07</td><td>321</td></tr>
<tr><td>Probation Violation</td><td>0.11</td><td>91</td></tr>
</table>
Annual Case Assignment for 1.0 FTE
• Murder 6
• Jessica Law 6
• Measure 11 45
• Major A/B felonies 138
• Minor felonies 165
• Misdemeanors 300
• Probation violations 825
• Civil commitment 230

~OR~

In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by 14%. This contract cycle, attorneys in Jackson County have taken 4,956 public defense cases over 13.36 months, meaning per month, attorneys are currently able to take 371 cases. Currently, there are 616 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in Jackson County would have to take 422 cases a month, for an increase of 14%. Jackson County has 26 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county. This would result in the following increases based on current caseloads:</td></tr>
</table>

<table>
<tr><td></td><td>
<table>
<tr><th></th><th>Current Represented Cases (13.36 months)</th><th>Current Unrepresented Cases (13.36 months)</th><th>Proposed % Increase (13.36 months)</th></tr>
<tr><td>Civil Commitment</td><td>45</td><td></td><td>0%</td></tr>
<tr><td>Jessica's Law</td><td>5</td><td></td><td>0%</td></tr>
<tr><td>Major Felony</td><td>458</td><td>41</td><td>9%</td></tr>
<tr><td>Measure 11</td><td>151</td><td>2</td><td>1%</td></tr>
<tr><td>Minor Felony</td><td>1,238</td><td>161</td><td>13%</td></tr>
<tr><td>Misdemeanor</td><td>2,478</td><td>321</td><td>13%</td></tr>
<tr><td>Murder</td><td>7</td><td></td><td>0%</td></tr>
<tr><td>PCR/Habeas</td><td>4</td><td></td><td>0%</td></tr>
<tr><td>Probation Violation</td><td>567</td><td>91</td><td>16%</td></tr>
<tr><td>Specialty Court</td><td>3</td><td></td><td>0%</td></tr>
</table>

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Jackson County would be addressed over twelve months' time.
</td></tr>
<tr><td>Performance Measure</td><td>Decrease in number of individuals on unrepresented list.
No unrepresented defendants by September 2024.</td></tr>
<tr><td>Resource Needed</td><td>The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.</td></tr>
<tr><td>Future Actions</td><td></td></tr>
</table>

Warrants

<table>
<tr><td>Intervention</td><td>Terminate appointment of attorney at 60 days if individual is on warrant status for FTA & return individual to unrepresented list</td></tr>
<tr><td>Lever</td><td>Attorney Capacity</td></tr>
<tr><td>Intended Outcome or Goal</td><td>Increase attorney ethical capacity, reduction in number of unrepresented individuals.</td></tr>
<tr><td>What if analysis</td><td>OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Jackson County as of 8/10/2023, there are 456 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

<table>
<tr><th></th><th>Number of appointments on warrant status</th></tr>
<tr><td>Murder</td><td></td></tr>
</table>
</td></tr>
</table>

	Measure 11	1
	Major Felony	75
	Minor Felony	112
	Misdemeanor	268
	Civil Commitment	
	PCR	
Performance Measure	Reduction in the number of individuals on warrant status over 60 days with appointed attorneys	
Resource Needed	Business process change	
Future Actions		

Intervention or Action Recommended	Lever Utilized	Outcome, Impact, or Goal	How to Measure or Track	Resources, Barriers and Limitations	Timeframe to Implement	Consensus or Note Dissent
Increase Attorney Capacity/Add Attorneys— The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys	Attorney Capacity OR Add attorneys	Increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.	Dashboards will track a reduction in unrepresented individuals	The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis		
Coordinator for attorney appointments – Local or regional coordinator for attorney appointments. The coordinator, an OJD employee, will identify available qualified attorneys with capacity, assist the court in prioritizing appointment (considering custody status of individuals in need of counsel,	Attorney Capacity	Increase attorney capacity, system efficiencies; reduction in number of unrepresented individuals	Dashboard will track a reduction in number of unrepresented individuals	Position and funding for coordinator		

and qualifications) identify and coordinate appointment to conflict counsel, monitor AIC and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody						
Cite and release warrants – increase or maintain use of cite and release warrants	Attorney capacity (in-custody defendant)					
Warrants – Terminate appointment of attorney at 30 days if individual is on warrant status for FTA & return individual to unrepresented list – judicial discretion for exceptions.	Attorney Capacity	Increase attorney ethical capacity, reduction in number of unrepresented individuals	Dashboard will track a reduction in the number of individuals on warrant status over 30 days with appointed attorneys	Business process change		Concerns: Exceptions for folks known to def atty and basis for not removing. Levels of FTA? Attys have done work on the case and creates conflicts if moves from firm to firm. Staff impact when on and off warrant status.
Arraignment attorney – Arraignment is handled by a duty attorney under contract with the PDSC	Attorney capacity	Arraignment docket can be handled by single attorney. This attorney will have time to talk with in-custody	Dashboard will track reduction in the number of individuals on the unrepresented	Policy change; business process change Similar to specialty court docket appearances –		Attorneys will only agree to do it if specifically funded

		individuals and Release Assistance Officers prior to arraignment, increasing the possibility of the court having information needed to make a release decision at arraignment, reducing the need for additional court hearing(s). It will also free up capacity for attorneys to work their assigned cases	list, fewer continuances, increased time to disposition	inside a contract or hourly		through a contract or hourly Need coordinator to have access to conflict information
Mandatory settlement dockets for property offenses early in the process (prior to 180-day mark)	Increase disposition	Reduce caseloads for minor felony attorneys and thus increase capacity or make existing caseloads more manageable	Dashboard tracking results from time of implementation and comparing to dispositions form same quarter in earlier years to determine success	Policy change		Atty capacity concerns. Suggest as needed settlement dockets. Gpod docket
Robust 416 program	Increase disposition			Need jail beds to be successful		
Implement a rolling minimum workload model	Increase capacity	Attorneys accountable to carry a minimum workload set and paid based on experience/qualification	Dashboard will track a reduction in number of unrepresented individuals	PDSC policy and contract change.		
Case resolution requirements: Standardized status questions – discovery, offer, witness contact, investigation, evaluations						

Payment for Post-Conviction work – encourages attorneys to take BM11, JLaw, Murder	Capacity					
Pay increased rate based on experience	Retention					

LEVERS:

(1) Reduce filings
(2) Increase disposition
(3) Increase # of attorneys
(4) Increase attorney capacity

Intervention or Action Recommended	Lever Utilized	Outcome, Impact, or Goal	How to Measure or Track	Resources, Barriers and Limitations	Timeframe to Implement	Consensus or Note Dissent
Continue Early Disposition Program resolutions.	Increase time Dispositions	Reduce appearances, increasing capacity by resolving cases quickly	Number of EDPs filed	As DAs stop filing crime by category, cases appropriate for EDP become lessened.	(Currently in place)	Increasing (prop offense pre rec for career prop offender) but not filing additional cases that would have been EDP eligible (thefts).
Pre-filing Diversionary Programs: - Law Enforcement Diversion (LEED) - Mobile Crises Unit - Community Outreach Services Referral	Reducing Filings	Reduce cases filed in criminal process	Programs have to individually track- we won't know what isn't referred to the court	Funding/Resources. Upscaling and staffing availability.	(Currently in place)	
Specialty/Diversionary Courts: - Veteran Court - Drug Court - Mental Health Court - STAR Court - Fostering Attachment - 416 Program	Increase Atty Capacity	Create appropriate offramps to address underlying causation of crime.	Recidivism rates of participants	Funding/Resources.	(Currently in place)	Consider DUII and DV specialty court

Mass settlement docket(s)	Increase Atty Capacity	Resolve cases	Number of cases resolved through mass settlement dockets	Inefficient; creates incentive to delay may be barrier to resolution; resource intensive, and should be occurring naturally with efficient court process	(Currently in place)	Heavy lift
Remove warrant cases from attorney case counts	Increase attorney capacity	Create additional capacity for case count		Cases coming back from warrants suddenly increase beyond capacity or create inefficiency if reassigned too quickly.	Immediate	Court Discretion
Centralized court-appointed case count system	Increase atty capacity by accurate real time data	Build a centralized atty tracking dashboard that allows real-time case counts per atty for judges. Reads eCourt for real-time numbers		Cost and timeliness to implementation	Long term	Realtime information about capacity
Review of how eligibility for CAA is verified locally in Marion County Court Process.	Increase Atty Capacity	Ensure that net of CAA eligibility is not case too wide, capturing individuals NOT eligible for funding.		Limited access to data; court resources.	Short	Should there be jurisdictional or regional standards rather than state wide?
Secretary of State Audit of OPDS	Increase # of attorneys	Rely on lawyers being professionals to determine competency.	Track type and number of attorneys seeking OPDS	Ensuring high-quality services to indigent defendants	Immediate	Role of LFO? They are budget audits

		ORPCs already address minimal competency	reimbursement/contracts			
Sec of State Audit on OJD CAA validation process- State level	Increase capacity	Validate process and information OJD relies upon to ensure indigent defendant is eligible for COA.			Moderate	
Remove indigent defense qualification threshold metrics from OPDS responsibility	Increase attorney capacity (by reducing eligible clients)	OPDS setting metrics = two problems (1) perceived conflict and (2) over-broad inclusion into public defense services	Review % of public defense eligible defendants		Immediate	Statutory – would need to be a legislative fix
Increase funding streams to pay for indigent defense services	Increasing attorneys through additional pub defense funding	Modify court-fees to help off-set and increase funding for OPDS funding.	Audit current funding streams and funds contributed	Potential conflict. Increasing cost of being charged with crime.	Long term	Collection rates, where do fines and fees go? Go to general fund if not timely collected
Identify and eliminate incentives for obstructions in effective public defense services.	Increase attorney capacity	Identify and remove incentives to create system problems (i.e., crisis increases likelihood of		Difficulty differentiating between constitutionally adequate services and deliberate obstruction. Likely requires diverse workgroup.	Moderate	

		additional funding.)				
(re)Define OPDS' customer	Increase number of attorneys through better systems.	Currently, who is OPDS' customer? Public defense attorneys? Individual criminal defendants? Taxpayer? Efficient Court systems?	OPDS customer could be indigent defense attorneys. (trust lawyers to be professionals, and streamline systems and funding to make THEIR job easier.)	Is minimally adequate system the appropriate metric? If not- where is the line?	Immediate	
Additional clarity on what qualifies as constitutionally adequate public defense services; examine other "comparable work" in other legal offices (i.e. Holistic Defense)	Decrease time to disposition	Not all services to indigent defendants are necessary or within more narrowly defined legal services (i.e. social work)		Delicate balance between legal services and long-term solutions for clients. Requires additional partners (BAR, PCR courts, etc.) Very difficult to structure. Workgroup likely needed	Long term	Core functions with limited resources. Funding for social service support services/navigators. Frees up attys for atty work. PCRP model. What role does OPDS play in advancing attorneys. What is specifically required to

						make attorneys eligible for a qualification. Self-regulating problems…private attorneys can take anything (ethical??) Problem with moving up is PCR risk and no payment for trial attorney in PCR case.
Disallow OPDS to prefer specific types of service providers (remove preference for public defense vs consortium vs individual contract).	Increase # of attorneys as Pub Def model does not work for all lawyers	If true that OPDS prefers public defense offices, require OPDS to have fiscally responsible plans for any type of attorney who wishes to provide services.		Quality assurance	Moderate	

LEVERS:

(1) Reduce filings
(2) Increase disposition
(3) Increase # of attorneys
(4) Increase attorney capacity

Intervention or Action Recommended	Lever Utilized	Outcome, Impact, or Goal	How to Measure or Track	Resources, Barriers and Limitations	Timeframe to Implement	Consensus or Note Dissent
Pay private bar (MCAD) attorneys ethically and hourly ($200-$300) for the work they actually do rather than forcing them to act unethically	4, 3	Increased cases handled by existing attorneys and retain them, attract new lawyers and retain them	Number of cases handled, number of attorneys in system	Takes money that OPDS says it does not have and does not want to spend, OPDS does not want to have to deal with consortia	Can be done immediately if OPDS is willing to do it. Will take a number of years to increase the number of lawyers doing this work	Overhead is 2/3 of what you bring in. Adequate pay will bring in more attorneys. Attys keep time now – need common time keeping system. Common cloud-based data base. Realtime knowledge of what cases atty has and how much time they are spending.
Hold monthly mass settlement conferences	2	Increases the number of resolved cases	Number/percentage of cases involved in settlement conferences and number/percentage resolved	Takes judicial resources, requires both sides to be willing to resolve, but suggests to both sides no need to try to resolve on own	Can be started immediately	Heavy lift. Many could resolve without.
OPDS stop being a barrier to allowing attorneys to be paid	4, 3	Increase the number of cases handled by existing attorneys	Number of unrepresented	OPDS has the money to pay but is refusing to allow MCAD lawyers to	Can be done immediately – increase	Red tape. Less than 10 people handle

hourly on non contract cases and to paying the lawyers Increase Staffing.			cases getting attorneys	be paid hourly by placing significant barriers to be approved (the current position of OPDS appears to be it will not approve any MCAD lawyers) and has created significant barriers to being timely to be paid that it does seem to want to devote the resources to to remove (see next entry)	staffing if even temporarily to get caught up and then adequate staffing to maintain.	all accounts for the state.
OPDS stop being a barrier to paying interpreters	2, 4	Increase the number of interpreters and, therefore, their availability	Number of interpreters in the system, time for an attorney to be able to meet with their client	OPDS must change their mindset that a delayed and difficult process to get paid is good for the system and must make the process to submit invoices easier and must process invoices without delay (less than two weeks)	Will likely take a month or two (if OPDS devotes the resources to eliminating the payment delay) to have invoices paid within two weeks. Not sure how long it will take for OPDS to establish a "friendly" invoice submission process	
OPDS pay extra for bilingual lawyers	3, 2	Increase the number of bilingual lawyers which will increase the speed at which they can meet with their clients (no interpreter must be scheduled)	Number of bilingual lawyers in the system	OPDS has not wanted to spend the money to incentivize bilingual lawyers	Can be done immediately if OPDS wants to do it	

OPDS stop increasing the administrative (collecting and reporting data) burdens on attorneys unless they pay for the work	2,3, 4	If increasing administrative work is paid for attorneys can hire staff to do it, otherwise the cost comes out of their pocket or they do on their own – not having the unfunded burden on the attorneys increases what they can do as attorneys	Is OPDS appropriately paying for the time for attorneys to record and report the data it requires attorneys to provide	OPDS has never wanted to pay for administrative costs	Can be done immediately if OPDS is willing to do it	Currently 5% on top of the contract for Admin.
OPDS provide funding for training	2, 3, 4	Training means lawyers can operate more efficiently increasing their capacity, will attract more lawyers because they see they will get the training they need to be successful	Actual funding of training and number of lawyers who utilize it and the increased number of cases they take	OPDS does not believe consortia provide or even can provide training so they refuse to fund	Can be started immediately if OPDS is willing to do it	Will need to submit your training plan – regional?? At least let consortiums be eligible for it.
OPDS provide funding for supervision	2, 3, 4	Supervision means lawyers can continue to learn and, therefore, operate more efficiently increasing their capacity, will attract more lawyers because they see they will get the help (supervision) they need to be successful	Hard to measure other than looking at the increased number of cases a lawyer taking	OPDS does not believe consortia provide or even can provide supervision so they refuse to fund. This will take existing experienced lawyers out of representing clients (they will be handling fewer cases) but in the long run (3 to 5 or so years) the number experienced/highly qualified of attorneys in the system should increase	Can be started immediately if OPDS is willing to do it	Will need to submit your supervision plan – let consortiums be eligible for it.
OPDS pay existing, experienced, long term public defense providers at rates similar to what it is offering	2	Keep experienced lawyers in the system, lawyers who can resolve cases faster than new lawyers	Number of lawyers remaining public defense providers	OPDS claims it does not have the resources to do this but it is a matter of what they are willing to prioritize	Can be started immediately if OPDS is willing to do it	

new providers through the enhanced rate program						

CRISIS PLAN WORKSHEET

LEVERS:

(1) Reduce filings
(2) Increase disposition
(3) Increase # of attorneys
(4) Increase attorney capacity

Intervention or Action Recommended	Lever Utilized	Outcome, Impact, or Goal	How to Measure or Track	Resources, Barriers and Limitations	Timeframe to Implement	Consensus or Note Dissent
<u>Marion County Justice Partners Proposal to the Public Defense Service Commission:</u> Public Defense Unit Funding Model for Nonprofit Public Defense Offices during the Unrepresented Crisis: "PDU" Funding Model instead of "MAC" contracts to supply all necessary staff, investigators, overhead costs, benefits, liability insurance, software and equipment, technology supports, training, compliance, and oversight. (Pilot through meaningful first appearance and arraignments?)	4	Adequate resources and workforce support for Public Defense Attorneys. Additional Administration, Investigation, Mitigation, and Client Support to free up more existing attorney capacity. Added Existing Attorney Capacity to Represent Clients	Monitor current workload reports and open caseload reports for all cases assigned to attorney without objection/ with ethical acceptance of new client matters. Monitor the workload and caseload reports for cases assigned to "PDU" funded attorneys. Document any change in Existing Attorney Capacity	Time to implementation is incredibly short. Oregon's current funding model continues to fail to 1) acknowledge the actual work required and provided by attorneys and neglect to fund minimum resources necessary to meet the standards for adequate defense representation. Also, the current contract structure fails to 2) adequately fund public defense office operations, 3) provide for reasonable attorney workloads and compensation, and 4) invest in adequate support staff to meet the needs of public defenders' caseloads and their clients.	Presentation of the terms to the PDSC and OPDS in August and September. Attorney Reporting, Shared Data, and Analysis of Existing Attorney Capacity from Oct. 2023- January 2024. Prepare data for long-term funding request and implementation in short session	MAC is modified case counting and trying to get away from that.
<u>Marion County Pilot Program for Hourly Billing or Workload Contract Model for 2023- 2025:</u>	3 & 4	Accurate forecasting of Public Defense Needs and Early Identification of Potential Shortages.	Ongoing hours worked reported to OPDS.	Unknown from DA and Court Perspectives	Presentation of the terms to the PDSC and OPDS in August and September.	RFP process very involved

Allow private contractors and nonprofit public defense contracts to differ Hourly billing for private attorneys and time keeping for nonprofit public defenders. Adjust for employer vs. contract costs and expenses		Adequate resources and workforce support for Public Defense Attorneys. Provide improved data and analysis for OPDS about the minimal work being done for each client prior to disposition. Improve oversight and accountability. Education of Legislature: Granular Data needed to understand Public Representation in Totality for those who are not currently practicing Public Defense Representation.	PDSC/ OJD partnership in documenting minimum hours spent on every client matter. Granular data sharing to identify the work performed by public defense attorneys and the different areas where unnecessary work may be occurring. Ex. Multiple needless court appearances, full preparation of trials that are dismissed within one week of trial setting, absorption, conversion, and management of multi-agencies discovery	Time to implementation is incredibly short. OPDS limited with staff and resources at the state agency level. OPDS need to increase IT and data systems funding within the agency and for all Marion County Providers. Judicial Stop to Forced Appointments	Attorney Hourly Reports, Shared Data with PDSC/ CJC/ and Legislators 2024 Analysis of Existing Attorney Capacity from Oct. 2023-December 2023. Prepare data for long-term funding request and implementation in short session.	and resulted in variety of contract. Now its based on qualificatio ns, staffing levels, overhead. Request for Qualificati on – request to contract. Problem is current KTs written as Public Defense Contracts and shoe hole consortium into that format
Prioritization of Current Limited Attorney Resources for: 1) People Held In Custody, 2) Child Victim(s) Stated in Charge, or 3) Person to Person Felonies	4	Ensure that those with the greatest loss of liberty can receive representation without unnecessary	Weekly reporting to court providing updates on individual attorney workloads. In Custody Appointment Reporting In or Out of Contract and tracking the prioritization of remaining	None from PDMC Unknown from DA and Court Perspectives	Immediately	Duii Docket? Streamline ??? Diversion Docket – can the Arraignme nt attorney work on those?

			attorney workload capacity for those in custody			DV Docket?
<u>Proposed DA Policies and Practice Changes</u>: <u>Efficient **Discovery** Management Systems:</u> - Centralized and Uniform Process for Larger Offices to Receive Discovery. - Bates Stamp for all discovery. <u>Resolve Late Discovery</u>: - Filed sworn DA statements for Brady material and full discovery by pretrial conference date. - Court Colloquy on Record at PTC <u>Improved Settlement Offers</u>: - Timeline for Initial DA generated offers. Similar quality of an EDP or violation treatment offer. - State Stipulated Departures on	2	- Processing of discovery at a quicker pace and earlier review with client (during week of initial appointment, if possible). - Earlier dispositions with full review of discovery - Record of compliance with DA discovery obligations - Less continuances of trial - Prioritizing use of available defense capacity in preparing fully for trials that will be continued - Creating offers that defenders cannot beat at trial	- DA data of all discovery provided to PDMC - PDMC centralized uniform data of receipt of discovery - DA and Defense attorney feedback on ease of use and reference of Bates Stamp materials - OJD data decrease in continuances week prior or week of trial - On the record data of completed discovery obligations or need for more DA time to satisfy obligations prior to trial setting (Unknown)	From PDMC - Additional Data and IT funds made available from OPDS - Adjust internal workflow of discovery department - Adjust tracking tools and generated reports - Training on new discovery timelines and court colloquy - Training on negotiation and counter offers when appropriate Unknown from DA but believe there may be an	PDMC: 30 Days after change in DA Discovery Production and Practice to Adjust and Implement Internally Unknown from DA Unknown from Court	Increase in video and body cam discovery has increased litigation workload by 30% min. How to make that process more efficient. Integration difficulties need to be resolved when looking at new case management systems. $$$ Technology will increase exponentially.

Mandatory Minimum Sentences on All Open/ Pending Cases				internal systems issue and funding issue.		
Marion County Community Court Program	1 & 2					Clackamas co, Lane Co muni ct.

Multnomah Circuit Court Concerns with OJD "Draft Recommended Encouraged Interventions 08.11.2023"

Recommendation	Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.

For this OJD recommendation, the existing contractual MAC equivalencies were used to determine that all the contracted public defenders in Multnomah would each need to increase their caseload by 5% to take on all the current and incoming cases over the course of their new contract. The flaw in this rationale is that the vast majority of the public defenders in this county are not meeting their contractual MAC as it is. Neither the attorneys working for Metropolitan Public Defenders (MPD) nor those working for Multnomah Defenders Inc. (MDI) are carrying "full caseloads" as defined in their contracts for representation in Multnomah County. Their ethical workload limitations prevent many of the public defense attorneys currently under contract in Multnomah County from taking their contractual MAC. Increasing their contractual MAC will not address the problem here if their contracts also allow them to cease taking cases when they reach ethical limits, however those are defined.

To calculate the percentage of increased capacity needed, OJD used the number of currently unrepresented public defense cases in Multnomah County (527) based on data from Odyssey. This does not include the 400 felony cases our DA has indicated they are holding and prepared to file, nor whatever percentage of the cases dismissed due to multiple appearances without representation will ultimately be refiled. The current number of criminal cases needing representation could easily be double the number that shows in our Odyssey data as active cases without attorneys.

Their calculation states that to cover new criminal cases being filed monthly as well as all the currently unrepresented cases, Multnomah County attorneys would have to take 797 cases per month in the new contract cycle, for an increase of 5% in the number of cases each attorney takes. OJD's estimate assumes that for the next contract cycle there will be 797 cases per month that need public defense representation in Multnomah County. That calculation is based on the notion that criminal cases will be filed at the same rate that they have been filed over the last 13+ months. They arrive at 797 by adding the appointments to date in the contract cycle (10,121) to the number of currently unrepresented cases (527) and dividing by the 13.36 months elapsed in the current contract cycle—which assumes that for the new contract cycle filings will remain flat.

There are known (as well as unknown) changes underway which could drive a larger increase in criminal case filings including the new fentanyl possession law, changes in booking policies for the Multnomah County jail, and changes in enforcement policies and practices, including a new traffic patrol unit at the Portland Police Bureau focused on DUII enforcement. To the extent that criminal filings increase, there will be a bigger gap between appointments made and cases needing appointments.

OJD's calculations and suggested recommendations follow on the next page for reference.

OJD Recommended Intervention

<table>
<tr><td>Recommendation</td><td>Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.</td></tr>
<tr><td>Lever</td><td>Attorney Capacity OR Add attorneys</td></tr>
<tr><td>Intended Outcome or Goal</td><td>While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.</td></tr>
<tr><td>What if analysis</td><td>Select this LEVER: Add attorneys

In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Multnomah County, the need is 3.15 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed:
<table>
<tr><td></td><td>Capacity Needed (attorney FTE)</td><td>Total # of additional cases for new attorneys</td></tr>
<tr><td>Measure 11</td><td>0.24</td><td>8</td></tr>
<tr><td>Major Felony</td><td>0.40</td><td>57</td></tr>
<tr><td>Minor Felony</td><td>2.19</td><td>366</td></tr>
<tr><td>Misdemeanor</td><td>0.30</td><td>87</td></tr>
<tr><td>Probation Violation</td><td>0.01</td><td>9</td></tr>
</table>
Annual Case Assignment for 1.0 FTE
• Murder 6
• Jessica Law 6
• Measure 11 45
• Major A/B felonies 138
• Minor felonies 165
• Misdemeanors 300
• Probation violations 825
• Civil commitment 230

~OR~

Select this LEVER: Attorney Capacity

In lieu of adding attorneys, the existing attorneys within the county could increase their current caseload capacity by 5%. This contract cycle, Multnomah County attorneys have taken 10,121 public defense cases over 13.36 months, meaning per month, attorneys are currently able to take 758 cases. Currently, there are 527 unrepresented public defense cases. To cover the current and unrepresented caseload over 12 months of the contract, Multnomah County attorneys would have to take 797 cases a month, for an increase of</td></tr>
</table>

<table>
<tr><td></td><td>5%. Multnomah County has 95 active attorneys on contract. This would result in the following increases based on current caseloads:

<table>
<tr><th></th><th>Current Represented Cases</th><th>Current Unrepresented Cases</th><th>Proposed % Increase</th></tr>
<tr><td>Civil Commitment</td><td>14</td><td></td><td>0%</td></tr>
<tr><td>Major Felony</td><td>839</td><td>57</td><td>7%</td></tr>
<tr><td>Measure 11</td><td>419</td><td>8</td><td>2%</td></tr>
<tr><td>Minor Felony</td><td>2,978</td><td>366</td><td>12%</td></tr>
<tr><td>Misdemeanor</td><td>3,998</td><td>87</td><td>2%</td></tr>
<tr><td>Murder</td><td>51</td><td></td><td>0%</td></tr>
<tr><td>PCR/Habeas</td><td>15</td><td></td><td>0%</td></tr>
<tr><td>Probation Violation</td><td>1,733</td><td>9</td><td>1%</td></tr>
<tr><td>Specialty Court</td><td>74</td><td></td><td>0%</td></tr>
</table>

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Multnomah County would be addressed over twelve months' time.</td></tr>
<tr><td>Performance Measure</td><td>Decrease in number of individuals on unrepresented list.
No unrepresented defendants by September 2024.</td></tr>
<tr><td>Resource Needed</td><td>The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.</td></tr>
<tr><td>Future Actions</td><td></td></tr>
</table>

CIRCUIT COURT OF THE STATE OF OREGON
FOUTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1200 S.W. FIRST AVENUE
PORTLAND, OR 97204-3201

JUDITH H. MATARAZZO
PRESIDING JUDGE

PHONE (971) 274-0500
FAX (503) 276-0999

August 23, 2023

Chief Justice Meagan Flynn
Supreme Court Building
1163 State Street
Salem, Oregon 97301

Dear Chief Justice Flynn,

Multnomah County is marking more than 20 months since we first started experiencing delays in appointments of attorneys for all the defendants entitled to be represented by one. We are appreciative of the opportunity SB 337 provides to compile our efforts to tackle this ongoing constitutional crisis. It is helpful in examining the scope of our shortage to consider preceding events and circumstances that have all contributed to where we stand today.

The Multnomah County Circuit Court has a long history of engaging in collaborative and productive conversations with the multiple stakeholders involved in our county's criminal justice system. For many years, Multnomah County has served as a bellwether in the areas of treatment courts, specialty dockets, community diversion programs, pretrial release guidelines and supervision, justice reinvestment, and even collaborative communication itself. Beginning in 2015 and over the course of multiple grant cycles, the MacArthur Foundation's Safety and Justice Challenge has awarded more than $5 million dollars to Multnomah County to reduce unnecessary jail incarceration safely, equitably, and sustainably. The core of the Foundation's initiative seeks to change the way America thinks about and uses jails, particularly prior to adjudication. The innumerable meetings and projects that have occurred under these grants have allowed us to study best practices and develop comprehensive policies, practices and systems aimed at not only reducing local incarceration and disparities in jail usage but enhancing procedural justice to make court processes less burdensome. Our court and the criminal justice stakeholders in Multnomah County share the MacArthur Foundation's goal to embrace more effective, fair, and equitable responses to crime and social disorder, thereby creating momentum toward whole system criminal justice reform.

Prior to the passage of SB 337 instructing the Presiding Judge in each county to develop a plan for the defense crisis, Multnomah County had already implemented many changes in an effort to resolve the crisis. We experienced delays in attorney appointments beginning in summer 2021. By November 2021, it became increasingly difficult to find public defense attorneys who could take cases for defendants in custody following orders granting substitution of counsel. More and

more, defendants were in custody for weeks without appointed counsel. Our court developed a new process of appointing OPDS as interim counsel as a placeholder for better tracking of those cases. In January 2022, both Metropolitan Public Defenders (MPD) and Multnomah Defenders Inc. (MDI) notified the court that they would be unable to take minor felony case assignments for the cases on our daily felony arraignment dockets except for existing clients, due to excessive caseloads. We immediately met with the Multnomah County District Attorney's (MCDA) office and leadership at the public defense agencies to manage and mitigate the unprecedented situation. Together, we developed a process for arraignment, release and docketing when counsel was not available for individuals. The court put in place practices to accurately track how many people were not receiving counsel, a business process later adopted statewide by OJD. There were many more meetings, spreadsheets, research projects, discussions, proposals, planning and training as the weeks turned into months with no end in sight.

By the end of January 2022, we had 41 unrepresented cases in Multnomah County. By the end of June 2022, we had 622 unrepresented cases. The MCDA's Office advised that they had over a thousand additional cases that they were holding and were prepared to file pending resolution of the crisis. Due to the process we developed for prioritization of counsel for people in custody, we have kept the number of unrepresented people in custody relatively low, varying from about 10 to 25 over time; each of those have previously been represented but are now waiting for a new attorney to be appointed after a motion for substitution of counsel was granted. We currently have 16 unrepresented people in custody. However, we have more than 400 people out of custody waiting for public defense attorneys, some of whom have been waiting for months.

Multnomah County is much larger than the other judicial districts in the state. Our criminal filings are triple those of the next largest county. Because of our size and volume of cases, it takes a while to implement changes and create new processes that then need to be communicated to all the stakeholders. Had the public defense shortage been in place prior to the pandemic, we would have even bigger problems. Multnomah County's criminal case filings were greatly reduced over the past few years. In FY 2019 we had 9,474 misdemeanors and 3,169 felonies filed, but in FY 2023 we had only 3,047 misdemeanors and 3,508 felonies filed. The significant reduction in misdemeanor case filings in the past three years relative to pre-pandemic years means fewer total cases are moving through the Multnomah County Circuit Court, and the public defense attorneys are all carrying fewer cases than public defenders in this county traditionally carried in years prior to 2020. If the case filings were like pre-Covid numbers, the number of unrepresented cases in this county would be much larger. Please note that several factors have significantly impacted attorney capacity. First, there has been an appreciable increase in felony filings. Second, Multnomah County has a deficient number of public defense attorneys overall and a deficiency of felony-qualified attorneys. Third, there has been an increase in discovery and an increase in public defense clients who are in need of community-based services, both of which impact defense attorney capacity.

In examining our disposition rates, our data shows that cases with attorneys are resolving. Rates of disposition from Fiscal Year 2023 in Multnomah County were very similar to those of 2019, pre-pandemic. There has been speculation that cases are not getting out to trial as frequently as they used to and that dismissals have dramatically increased, but that is not what the data shows.

In FY 2019, 3.9% of criminal cases in Multnomah County were resolved through a trial and in FY 2023 4.2% were resolved through a trial. In FY 2019, 51.6% of criminal cases were dismissed and in FY 2023 52.3% were dismissed.

Although criminal case filings in Multnomah County in each of the years 2021 and 2022 were only 54% of the criminal case filings in the year 2019, there are several phenomena that are making the cases more complicated for providing effective representation and that are limiting how many cases the public defense attorneys are currently taking. One factor is that murders and major felonies are a much higher percentage of the workload of the public defense agencies in this county, and these cases take more resources and remain open for longer – often into the next contract cycle for the attorneys. Defendants in Multnomah County more frequently present with serious yet untreated mental health, behavioral, and/or substance use issues, and too many are also homeless. Staffing shortages in the Multnomah County jails have made it arduous and time-consuming for defense attorneys to make contact with clients in custody.

Our court is engaged with state, city, county, and community leadership in an ongoing attempt to find resources for the problems of homelessness, mental illness, and addiction. Our recommendations in response to the requirements of SB 337 are focused on the need to better estimate capacity, track, and compensate the public defense workload/caseload, and on ways to refine progress we are making in case resolution. Where we recommend an agency "seek" funding, we understand the significant hurdles in place but believe funding those resources will directly contribute to better outcomes.

Our collaborative efforts remain ongoing. Court leadership in Multnomah County meet regularly with MPD, MDI, the Portland Defense Consortium, and the MCDA's Office to identify pinch points and potential solutions to alleviate pressure, and we have implemented a wide variety of policy, procedural, and docket structure changes to help cases move more efficiently through our system. Those solutions have helped prevent the problems from getting any worse. However, without additional changes from external agencies not controlled by the court, we will not be able to fully resolve the current crisis. For that reason, we have broadened our plan to include recommendations identified by agency as listed below, including OPDS, the Multnomah County Sheriff's Office, the MCDA's Office, and our local public defense providers as well as our court. Senate Bill 337 directed each Presiding Judge to develop a coordinated public safety unrepresented defendant crisis plan to submit to the Criminal Justice Commission. After substantial discussion with our justice system stakeholders, please accept the following recommendations from the Fourth Judicial District.

RECOMMENDATIONS

OFFICE OF PUBLIC DEFENSE SERVICES

SB 337 creates a number of new obligations for OPDS, particularly in Section 3, which amends ORS 151.216. Some of the recommendations below restate some of these new legislatively

assigned duties. To the extent the recommendations duplicate those provisions, our recommendations reflect what we believe should be priorities as the agency adopts new policies.

1) OPDS should assure that there are enough public defenders to meet the appointment needs for a judicial district based on national metrics for districts of a similar size. Where a district operates a central assignment system organized by dockets, OPDS should assure that the capacity for a judicial district accommodates principles adopted in SB 337, such as the requirement for vertical representation in ORS 151.216(2)(d).

2) OPDS should negotiate contracts with case numbers that contracting parties agree are a realistic prediction of how many cases lawyers should be able to ethically handle in a contract year, factoring in the actual workload per lawyer with the understanding that many cases carry forward from one contract year to the next and recognizing the Oregon State Bar Formal Opinion 2007-178 regarding attorney workload standards. We understand that circumstances may change which result in that contractor being able to handle fewer cases than predicted. If this were to occur, then the contractor should seek approval from OPDS to take fewer cases based on objective criteria to measure active workload.

3) OPDS should develop objective criteria that determines when contracting lawyers and law firms have reached ethical limits for handling additional cases. Objective criteria should include ability of defense providers to meet time to disposition standards set by the Oregon Supreme Court and the agreement that they will work to comply with those standards to keep cases moving forward. Considerations for evaluating public defender workload and capacity should include:
    a. Clients in-custody v. out-of-custody
    b. Volume of discovery and type of discovery: body camera video, computer downloads, scientific evidence, cell phone evidence, social media evidence etc.
    c. Jail access issues delaying communication with in-custody clients
    d. Complexity of the case/charges
    e. The number of clients in need of community-based services and internal social work services, both of which are insufficient for the need
    f. The level of factual and mitigation investigation needed for each case/client, which varies
    g. The need for legal research, writing, and litigation of motions
    h. The need for experts
    i. Attorney time spent in court
    j. Trial rates and trial schedule
    k. Access to supervision and training for attorneys
    l. The American Bar Association's "10 Principles of a Public Defense Delivery System" which includes a recommendation that public defense providers and their lawyers should be independent of political influence and subject to judicial authority and review only in the same manner and to the same extent as retained counsel and the prosecuting attorney and its lawyers.

4) OPDS should develop a process in the event a defense provider reports, based on the objective criteria, that they have reached their ethical limitation. The process should consider the following:

    a. How and when the fact of limitation is established and reported, including requirement for prompt communication to the Presiding Judge.
    b. A process for OPDS oversight and requirement for OPDS or court approval when an ethical limitation is reached if it is prior to the end of the contract cycle.
    c. The procedure for when the defense provider will resume appointments and how they will resume appointments.
    d. A process for the court to ensure priority cases receive appointments when defense providers are unable to fully meet the county's need for appointed counsel.
    e. How OPDS will find additional attorney capacity to meet the county's appointed attorney needs for the remainder of the contract cycle if current providers have reached their ethical limits.

5) OPDS should consider innovative and alternative ways to add attorney capacity, including providing funding for trained case managers and social workers who can effectively and efficiently provide critical services currently provided by attorneys and paralegals.

6) OPDS should maintain the structure and funding for the Portland Defense Consortium if possible. If not, OPDS should fund a fixed cohort of experienced felony attorneys sufficient to handle cases involving conflicts, co-defendants and serious charges that might drain the resources of a regular agency. The size and complexity of Multnomah County requires experienced counsel beyond a single layer of private bar attorneys who do not always accept appointments if they perceive a case to be too challenging. Dedicated experienced felony attorneys outside of the traditional agencies are crucial if Multnomah County is to sustainably represent all the serious felony defendants who need appointed attorneys.

7) OPDS should monitor, audit and review compliance with the contracts on a regular basis. They should also install an auditing system for assuring that contractors have in fact reached ethical limits based on objective criteria when contractors report ethical limits. It took over a year to obtain needed information about contracts and case counts from OPDS. It appeared they either did not have the information or were unable to provide it to the Court.

8) OPDS should require reporting of total case counts including cases continuing beyond the contractual time frame. At all times, OPDS should know how many cases each attorney is managing.

9) OPDS should advise the court of the total capacity available for a contract year per provider so that the court and other system stakeholders can plan and account for when there will be shortages and delays related to insufficient availability of counsel.

10) OPDS should procure sufficient funds and enough providers to cover investigation, psychological exams, drug and alcohol exams, evidentiary and forensic evaluations, subject-matter experts, etc. to ensure those critical steps take place commensurate with the court's time to disposition standards.

11) OPDS should consider the additional time necessary for practitioners to adapt to new procedures and technological developments, including the planned implementation of body-worn cameras by the Portland Police Department and the impact it will have on caseloads.[1]

12) OPDS should consider changes and mandates from the legislature, appellate courts, as well as law enforcement practices which will impact the time needed for representation.

DEFENSE PROVIDERS

1) Utilizing the process OPDS develops to track and communicate capacity on an ongoing basis as mentioned in number 7 above, defense providers need to report their individual capacity to the Presiding Judge on an ongoing basis.

2) Defense providers need to advise the Presiding Judge immediately if they learn that there is a reasonable likelihood they will need to curtail appointments at any time.

3) Defense providers should seek appropriate funds and develop programs to adequately recruit and train new attorneys. Training should include best practices for treatment courts and other specialty dockets.

4) Defense providers should seek funds to hire trained case managers and social workers, who directly contribute to increasing attorney capacity in a cost-efficient manner and improve working conditions conducive to retaining experienced attorneys. Furthermore, studies of worked performed by case managers and social workers funded by Justice Reinvestment grants conclusively establish reduction in recidivism rates and decreased incarceration rates for the defendants they assist.

5) Defense providers should develop policies and practices to retain attorneys, particularly at the 3-to-5-year point to avoid a turnover in staff that contributes to lack of capacity.

6) If a defense provider is unable to meet the recommendations regarding communicating capacity or alerting of appointment curtailments, they should be expected to share at least minor felony caseload counts and status as the data appears to demonstrate this is a pinch point for retaining attorneys.

---

[1] Multnomah County currently has about 120 officers with body cameras employed. In a few weeks, Portland Police Bureau is beginning a pilot project with 170 additional body cameras. If adopted in full, there will be hundreds more officers with body camera footage as part of discovery.

7) Defense providers should manage normal vacation and personal leave and other standard reductions in staff without a refusal to take on new cases.

MULTNOMAH COUNTY SHERIFF'S OFFICE

1) MCSO should provide timely and appropriate access for public defense attorneys to meet with newly arrested individuals at the Multnomah County Detention Center at the time of arrest and/ or prior to their appearance in arraignment court. Defense attorneys should have access to their clients by phone and in person at all jail facilities. Defense attorneys should not have to try multiple times to gain access to their clients.

2) MCSO should provide timely transports of individuals in their custody to the court for hearings and trials as ordered. Over the last few years, the court has routinely had to cancel and reschedule proceedings because of an inability to get defendants transported to the courtrooms, thus, adding to the already busy schedules of defense providers, the MCDA's office, and court staff.

3) MCSO should develop and implement an effective space for defendants to participate in online remote proceedings from the jail facilities when remote appearances are appropriate. Improved audio/video quality during remote proceedings from the jails helps to reduce the need for transporting individuals to court.

4) MCSO should develop appropriate staffing models for the current security needs at Multnomah County Circuit Court facilities and the workload for their Facility Security Officers and Court Service Unit and submit appropriate budget requests to the county.

5) MCSO should provide appropriate staffing to open Multnomah County's central courthouse at 7:00 am and remain open to the public until 6:00 pm. Central courthouse operating hours are currently limited to 7:30 – 5:30 due to MCSO staffing. Opening the building thirty minutes earlier will reduce the wait time for the many people standing in line outside the courthouse and allowing an additional thirty minutes in the evening will allow more flexibility in resolving matters instead of having parties return the following day. The business hours at the historic courthouse were 7:00 am to 6:00 pm.

MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE

1) The MCDA's office should be staffed at a level suitable for a jurisdiction the size of Multnomah County and to accommodate the dockets and programs needed to meet the public safety, prevention, recidivism reduction and community outreach needs of this community.

2) The MCDA's office should seek funding for pre-charge and pre-trial diversion programs and resources. Conditional discharge programs authorized by statute reduce strain on attorney and court workload and contribute to public safety.

3) The MCDA's office should develop practices that ensure timely and consistent discovery to meet established time to disposition standards.

4) When shifting assignments, the MCDA's office should be able to timely name a successor who takes over a caseload and to provide notice to the court and the parties with the name of that newly assigned deputy district attorney (DDA).

5) The DDA on a case should personally attend all settlement conferences where defendants are present if possible and follow best practices in developing and communicating plea offers.

6) Notify the defense of cases that cannot proceed as early as possible to help the defense avoid preparing for trial in cases where the State cannot proceed and will be dismissing the charges.

MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY JUSTICE

1) MCDCJ should provide sufficient staffing and training for providers to be able to administer the Level of Service/Case Management Inventory assessment or other necessary evaluations in all the case types where they have been ordered.

2) MCDCJ should seek funding for probation monitoring and treatment resources for misdemeanor offenses in Multnomah County. Without funding for these services, it is impossible to adequately address the substance use issues driving low level crimes here.

OREGON STATE LAB

The Oregon State Crime Lab should be adequately funded and staffed to provide sufficient forensic testing and services in accordance with its mission and purpose, and to comply with the Oregon Supreme Court's time to disposition standards.

CRIMINAL JUSTICE COMMISSION

The Criminal Justice Commission should fully fund Multnomah County's specialty and treatment courts. The specialty courts and treatment courts are very efficient in their use of attorney resources, but without sufficient funding for personnel and treatment resources, are unable to meet best practices standards.

MULTNOMAH COUNTY CIRCUIT COURT

In the template OJD created for our SB 337 Crisis Plans, our court has outlined the many steps already taken to reduce the backlogs of cases and create efficiencies by modifying policies and procedures. In its Unrepresented Crisis Plan Guidance report, OPDS identified four main levers that could reduce the unrepresented person crisis. To address the first two levers, Reduce Filings and Increase Dispositions, we have done substantial work in conjunction with system

stakeholders and are seeing positive results. Criminal case filings are far below pre-pandemic levels and the data shows that cases are resolving. The remaining levers, Increase Number of Attorneys and Increase Attorney Capacity, are the primary focus of our recommendations as these are areas outside of the court's control but that are fueling the current crisis.

An additional area that contributes to the strain on defense attorney capacity is the turnover in judges on the Multnomah Circuit Court bench as well as high staff turnover and difficulty in recruiting court employees. The high cost of living in the Portland metropolitan area and the location of the two main Multnomah County Circuit Court facilities in downtown Portland exacerbate the difficulty in recruiting. The defense crisis has occurred at a time when we are experiencing many other pressures on the criminal justice system. Lack of adequate staffing resources and high turnover lead to errors or delays in an already over-burdened system.

Despite the many challenges we are currently facing, Multnomah County Circuit Court judges, district attorneys, law enforcement, public defenders, victims' advocates, and service providers have worked collaboratively to improve the efficiency and effectiveness of our criminal justice system. We will continue this progress but believe that our recommendations for systemic changes outside of the court's control will help us to overcome major barriers to that efficiency and effectiveness. It is our hope that this letter with additional context will aid in the understanding of the complex drivers of the public defense crisis in our county.

Sincerely,

Judith Matarazzo
Presiding Judge

Cheryl Albrecht
Chief Criminal Judge

Barbara Marcille
Trial Court Administrator

SB 337 Crisis Plan Template Responses

Team members

Judith H. Matarazzo – Presiding Judge
Cheryl Albrecht – Chief Criminal Judge
Michael A. Greenlick – Circuit Court Judge
Barbara Marcille – Trial Court Administrator
Neal Japport – Deputy Trial Court Administrator
Deena Farole – Circuit Court Analyst
William G. White – Indigent Verification

Mike Schmidt – Multnomah County District Attorney
Jeff Howes – Multnomah County District Attorney's Office
Aaron Knott – Multnomah County District Attorney's Office

Stacey Reding – Director, Multnomah Defenders Inc.
Carl Macpherson – Director, Metropolitan Public Defenders
Grant Hartley – Executive Director, Metropolitan Public Defenders
Jon Sarre – Portland Defense Consortium

David A. Hayes – OPDS Analyst

Lindsey Detweiler, OSCA Senior Assistant General Counsel
Rachel Woods, OSCA Analyst

Meeting Dates

7/12/23
8/1/23
8/15/23

Overview

In early January 2022, Metropolitan Public Defenders (MPD) announced that they would temporarily cease taking appointments on any felonies in Multnomah County, and by the end of January 2022 Multnomah Defenders Inc. (MDI) also ceased taking any felony appointments in Multnomah County. By April 2022, both MPD and MDI also ceased taking misdemeanor appointments. At times there have been over 600 people facing criminal changes who have not had an assigned lawyer in this county; most have been defendants who are released from custody. The limitations on defense attorney availability for appointments have continued for over 18 months, and there are currently still over 400 unrepresented individuals facing criminal charges in Multnomah County. There are also many cases which have been dismissed due to multiple reappearances without an available attorney to represent the defendant and

potentially hundreds of cases which the Multnomah County District Attorney's Office (MCDA) has not yet presented to a grand jury due to the lack of available defense attorneys; these cases may still be filed and would exacerbate the shortage. Stakeholders including leadership from MPD, MDI, the Portland Defense Consortium, MCDA, OPDS, and the court have been meeting multiple times per month since the crisis began to explore solutions.

Actions Taken to Date

1. Met weekly with OPDS to identify priorities for appointment and discuss individual cases to assist matching defendants with appropriate attorneys. Actively seek attorneys to represent unrepresented individuals, prioritizing in-custody defendants.

2. Actively monitoring defendant/public defender status (daily) – total days without attorney and whether they are approaching statutory timelines.

3. Actively monitoring and communicating with all in-custody unrepresented defendants.

4. Developed protocols to prioritize public defender assignments, maximize assignments to higher risk cases, and minimize cases with no public defender assigned.

5. Worked with stakeholders to minimize constitutional deficiencies when unable to appoint counsel, such as agreed upon release provisions.

6. Expanded scope of specialized Resolution Dockets to increase opportunities for case closure by plea or trial.

7. Assigned Senior (retired) Judges for specialized settlement and case management dockets focusing on serious crime types.

8. Worked with court data and lists from prosecution and defense to identify cases potentially ready for settlement and facilitated settlement where possible.

9. Sending court-issued email reminders to lawyers regarding call and trial dates to encourage more timely disposition.

10. Issued temporary 30-day grace period from court appearances for new attorneys and newly felony-qualified attorneys.

11. Consolidated felony morning call dockets to reduce number of appearances.

12. Cross-trained OJD staff to allow for early resolution of cases in the Justice Center.

13. Worked with district attorney's office to improve discovery practices (DA developed new reminder system to ensure timely discovery).

14. Assigned consistent judicial officer to arraignments (rather than using usual rotation schedule) for better oversight of appointment and arraignment process.

15. Created daily capacity review for appointments at misdemeanor arraignments to direct appointment capacity to higher priority cases.

16. Added new staff analyst position to focus on criminal case data analysis and evaluation and implementation of procedural changes.

17. Restructuring misdemeanor docket to increase opportunities for early communication and prompt resolution.

18. Created a process for defendants to appear through counsel at various proceedings, including most status proceedings in felony and misdemeanor cases.

19. Expanded opportunity for omnibus motions beyond dispositive motions to be heard in advance of trial.

<u>Actions Taken on OCDLA Recommendations</u>

1. Created a process for scheduling early omnibus motion hearings in misdemeanor cases, expanding on our previous procedure for felony cases.

2. Created remote proceedings chart and process to appear through counsel at many types of misdemeanor and felony hearings.

3. We have not specifically reduced the number of check-n appearances and time spent at "mass" dockets; however, the number of times at which defense counsel must appear at a docket is within their control. If they are in excellent communication with their client, the client in a felony may only need to appear at arraignment and plea or trial. A client in a misdemeanor case isn't required to appear at all, but in the absence of a waiver, would only be required to appear at arraignment and trial. Attorneys in felony cases would submit a written report for each time a case is on a presiding call docket which is reported on by a single attorney appearing for a firm. Attorneys in misdemeanor cases will be required to appear at a pre-trial conference. There are other types of dockets and needs, such as diversion, release hearings, or treatment courts, but

these are not “mass” status check dockets. Given the PJO permitting many remote appearances and appearance through counsel, the court does not see a need to reduce the number of “check-in” appearances.

4. Time standards: The court strives to follow the Time to Disposition Standards put in place by the Oregon Supreme Court in 2019. The court does not view those as outdated.

5. Increase use of remote hearings: PJO 2201-00006 adopted a robust system of remote proceedings and consent to appear through counsel.

6. Discovery deadlines: Our current misdemeanor rules impose discovery deadlines. In felonies, our case management conference system in Measure 11 cases seeks to address and facilitate the discovery process. The District Attorney’s office has experienced significant issues with their discovery desk but are improving and adopting a case management system. The court has urged the District Attorney’s office to provide more timely discovery and to review at regular intervals whether new reports have been filed by police but not communicated to the DDA. Once their improvements are in place, we can review whether it makes sense to impose discovery deadlines.

7. DA-created plea negotiation deadlines have been eliminated by UTCR.

<u>Best Practices</u>

1. Working with Sheriff’s Department to address available staffing for court hearings to minimize transport delays for hearings and trials.

2. Exploring and implementing increased use of remote appearances to reduce in-person court appearances. Invested in additional video conference equipment in the jails and main courthouse; provided iPads for use by inmates in custody for remote appearances.

3. Conducted a two-week pilot to test restructuring the felony arraignment docket to allow more time for attorney-client communications and evaluate feasibility. Identified obstacles to implementing this on a permanent basis; working with justice system partners to overcome barriers to allow for further refinements.

4. Working to develop a process to consolidate cases as early as possible—preferably at arraignment—to reduce the appointment of multiple attorneys to a single individual.

<u>Documents</u>

See Multnomah SB 337 Crisis Plan Letter to Chief Justice Flynn

Crisis Plan Interventions or Recommendations

In its Unrepresented Crisis Plan Guidance report, OPDS identified four main levers that could reduce the crisis. To address the first two levers, Reduce Filings and Increase Dispositions, we have done substantial work in conjunction with system stakeholders and are seeing positive results. Criminal case filings are far below pre-pandemic levels and data shows that cases are resolving. The remaining levers, Increase Number of Attorneys and Increase Attorney Capacity, are the primary focus of our recommendations as these areas are outside of the court's control but are fueling the current crisis.

OFFICE OF PUBLIC DEFENSE SERVICES

SB 337 creates a number of new obligations for OPDS, particularly in Section 3, which amends ORS 151.216. Some of the recommendations below restate some of these new legislatively assigned duties. To the extent the recommendations duplicate those provisions, our recommendations reflect what we believe should be priorities as the agency adopts new policies.

1. OPDS should assure that there are enough public defenders to meet the appointment needs for a judicial district based on national metrics for districts of a similar size. Where a district operates a central assignment system organized by dockets, OPDS should assure that the capacity for a judicial district accommodates principles adopted in SB 337, such as the requirement for vertical representation in ORS 151.216(2)(d).

2. OPDS should negotiate contracts with case numbers that contracting parties agree are a realistic prediction of how many cases lawyers should be able to ethically handle in a contract year, factoring in the actual workload per lawyer with the understanding that many cases carry forward from one contract year to the next. We understand that circumstances may change which result in that contractor being able to handle fewer cases than predicted. If this were to occur, then the contractor should seek approval from OPDS to take fewer cases based on objective criteria to measure active workload.

3. OPDS should develop objective criteria that determines when contracting lawyers and law firms have reached ethical limits for handling additional cases. Objective criteria should include ability of defense providers to meet time to disposition standards set by the Oregon Supreme Court and the agreement that they will work to comply with those standards to keep cases moving forward.

4. OPDS should develop a process in the event a defense provider reports, based on the objective criteria, that they have reached their ethical limitation. The process should consider the following:

5. How and when the fact of limitation is established and reported, including requirement for prompt communication to the Presiding Judge.

6. A process for OPDS oversight and requirement for OPDS or court approval when an ethical limitation is reached if it is prior to the end of the contract cycle.

7. The procedure for when the defense provider will resume appointments and how they will resume appointments.

8. A process for the court to ensure priority cases receive appointments when defense providers are unable to fully meet the county's need for appointed counsel.

9. How OPDS will find additional attorney capacity to meet the county's appointed attorney needs for the remainder of the contract cycle if current providers have reached their ethical limits.

10. OPDS should consider innovative and alternative ways to add attorney capacity, including providing funding for trained case managers and social workers who can effectively and efficiently provide critical services currently provided by attorneys and paralegals.

11. OPDS should maintain the structure and funding for the Portland Defense Consortium if possible. If not, OPDS should fund a fixed cohort of experienced felony attorneys sufficient to handle cases involving conflicts, co-defendants and serious charges that might drain the resources of a regular agency. The size and complexity of Multnomah County requires experienced counsel beyond a single layer of private bar attorneys who do not always accept appointments if they perceive a case to be too challenging. Dedicated experienced felony attorneys outside of the traditional agencies are crucial if Multnomah County is to sustainably represent all the serious felony defendants who need appointed attorneys.

12. OPDS should monitor, audit and review compliance with the contracts on a regular basis. They should also install an auditing system for assuring that contractors have in fact reached ethical limits based on objective criteria when contractors report ethical limits. It took over a year to obtain needed information about contracts and case counts from OPDS. It appeared they either did not have the information or were unable to provide it to the Court.

13. OPDS should require reporting of total case counts including cases continuing beyond the contractual time frame. At all times, OPDS should know how many cases each attorney is managing.

14. OPDS should advise the court of the total capacity available for a contract year per provider so that the court and other system stakeholders can plan and account for when there will be shortages and delays related to insufficient availability of counsel.

15. OPDS should procure sufficient funds and enough providers to cover investigation, psychological exams, drug and alcohol exams, evidentiary and forensic evaluations, subject-matter experts, etc. to ensure those critical steps take place commensurate with the court's time to disposition standards.

16. OPDS should consider the additional time necessary for practitioners to adapt to new procedures and technological developments, including the planned implementation of body-worn cameras by the Portland Police Department and the impact it will have on caseloads.[1]

17. OPDS should consider changes and mandates from the legislature and appellate courts which will impact the time needed for representation.

DEFENSE PROVIDERS

1. Utilizing the process OPDS develops to track and communicate capacity on an ongoing basis as mentioned in number 7 above, defense providers need to report their individual capacity to the Presiding Judge on an ongoing basis.

2. Defense providers need to advise the Presiding Judge immediately if they learn that there is a reasonable likelihood they will need to curtail appointments at any time.

3. Defense providers should seek appropriate funds and develop programs to adequately recruit and train new attorneys. Training should include best practices for treatment courts and other specialty dockets.

4. Defense providers should seek funds to hire trained case managers and social workers, who directly contribute to increasing attorney capacity in a cost-efficient manner and improve working conditions conducive to retaining experienced attorneys. Furthermore, studies of worked performed by case managers and social workers funded by Justice Reinvestment grants conclusively establish reduction in recidivism rates and decreased incarceration rates for the defendants they assist.

5. Defense providers should develop policies and practices to retain attorneys, particularly at the 3-to-5-year point to avoid a turnover in staff that contributes to lack of capacity.

6. If a defense provider is unable to meet the recommendations regarding communicating capacity or alerting of appointment curtailments, they should be expected to share at least minor felony caseload counts and status as the data appears to demonstrate this is a pinch point for retaining attorneys.

[1] Multnomah County currently has about 120 officers with body cameras employed. In a few weeks, Portland Police Bureau is beginning a pilot project with 170 additional body cameras. If adopted in full, there will be hundreds more officers with body camera footage as part of discovery.

7. Defense providers should manage normal vacation, leave and other standard reductions in staff without a refusal to take on new cases.

MULTNOMAH COUNTY SHERIFF'S OFFICE

1. MCSO should provide timely and appropriate access for public defense attorneys to meet with their clients by phone and in person at all jail facilities. Defense attorneys should not have to try multiple times to gain access to their clients.

2. MCSO should provide timely transports of individuals in their custody to the court for hearings and trials as ordered. Over the last few years, the court has routinely had to cancel and reschedule proceedings because of an inability to get defendants transported to the courtrooms, thus, adding to the already busy schedules of defense providers, the MCDA's office, and court staff.

3. MCSO should develop and implement an appropriate space for defendants to participate in online remote proceedings from the jail facilities. Improved audio/video quality during remote proceedings from the jails helps to reduce the need for transporting individuals to court.

4. MCSO should develop appropriate staffing models for the current security needs at Multnomah County Circuit Court facilities and the workload for their Facility Security Officers and Court Service Unit and submit appropriate budget requests to the county.

5. MCSO should provide appropriate staffing to open Multnomah County's central courthouse at 7:00 am and remain open to the public until 6:00 pm. Central courthouse operating hours are currently limited to 7:30 – 5:30 due to MCSO staffing. Opening the building thirty minutes earlier will reduce the wait time for the many people standing in line outside the courthouse and allowing an additional thirty minutes in the evening will allow more flexibility in resolving matters instead of having parties return the following day. The business hours at the historic courthouse were 7:00 am to 6:00 pm.

MULTNOMAH COUNTY DISTRICT ATTORNEY'S OFFICE

1. The MCDA's office should be staffed at a level suitable for a jurisdiction the size of Multnomah County and to accommodate the dockets and programs needed to meet the public safety, prevention, recidivism reduction and community outreach needs of this community.

2. The MCDA's office should seek funding for pre-charge and pre-trial diversion programs and resources. Conditional discharge programs authorized by statute reduce strain on attorney and court workload and contribute to public safety.

3. The MCDA's office should develop practices that ensure timely and consistent discovery to meet established time to disposition standards.

4. When shifting assignments, the MCDA's office should be able to timely name a successor who takes over a caseload and to provide notice to the court and the parties with the name of that newly assigned deputy district attorney (DDA).

5. The DDA on a case should personally attend all settlement conferences where defendants are present if possible and follow best practices in developing and communicating plea offers.

MULTNOMAH COUNTY DEPARTMENT OF COMMUNITY JUSTICE

1. MCDCJ should provide sufficient staffing and training for providers to be able to administer the Level of Service/Case Management Inventory assessment or other necessary evaluations in all the case types where they have been ordered.

2. MCDCJ should seek funding for probation monitoring and treatment resources for misdemeanor offenses in Multnomah County. Without funding for these services, it is impossible to adequately address the substance use issues driving low level crimes here.

OREGON STATE LAB

The Oregon State Crime Lab should be adequately funded and staffed to provide sufficient forensic testing and services in accordance with its mission and purpose, and to comply with the Oregon Supreme Court's time to disposition standards.

CRIMINAL JUSTICE COMMISSION

The Criminal Justice Commission should fully fund Multnomah County's specialty and treatment courts. The courts are very efficient in their use of attorney resources, but without sufficient funding for personnel and treatment resources, are unable to meet best practices standards.

MULTNOMAH COUNTY CIRCUIT COURT

In the Actions Taken section, our court has outlined the many steps already taken to reduce the backlogs of cases and create efficiencies by modifying policies and procedures. These practices have been implemented based on stakeholder input over the past 18+ months. The new practices are resulting in some efficiencies and the data shows that cases in this

county are resolving, albeit slowly. We have identified additional best practices that we are working towards achieving. Our experience has demonstrated that docketing and case management practices can prevent the crisis from getting worse and aid attorneys in balancing their workload, but that those interventions alone will not resolve the underlying drivers of the crisis in this county.

We have managed throughout the crisis to hold a very small number of individuals in custody without representation, typically no more than 20 people, as we have prioritized cases in custody for the available public defense attorney capacity here. Those individuals in custody who are unrepresented have each had prior representation but have been granted substitution of counsel and available attorneys without conflicts have yet to be identified for them. We do continually find representation and remove individuals in custody from the unrepresented list but then new defendants are added to the list as new motions for substitution of counsel are filed and granted.

In Multnomah County, from August 17, 2022 – August 16, 2023, 1,922 of the cases that have been on our unrepresented list have moved off that list and been appointed counsel. Our number of unrepresented individuals was steadily increasing and reached a high point of 622 unrepresented people in need of public defenders in Multnomah County in June 2022. The practices we have implemented have kept that number fairly static over the past year, with 350-400 unrepresented defendants out of custody at any given time. While cases are resolving and many defendants who are unrepresented for a period of time without counsel are eventually receiving an appointed public defender, every day in this county we are placing new defendants on the unrepresented list as we conduct arraignments and do not have enough available attorneys for the new cases coming in. We believe the recommendations for systemic changes listed in this document will be effective in changing this dynamic.

<u>Below are additional fields in the template that either don't apply to our recommendations or that are not possible for us to answer at this time.</u>

- Check boxes to indicate which lever it is addressing (Filings, Dispositions, Attorney Capacity, Add Attorneys, or Other)
- Intended Outcome or Goal
- Performance Measurement
- Resources Required
- Start Date of Intervention
- End Date of Intervention
- Time to Take Effect
- Was there community consensus on this intervention?
- If no consensus, describe minority viewpoints

CLACKAMAS INDIGENT DEFENSE CORPORATION
KEVIN LEIK, ADMINISTRATOR
SHANNON KMETIC, PRESIDENT

217 7TH STREET
OREGON CITY, OR 97045

PHONE: 503-422-7000
CIDCDEFENSE@GMAIL.COM

February 2, 2023

Presiding Judge Wetzel, et al
Crisis Plan Team
Clackamas County Court
503 Main Street
Oregon City, OR 97045

RE: Unrepresented Crisis Plan CIDC Data

Dear Presiding Judge Wetzel,

We are writing to provide some information which we believe is relevant to the current unrepresented crisis in anticipation of our upcoming meeting. We have discussed these issues at length in the past, and we appreciate the court's ongoing willingness to communicate regarding the handling of these cases. We have a unique ability in this County to work collaboratively towards resolution of this crisis and we look forward to putting together a plan that will assist in moving toward that goal.

We'll note, at the outset, we have limited attorney capacity. Under the current contract extension with OPDS we must allocate that capacity on a monthly basis so as to avoid a large deficit at the end of the fiscal year such as we saw this April. We have focused our available attorney capacity on persons who are in-custody, so our records do not show any unrepresented in-custody persons who wish to have counsel.[1]

At present, according to our latest records, there are 400 persons with pending cases in this jurisdiction who have applied for and been approved for counsel and who have not been appointed attorneys. We are currently attempting to focus our limited out-of-custody capacity on older cases, where persons have been missing counsel for an extended period. This means newer cases are not being appointed counsel while we focus on the oldest unrepresented matters. We have reduced the rate of growth in unrepresented persons, but the number continues to grow.

[1] The OJD has indicated there are nine in-custody unrepresented persons. If these individuals remain unrepresented, and are seeking counsel, we would appreciate having their names and case numbers so we can find the source of the data error and correct it.

The reason for this continued growth in unrepresented persons is, simply, a lack of necessary attorney capacity. The following is the number of cases which came through CIDC last fiscal year:

7/1/2023-6/30/2023 CIDC Total In-Custody Cases - 2664
7/1/2023-6/30/2023 CIDC Out-of-Custody cases- 2794
7/1/2023-6/30/2023 CIDC Total Cases – 5458

Each of these cases is given a point value by OPDS, with more serious cases having a higher point total. The total point value for the cases follows:

OPDS Point Value for the Total Cases – 8919.7

Each attorney taking on a full CIDC case load is allowed to take 300 points worth of cases per year, commonly referred to as a maximum attorney caseload, or "MAC." By dividing last year's cases by that number, you get the total number of attorneys necessary to provide counsel to every person applying:

Total Points (8919.7) / MAC (300) = 29.7

As such, CIDC would require a total of 29.7 MAC to handle last year's caseload. Unfortunately, CIDC was only granted a max of 24.7 MAC last year, and spent much of the year below that amount.

Given this context, CIDC has five fewer attorneys than would be necessary to cover the incoming cases. This does not address the current unrepresented matters. As of today, we are showing 400 cases currently unrepresented and seeking counsel. Those cases have a total point value of 445 points under the contract. This is approximately another one and a half MAC.

Taken together, this means CIDC would require a total of 31.2 MAC to make reasonable inroads into correcting the current problems. This assumes no growth in the number of cases. We have requested this number of attorneys from OPDS and await their response.

We'll note, also, that on review of the Guidance provided to us from OPDS as to how to address the crisis, they suggest discussions of capacity are, to some degree, unhelpful. They recommend, rather than focus on this issue, we look to court procedures and charging decisions in trying to handle the crisis. Frankly, while we appreciate their position, most of their suggested solutions don't resolve the problems in practice. They largely involve handling cases faster. This does little to assist in fixing the ongoing problem, since each case still has a value assigned when it is assigned to an attorney. A single point case is worth one point of capacity regardless of whether it takes several weeks to handle or several months. Given the structure of the contracts, many of the proposed solutions are simply inapplicable to the crisis.

In addition, many of the other recommendations they suggest have been long-standing practice in this county, which is one of the reasons we were the last metro-county to stop

taking cases. We remain the standard of efficiency, which leaves little room for fixing the problem without addressing capacity.

For this reason, we strongly believe it's necessary to make a strong statement in our crisis plan as to the need for additional capacity. Unlike other jurisdictions, as a well run and efficient consortia, we have been able to attract and retain excellent attorneys. Our representation model allows our attorneys to make a good living doing this important work. Given appropriate numbers, we expect we can cover our incoming cases and clear up the backlog in short order.

We are open to your thoughts on other means of streamlining cases and resolving the crisis, but would like to ensure the real issue is addressed.

Regards,

Kevin C. Leik
Director, CIDC

Case filing data from FY 2023 indicates that to cover the caseload in Clackamas County, 31.44 MAC is needed in the following case categories:

Case Category	MAC Needed
Civil Commitment	2.67
Contempt	2.18
Delinquency	0.80
Felony	12.97
Misdemeanor	12.63
PCR/Habeas	0.20
Total	31.44

Recommended Intervention

Recommendation	Add attorneys — The PDSC should contract for additional attorneys.
Lever	Add attorneys
Intended Outcome or Goal	While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.
What if analysis	In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Clackamas County, the need is 1.23 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below. The following additional attorney capacity is needed: Capacity Needed (attorney FTE) / Total # of **additional** cases for new attorneys Major Felony: 0.05 / 7 Minor Felony: 0.37 / 61 Misdemeanor: 0.78 / 234 Probation Violation: 0.03 / 21 Annual Case Assignment for 1.0 FTE • Murder 6 • Jessica Law 6 • Measure 11 45 • Major A/B felonies 138 • Minor felonies 165 • Misdemeanors 300 • Probation violations 825 • Civil commitment 230
Performance Measure	Decrease in number of individuals on unrepresented list. No unrepresented defendants by September 2024.
Resource Needed	The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.

IN THE SIXTH JUDICIAL DISTRICT OF THE STATE OF OREGON

CIRCUIT COURTS OF

UMATILLA AND MORROW COUNTIES

In the Matter of Umatilla and Morrow County Circuit Courts Unrepresented Persons	No. 23-007 (Amendment 1) PRESIDING JUDGE ORDER RE: DIRECTING THE PRIORITY OF APPOINTMENTS OF DEFENSE ATTORNEYS IN UMATILLA AND MORROW COUNTIES

SUMMARY OF CHANGE: This amends PJO 23-007. Specifically addresses that based on necessity, the court will defer for later arraignment those charges, not defined as person class A misdemeanors under OAR, and B and C Misdemeanors.

WHEREAS, Chief Justice Order (CJO) 23-024, in response to Senate Bill (SB) 337, directs each presiding judge to immediately develop a crisis plan for their respective judicial district, with the goal of resolving the crisis; and

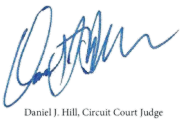
WHEREAS, SB 337 establishes requires that Oregon's courts help resolve the unrepresented defendant and develop a "unrepresented defendant crisis plan", prioritizing unrepresented defendants who are in custody.

II IT HEREBY ORDERED that the Sixth Judicial District of Umatilla and Morrow Counties, having consulted with Public Defense Organizations (PDO), DAs, and LPSCCs for both counties in the district, are establishing the following crisis plan to address the potential unrepresented defendant crisis:

1. Public Defender Organizations (PDO) shall advise the court when they will be within 10% of their cap on a case type.
2. The court will prioritize in-custody cases over out-of-custody cases, using the 10% to focus on such appointments.

3. Upon verification of qualification for Court Appointed Counsel, OPDS will be appointed whenever the court received notice that the PDO's do not have capacity. Cases will be deferred to another date for further action. Upon Defense Counsel and OPDS reaching an agreement that Counsel will accept a case, Defense Counsel shall file into the case a notice of representation with the court.
4. If necessary, the court will cease to issue bench probation Orders to Show Cause for violations of bench probation, for other than DUII or person offenses.
5. If necessary, the court will defer for later arraignment those charges, not defined as person class A misdemeanors under OAR, and B and C Misdemeanors.

Dated this 25 day of August, 2023



DANIEL J. HILL
Presiding Judge

Recommended Intervention

<table>
<tr><td>Recommendation</td><td>Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers.</td></tr>
<tr><td>Lever</td><td>Attorney Capacity</td></tr>
<tr><td>Intended Outcome or Goal</td><td>While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.</td></tr>
<tr><td>What if analysis</td><td>Attorney Capacity
In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by less than 1%. This contract cycle, attorneys in the 7th District have taken 2,622 public defense cases over 13.7 months, meaning per month, attorneys are currently able to take 191 cases. Currently, there are 15 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in the 7th District would have to take 193 cases a month, for an increase of less than 1%. The 7th District has 60 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county. This would result in the following increases based on current caseloads:

<table>
<tr><td></td><td>Current Represented Cases (13.7 months)</td><td>Current Unrepresented Cases (13.7 months)</td><td>Proposed % Increase (13.7 months)</td></tr>
<tr><td>Civil Commitment</td><td>11</td><td></td><td>0%</td></tr>
<tr><td>Jessica's Law</td><td>4</td><td></td><td>0%</td></tr>
<tr><td>Major Felony</td><td>83</td><td>3</td><td>4%</td></tr>
<tr><td>Measure 11</td><td>43</td><td>1</td><td>2%</td></tr>
<tr><td>Minor Felony</td><td>403</td><td>7</td><td>2%</td></tr>
<tr><td>Misdemeanor</td><td>1,688</td><td>4</td><td>0%</td></tr>
<tr><td>Murder</td><td>2</td><td></td><td>0%</td></tr>
<tr><td>Probation Violation</td><td>366</td><td></td><td>0%</td></tr>
<tr><td>Specialty Court</td><td>22</td><td></td><td>0%</td></tr>
</table>

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in the 7th District would be addressed over twelve months' time.</td></tr>
<tr><td>Performance Measure</td><td>Decrease in number of individuals on unrepresented list.
No unrepresented defendants by September 2024.</td></tr>
<tr><td>Resource Needed</td><td>The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.</td></tr>
<tr><td>Future Actions</td><td></td></tr>
</table>

House Bill 2497

Sponsored by Representative OWENS, Senator FINDLEY (Presession filed.)

SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced.**

Directs State Court Administrator to fund assessment of courthouses in small counties.

Requires state to provide funding for courthouses not in need of replacement. Requires state to build new courthouse to replace courthouses in need of replacement.

A BILL FOR AN ACT

Relating to courthouses.

Be It Enacted by the People of the State of Oregon:

SECTION 1. (1) The State Court Administrator shall fund the assessment of courthouses in each county with a population of less than 50,000. The assessment must examine the viability of maintaining the use of the current courthouse for the next 75 years.

(2) If the assessment performed under subsection (1) of this section indicates that a courthouse in a county should not be replaced, the state, by and through the Oregon Department of Administrative Services, shall provide funding for technology, security and courthouse infrastructure so that the courthouse can be used for the next 25 years.

(3)(a) If the assessment performed under subsection (1) of this section indicates that a courthouse in a county should be replaced, the state, acting by and through the Oregon Department of Administrative Services, shall purchase property and build a new courthouse that will meet the needs of the county for at least 75 years.

(b) The state shall lease space in a courthouse built under this subsection to the county at a rate that equals 50 percent of the market rate for commercial space in the county.

NOTE: Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

LC 1272

CASE FILING PER JUDGE THROUGH 7/27/2023

County	Cases	Judges	Average per Judge
Malheur	1,443	2	722
Clackamas	6,833	11	621
Washington	9,298	15	620
Jackson	6,051	10	605
Benton	1,781	3	594
Lincoln	1,752	3	584
7th Judiical	2,255	4	564
Yamhill	2,166	4	542
Crook-Jefferson	1,535	3	512
Linn	2,533	5	507
Deschutes	4,342	9	482
Umatilla-Morrow	2,362	5	472
Klamath	2,327	5	465
Union-Wallowa	928	2	464
Polk	1,377	3	459
Douglas	2,251	5	450
Grant-Harney	415	1	415
Lake	413	1	413
Marion	6,045	15	403
Josephine	1,828	5	366
Coos-Curry	2,124	6	354
Clatsop	1,060	3	353
Baker	333	1	333
Tillamook	614	2	307
Columbia	918	3	306
Multnomah	9,830	38	259
Lane	3,694	15	246

Draft SB 337 Unrepresented Defendant Crisis Plan

Deschutes County Circuit Court

Background:

As of July 20, 2023, Deschutes County had 4 unrepresented defendants in 5 cases. Two of those defendants are in custody and the remainder are out of custody. The number of unrepresented defendants in the county has remained low but for June 2023, when the number spiked due to conflict cases.

Of the two pretrial defendants in custody who were without an attorney appointment, one is a M11 case where all local attorneys have an explicit conflict. The other is an individual who is in custody for a civil commitment- extreme risk case where all local attorneys also have an explicit conflict. The court is working with OPDS to identify qualified attorneys. The reasons for these two cases being without attorney appointments are due to case-specific circumstances.

In Deschutes County, cases filed decreased 2.8% over the previous year. Although overall case filings decreased, there was a significant increase in civil commitment case types. This differs from statewide where cases filed increased 1.4% with increases across most case types. Similarly, the overall attorney MAC needed to cover the cases filed decreased in FY 2023. There is a decreased need for felony and misdemeanor cases, but an increased need for civil commitment cases.

Deschutes County saw a 27.7% increase in dispositions and a 27% increase in clearance rate during FY 2023. Deschutes County's decreased case filings and increased dispositions and clearance rate in FY 2023 helped to keep the number of unrepresented individuals from becoming as severe as it did in many jurisdictions.

There is 11.9 MAC remaining in the current extended contract. The MAC needed to cover the current unrepresented cases is 0.02. The data suggests there is enough MAC to cover the current unrepresented cases and new case filings, but that may be complicated by the unrepresented case types, attorney conflicts, substitutions, and high attorney caseloads.

Court Actions to Date:

The stakeholders in the criminal justice system in Deschutes County have a collaborative culture between the court, the public defense providers and the District Attorney's Office. This culture of respectful problem-solving and communication has enabled the 11th Judicial District to resolve most issues as they arise.

Deschutes County has taken the following actions to avoid or reduce the likelihood of creating a crisis of unrepresented defendants:

- Extended the length of time between arraignment/initial appearance and entry of plea to provide time for attorneys to meet with their clients and gather information in an effort to reduce unnecessary hearings.
- Moved the trial readiness docket from the Thursday to Tuesday the week before trial (two days earlier).
- Conducted mini-settlement conference dockets to resolve criminal cases with less serious charges.
- Provide formal settlement conferences almost weekly to resolve criminal cases with the most serious charges, cases which are generally scheduled for multi-week jury trials.
- Maintained remote proceedings to promote efficiency and allow public defenders to work on other matters while waiting for their cases to be called on large dockets.
- Conduct recurring meetings and encourage ongoing communication between Presiding Judge, public defenders, and the District Attorney's Office to address trends in case processing issues, changes to their capacity, and opportunities for ongoing efficiencies and improvement.
- Consulted with stakeholders to strategically process case backlogs, including warrants, that developed during the pandemic.

Actions Taken on OCDLA Recommendations/Related to UTCR proposals:

The 11th Judicial District has the following practices in place:

- Reduced multiple court appearances by increasing length of time between initial appearance and entry of plea.
- Continues to allow plea negotiations until trial, no plea deadlines.
- Presiding Judge completed week-long mediation training through National Judicial College and subsequently began offering formal settlement conferences for cases with serious charges. Significant settlement conferences are conducted almost weekly, reducing significant numbers of multi-day trials.
- Continues to offer remote hearings.

Already Adopted Best Practices:

- Deschutes County currently follows the best practices for Odyssey data entry.
- If we experience a reduction in public defense capacity, we will prioritize attorney appointments based on the seriousness of the charge/s, in-custody status and case age.
- We will consider removing attorney appointment if a warrant is issued.

<u>Possible Interventions/Recommendations:</u>

The intended outcome or goal of this plan is to retain and recruit public defenders. The stakeholders of the 11th Judicial District make the following recommendations to achieve that goal.

<table>
<tr><td>Recommendation</td><td>Increase Attorney Capacity— The PDSC should contract for additional attorneys in Central Oregon.</td></tr>
<tr><td>Lever</td><td>Add Attorneys</td></tr>
<tr><td>Intended Outcome or Goal</td><td>While this action is outside of the court's authority, increasing the number of attorneys is the most likely intervention that will address the unrepresented individuals' crisis. An increase in attorney capacity can be obtained by adding additional attorneys to the system. Hiring and/or developing additional qualified attorneys for the various case types increases local capacity to handle conflict cases.</td></tr>
<tr><td>What if analysis</td><td>Add Attorneys

In order to eliminate the number of unrepresented individuals (effective August 11, 2023), additional attorneys could be added. In Deschutes County, the need is 0.01 FTE at full caseloads as outlined in the OPDS contract to meet the qualifications below.

The following additional attorney capacity is needed:
<table>
<tr><td></td><td>Capacity Needed (attorney FTE)</td><td>Total # of additional cases for new attorneys</td></tr>
<tr><td>Civil Commitment</td><td>0.00</td><td>1</td></tr>
<tr><td>Minor Felony</td><td>0.01</td><td>2</td></tr>
<tr><td>Probation Violation</td><td>0.00</td><td>3</td></tr>
</table>

Annual Case Assignment for 1.0 FTE
• Murder 6
• Jessica Law 6
• Measure 11 45
• Major A/B felonies 138
• Minor felonies 165
• Misdemeanors 300
• Probation violations 825
• Civil commitment 230
• PCR/Habeas 45

Currently, there are 6 unrepresented public defense cases. Several of these are PCR cases where attorneys are always assigned by OPDS, but out-of-county.</td></tr>
<tr><td>Performance Measure</td><td>Decrease in number of individuals on unrepresented list.
No unrepresented defendants by September 2024.</td></tr>
<tr><td>Resource Needed</td><td>The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However,</td></tr>
</table>

	OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.
Future Actions	

Encouraged Interventions, where applicable in your judicial district

Conflicts

Intervention	Regional conflict resolution team
Lever	Attorney Capacity
Intended Outcome or Goal	Let the conflicts coordinator locally seek out attorneys in the region for neighboring counties to address conflict cases.
What if analysis	If attorney capacity is available within the region, the conflicts coordinator would be available to seek attorneys in neighboring counties to address the conflict need. Based on crisis team conversations, in Deschutes County, 100% of individuals on the unrepresented list are identified as conflict cases. As with the 21-23 caseload, conflict counsel is expected to be necessary in the 23-25 caseload. In order to eliminate the number of unrepresented individuals (effective August 10, 2023), and handle the forecasted caseload for 23-25, the following additional attorney capacity is needed to manage conflicts:

	Capacity Needed to address conflicts (attorney FTE)
Murder	
Measure 11	
Major Felony	
Minor Felony	0.01
Misdemeanor	
Civil Commitment	0.00
Probation Violation	0.00

Performance Measure	Reduction in number of conflict cases on the unrepresented list and the length of time that a defendant is on the list.
Resource Needed	Funding for conflict attorney capacity; funding for conflict coordinator. Change in policy.
Future Actions	

Coordinator for attorney appointments

Intervention	Local or regional coordinator for attorney appointments, particularly in districts with a high number of conflicts. The

	coordinator would ideally be an employee of OPDS who has sufficient capacity and expectations of timely and responsive work on these cases. Identifying and contracting with attorneys is the responsibility of OPDS, not OJD. If it is determined that regional coordinators would be employees of OJD, additional capacity (FTE) would be required within OJD to perform these duties. The local or regional coordinator will identify available qualified attorneys with capacity, assist the court in prioritizing appointment (considering custody status of individuals in need of counsel, and qualifications), identify and coordinate appointment to conflict counsel, monitor AIC and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.
Lever	Attorney Capacity
Intended Outcome or Goal	Increase attorney capacity, system efficiencies; reduction in number of unrepresented individuals.
What if analysis	
Performance Measure	Reduction in number of unrepresented individuals.
Resource Needed	Position and funding for coordinator
Future Actions	

Warrants

Intervention-	If required, terminate appointment of attorney at 60 days if individual is on warrant status for FTA & return individual to unrepresented list. If this becomes required, it will be critical for OPDS and OJD to agree on the period at which attorneys are removed from their appointment once an FTA warrant is issued. This will avoid conflicting direction to attorneys from the local court and OPDS regarding removal from these appointments.
Lever	Attorney Capacity
Intended Outcome or Goal	Increase attorney ethical capacity, reduction in number of unrepresented individuals.
What if analysis	OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity. In Deschutes County as of 8/10/2023, there are 140 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

		Number of appointments on warrant status
	Jessica's Law	
	Measure 11	
	Major Felony	12
	Minor Felony	25
	Misdemeanor	103
	Civil Commitment	
	PCR	
Performance Measure	Reduction in the number of individuals on warrant status over 60 days with appointed attorneys	
Resource Needed	Business process change	
Future Actions		

Intervention	Be cautious about implementing policy changes to improve the public defense crisis in one judicial district that might create a crisis in another district.
Intervention or Recommendation	Recommendation
Lever	Attorney Capacity, Add/Retain Attorneys
Intended Outcome or Goal	Retain public defenders
Performance Measure	
Resources Needed	The 11th Judicial District will utilize the data dashboards provided by the Oregon Judicial Department to monitor progress on these performance measures.
Timeframe	On-going

Intervention	Create more flexibility in contracting for public defense providers to recognize the actual amount of time it takes to replace and hire attorneys (more than 60 days).
Intervention or Recommendation	Recommendation
Lever	Attorney Capacity, Add Attorneys

Intended Outcome or Goal	Contract modification that increases times before the contracted rate is reduced
Performance Measure	Improved time to disposition Reduction in case backlogs Reduction in motions to continue
Resources Needed	PDSC contracting adjustment
Timeframe	TBD

Intervention	Update contracting to acknowledge the higher cost of living in some areas of the state, and remove livability barrier
Intervention or Recommendation	Recommendation
Lever	Add attorneys
Intended Outcome or Goal	Increase number of attorneys interested in public defense, to include areas with higher cost of living
Performance Measure	Improved time to disposition Reduction in case backlogs Reduction in motions to continue
Resources Needed	PDSC contracting adjustment
Timeframe	TBD

Intervention	Consider loan forgiveness for attorneys who provide public defense services through conflict contracts and/or consortia.
Intervention or Recommendation	Recommendation
Lever	Add attorneys
Intended Outcome or Goal	Increase number of public defense attorneys
Performance Measure	
Resources Needed	statutory change
Timeframe	TBD

Most of these strategies were already in effect. Trial readiness was moved to Tuesdays the first week of July 2023.

FILED
POLK COUNTY OREGON
2023 JUL 27 PM 1:35
TRIAL COURT ADMINISTRATOR
ENTERED BY

IN THE CIRCUIT COURT OF STATE OF OREGON

IN AND FOR POLK COUNTY

In the Matter of Lower Level Criminal Case Resolution Procedure In Polk County	)))	PRESIDING JUDGE ORDER No. 23 - 002

ORDER ESTABLISHING CRIMINAL CASE RESOLUTION DOCKET

THE ABOVE MATTER coming before the Court on its own motion for a periodic review of existing court process to ensure local compliance with applicable law and to efficiently dispense justice, the Court finds that:

ORS 1.171 provides that the presiding judge of a district is the administrative authority over the circuit court of the district and authorizes exercising powers to make rules, issue orders and take other action appropriate to that exercise;

There is good cause to update a local process dealing with this matter to increase the overall efficiency of the court and to best serve the community;

NOW, THEREFORE, I HEREBY ORDER that subject to the exceptions contained within this order, criminal case resolution proceedings in Polk County Circuit Court shall be held as follows:

- All criminal cases with the highest charge of "C" felony or below shall be scheduled on a Criminal Case Resolution Docket (CCR) upon filing of the required Trial Readiness Information and Witness List pursuant to PJO 21-005.
- CCR Docket will be held each Friday at 9:30AM in courtroom 2 of the courthouse or otherwise designated by the Presiding Judge.
- Parties with a case on CCR must appear in person unless the court directs otherwise. All persons with authority needed to settle the case shall appear.
- If a matter cannot be resolved through CCR Docket, the matter will then be assigned to a judge for further proceedings and trial.
- If the Court is unable to hold CCR Docket for two or more consecutive weeks, the eligible cases for this docket will be assigned to a judge for further proceedings as appropriate.
- In-custody defendants who have not waived 60 days or who are subject to a request for a fast and speedy trial will not be automatically assigned to the CCR Docket.

NOTWITHSTANDING THE ABOVE, parties may request a separate settlement conference where the case cannot be resolved through or does not meet the requirements for the CCR Docket.

THIS ORDER supersedes any previous Order on this matter and any other conflicting Orders.

Dated this this 27 day of July 2023.

Norman R. Hill
Presiding Judge

SB 337 / CJO 23-024 Unrepresented Defendant Crisis Plans
Coos County

The Office of the State Court Administrator data team will provide the data to populate the 'what if' analysis for the levers you choose to include in your crisis plan. Please contact your assigned team to request the data. For questions, contact Tiffany Quintero.

Recommended Intervention

<table>
<tr><td>Recommendation</td><td>Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers or contract for additional attorneys.</td></tr>
<tr><td>Lever</td><td>Attorney Capacity</td></tr>
<tr><td>Intended Outcome or Goal</td><td>While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.</td></tr>
<tr><td>What if analysis</td><td>In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by 4%. This contract cycle, attorneys in Coos/Curry County have taken 1,598 public defense cases over 13.7 months, meaning per month, attorneys are currently able to take 116 cases. Currently, there are 51 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in Coos/Curry County would have to take 121 cases a month, for an increase of 4%. Coos/Curry County has 10 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county. This would result in the following increases based on current caseloads:
<table>
<tr><th></th><th>Current Represented Cases (13.7 months)</th><th>Current Unrepresented Cases (13.7 months)</th><th>Proposed % Increase (13.7 months)</th></tr>
<tr><td>Civil Commitment</td><td>14</td><td></td><td>0%</td></tr>
<tr><td>Major Felony</td><td>68</td><td>7</td><td>10%</td></tr>
<tr><td>Measure 11</td><td>34</td><td>3</td><td>9%</td></tr>
<tr><td>Minor Felony</td><td>302</td><td>11</td><td>4%</td></tr>
<tr><td>Misdemeanor</td><td>969</td><td>26</td><td>3%</td></tr>
<tr><td>Murder</td><td>2</td><td></td><td>0%</td></tr>
<tr><td>PCR/Habeas</td><td>2</td><td></td><td>0%</td></tr>
<tr><td>Probation Violations</td><td>199</td><td>4</td><td>2%</td></tr>
<tr><td>Specialty Court</td><td>8</td><td></td><td>0%</td></tr>
</table>
With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Coos/Curry County would be addressed over twelve months' time.</td></tr>
</table>

Performance Measure	Decrease in number of individuals on unrepresented list. No unrepresented defendants by September 2024.
Resource Needed	The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.
Future Actions	

Encouraged Interventions, where applicable in your judicial district

Conflicts

Intervention	Regional conflict resolution team
Lever	Attorney Capacity
Intended Outcome or Goal	Let the conflicts coordinator locally seek out attorneys in the region for neighboring counties to address conflict cases.
What if analysis	If attorney capacity is available within the region, the conflicts coordinator would be available to seek attorneys in neighboring counties to address the conflict need. Based on crisis team conversations, in Coos/Curry County, 100% of individuals on the unrepresented list are identified as conflict cases. As with the 21-23 caseload, conflict counsel is expected to be necessary in the 23-25 caseload. In order to eliminate the number of unrepresented individuals (effective August 23, 2023), and handle the forecasted caseload for 23-25, the following additional attorney capacity is needed to manage conflicts:

	Capacity Needed to address conflicts (attorney FTE)
Murder	
Measure 11	0.07
Major Felony	0.05
Minor Felony	0.07
Misdemeanor	0.09
Civil Commitment	
Probation Violation	0.01

Performance Measure	Reduction in number of conflict cases on the unrepresented list and the length of time that a defendant is on the list.
Resource Needed	Funding for conflict attorney capacity; funding for conflict coordinator. Change in policy.
Future Actions	

Warrants

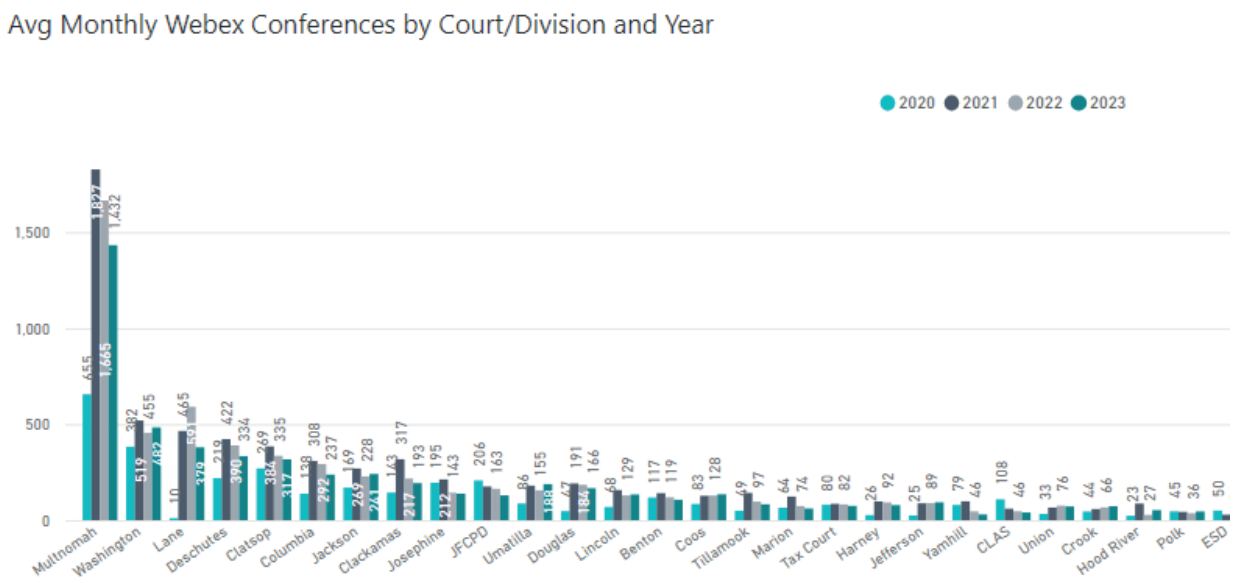
Intervention	Terminate appointment of attorney at 60 days if individual is on warrant status for FTA & return individual to unrepresented list
Lever	Attorney Capacity
Intended Outcome or Goal	Increase attorney ethical capacity, reduction in number of unrepresented individuals.

<table>
<tr><td>What if analysis</td><td>OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity.

In Coos/Curry County as of 8/10/2023, there are 57 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows:

<table><tr><td></td><td>Number of appointments on warrant status</td></tr><tr><td>Jessica's Law</td><td></td></tr><tr><td>Measure 11</td><td>2</td></tr><tr><td>Major Felony</td><td>4</td></tr><tr><td>Minor Felony</td><td>16</td></tr><tr><td>Misdemeanor</td><td>35</td></tr><tr><td>Civil Commitment</td><td></td></tr><tr><td>PCR</td><td></td></tr></table></td></tr>
<tr><td>Performance Measure</td><td>Reduction in the number of individuals on warrant status over 60 days with appointed attorneys</td></tr>
<tr><td>Resource Needed</td><td>Business process change</td></tr>
<tr><td>Future Actions</td><td></td></tr>
</table>

Exhibit A – Webex Usage by Court



[Open in Power BI]

eStats Remote Hearings
Data as of 7/27/23, 9:14 PM

Exhibit B – Clatsop Remote Hearings

Year	2023				
Platform	Video Conferences	Total Participants	Avg Participants / Conference	Total Duration (hours)	Avg Duration / Conference (min)
Webex	**2,220**	**15,118**	**7**	**1,667**	**45**
Circuit & Tax Courts	2,220	15,118	7	1,667	45
Total	**2,220**	**15,118**	**7**	**1,667**	**45**

[Open in Power BI]

eStats Remote Hearings
Data as of 7/27/23, 9:14 PM
Filtered by **Court** (is Clatsop), **Platform** (is Webex), **Year** (is 2023)

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

IN THE MATTER OF: Washington County Circuit Court UNREPRESENTED PERSONS	CORRECTED PRESIDING JUDGE ORDER 331 DIRECTING THE PRIORITY OF APPOINTMENTS OF DEFENSE ATTORNEYS IN WASHINGTON COUNTY

1.

On March 16, 2022, I signed Presiding Judge Order (PJO) No. 320 implementing a temporary plan to continue the arraignments of adult criminal defendants in Washington County who qualified for court appointed counsel, but for whom no defense attorney was available to appoint.

On August 23, 2022, I signed PJO No. 321 rescinding the temporary plan because there was no foreseeable end to the immediate or long-term shortage of available criminal defense attorneys in Washington County, or in the state of Oregon.

On the date of this Order, there are approximately eighty adults in custody at the Washington County Jail without attorney representation. Of these, twenty-one have been in custody without attorney representation for thirty days or more. There are more two hundred and fifty defendants

out of custody waiting for attorneys with approximately thirty of these being probation violation matters including Measure 11 matters and domestic violence.

Currently, due to the lack of criminal defense attorneys, additional dockets have been created to check in with defendants who do not have lawyers and assure they are completing applications for court appointed counsel. These hearings are time consuming to the parties and the court's docket, but have been implemented to maintain contact with defendants, keep them informed of their appointment status, and assure that once an attorney is appointed to them the attorney has the information necessary to contact them.

As Presiding Judge, I have had frequent discussions with OPDS staff over the past year and several months about the ongoing unrepresented persons crisis in Washington County and have been involved with recommending priorities for appointment. There have been several local criminal justice system stake holder meetings and many smaller meetings to come up with ways to maximize the available resources. The court had two settlement dockets (aka Wingspan 2 and 3) to facilitate settlement of cases. I have presided weekly over an ever-increasing Office of Public Defense Services (OPDS) Case Management Conference (CMC) Docket comprised of unrepresented defendants both in custody and out of custody.

The unrepresented defendant crisis has not diminished, to the contrary our unrepresented cases have continued to increase.

I have attempted to informally prioritize the appointment of criminal defense attorneys to adults who are in custody. However, the current informal priority process for the appointment of attorneys is not working in a way that provides for the fair allocation of attorney resources. In custody defendants must be given attorney appointment priority over people who are out of custody facing similar charges. After prioritizing defendants who are in custody, those who are

not in custody should receive attorneys based on an understandable system that prioritizes domestic violence, probation violations and those suffering from serious mental health issues that may need to be evaluated pursuant to ORS Chapter 161.

2.

Washington County does not have attorneys under contract pursuant to ORS 151.010.

3.

It is the duty of the Public Defense Services Commission (PDSC)[1] to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. ORS 151.216 (1)(a).

4.

Currently Metropolitan Public Defenders (MPD) – Washington County, assists OPDS with gathering conflict information from the various criminal defense firms and contracted lawyers in Washington County. Based on the information they receive, they then relay to the Washington County Circuit Court Indigent Defense Verifiers Office the names of those attorneys who are available to accept appointment of cases as they come in for initial arraignment. If an attorney is not available for appointment at the initial arraignment, the person is "appointed" OPDS. OPDS is not the lawyer but is a placeholder in the court's computer system used by the Office of State Court Administrator (OSCA) to determine how many people are eligible for and in need of a

[1] SB 337 changes the name of the commission to Oregon Public Defense Commission (OPDC).

court appointed attorney. This is consistent with the statewide business process that was established by OSCA on August 11, 2022.

Once the person is appointed OPDS, the current process is for MPD – Washington County, and OPDS to continue to seek available and qualified attorneys, as attorneys become available to take additional appointments for these cases. Attorneys are not required to take specific cases but are allowed to pick from the list.

5.

This PJO is in response to the unrepresented person's crisis. It includes procedures regarding the administration of the appointment of attorneys in Washington County and is not intended to conflict with any policies, procedures, standards, and guidelines adopted by PDSC and establishes priorities for the appointment of lawyers. ORS 151.216(2).

6.

In Washington County, lawyers shall be appointed to the oldest matter where the defendant is in custody that the lawyer is qualified to handle, and where they do not have a conflict pursuant to the Oregon Rules of Professional Conduct (ORPC), before receiving an appointment on a matter where the defendant is not in custody. If a lawyer is not qualified to handle any of the matters where the defendant is currently in custody, then the lawyer may be appointed to a matter where the defendant is not in custody and for which they are qualified and they do not otherwise have a conflict. Matters where the defendant is not in custody shall be prioritized as follows:

1) M11 offenses;
2) Pretrial domestic violence felonies;

3) Probation violation (PV) matters involving domestic violence, or where revocation of probation or jail is being recommended, and PVs on downward departure cases;
4) Cases where the court has reason to suspect mental health issues that may need to be evaluated pursuant to ORS Chapter 161;
5) Other matters where the defendant is not in custody - oldest arraignment date first.

7.

The Presiding Judge may order the appointment of a lawyer in other matters upon a finding of good cause.

8.

Judicial appointments not consistent with this PJO may be vacated by the appointing judge or the Presiding Judge.

9.

A defendant has the right to have counsel appointed if indigent. Defendants who wish to have court appointed counsel shall complete an application for court appointed counsel prior to the appointment of counsel. The application is available online here: IN THE CIRCUIT COURT OF THE STATE OF OREGON. Defendants may also submit paper applications at the Washington County Law Enforcement Center (LEC). The requirement for the completion of an application may be waived for good cause by the court.

10.

Cases where the defendant is in custody shall receive priority for appointment of an attorney. No attorney shall be appointed to an out of custody defendant if that attorney is qualified to take a matter where the defendant is in custody case. The court may forgo the

appointment of attorneys to out of custody defendants if there remain unrepresented defendants who have been in custody without a lawyer for thirty days or more.

11.

Adult defendants who are in custody and who have been appointed OPDS shall have an appearance in court every two weeks, but no more than three weeks absent good cause, on the OPDS CMC docket. Defendants who are out of custody shall have a hearing approximately every six to eight weeks on the OPDS CMC docket. The purpose of these hearings is for the court to confirm the defendant's custody, attorney representation status, set future dates, and consider other matters as may be brought by either party at that time.

12.

Except in cases where the matter is assigned to a specific judge, attorney motions and notices to withdraw shall be heard by the Presiding Judge or a judge designated by the Presiding Judge to hear the matter.

13.

Attorney appearance by telephone regarding attorney withdrawal motions may be requested via email at least one day ahead of time to the Presiding Judge's staff email and to the calendaring department.

14.

The 2023 Legislative Assembly has enacted Senate Bill (SB) 337, which, among other provisions relating to Oregon's public defense system, establishes requirements concerning a present crisis involving persons accused of crimes in state court who qualify for court-appointed counsel but are not represented. The bill becomes effective on passage. The bill requires each

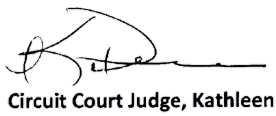
judicial district with a total population of more than 100,000 to convene a crisis team to assist in the development of the judicial district's plan to coordinate and implement the plan

Consistent with this Order, SB 337 prioritizes the resolution of cases of unrepresented defendants who are in custody and then to those who are out of custody.

A crisis team will be convened in Washington County to consider ways to resolve the unrepresented person crisis. This Order may be amended, if necessary, based on strategies arising from the crisis team.

This Order is effective immediately.

July 13, 2023



Circuit Court Judge, Kathleen Proctor

(This order corrects the previous order dated July 11, 2023.)

Recommended Intervention

<table>
<tr><td>Recommendation</td><td>Increase Attorney Capacity— The PDSC should increase the annual caseload limits in contracts with public defense providers.</td></tr>
<tr><td>Lever</td><td>Attorney Capacity</td></tr>
<tr><td>Intended Outcome or Goal</td><td>While this action is outside of the court's authority, increasing attorney capacity is the most likely intervention that will address the unrepresented individual's crisis. An increase in attorney capacity can be obtained through additional workload of existing attorneys or by adding additional attorneys to the system. Increasing annual caseload limits permitted under the contract is one way to expand workload; hiring and/or developing attorneys has the effect of adding attorneys to the system.</td></tr>
<tr><td>What if analysis</td><td>Attorney Capacity

In lieu of adding attorneys, the existing attorneys taking cases within the county could increase their current caseload capacity by 9%. This contract cycle, attorneys in Linn County have taken 2,516 public defense cases over 13.5 months, meaning per month, attorneys are currently able to take 186 cases. Currently, there are 188 unrepresented public defense cases. To cover the current and unrepresented caseload over the next 12 months of the contract, attorneys in Linn County would have to take 202 cases a month, for an increase of 9%. Linn County has 15 active attorneys on contract, along with other providers taking conflict cases hourly or under contract but out-of-county. This would result in the following increases based on current caseloads:

<table>
<tr><td></td><td>Current Represented Cases (13.5 months)</td><td>Current Unrepresented Cases (13.5 months)</td><td>Proposed % Increase (13.5 months)</td></tr>
<tr><td>Civil Commitment</td><td>61</td><td></td><td>0%</td></tr>
<tr><td>Jessica Law</td><td>3</td><td></td><td>0%</td></tr>
<tr><td>Major Felony</td><td>166</td><td>11</td><td>7%</td></tr>
<tr><td>Measure 11</td><td>71</td><td>3</td><td>4%</td></tr>
<tr><td>Minor Felony</td><td>732</td><td>53</td><td>7%</td></tr>
<tr><td>Misdemeanor</td><td>969</td><td>75</td><td>8%</td></tr>
<tr><td>Murder</td><td>5</td><td></td><td>0%</td></tr>
<tr><td>PCR/Habeas</td><td>3</td><td></td><td>0%</td></tr>
<tr><td>Probation Violations</td><td>468</td><td>46</td><td>10%</td></tr>
<tr><td>Specialty Court</td><td>38</td><td></td><td>0%</td></tr>
</table>

With this change to annual caseloads, all existing attorneys qualified for the case types affected would need to increase their caseload. The current unrepresented crisis in Linn County would be addressed over twelve months' time.</td></tr>
<tr><td>Performance Measure</td><td>Decrease in number of individuals on unrepresented list.
No unrepresented defendants by September 2024.</td></tr>
</table>

Resource Needed	The resources needed to increase attorney capacity are the purview of PDSC and outside the scope of this recommendation. However, OJD acknowledges that additional resources will be required and supports directing resources to alleviating the crisis.
Future Actions	

Warrants

Intervention	Terminate appointment of attorney at 60 days if individual is on warrant status for FTA & return individual to unrepresented list
Lever	Attorney Capacity
Intended Outcome or Goal	Increase attorney ethical capacity, reduction in number of unrepresented individuals.
What if analysis	OJD acknowledges that, as a result of PDSC contract terms, termination by the court of appointment for individuals on warrant status does not increase contracted attorney capacity. However, termination of appointment reduces the attorney's caseload, likely freeing up ethical capacity. In Linn County as of 8/10/2023, there are 131 open appointments over 60 days for cases in warrant status. Terminating appointments will reduce the number of cases appointed to attorneys as follows: Jessica's Law: 1 Measure 11: 11 Major Felony: 5 Minor Felony: 53 Misdemeanor: 66
Performance Measure	Reduction in the number of individuals on warrant status over 60 days with appointed attorneys
Resource Needed	Business process change
Future Actions	

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

In the Matter of:	PRESIDING JUDGE
Updating Restrictions on Court Operations	GENERAL ORDER
	Number: PJ 21-001

Chief Justice Order Number 21-009 was adopted by Chief Justice Walters on March 11, 2021. The CJO becomes effective as of March 15, 2021 and addresses the most recent orders for the operations of courts within the state of Oregon. CJO 21-009 grants authority to the Presiding Judge of the court to set forth as to the mode of proceedings in the local court.

This court has issued Presiding Judge Orders concerning court operations during the emergency period declared by the Governor of the state of Oregon and previous Chief Justice Orders.

In order to effectuate provisions of the CJO 21-009, the undersigned Presiding Judge of the Linn County Circuit Court orders as follows:

1. CJO Paragraph 2f(1) allows the Presiding Judge to allow certain types of proceedings to be conducted in person. It is the recent experience of this court that certain bench trials, with limited numbers of parties and witnesses, can be held in person and remain compliant to all safety measures required by Paragraph 5 of CJO 21-009. Therefore, proceedings involving fewer than three parties with counsel and fewer than five witnesses per side in the courthouse at one time may be conducted in person. Parties and counsel may elect, upon notification to the court, to appear remotely. The court will honor those requests so long as there is appropriate technology available for all to appear and be heard.
2. All proceedings must comply with Paragraph 5 of CJO 21-009.

3. FED proceedings, including FED bench trials, will be conducted remotely unless otherwise allowed by CJO 21-009 or this PJO.
4. Criminal pleas and sentencings will be scheduled to be conducted remotely. Juvenile admissions and disposition hearings will be scheduled to be conducted remotely. Counsel may request that these proceedings be conducted in person and the Presiding Judge will consider such requests pursuant to CJO 21-009, Paragraph 2f(2) which provides that the Presiding Judge may permit a particular proceeding to be conducted in person for reasons particular to that proceeding. In the event of personal appearances, such proceedings are subject to the requirements of CJO 21-009 Paragraph 5.
5. Unless objected to by the defendant, pleas and sentencings will continue by remote means when the defendant is in the custody of the Linn County Sheriff or the Department of Corrections.
6. The court requires personal appearances at the courthouse for first appearances on Wednesday afternoons. At that time, defendants are assigned attorneys (if requested), sign release agreements and are instructed as a condition of their release to contact their attorneys and participate in a further appearance by remote means. This process shall continue with required first appearances.
7. This PJO is effective upon the approval of the Chief Justice of the Oregon Supreme Court. The Chief Justice approved this PJO on March 26, 2021.

Dated this 29th day of March, 2021

Thomas A. McHill
Presiding Judge

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

In the Matter of:	PRESIDING JUDGE
Imposing In-Person Restrictions on Court Operations During Statewide Freeze	GENERAL ORDER
	Number: PJ20-015

On November 18, 2020, Chief Justice Walters issued her Chief Justice Order number 20-047, Order Imposing In-Person Restrictions on Court Operations During Statewide "Freeze". The CJO provides that unless otherwise authorized, a circuit court may conduct any legal proceedings as long as it does so entirely by remote means and as long as remote means are permitted by law, including any Chief Justice Order.

NOW, THEREFORE, IT IS ORDERED THAT:

Unless constitutionally or statutorily required to be conducted in-person, all hearings will be conducted remotely by video or telephone conference. Hearing participants will be given appropriate contact information for a scheduled event in the hearing notice of the event.

Paragraphs 2 and 3 of CJO 2020-047 provide instances where in-person proceedings may be conducted. Notwithstanding these paragraphs, it is the policy of the Linn County Circuit Court that unless an objection is made or the court finds otherwise as provided in CJO 2020-047, the following proceedings will be conducted by remote means:

1. Unless for trial, all in-custody defendants or parties will appear by video. Sentencing for in-custody defendants will be conducted by video, unless the defendant objects to appearing remotely.
2. All routine appearances in criminal cases, such as resolution conferences, status conferences and scheduling conferences will be conducted by remote means. Sentencings or other proceedings may be conducted remotely unless required otherwise by the constitution, statute or if the defendant objects to remote means.

Admin Orders – TCA
OR
Order
13314495



3. First appearance FED appearances, subject to any issued moratorium, will be conducted in-person, unless a party arranges for appearance by remote means prior to the hearing.
4. Adult Drug Treatment court will continue to have appearances by remote means. Family Treatment Court appearances will be by remote means.
5. All routine appearances in civil cases or family law cases will be conducted by routine means.
6. Civil commitment hearings will be conducted by remote means to the fullest extent possible.
7. Juvenile shelter care hearings will be conducted by remote means. Jurisdictional, dispositional hearings and all other review and permanency hearings will be conducted by remote means unless the court determines, under the guidelines of CJO 2020-047 an in-person hearing is required.
8. Appearances on FAPA applications, motions and renewals, Elderly Persons and Persons with Disabilities Abuse Prevention Act, Sexual Abuse Protection Orders, Extreme Risk Protection Orders and stalking orders may be conducted in-person.
9. Hearings on immediate danger orders may be conducted in-person.

Any other matters will be conducted remotely unless otherwise required by law or allowed by CJO 2020-047.

This order will remain in effect until further order of the Presiding Judge.

Dated this 7th day of December 2020

Thomas A. McHill
Presiding Judge

Verified Correct Copy of Original 7/26/2023.

IN THE CIRCUIT COURTS OF THE STATE OF OREGON
FOR GRANT AND HARNEY COUNTIES

In the Matter of Indigent Defense Representation Notices	)	File No. ADPJO
	)	PRESIDING JUDGE ORDER NO 23-004

1) Under current statutory law, the court must keep track of the specific attorney representing an indigent client for collection of workload data. For each of the public defense contractors who have more than one attorney assigned to individual cases, this order is required to assist the court in collecting data for addressing the indigent defense caseload issues created under the current contact structure and limitations.

2) Upon assignment of an indigent case, the court will issue an 'Order Appointing Counsel' naming the attorney and bar number of the attorney which the firm is assigning to the case.

3) If the case is reassigned to another attorney in the firm, the substituting attorney shall file a 'Notice of Change of Representation' with the court within five judicial days of the change of representation within the firm. The notice shall contain the attorney's name as listed with the Oregon State Bar, the attorney's bar number, the email addresses to where all court notices are to be sent, the mailing address and phone number of the assigned attorney. The notice will be filed and served on the other parties to the case.

4) The case credits assigned at appointment shall be subtracted from the first attorney's caseload numbers and added to the newly assigned attorney's caseload numbers.

5) The court shall allow the contracted case credits for the appointment of the firm pursuant to their contract with the Oregon Public Defense Service Commission (PDSC), and its successor agency, the Oregon of Public Defense Commission (OPDC). The court shall not allow double counting of the case credits when the case is reassigned internally.

6) The contractors shall provide the above information for all cases appointed since July 1, 2023 no later than September 1, 2023.

7) This Presiding Judge's Order will expire upon implementation of a Supplemental Local Rule or Chief Justice Order covering the same notice of representation topic.

7/26/2023 9:58:38 AM

Robert S. Raschio, Circuit Court Judge

APPENDIX C: OJD Resources

C.1 CHIEF JUSTICE ORDER 23-024

C.2 MEMO RE: SB 337C UNREPRESENTED DEFENDANT CRISIS PLANS

C.3 SB 337 UNREPRESENTED CRISIS PLAN FACILITATOR GUIDE

C.4 CJO 23-024, SB 337 INTRODUCTION POWERPOINT

C.5 UNREPRESENTED CRISIS OJD-LED EFFORTS

C.6 TRANSCRIPT WAYS & MEANS 6/9/23 SB 337 WS: REMARKS FROM SENATOR SOLLMAN

C.1

In the Matter of Requiring Development and Implementation of Coordinated Public Safety Unrepresented Defendant Crisis Plans in Each Judicial District	))))))))	CHIEF JUSTICE ORDER No. 23-024 ORDER REQUIRING DEVELOPMENT AND IMPLEMENTATION OF COORDINATED PUBLIC SAFETY UNREPRESENTED DEFENDANT CRISIS PLANS IN EACH JUDICIAL DISTRICT

I HEREBY FIND as follows:

1. ORS 1.002(1) provides that the Chief Justice is the administrative head of the judicial department of government of this state and, to facilitate the exercise of that administrative authority, may make rules and issue orders appropriate to that exercise.

2. The 2023 Legislative Assembly has enacted Senate Bill (SB) 337, which, among other provisions relating to Oregon's public defense system, establishes requirements concerning a present crisis involving persons accused of crimes in state court who qualify for court-appointed counsel but are not represented ("unrepresented defendant crisis"). That bill—not yet signed by the Governor—becomes effective on passage.

3. Sections 104 through 106 of SB 337 identify important responsibilities for Oregon's courts in helping to resolve the unrepresented defendant crisis, including the development and implementation, in each judicial district, of a coordinated public safety unrepresented defendant crisis plan (hereafter, "unrepresented defendant crisis plan" or "plan").

    a. Section 104 includes these components, in relation to each judicial district's plan:

        (1) Prioritization of the resolution of cases of unrepresented defendants who are in custody and then the cases of unrepresented defendants who are out of custody;

        (2) For each judicial district with a total population of more than 100,000, immediate convening of a crisis team to assist in the development of the judicial district's plan and to coordinate the implementation of the plan, composed of at least the presiding judge, the district attorneys within the judicial district; and the Office of Public Defense Services (OPDS) executive director (or designee); and

        (3) Submission of the judicial district's plan to the Oregon Criminal Justice Commission (CJC), as soon as practicable and no later than September 1, 2023.

    b. Sections 105 and 106 then describe additional components—which apply to the Public Defense Services Commission (PDSC) and the CJC—in relation to the judicial districts' plans:

        (1) The PDSC must, by no later than August 15, 2023, promulgate and disseminate guidance for the plans; and

(2) The CJC must review each plan and report its findings to the legislature.

c. Section 104 also furthered the legislature's goal of resolving the unrepresented defendant crisis, stating:

(1) The Chief Justice may issue orders related to resolving the crisis; and

(2) Each presiding judge may issue orders related to resolving the crisis that are consistent with any Chief Justice order and the judicial district's plan.

4. In urging support for the aspects of SB 337 just described, Senator Janeen Sollman explained that the legislature has directed the PDSC "to work in cooperation with the [Oregon] Judicial Department [(OJD)] on the development of a data-driven approach to ensuring representation for financially eligible, unrepresented persons * * * across judicial districts, including, but not limited to, an analysis of actual provider capacity in each judicial district, by case type and qualification[.]" Audio Recording, Joint Committee on Ways and Means, SB 337, June 9, 2023, at 1:39:55 (comments of member Senator Janeen Sollman), https://olis.oregonlegislature.gov.

5. This Chief Justice Order is intended to implement the policies and concepts described in sections 104 through 106 of SB 337, and to facilitate the timely development and implementation in each judicial district of a collaborative, effective, and data-driven unrepresented defendant crisis plan. OJD is fully committed to addressing the unrepresented defendant crisis, and this order and the resulting judicial district plans represent important steps toward resolving that crisis throughout our state.

I HEREBY ORDER as follows:

1. Each presiding judge shall immediately develop an unrepresented defendant crisis plan for that presiding judge's judicial district, with the goal of resolving the crisis.

2. The process of developing a plan shall include the following:

a. The presiding judge shall use a uniform "Unrepresented Crisis Plan Template" that the State Court Administrator (SCA) shall develop, approve, and distribute to all presiding judges as soon as practicable.

b. As part of the plan development and implementation process, each presiding judge shall:

(1) Prioritize the resolution of cases of unrepresented defendants who are in custody and then the cases of unrepresented defendants who are out of custody;

(2) Utilize available data related to criminal cases and attorney capacity within the judicial district;

(3) Consider the guidance promulgated by the PDSC;

(4) Include the district attorneys and local public defense contract administrators within the judicial district;

(5) Invite local public defense providers and other appropriate community partners within the judicial district to provide input;

(6) For any judicial district with a total population of more than 100,000, convene a crisis team composed of at least the presiding judge, the district attorneys within the judicial district, and the OPDS executive director (or designee); as contemplated by the legislature, the crisis team then will assist in the development of the judicial district's plan and coordinate implementation of the plan; and

(7) For any judicial district with a total population of 100,000 or fewer, but also with more than 20 unpresented defendants as of the date of this order, convene a crisis team as described in paragraph 2.b.(6) of this order.

3. Each presiding judge shall submit a preliminary unrepresented defendant crisis plan, for that presiding judge's judicial district, to the SCA as soon as practicable, but no later than August 24, 2023.

4. The SCA shall review each preliminary plan and coordinate further with each presiding judge, as needed, regarding the final plan for the judicial district.

5. Upon the presiding judge's confirmation of a final plan, the SCA shall submit each judicial district's final plan to the CJC, on behalf of each presiding judge, no later than September 1, 2023.

6. Each presiding judge may issue a Presiding Judge Order (PJO) related to the resolution of the unrepresented defendant crisis in that presiding judge's judicial district. Any such PJO must be consistent with this order and with the unrepresented defendant crisis plan adopted for the judicial district, and also should strive to

   a. Follow the guidelines set out in the SCA's final Unrepresented Crisis Plan Template; and

   b. Consider the input of other public safety partners, including the guidance promulgated and disseminated by the PDSC.

7. This order is effective immediately.

Dated this 7th day of July, 2023.



Meagan A. Flynn
Chief Justice

23-143

OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

July 17, 2023

MEMORANDUM

TO:	Presiding Judges Trial Court Administrators
FROM:	Nancy J. Cozine State Court Administrator
SUBJECT:	FOR DISTRIBUTION: SB 337-C – Unrepresented Defendant Crisis Plans
TOPIC TAGS:	Legislative Alert; Administration/Business Process
ACTION:	*Informational Only*
BOTTOM LINE:	CJO 23-024 and SB 337 have been signed and are in effect. This memo focuses on the provisions in each that direct every presiding judge to develop an unrepresented persons crisis plan no later than September 1, 2023.

As you know, Chief Justice Flynn recently issued Chief Justice Order (CJO) 23-024 and the Governor signed Senate Bill (SB) 337-C. Both the bill and the order direct every presiding judge to develop an unrepresented persons crisis plan no later than September 1, 2023. The CJO aligns with the statutory direction in SB 337 and adds a bit more detail regarding the requirements for presiding judges. This memo summarizes the requirements for the unrepresented persons crisis plans and outlines the approach that the Oregon Judicial Department (OJD) will take to ensure that courts are able to achieve this task within the expected timelines.

The provisions of SB 337-C relating to the crisis plans are found in sections 103-107. In order to move through this work in an efficient way, staff at the Office of the State Court Administrator (OSCA) are coordinating with the Public Defense Services Commission (PDSC) and the Criminal Justice Commission (CJC), which also have responsibilities in the process. OSCA staff will be assigned to assist courts by providing information and other supportive services as courts develop their plans, and will be available to assist with convening and facilitating discussions with stakeholder crisis teams if needed.

Please review this memo and distribute it, as needed, to your external partners. Each presiding judge will have to quickly implement a planning process for their judicial district and produce a plan.

Nancy J. Cozine, State Court Administrator ● Supreme Court Building ● 1163 State Street ● Salem, Oregon 97301-2563
503-986-5500 ● Oregon Relay Service - 711

I. Overview of Requirements for Unrepresented Defendant Crisis Plans

Section 103 makes legislative findings about the unrepresented persons crisis but does not contain substantive provisions.

CJO 23-024 and section 104 require each presiding judge to (1) immediately develop and implement a "coordinated public safety unrepresented defendant crisis plan," and (2) submit that plan to the CJC as soon as practicable and no later than September 1, 2023. The CJO directs presiding judges to submit preliminary plans to OSCA no later than August 24, 2023, and OSCA will submit final plans to the CJC by September 1, 2023.

The crisis plan must first prioritize the resolution of cases with unrepresented defendants who are in custody, and then prioritize out-of-custody unrepresented defendants. In judicial districts with a population of over 100,000 people or where there were more than 20 unrepresented defendants on July 7, 2023, the presiding judge must "immediately convene a crisis team" to assist in the development and implementation of the district's plan. Direction for the crisis team is provided below.

The CJO also requires presiding judges to utilize available data when developing and implementing their plans, consider guidance developed by the PDSC (expected to be approved on July 20), and invite public defense providers and other community partners to provide input.

We ask all courts to adhere to the legislative expectations provided by Senator Janeen Sollman related to the plans and planning process. Senator Sollman explained that the legislature has directed the PDSC

> "to work in cooperation with the [Oregon] Judicial Department on the development of a data-driven approach to ensuring representation for financially eligible, unrepresented persons * * * across judicial districts, including, but not limited to, an analysis of actual provider capacity in each judicial district, by case type and qualification[.]" Audio Recording, Joint Committee on Ways and Means, SB 337, June 9, 2023, at 1:39:55. Available at https://olis.oregonlegislature.gov.

Section 104 of SB 337 also authorizes the Chief Justice to enter orders related to resolving the unrepresented defendant crisis and both the bill and the CJO authorize presiding judges to enter standing orders related to resolution of the unrepresented defendant crisis. The presiding judge orders must be consistent with the crisis plan developed by the presiding judge and consistent with any orders entered by the Chief Justice.

SB 337-C also contains requirements for the PDSC, the CJC, and other state agencies. Section 105 of the bill requires the PDSC to promulgate and disseminate guidance for the judicial district crisis plans no later than August 15, 2023, develop a training plan for public defense providers specific to the unrepresented defendant crisis, and report to the legislature no later than October 1, 2023. Section 106 directs the CJC to review each judicial district's crisis plan and report its findings to the legislature, also no later than October 1, 2023. Finally, section

107 requires all state agencies to assist presiding judges, the PDSC, and the CJC with the performance of their duties under the bill.

II. Crisis Plan Report Templates and OSCA Data Reports

OSCA has created a template to document the judicial district's unrepresented defendant crisis plan and will provide each presiding judge with data specific to the judicial district to help the team (1) identify the nature of the unrepresented persons crisis in the district, and (2) determine what actions and recommendations to include in the crisis plan. The data will include information about the district's pending cases, case filings, time-to-disposition rates, and trial rates.

Your plan should reflect the nature of your unrepresented population, steps the court and its stakeholders can agree to take to address the crisis, other steps the court deems necessary to address the crisis that may not reflect a local consensus, and what additional resources are needed in your district to resolve the unrepresented persons crisis by June 30, 2025.

OSCA staff are meeting with the PDSC and the CJC to coordinate efforts and will provide courts with the guidance that the PDSC promulgates pursuant to section 105 of the bill as soon as that is available.

III. Unrepresented Defendant Crisis Teams in Specified Counties

Each presiding judge needs to include district attorneys and local public defense contract administrators within the judicial district, and invite input from local public defense providers and other community partners.

In addition, judicial districts with a population of more than 100,000 or who had more than 20 unrepresented defendants as of July 7, 2023, are required to convene crisis teams. Those judicial districts consist of the following counties: Benton, Clackamas, Coos, Deschutes, Douglas, Jackson, Klamath, Lane, Lincoln, Linn, Malheur, Marion, Multnomah, Washington, and Yamhill. The crisis teams are to assist with developing and implementing the courts' unrepresented defendant crisis plans. See, section 104(2).

The crisis team must include the presiding judge, the district attorney, and the director of the Office of Public Defense Services (OPDS) or her designee. Those participants are the minimum statutorily required. When convening crisis teams courts may use an existing Criminal Justice Advisory Council established pursuant to ORS 1.851 or the Local Public Safety Coordinating Council under ORS 423.560, if the group otherwise meets minimum statutory requirements. OPDS has designated staff to participate in the crisis teams and should be included in team communications.

We encourage you to schedule the crisis team meetings as soon as possible. We recommend that you hold the first meeting no later than the week of July 24 and hold the meetings in person

if possible. Also, consider that it may take more than one meeting to develop the plan. Preliminary plans are due at OSCA no later than August 24.

IV. Conclusion

We realize that this is a large amount of information and a significant amount of work for all of us in a very short timeframe. Thank you for your leadership and hard work navigating this crisis over these many months. We hope that this new approach will help us all find a way forward that ensures representation for everyone who has a right to counsel.

NC:jm/23eNC018jm
Attachment
ec: OSCA Leadership
OSCA SB 337 Workgroup

C.3

SB 337 Unrepresented Crisis Plan Facilitator Guide

Oregon Judicial Department
Office of the State Court Administrator

Table of Contents

Chief Justice Order 23-024 2
Background 2
Overview of Requirements for Unrepresented Crisis Plans 2
Initial Planning Prior to the First Crisis Team Meeting 3
Crisis Plan Template 4
The Four Levers 4
Best Practices 5
Proposals to Modify Uniform Trial Court Rules (UTCRs) 6
Data-Driven Decisions 6
Using County-Specific Data 6
Plan Content 7
Finalize and Submit Plan to OSCA by August 24, 2023 7
Thank You / Next Steps 8

Chief Justice Order 23-024

Chief Justice Order (CJO) 23-024 aligns with legislative passage of Senate Bill 337 (2023) and directs each presiding judge to develop a coordinated plan to resolve the unrepresented crisis in their judicial district. Developing the plan is an opportunity to create a shared understanding of the nature of the crisis locally and the factors that affect it. The plan should rely on existing resources to the greatest extent possible, but also can identify additional resources needed. This guide is intended to assist the presiding judge and court stakeholders in identifying the specific nature of the crisis in their judicial district and with development and implementation of the plan to address those issues.

Background

The Oregon Judicial Department (OJD), in collaboration with the Oregon Public Defense Services Commission (PDSC) and Office of Public Defense Services (OPDS), developed an Unrepresented Dashboard to define and track the number of people eligible for state-appointed attorneys in various case types for whom a lawyer is not available. Since creation of the dashboard in August 2022, the number of unrepresented individuals has significantly increased. On July 6, 2023, well over 2,000 people stood accused of crimes and did not have a lawyer to represent them, including 260 people in custody and 2,313 people out of custody. An additional 352 people lacked lawyers in probation violation, contempt, post-conviction, habeas corpus, civil commitment, and juvenile delinquency case types.

The unrepresented crisis affects people across 27 counties, although the problem is most severe in 10 counties – Multnomah, Jackson, Washington, Clackamas, Linn, Douglas, Marion, Klamath, Benton, and Lincoln. Similarly, the in-custody unrepresented crisis is focused on nine counties – Washington, Jackson, Douglas, Multnomah, Clackamas, Klamath, Linn, Benton, and Marion, although 20 counties have a least one unrepresented person in custody.

Overview of Requirements for Unrepresented Crisis Plans

Because of the short timeline to convene crisis teams and develop crisis plans, many team participants may not have read CJO 23-024 or relevant portions of SB 337 prior to the first crisis team meeting. It is recommended that you review the key elements and timelines of the CJO with team members and interested persons.

The key provisions of CJO 23-024, reflecting the provisions of Sections 103-107 of SB 337 are:

1. Each presiding judge will develop an unrepresented crisis plan with the goal of resolving the crisis in their judicial district. The State Court Administrator (SCA) will provide a form for submitting the plan, as well as data related to criminal cases and attorney capacity in the judicial district.

    - Each presiding judge must include district attorneys and public defense contractors within the judicial district in the planning effort and invite local public defense providers and other appropriate community partners to provide input.
    - OPDS will participate in planning efforts in judicial districts with a population of more than 100,000 or with 20 or more unrepresented individuals as of July 7, 2023.

2. The plan must prioritize unrepresented individuals who are in custody, and then focus on unrepresented individuals who are out of custody.

3. The plan must consider guidance promulgated by the Public Defense Services Commission (PDSC).

4. A preliminary plan will be submitted to the State Court Administrator (SCA) no later than August 24, 2023, and the SCA will submit the final plan to the Oregon Criminal Justice Commission (CJC) no later than September 1, 2023. The CJC will review the plans and provide a report its findings to the legislature no later than October 1, 2023.

5. Each presiding judge may issue a presiding judge order (PJO) related to the unrepresented crisis. Any PJO must be consistent with the CJO and with the district's unrepresented crisis plan.

Notes:

- The PDSC is required by SB 337 to develop a training plan related to the unrepresented crisis for public defense providers no later than September 1, 2023.
- The PDSC is required by SB 337 to report to the legislature about its guidance and training plan not later than October 1, 2023.
- All state agencies are directed by SB 337 to assist the presiding judges, PDSC, and CJC in performing these duties

Initial Planning Prior to the First Crisis Team Meeting

The following information and tools are available on the SB 337 Unrepresented Crisis Plan SharePoint to review prior to meeting with your crisis plan teams. The SharePoint is only available to OJD judges and staff. Documents will need to be downloaded and provided as an attachment to the calendar invite.

- PowerPoint Presentation of State Level Data and Background
- SB 337 Crisis Plan Data Sets
- OJD Led Actions to Date
- PDSC Guidance

Prior to the first crisis team meeting, staff from the Office of the State Court Administrator (OSCA) is available to work with the presiding judge (PJ) to identify which data to emphasize in the data presentation, answer the questions below, and provide assistance.

1. Who does the PJ want to facilitate the meeting? Does the PJ want OSCA staff to facilitate the meetings, or would the judge prefer to lead/facilitate the meetings?

2. Who are the anticipated crisis team members? The PJ and, if helpful, OSCA staff should work together to identify any gaps and determine how to fill them.
3. How will you document decisions/issues/findings that come up in the meetings?
    - Will meetings be recorded or written meeting notes?

- Document the major decisions, interventions, barriers, or additional information needed to move forward.
- What are the key pieces of information that must be gathered?
- At the end of each meeting, the facilitator should summarize any decisions made on the components of the plan and any questions asked by the team that may need additional follow-up.
- The facilitator should ask the team if there are any questions that the team would like to see addressed at the next meeting. For instance, the team may have questions about current court practices or about OPDS payment policies. The facilitator should take those questions and work with the appropriate source or person to obtain answers. Anything learned can be summarized as a short memo and included with the next meeting's agenda.

Crisis Plan Template

The crisis plan template is intended to support a data-driven approach to identifying the nature of the crisis in each county and to create county-specific plans with measurable and achievable goals to eliminate the current unrepresented population no later than July 1, 2025, but sooner where feasible. Community consensus on the plan's components is encouraged. The plans should consider PDSC Guidance whenever possible.

The Four Levers

There are at least four "levers" related to representation capacity. Changes to any of the levers will have an impact on attorney capacity and the unrepresented crisis.

- **Filings**: Addresses the filing/indictment of cases. Reducing filings lowers the number of cases entering the court system, thereby reducing the need for public defenders. These interventions focus on ways to reduce filings or move cases out of the criminal court system. Increases in filings will also need to be considered and in what case types they are expected to increase.

- **Dispositions**: Increasing the number of cases that close or decreasing the time cases are in the court system will reduce the time burden on public defenders. Closing cases faster frees up public defender time for other cases and increases their ethical capacity. Interventions in this area include system efficiencies, and ways to resolve cases more efficiently.

- **Number of Attorneys:** More public defense attorneys will increase contract capacity. These interventions focus on ways to bring in new attorneys and retain the attorneys already in the system.

- **Attorney capacity**: Addresses the number of cases each attorney currently contracted to take public defense cases would need to take to resolve the unrepresented crisis. Increased capacity could also be gained through prioritizing the assignment of cases to use attorney MAC most efficiently, as well as ways to reclaim attorney time.

Best Practices

As you create and implement your crisis plans, follow these best practices to ensure you can track attorney caseloads accurately, track unrepresented individuals and changes over time, and use attorney resources most efficiently.

1. Odyssey Business Processes

   - Adding Jessica's Law Charge Modifier
   - ACP Eligibility, Verifications, and Recommendations
   - Adding Attorneys
   - Unrepresented Individuals
   - Monitor and Resolve Errors with Unrepresented Individuals – Click **Errors** button

2. Prioritize Assignment of Counsel

   Prioritize case assignments by custody status, crime seriousness, and length of time unrepresented. In-custody unrepresented individuals should be a "first in-first out" assignment to minimize time in custody without representation. An in-custody misdemeanor should be assigned counsel before an out-of-custody felony, and an out-of-custody felony should be assigned counsel before an out-of-custody misdemeanor. A civil commitment should be given the same priority as an in-custody case as it poses the same, if not greater, threat to an individual's liberty.

   Recommended crime seriousness prioritization, which should also consider custody status and length of time unrepresented:

   - Civil Commitment/Mental Health
   - Murder
   - Jessica's Law
   - Measure 11
   - Major Felony (Class A/B)
   - Minor Felony (Class C)
   - Misdemeanor/Contempt

   Also consider the following situations that would warrant a lower priority whether they are unrepresented or not:

   - Cases that have not been arraigned
   - Cases on warrant status
   - Cases with individuals who have fired one or more attorneys

   Recommended business process for closing an attorney appointment:

   - End the appointment in Odyssey when a final judgment has been entered into the court register.

- End the appointment in Odyssey when a judge has signed an order removing the attorney from the case or a bench warrant for client's failure to appear has been active for 180 days (section 7.1.2.5 of OPDS Criminal Contract).
- End the appointment in Odyssey when a bench warrant for a client's failure to appear has occurred on the first appearance after arraignment.

Recommend business process for assignment of counsel:

- Preserve felony qualified attorney MAC for felony cases.
- Place individuals on OJD's unrepresented list for misdemeanor cases rather than assign a felony qualified attorney if it would prevent an attorney from taking a new felony case tomorrow.

Note: The current PDSC contract requires the public defense contractor to prioritize court appointments for the most serious case types for which it has qualified attorneys. When there is no unrepresented crisis, felony qualified attorneys can be assigned to cases with less serious charges.

Proposals to Modify Uniform Trial Court Rules (UTCRs)

Please include in your plan any actions taken related to proposals to modify the UTCRs submitted by the Oregon Criminal Defense Lawyers Association (OCDLA), and how those actions might affect the unrepresented population or MAC needed. *See attached memo from Chief Justice Flynn to the Criminal Justice Advisory Committee (CJAC) and letter from Chief Justice Walters to the CJAC.* These topics include discovery deadlines, access to in-custody clients, omnibus hearings, use of remote proceedings, etc.

Data-Driven Decisions

The PowerPoint presentation of state level data and background provides an overview of the public defense system, changes to public defense contracting models, and statewide data on filings, dispositions, and pending caseloads that can be used to understand the issues at play.

Using County-Specific Data

The available data is a snapshot of what is in the Odyssey system. It does not provide answers or solutions to the unrepresented crisis but does provide information about how our system is working and guides us to the right questions to ask. It is not a judgment on anyone or any entity, and there are often good reasons for differences in the way cases show up in the data.

There can be data-entry errors or business processes that create questions about the aggregate data sets. If there are questions or concerns about the data, your assigned data analyst can help you address those.

Your OSCA data analyst will provide information on the nature of the unrepresented crisis in your district, and factors contributing to the crisis. You can use the information as a guide for discussions related to the unrepresented crisis plan in your district.

Plan Content

1. Crisis Team Members
2. Crisis Team Meeting Dates
3. Background - Key issues/findings contributing to the unrepresented crisis in your district, include data review packet and any known data quality issues identified.
4. Any actions taken related to OCDLA proposals to modify the UTCRs.
5. Any other actions/interventions to date to reduce the unrepresented crisis and outcomes resulting from those interventions.
6. Identify actions from best practices list court/providers are already doing, and best practices court/providers will start doing.
7. Attach any Presiding Judge Orders (PJOs) issued as part of the crisis plan
8. Interventions (for each intervention, complete the following):
    - Specific Intervention/Action or Recommendation
    - Lever utilized
    - Outcome/Impact/Goal
    - Describe how progress towards intended outcome/impact/goal will be measured or tracked. Include any new business processes or data entry protocols that need to be created. Include who will be impacted by any changes required.
    - Resources involved/needed and any limitations/barriers
    - Timeframe to implement and take effect
    - Community consensus, include minority viewpoints if any.

Finalize and Submit Plan to OSCA by August 24, 2023

Once the crisis team decides on the provisions of the plan, seek feedback from crisis team members on a written draft of the entire plan. If practicable given timing constraints, ask the group if they support the draft. Again, the goal is a consensus agreement on support for the draft as created by the group, or at least major portions of it. If consensus cannot be reached, proceed with the decision-making process, again capturing the position of the minority position(s).

When your plan is ready to be submitted, enter the information in the crisis plan data entry form linked below. You can use the form to build your draft and return to it to edit as you move through planning process.

- Crisis Plan Data Entry Form – Enter your final plan here
- Crisis Plans Submitted – View crisis plans submitted from other districts

OSCA will review and prepare plans for distribution to the CJC by **September 1, 2023**.

Thank You / Next Steps

Thank group members for their participation. Inform them that the plan has been submitted to the CJC and OSCA, as well as any next steps in the process to implement the interventions identified in the plan (e.g., ongoing meetings to evaluate implementation, etc.). Provide members of the crisis team with a copy of the plan submitted to CJC.

Crisis Team members are responsible for implementation of the plan. Members should consider scheduling regular implementation meetings as well as communicating with community partners and practitioners about changes within the plan that may impact their practice, schedule, etc. Allow space in the plan to revisit if things aren't working well. Also, provide them with contact information in case they have ideas, questions, concerns, etc., about the process.

Unrepresented Crisis Plans

CHIEF JUSTICE ORDER 23-024, ENROLLED SENATE BILL 337 (2023)

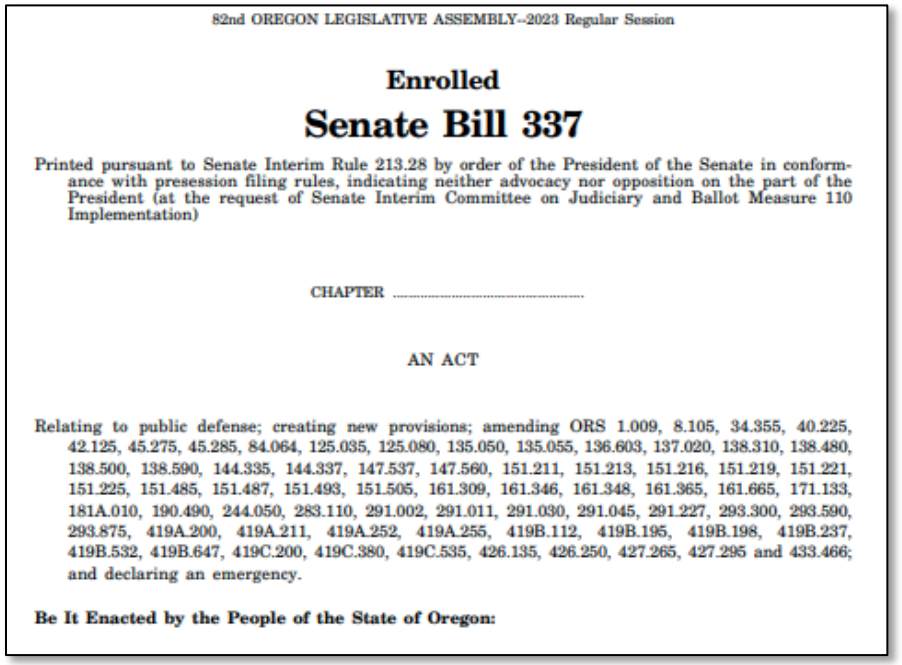
Oregon Judicial Department

APPROACH TO UNREPRESENTED CRISIS PLANS

- Current Status of Unrepresented Individuals
- The Four Levers Related to Representation Capacity
  - Case Filings
  - Dispositions
  - Number of Attorneys
  - Attorney Capacity
- Next Steps

SENATE BILL 337 – SECTS. 103-108

- Directs each presiding judge to (1) immediately develop and implement a "coordinated public safety unrepresented defendant crisis plan," and (2) submit that plan to the Criminal Justice Commission (CJC) as soon as practicable and no later than September 1, 2023.
  - Plans must prioritize resolution of cases with unrepresented persons who are in custody, following by out-of-custody unrepresented persons.
  - In judicial districts with populations over 100,000 or with 20 or more unrepresented persons, presiding judges must convene crisis teams that include Public Defense Services Commission (PDSC) to assist in the development and implementation of the district's plan.
  - Presiding Judges are authorized to issue Presiding Judge Orders to issue their plans.
- SB 337 directs the PDSC to promulgate and disseminate guidance for the judicial district crisis plans no later than August 15, 2023, develop a training plan for public defense providers specific to the unrepresented defendant crisis, and report to the legislature no later than October 1, 2023.
- SB 337 directs the CJC to review each judicial district's crisis plan and report its findings to the legislature no later than October 1, 2023



82nd OREGON LEGISLATIVE ASSEMBLY--2023 Regular Session

Enrolled

Senate Bill 337

Printed pursuant to Senate Interim Rule 213.28 by order of the President of the Senate in conformance with presession filing rules, indicating neither advocacy nor opposition on the part of the President (at the request of Senate Interim Committee on Judiciary and Ballot Measure 110 Implementation)

CHAPTER .....

AN ACT

Relating to public defense; creating new provisions; amending ORS 1.009, 8.105, 34.355, 40.225, 42.125, 45.275, 45.285, 84.064, 125.035, 125.080, 135.050, 135.055, 136.603, 137.020, 138.310, 138.480, 138.500, 138.590, 144.335, 144.337, 147.537, 147.560, 151.211, 151.213, 151.216, 151.219, 151.221, 151.225, 151.485, 151.487, 151.493, 151.505, 161.309, 161.346, 161.348, 161.365, 161.665, 171.133, 181A.010, 190.490, 244.050, 283.110, 291.002, 291.011, 291.030, 291.045, 291.227, 293.300, 293.590, 293.875, 419A.200, 419A.211, 419A.252, 419A.255, 419B.112, 419B.195, 419B.198, 419B.237, 419B.532, 419B.647, 419C.200, 419C.380, 419C.535, 426.135, 426.250, 427.265, 427.295 and 433.466; and declaring an emergency.

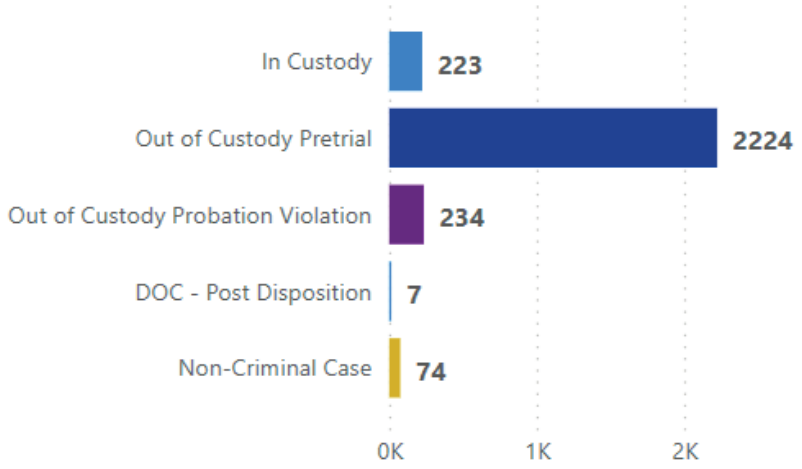
Be It Enacted by the People of the State of Oregon:

CURRENT STATUS OF UNREPRESENTED INDIVIDUALS

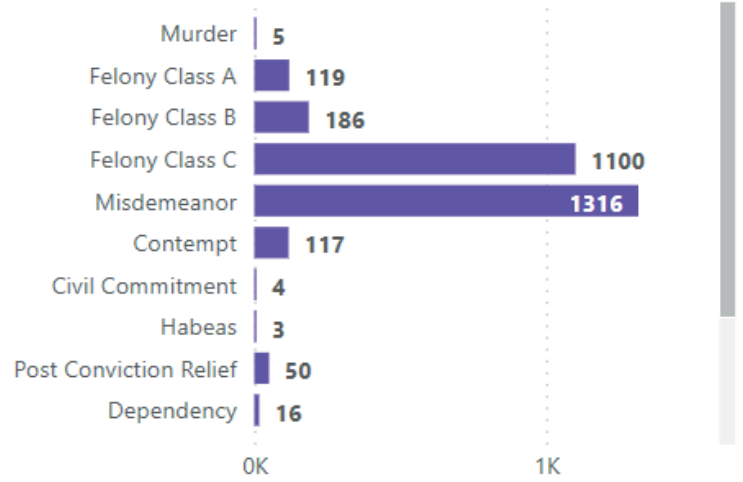
IDENTIFYING CASE TYPES AND OTHER TRENDS

Data as of 7/13/2023

Unrepresented By Category

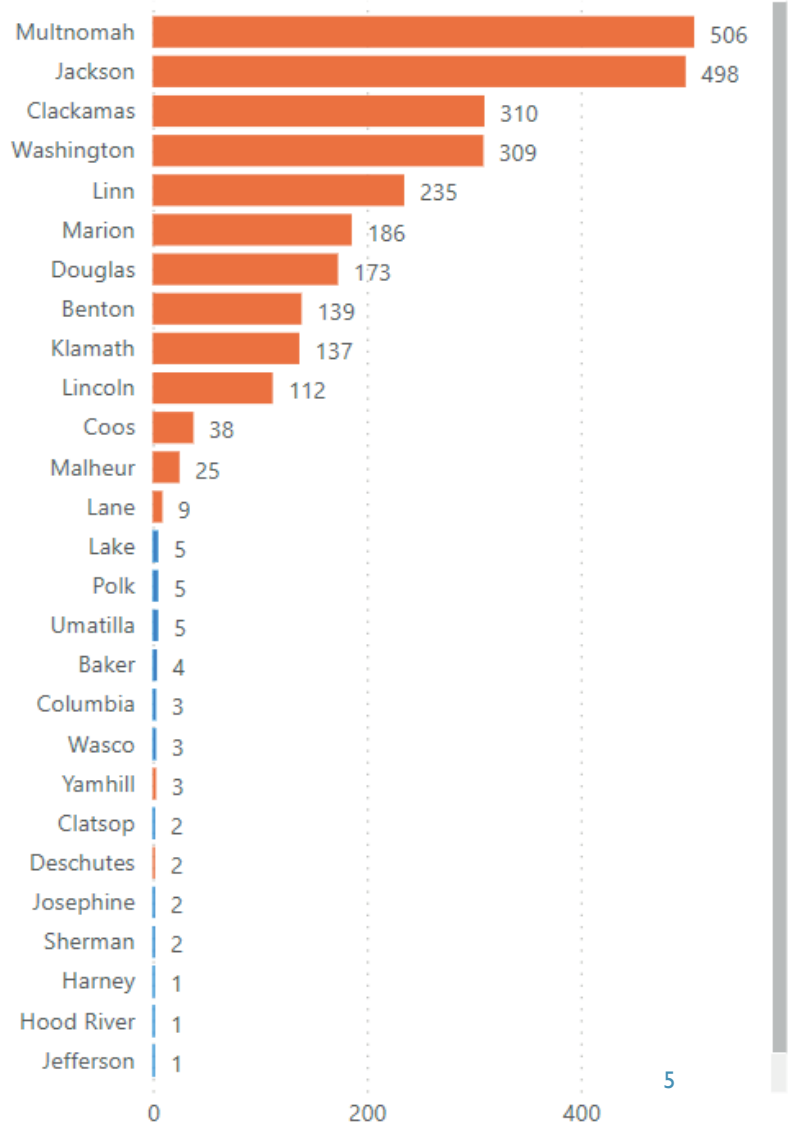


Unrepresented By Offense Group or Case Type

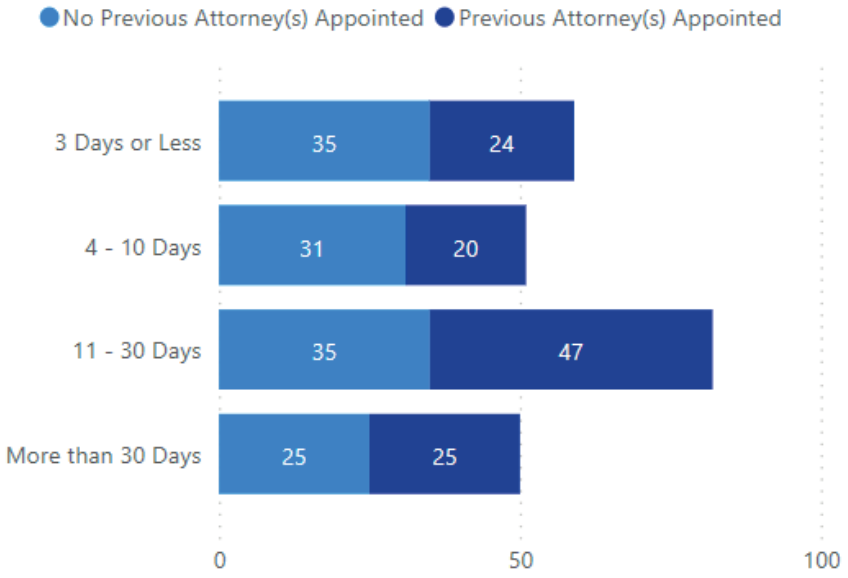


Unrepresented By County

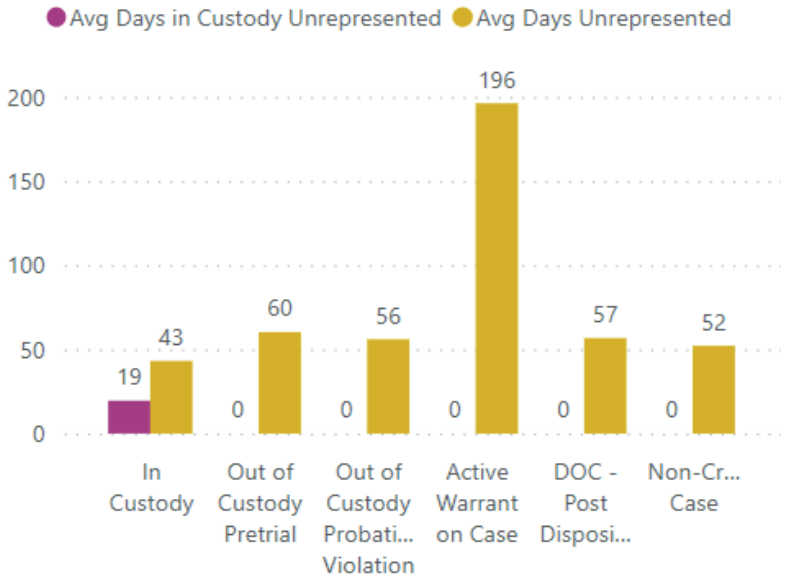
Orange Counties Must Convene Crisis Teams (CJO 23-024)



Days In Custody Unrepresented



Avg Days Unrepresented



CASE FILINGS AND PENDING CASES

UNDERSTANDING CASE FILING TRENDS AND PENDING CASES

Filings & Dispositions - Statewide

Last Updated 7/1/2024

Tip: Click on legend values in **Cases Filed** visual to filter other visuals.

Select Y axis Parameter for Cases Filed: Total Filed

Select Legend Parameter for Cases Filed: Case Type

Case Filings are Increasing

1.3%

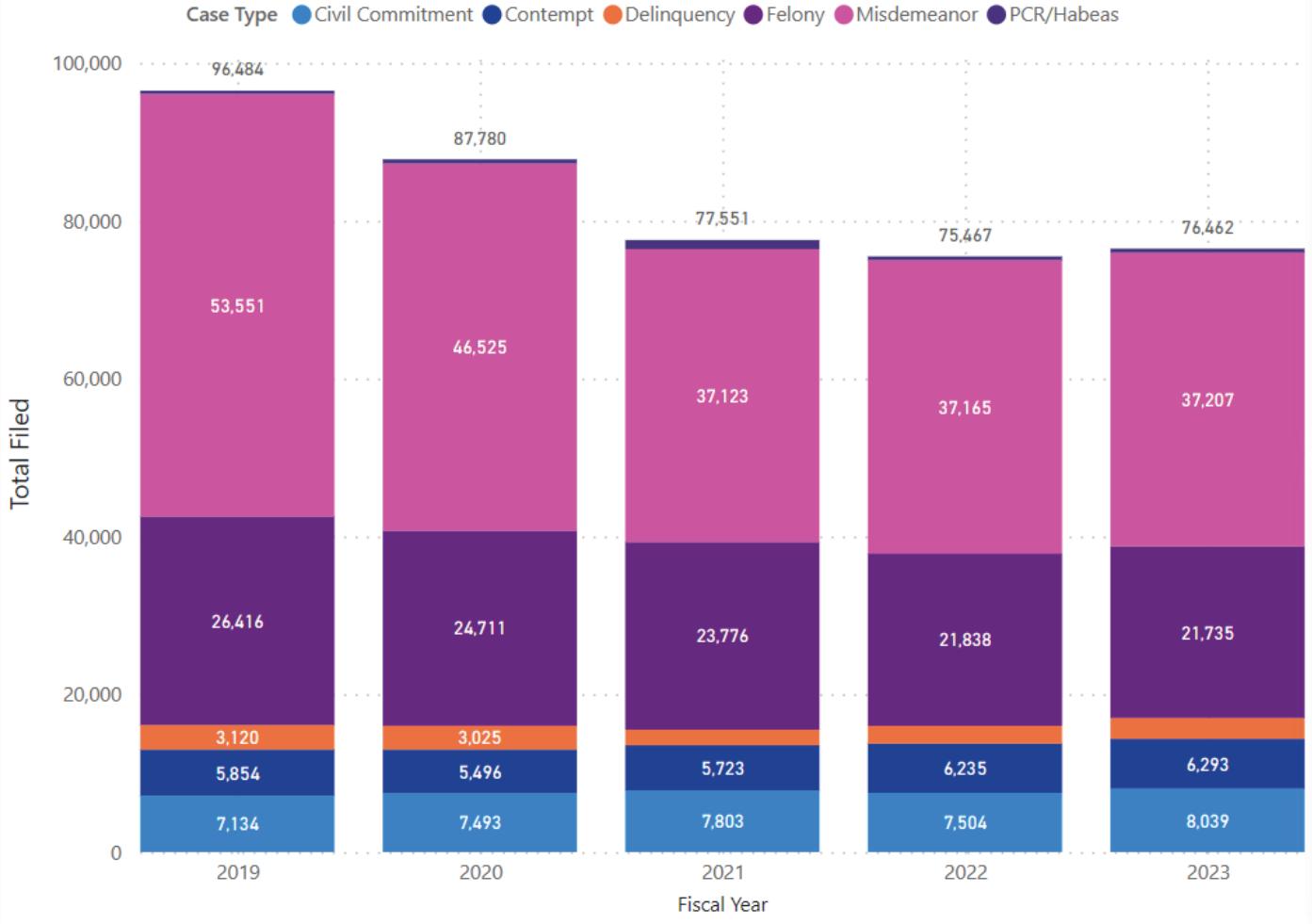
Year Over Year Change

Case Dispositions are Increasing

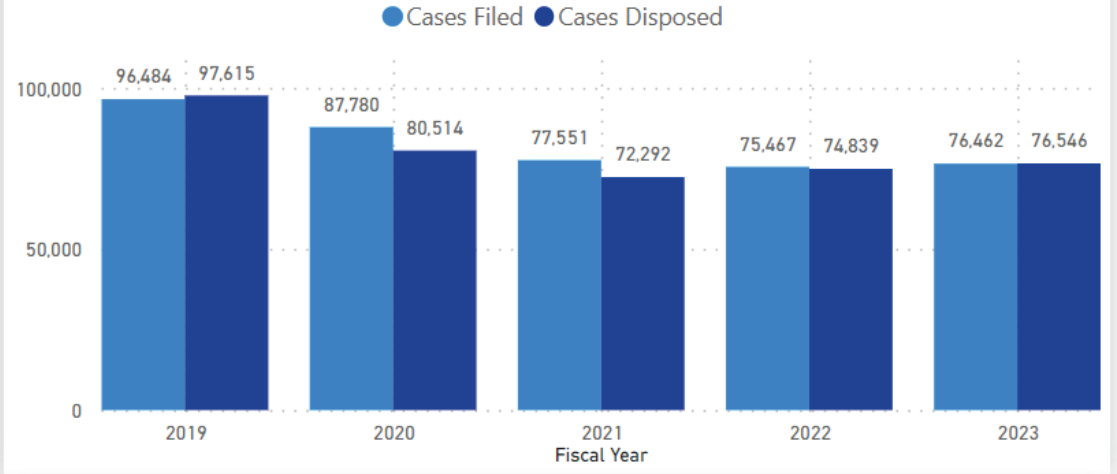
2.3%

Year Over Year Change

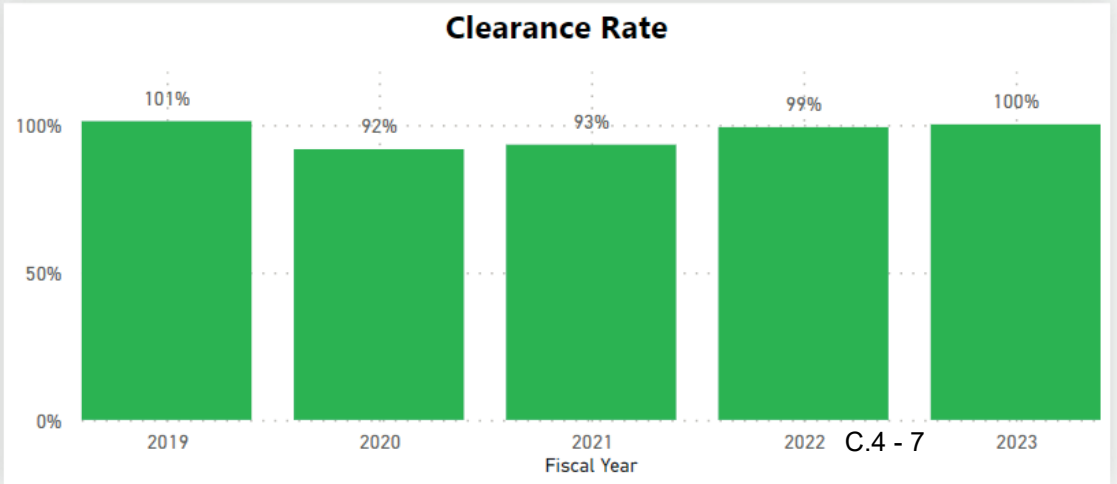
Cases Filed

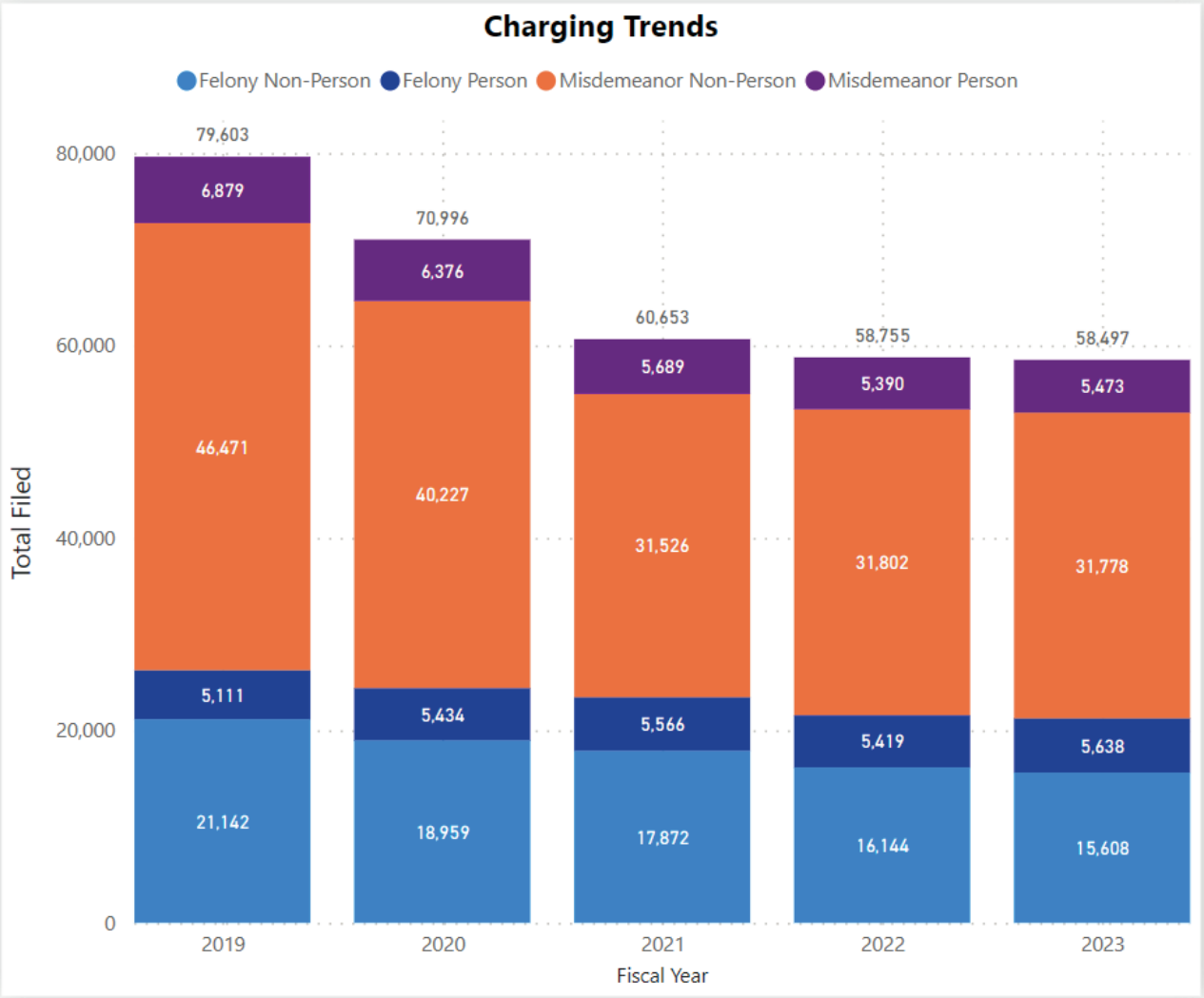


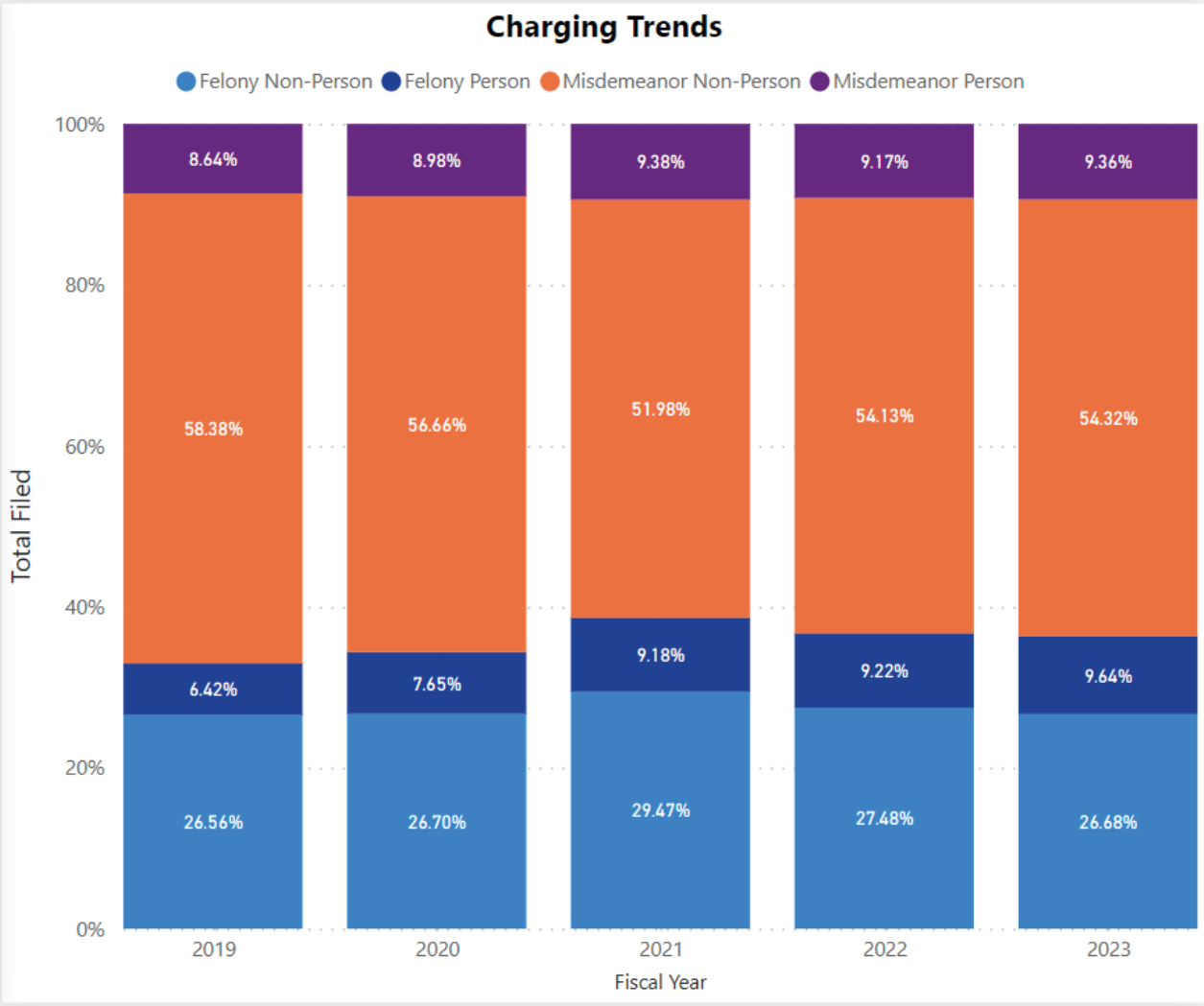
Cases Filed & Cases Disposed



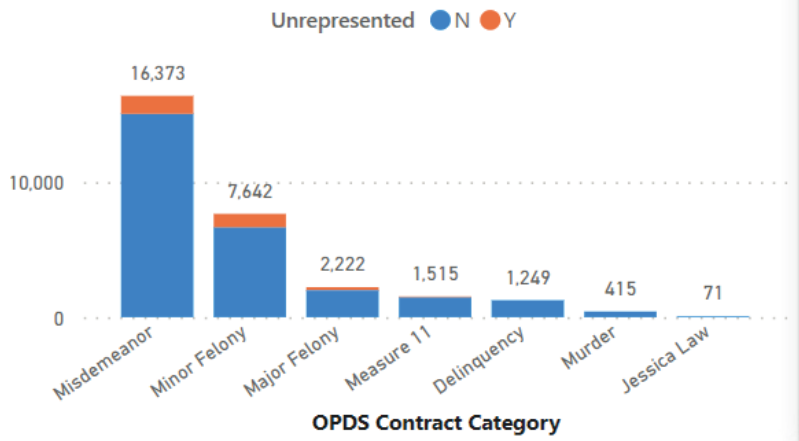
Clearance Rate



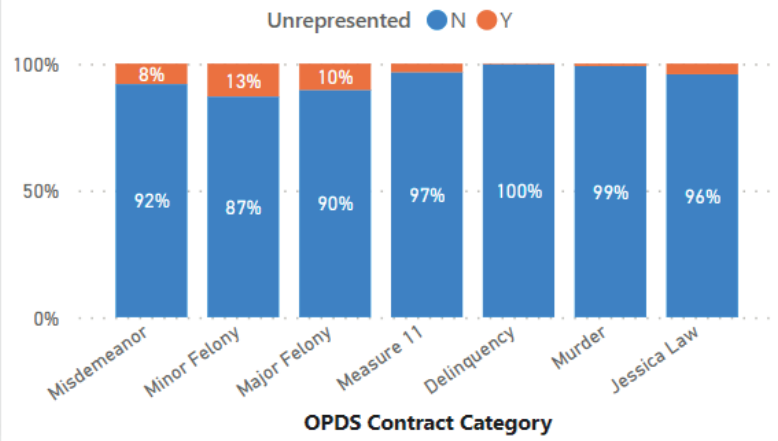

Charging Trends
Felony Non-Person
Felony Person
Misdemeanor Non-Person
Misdemeanor Person
Total Filed
Fiscal Year
2019
2020
2021
2022
2023
79,603
70,996
60,653
58,755
58,497
6,879
46,471
5,111
21,142
6,376
40,227
5,434
18,959
5,689
31,526
5,566
17,872
5,390
31,802
5,419
16,144
5,473
31,778
5,638
15,608


Charging Trends
Felony Non-Person
Felony Person
Misdemeanor Non-Person
Misdemeanor Person
Total Filed
Fiscal Year
2019
2020
2021
2022
2023
8.64%
58.38%
6.42%
26.56%
8.98%
56.66%
7.65%
26.70%
9.38%
51.98%
9.18%
29.47%
9.17%
54.13%
9.22%
27.48%
9.36%
54.32%
9.64%
26.68%

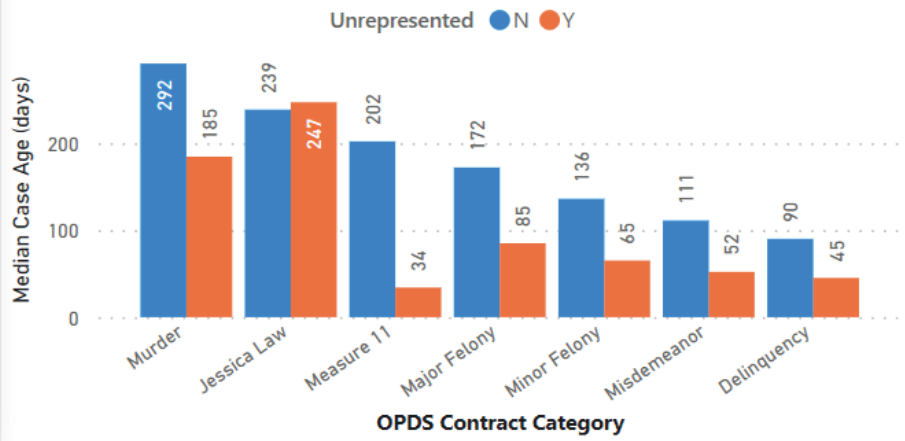
Active Pending Caseload



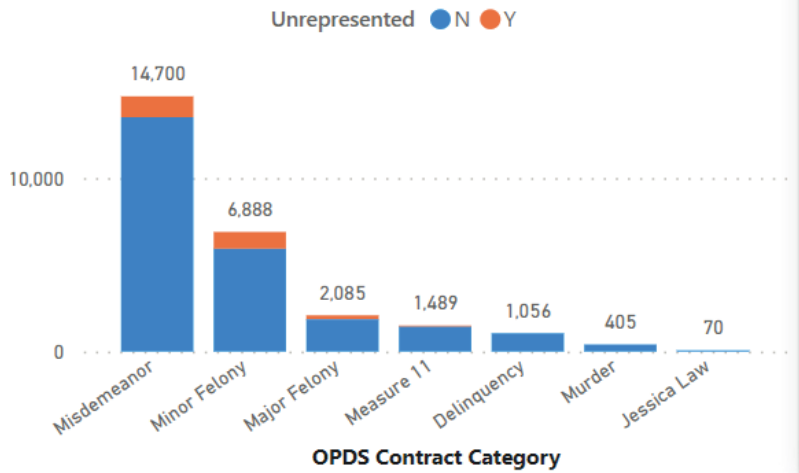
% Active Pending Caseload



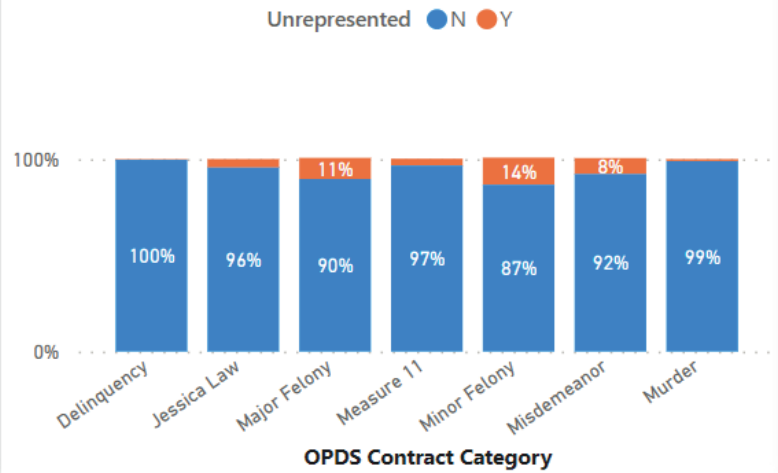
Median Case Age of Active Pending Cases



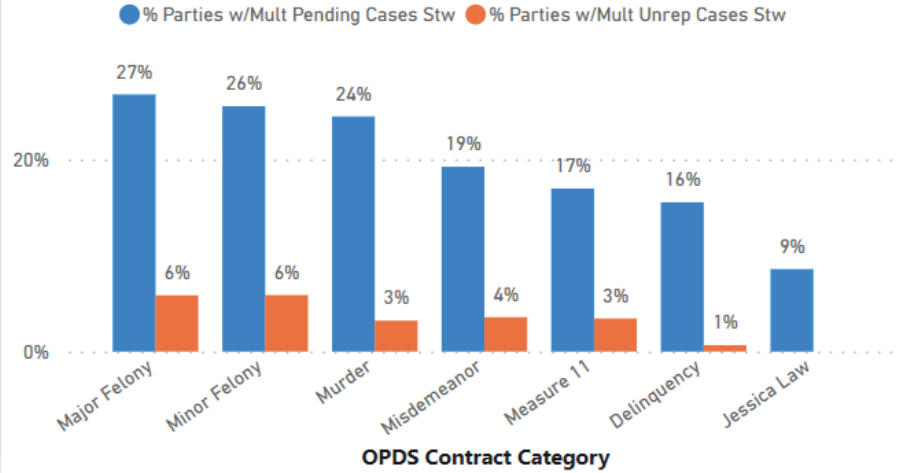
Individuals with Active Pending Cases



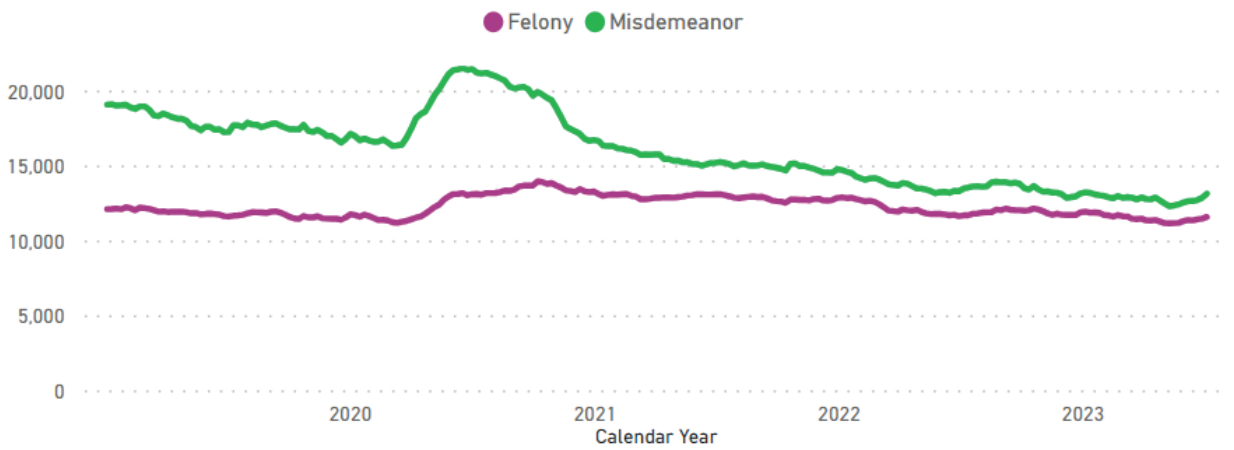
% Individuals with Active Pending Cases



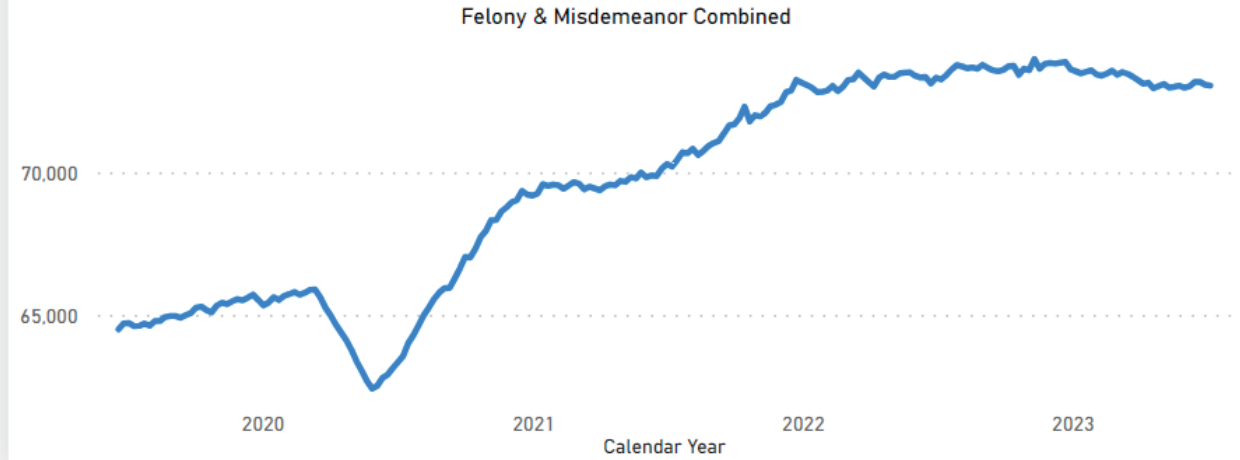
Individuals with Multiple Pending and/or Unrepresented Cases



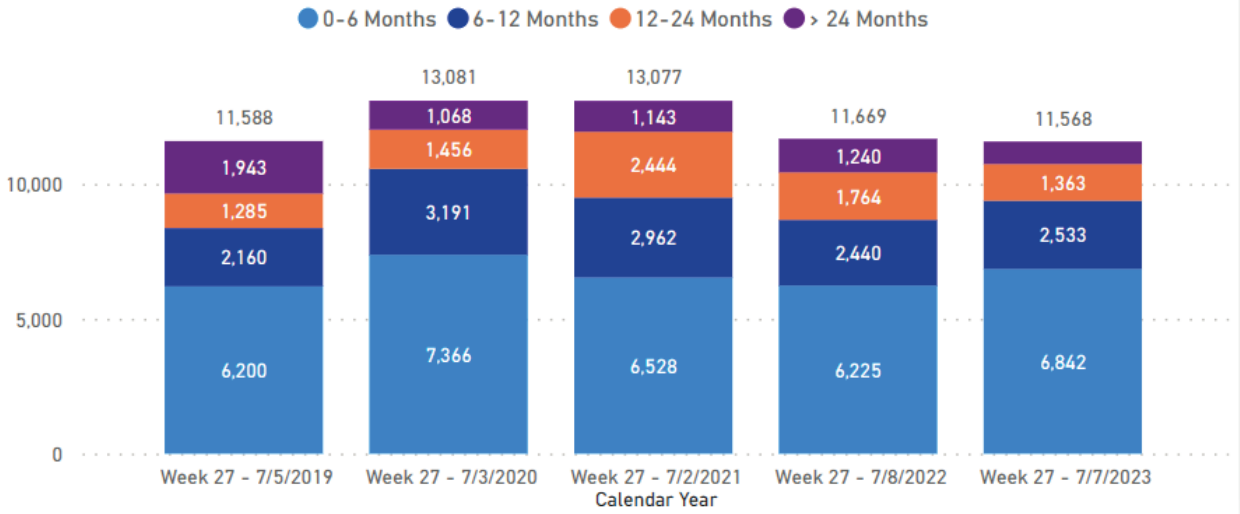
Active Pending Caseload Trends



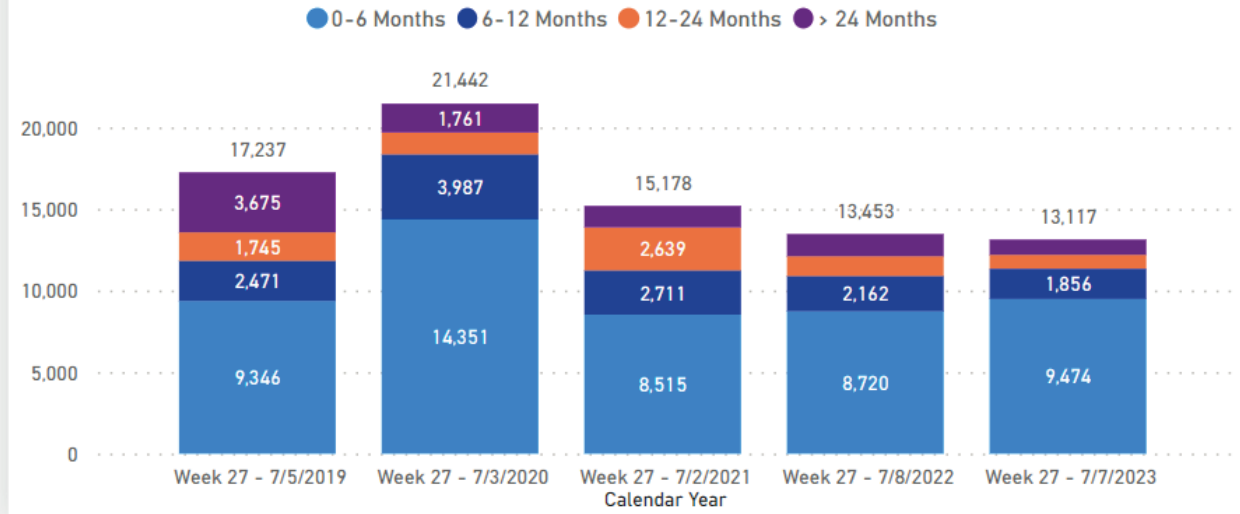
Stayed/Inactive Pending Caseload Trends - Active Warrants



Felony Active Pending Caseload Trends by Case Age



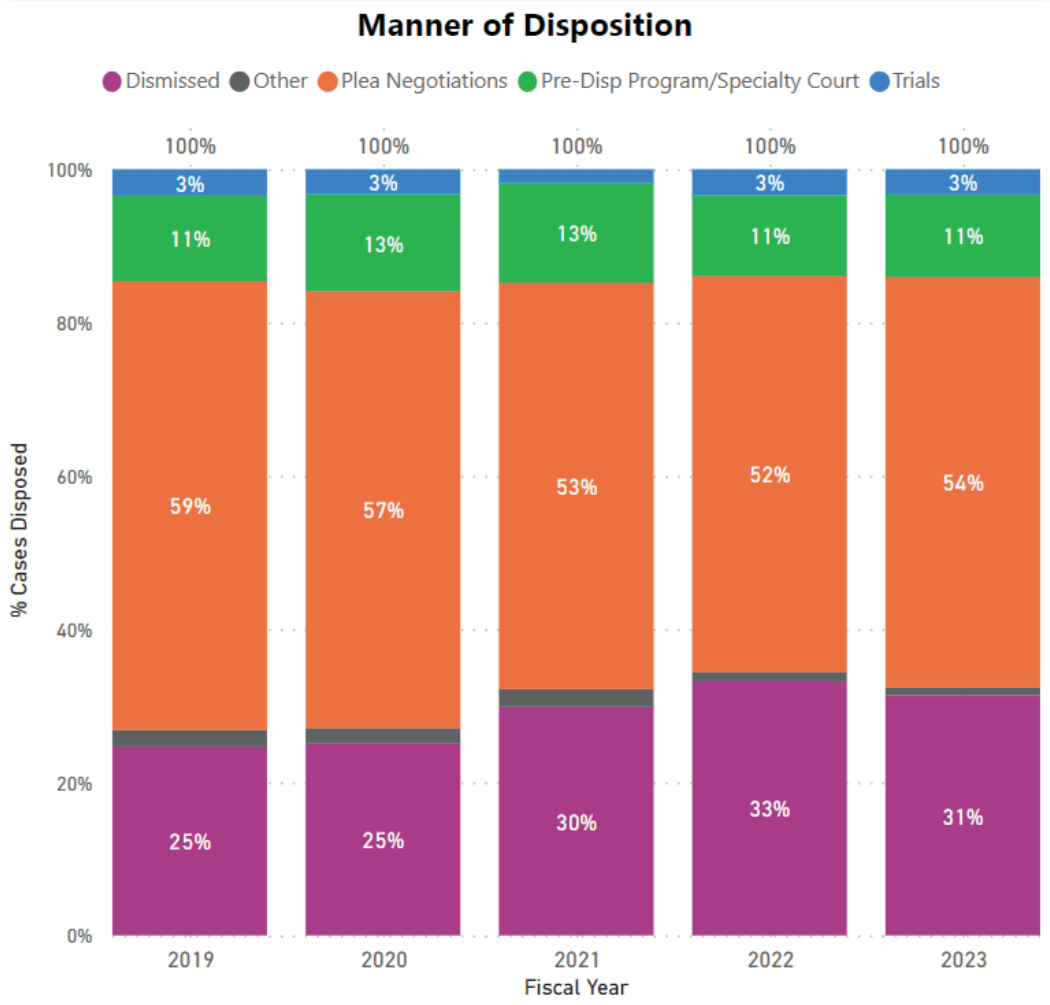
Misdemeanor Active Pending Caseload Trends by Case Age

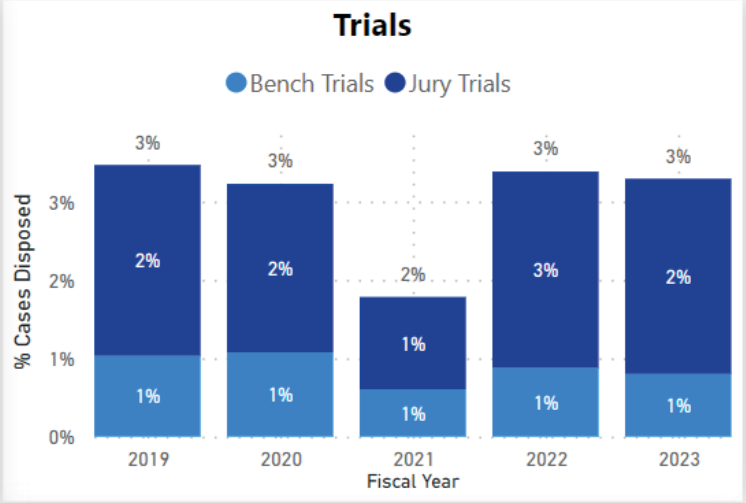


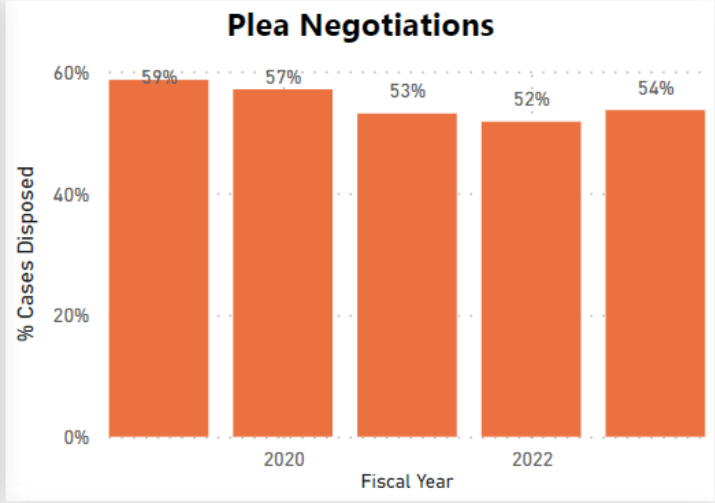
DISPOSITIONS

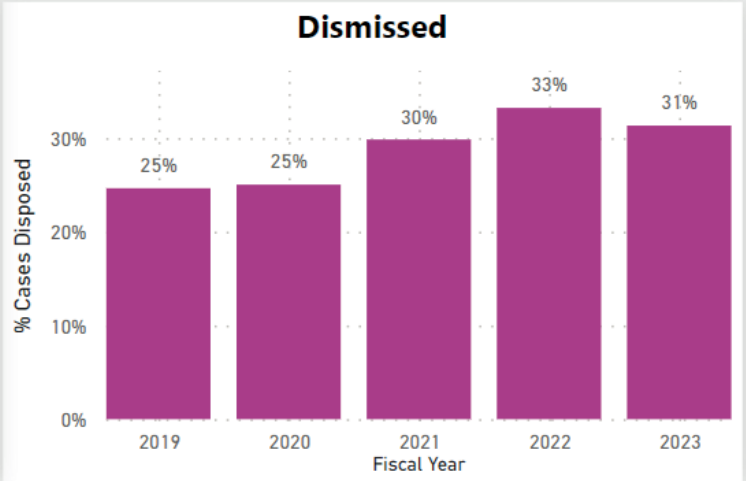
EVALUATING CASE MOVEMENT – TRENDS

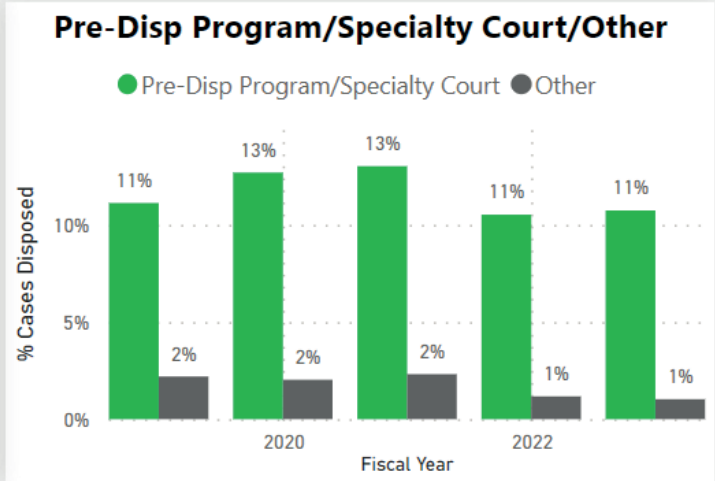
Felony and Misdemeanor Manner of Disposition



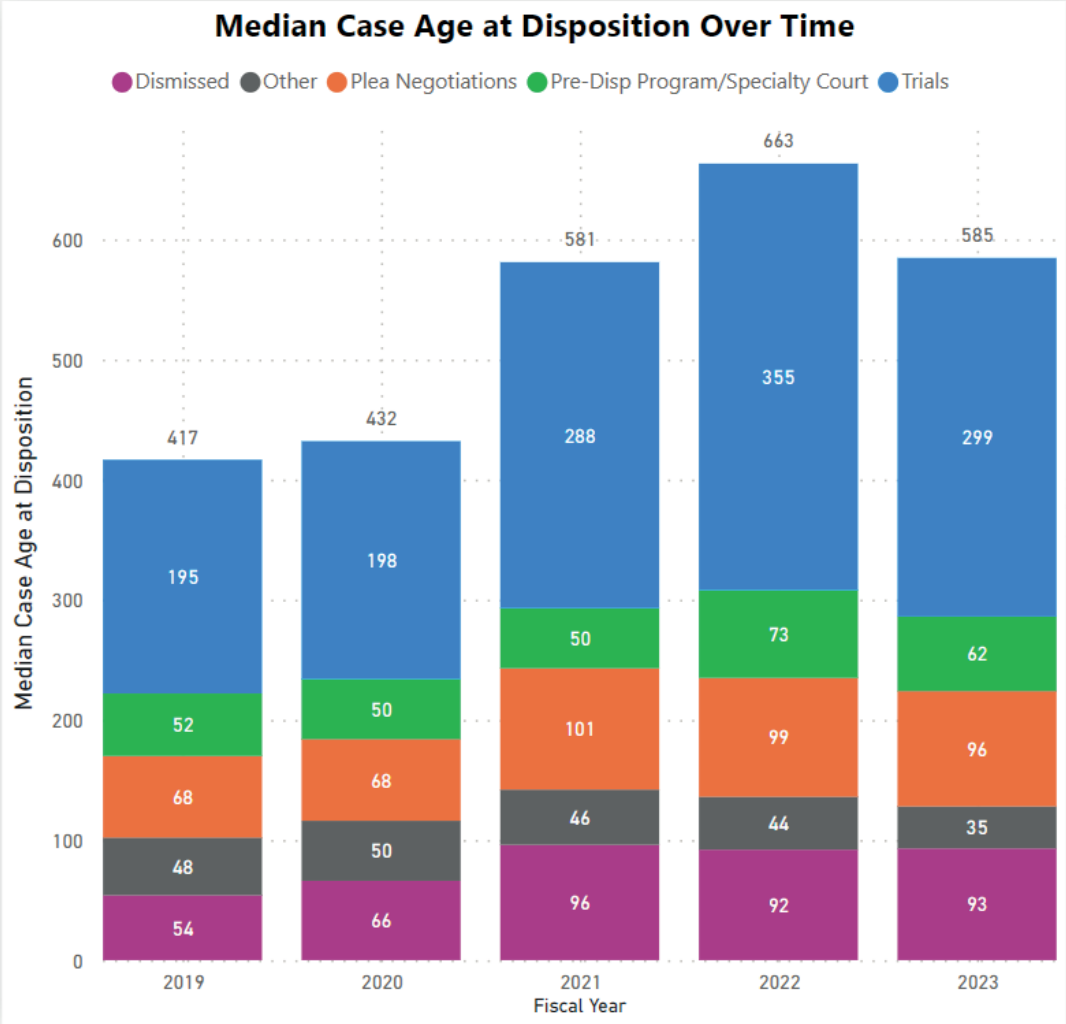


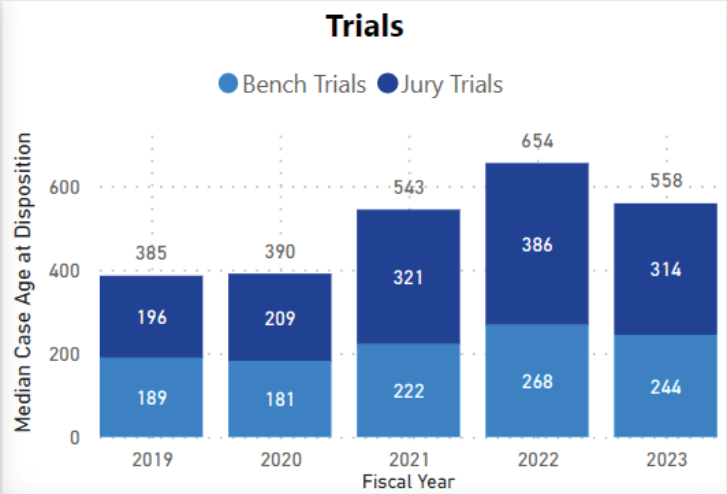




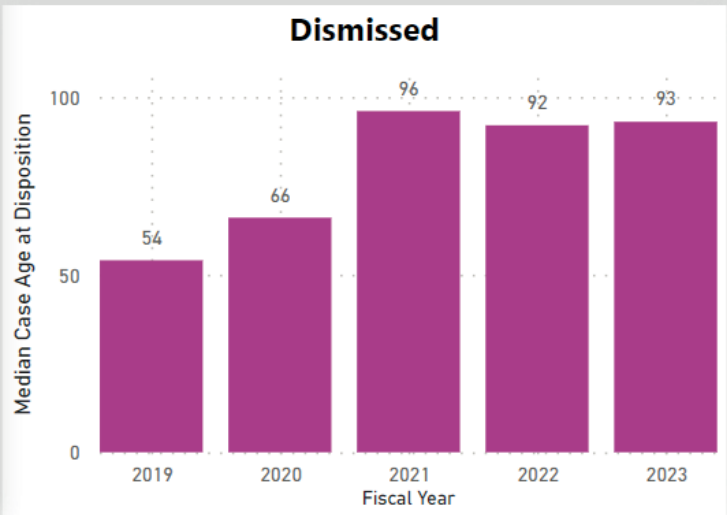


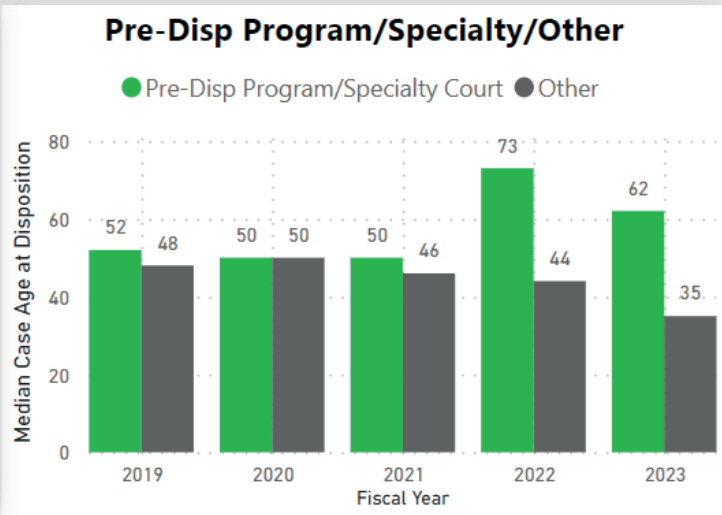
Felony and Misdemeanor Time to Disposition



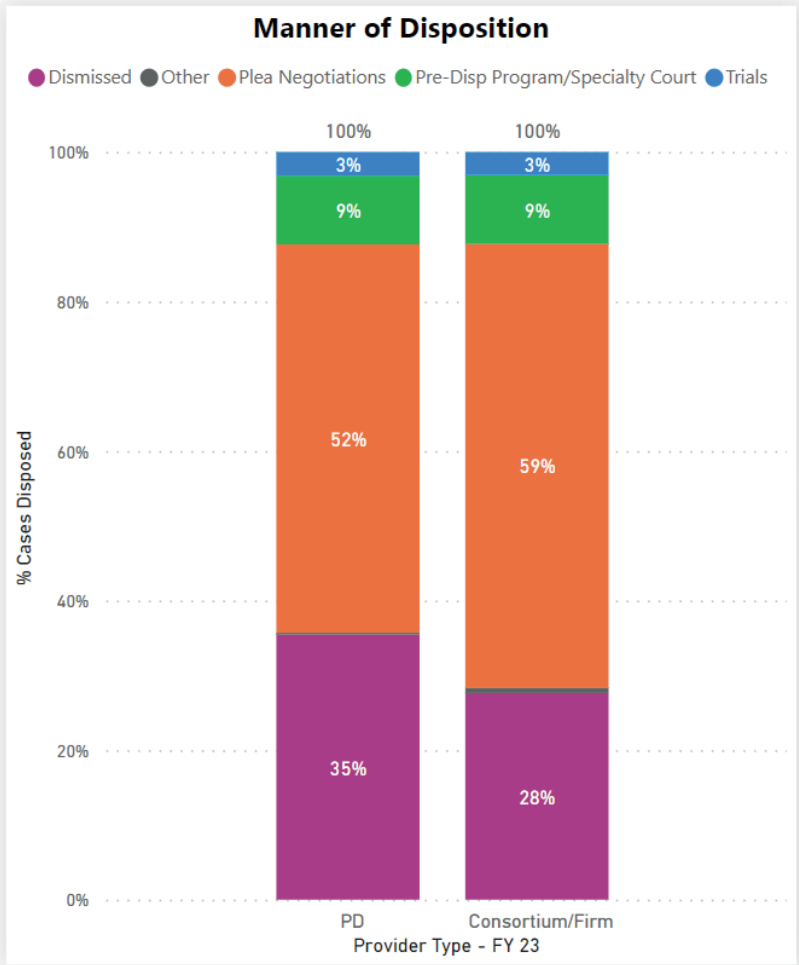


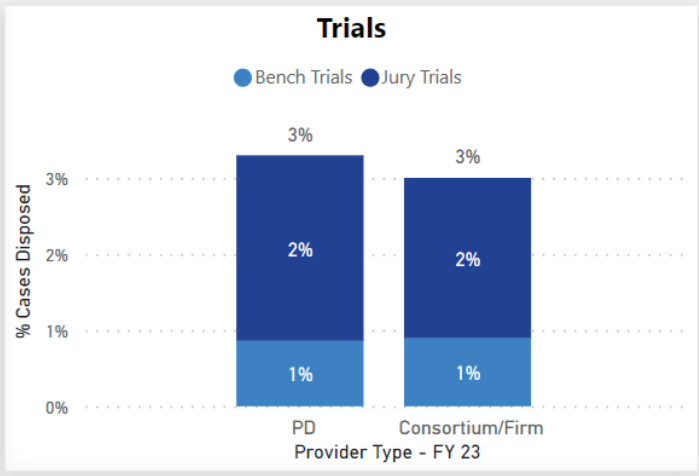


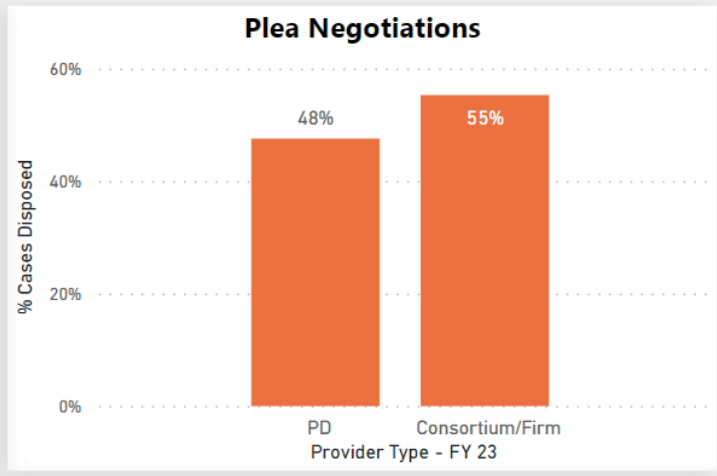


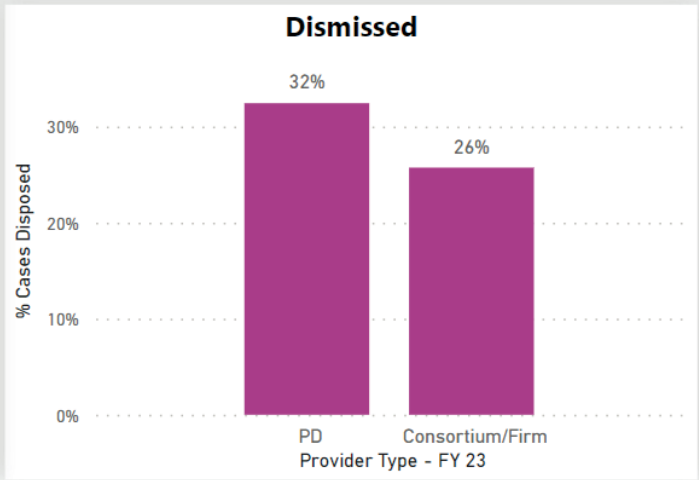


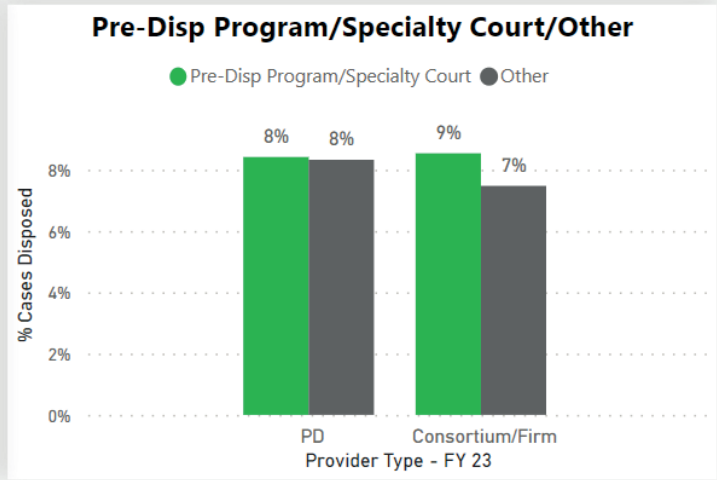
Felony and Misdemeanor Manner of Disposition by Provider



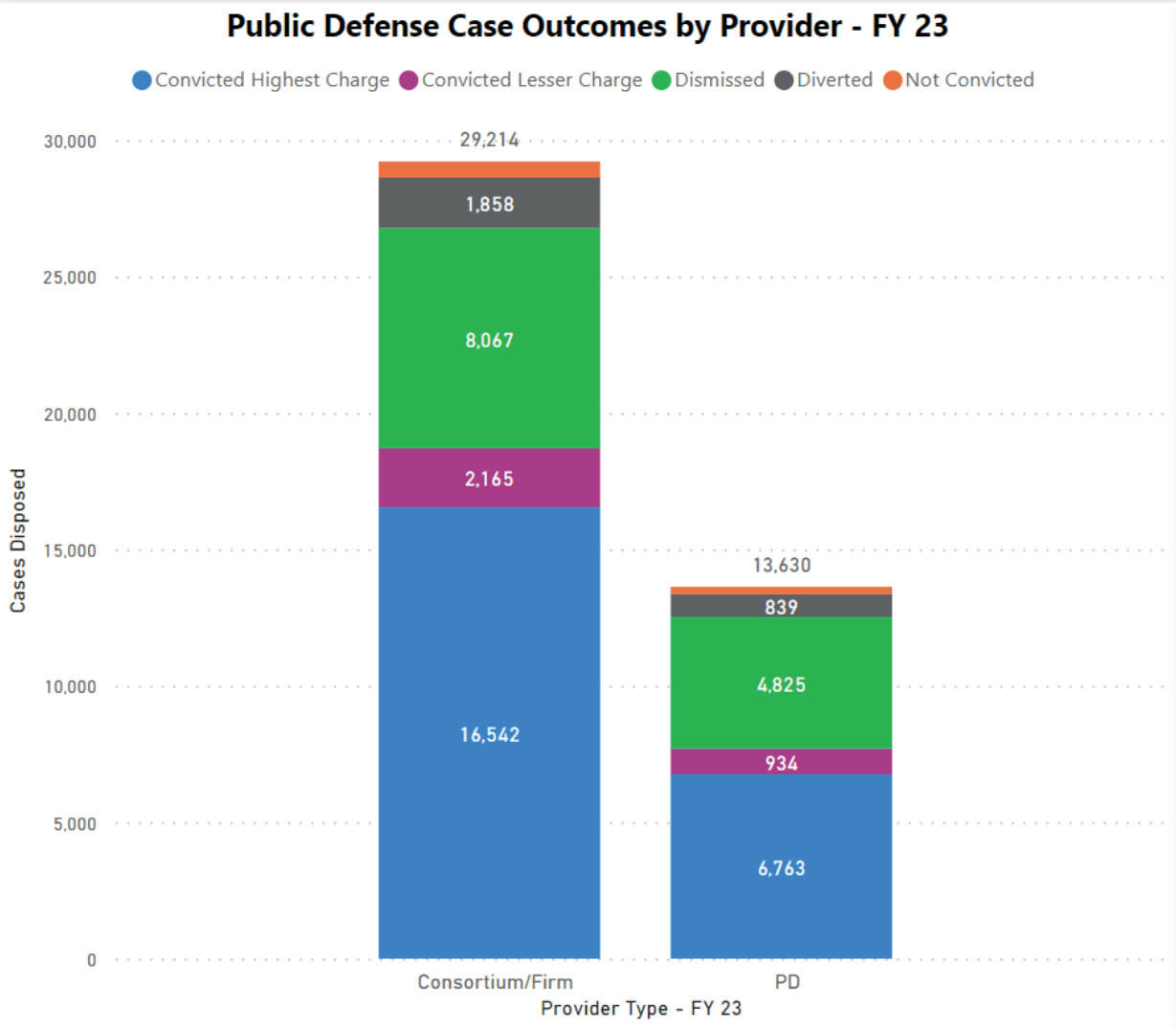


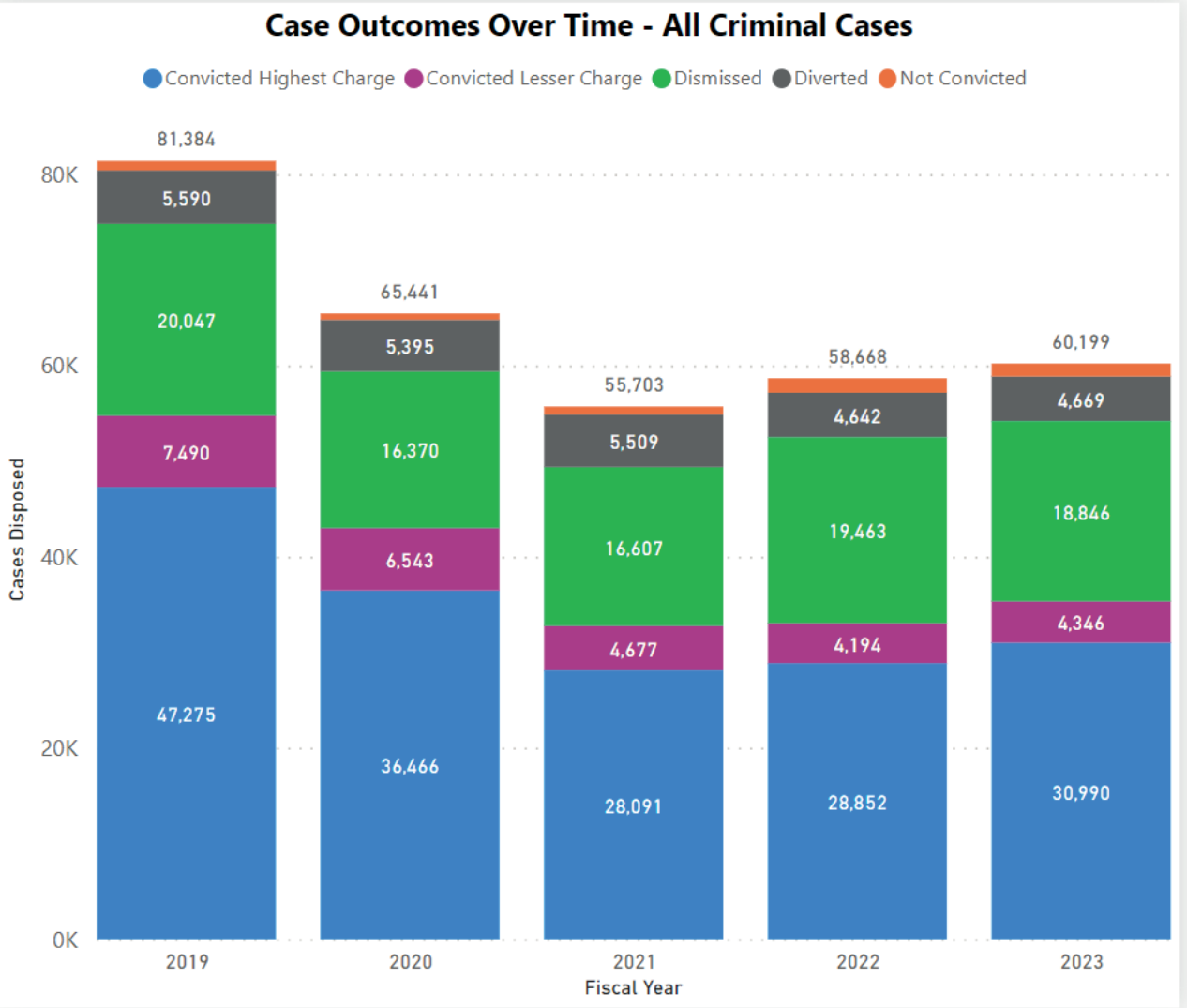




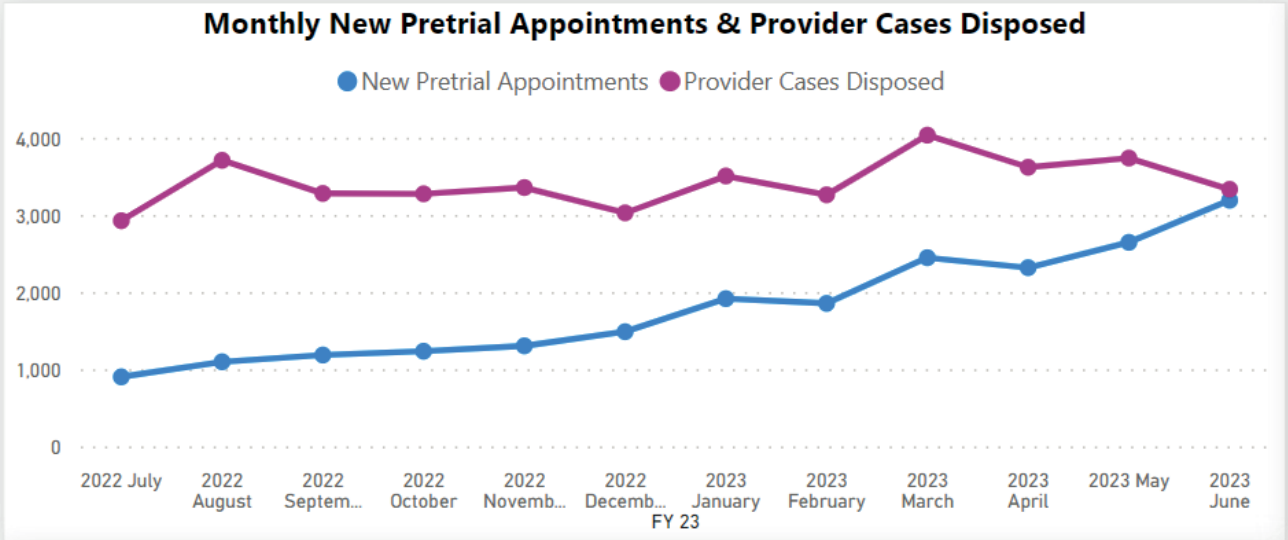


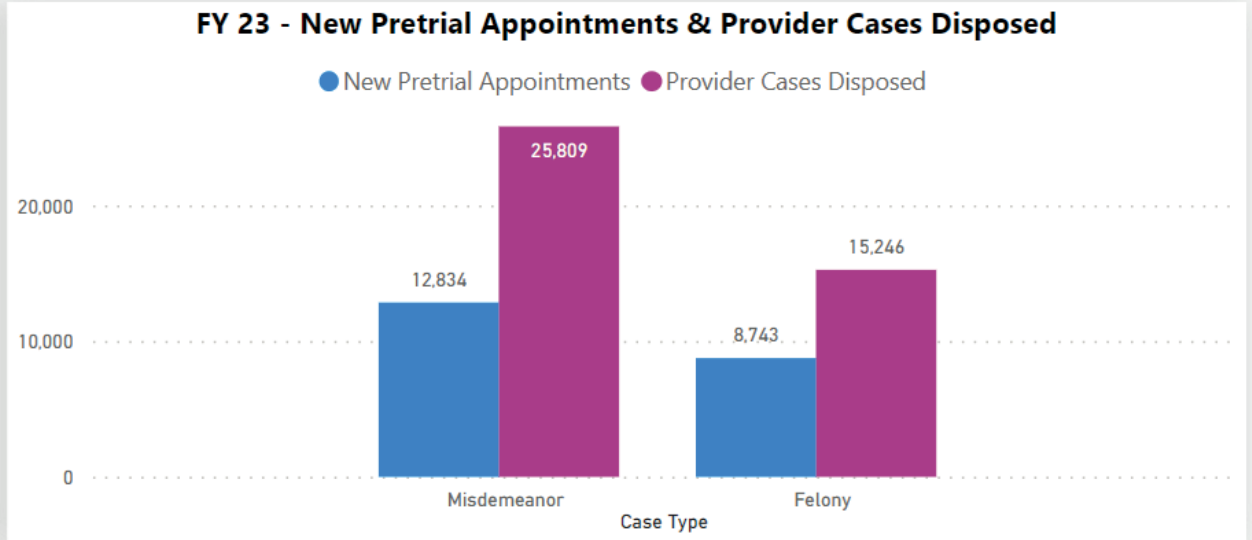
Felony and Misdemeanor Case Outcomes

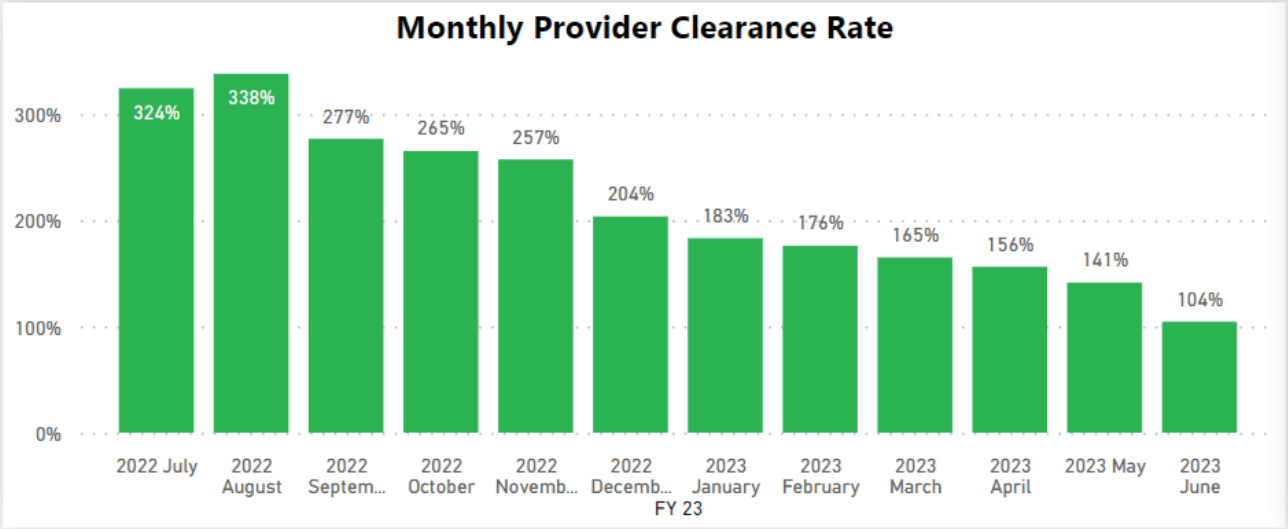


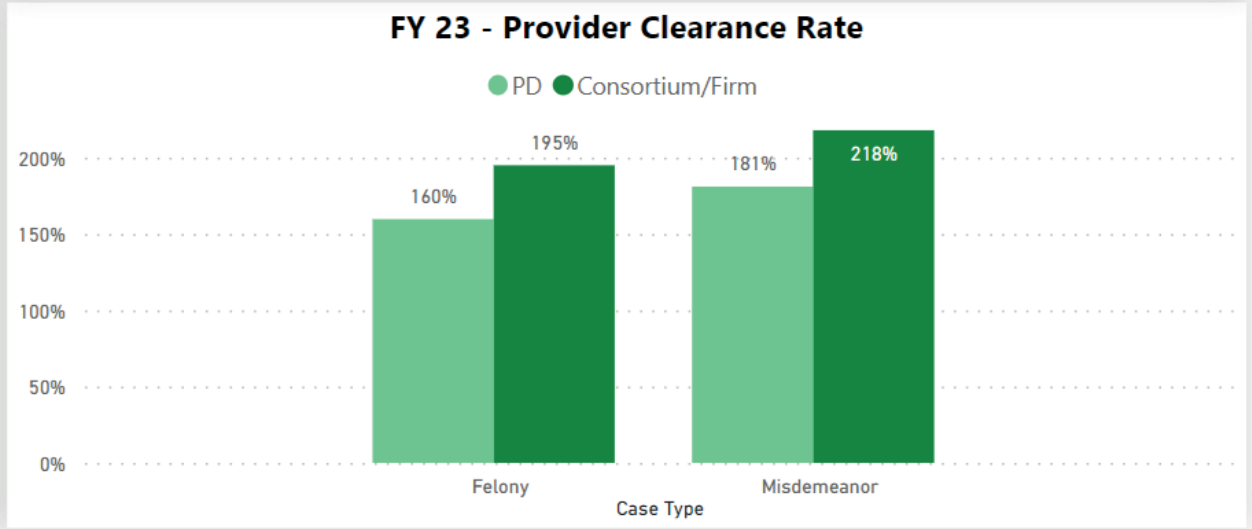


Felony and Misdemeanor Clearance Rates by Provider









ATTORNEY CAPACITY

CASELOAD TRENDS AND CURRENT CASELOAD STANDARD

OREGON PUBLIC DEFENSE SYSTEM: OVERVIEW

- Persons accused of a crime are entitled to counsel under the 6th and 14th amendments of the U.S. Constitution and Article 1, section eleven (11) of the Oregon Constitution
  - Oregon also extends that right to counsel by statute to include juvenile dependency, post-conviction relief, and other matters.
- Public Defense Services Commission (PDSC)
  - Responsible for establishing and maintaining a public defense system that ensures the provision of public defense services is consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. *See* ORS 151.216 et. seq.
- Safeguards for Reasonably Effective Assistance of Counsel
  - Oregon Rules of Professional Conduct
  - Oregon State Bar Performance Standards
  - American Bar Association 10 Principles of a Public Defense Delivery System
  - American Bar Association Standards for Criminal Justice
  - Key Resources (examples)
    - Attorneys qualified to represent client per case type
    - Time to represent clients
    - Access to ongoing training and supervision
    - Access to resources such as staff, investigators, interpreters

CASELOAD STANDARDS

Public defense systems do not control the number of cases entering the criminal courts each year so one way to ensure individual attorneys have sufficient time to meet their obligations for each client is to limit their workload. - 6th Amendment Center

Approaches to Caseloads

- Caseload Limit (primary current practice in adult criminal/PCR/Habeas work)
  - Limits cases assigned to an attorney within a period of time and does not account for existing "open" cases carried over from the prior time period.
- Workload Limit (current practice in jurisdictions with PCRP)
  - Limits total caseload assigned to an attorney at one time - accounts for existing/open cases and appointment to new cases.
- Hourly Rate with Compensation Caps Per Case (current practice in limited circumstances of adult criminal/PCR/Habeas work; also current federal practice)
  - Requires hourly billing on each case

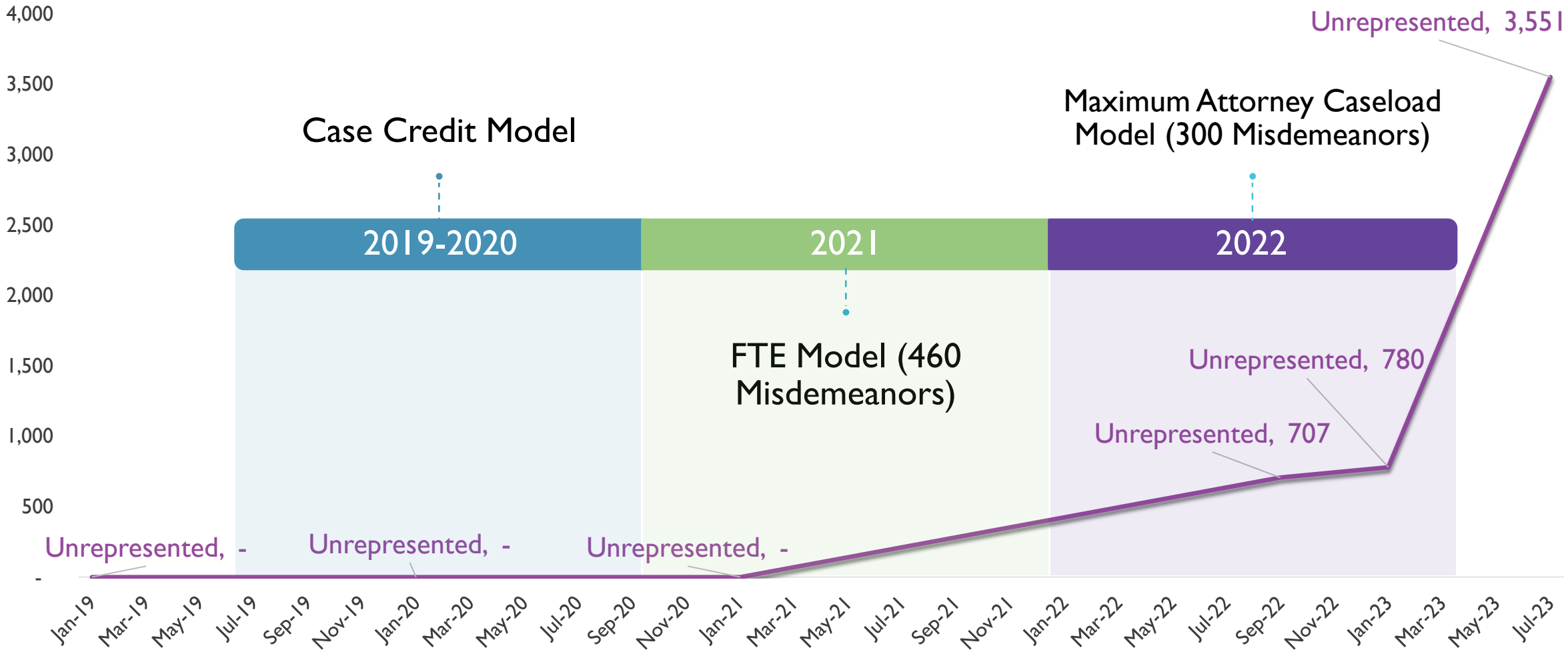
CASELOAD STANDARDS: NATIONAL APPROACHES

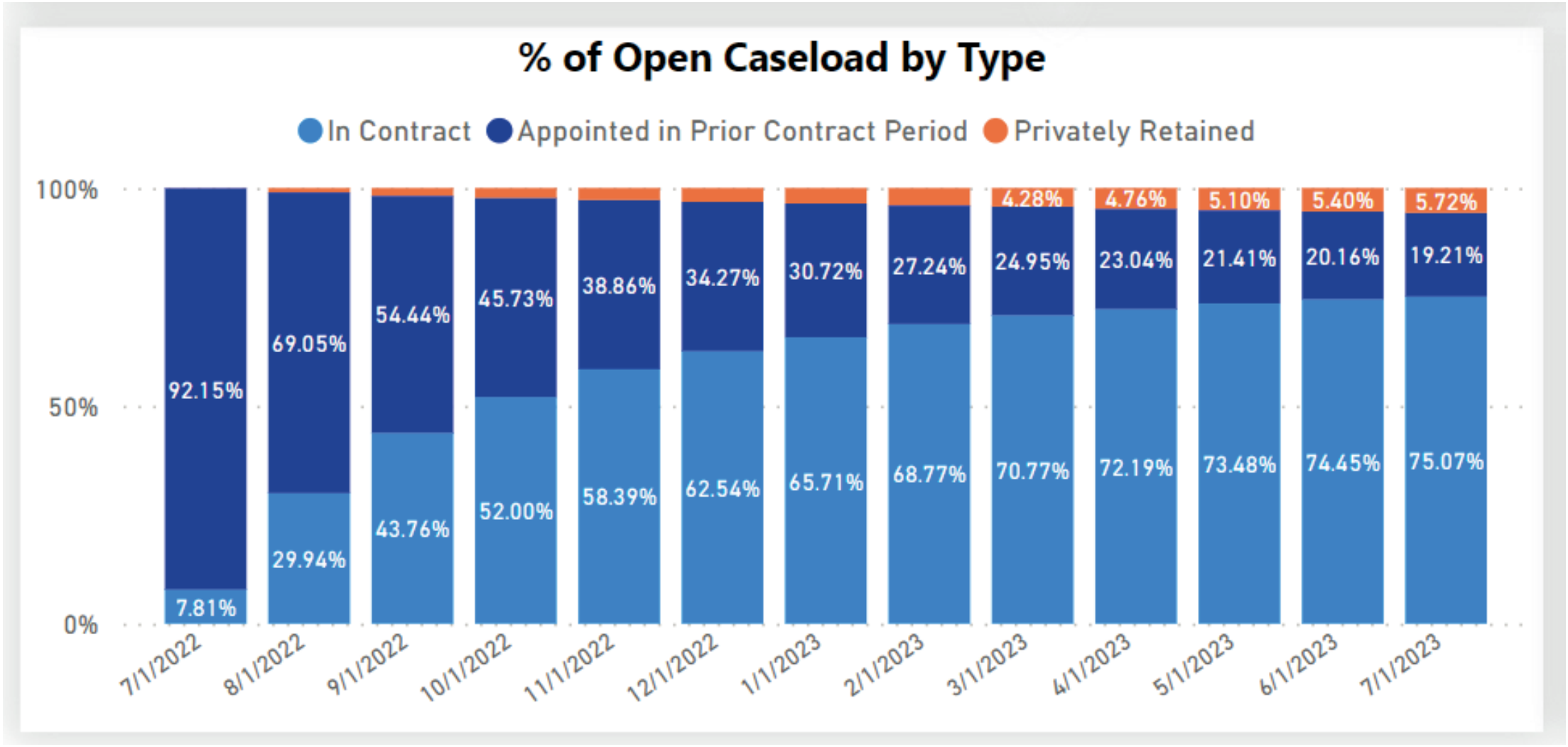
	National Advisory Commission (NAC) on Criminal Justice Standards and Goals (1973)	American Counsel of Chief Defenders Statement on Caseloads & Workloads (2007)	***Pending*** National Public Defense Workload Standards (2023)
Measure	Per Attorney	Per Attorney (assumes adequate support staff and average case complexity)	Per Attorney
Felony	150	• Standards should not exceed NAC. • Recommends review of local practice conditions and consider developing localized standards that adjust attorney caseloads when the types and nature of the cases handled warrant it. • Where increased complexity of practice anticipation of lower caseload ceilings from NAC.	Intended to replace NAC standards with recommended **time** per case Serve as a foundation upon which states can develop their own caseload standards
Misdemeanor	400		
Juv. Delinquency	200		
Mental Health Act (e.g., aid and assist)	200		
Appeals (non-capital)	25		

CASELOAD STANDARDS: OREGON'S APPROACH

	Pre-2021	2021	2022	2023-2025 DRAFT
Measure	Contracts did not include caseload limits—instead relied on a "case credit" or "credit" model.	% of 1.0 Full-Time Attorney (Annually)	Full-Time Attorney (Annually)	Full-Time Attorney (Annually)
Reference to Standard		Full-Time Equivalent (FTE)	Maximum Attorney Caseload (MAC)	Maximum Attorney Caseload (MAC)
Caseload Limitation		115% of NAC standards	Revised using ABA Oregon Study	Continued 2022 Methodology
Misdemeanor		**460**	**300**	**300**
Juv. Delinquency		230	132	132
Probation Violation		460	825	825

Unrepresented Cases and Public Defense Changes




% of Open Caseload by Type
In Contract
Appointed in Prior Contract Period
Privately Retained
100%
50%
0%
92.15%
7.81%
69.05%
29.94%
54.44%
43.76%
45.73%
52.00%
38.86%
58.39%
34.27%
62.54%
30.72%
65.71%
27.24%
68.77%
4.28%
24.95%
70.77%
4.76%
23.04%
72.19%
5.10%
21.41%
73.48%
5.40%
20.16%
74.45%
5.72%
19.21%
75.07%
7/1/2022
8/1/2022
9/1/2022
10/1/2022
11/1/2022
12/1/2022
1/1/2023
2/1/2023
3/1/2023
4/1/2023
5/1/2023
6/1/2023
7/1/2023

CASELOAD STANDARDS: OREGON'S APPROACH - TERMINOLOGY

- "Case credit" or "credit" refers to a fixed-rate fee paid for a case appointment based on the severity of the case. In previous PDSC contracts, this was an amount paid to an attorney for taking a case appointment.

- "FTE" or "full-time equivalent" describes the percentage of time an attorney is providing for public defense work. For example, an attorney with a .5 FTE is giving 50% of their time to public defense work. The current (2022-2023) contract does not use the term FTE but it will be included in the '23-'25 contracts

- "Maximum Attorney Caseload" or "MAC" refers to the caseload obligations associated with the percentage of time a contracted attorney provides to the agency. For example, a .5 FTE attorney has a MAC of 150 misdemeanor cases, which is determined by their FTE. The annual caseload limit for a 1.0 FTE attorney is 300 weighted cases per year, which corresponds to 25 weighted cases per month. In the current (2022-2023) contract, the MAC system represents the limit on the number of cases where an attorney can provide legal representation in a one-year period.

CASELOAD STANDARDS: OREGON'S APPROACH - HISTORY

- Prior to the 2019 contract cycle, cases were assigned a fixed-rate value and contractors were paid for each additional case handled. The system did not allow for PDSC to know the actual number of cases being handled by every attorney at any point in time, and no means of knowing whether contract providers have sufficient attorneys to handle the caseload.

- In 2019, the 6th Amendment Center presented findings of a study conducted on the Oregon PD system in 2018. One of the recommendations from the study suggested abolishing the fixed-fee contracting system. The 6th Amendment Center also recommended that PDSC be responsible for making individual case assignments to qualified attorneys to allow more oversight of caseload and workload.

CASELOAD STANDARDS: OREGON'S APPROACH - HISTORY

- PDSC responded to the report by redrafting the contracts into an FTE formula which contributed to the current crisis of too few lawyers to represent too many clients, with some defendants being denied representation altogether.

- The contracts for '23-'25 will remain an FTE contract model. There are some changes in these contracts, including:
  - two reimbursement rates at different price points for different tiers of attorneys,
  - only contracting with attorneys giving at least .5 FTE or 50% of their time to public defense work,
  - including a 15% variance (up or down) in caseload limits for maximum attorney capacity to account for jurisdictional differences in practice, and
  - two additional reporting obligations: a quarterly staff roster (who is working, their qualifications, any vacancies) and how contractors are distributing their funds in overhead cost.

CASELOAD STANDARDS: OREGON'S APPROACH - QUALIFICATIONS

- Attorney qualification levels do not currently directly map to case types. The levels of criminal attorney qualification from highest level to lowest are as follows:
  - Murder Lead Counsel
  - Murder Co-Counsel
  - Major Felony
  - Lesser Felony
  - Misdemeanor
- While attorneys at the misdemeanor level can only take misdemeanor cases, attorneys qualified at any higher level may take cases at that level and any level below it (for example, Major Felony qualified attorneys can take Major Felony, Lesser Felony, and Misdemeanor cases).

NUMBER OF QUALIFIED TRIAL-LEVEL ATTORNEYS

KEY PARTNERS IN OUR PUBLIC SAFETY SYSTEM

QUALIFIED TRIAL-LEVEL ATTORNEYS

80% of people accused of a crime are represented by a public defense provider

- Public Defense Providers Are Key Partners in Our Public Safety System
  - Assist in reducing rates of unnecessary pretrial detention
  - Direct and divert individuals into treatment programs and specialty courts
  - Challenge bias and disparities that permeate the legal system
  - Increase and promote the efficiency and legitimacy of the criminal legal system

FY 23 CRIMINAL CONTRACT

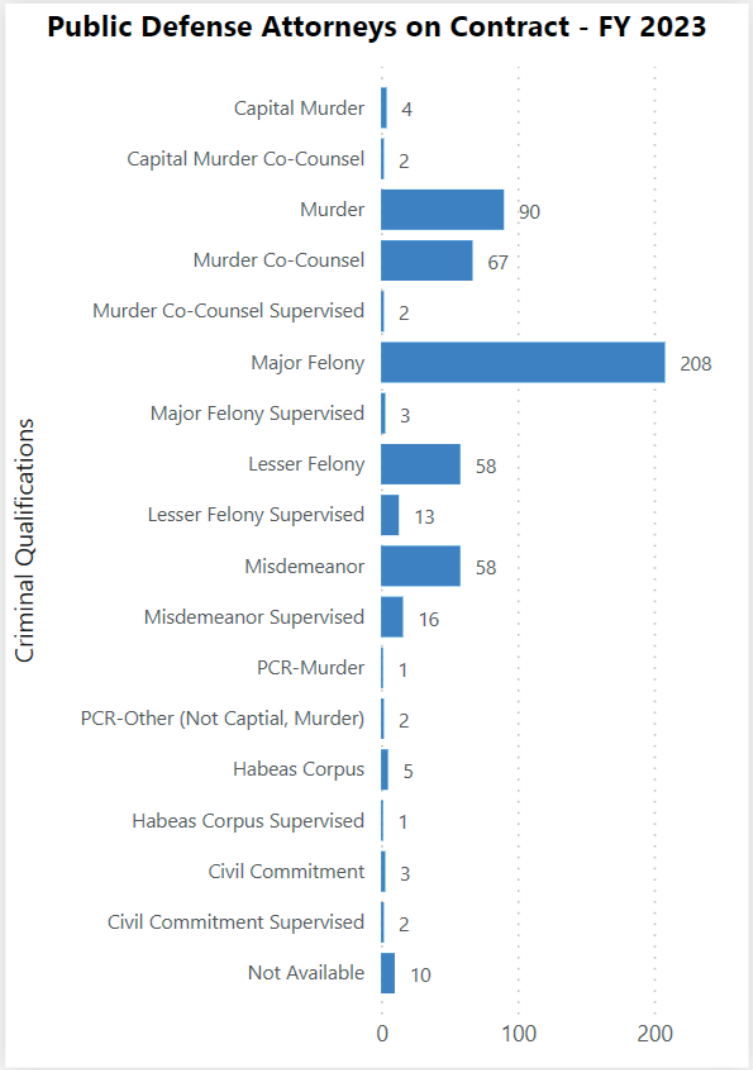
Active Public Defense Attorneys & Contracted FTE

All attorneys are not contracted for a full-time caseload (1.0 FTE or 300 weighted cases)

FY 23 contract extended through September 2023

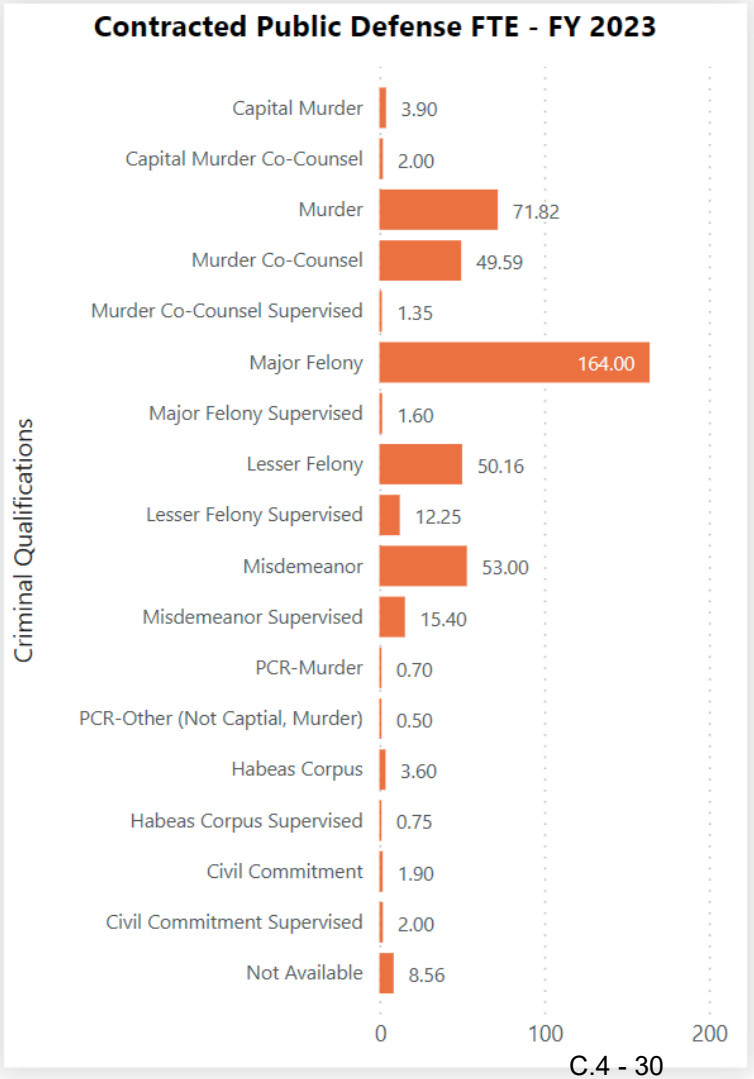
Total Contract Attorneys

545



Total Contracted FTE

443.08



NEXT STEPS

PUTTING IT TOGETHER AND BUILDING A PLAN

NEXT STEPS: THINGS TO KEEP IN MIND

- Use the OJD Crisis Plan Template & Facilitator Guide
- Review the PDSC Guidance
- Focus on the Four Levers and Be Creative
- Data-driven decision making and measurable outcomes
  - Data can:
    - Be a resource to understand historic and current trends
    - Be a tool to help identify what questions to ask
    - Forecast outcomes if you pull one "lever" and how it may or may not affect other "levers"
  - Data cannot:
    - Be accurate without good data governance (e.g., implementable business processes that are adhered to by all parties, consistent and accurate approach and data entry, clear definitions and parameters, etc.)
    - Account for information it does not know (e.g., deferred indictments/filings, DDA shortages, historic data that was not previously entered, etc.)
- Contemplate Whether and How Each Suggested Approach in Your Plan Will Provide Measurable Outcomes and Include Estimated Impact
- Work in a Respectful and Collaborative Manner

C.5

OJD-Led Actions to Alleviate Burdens on the Public Defense System, 2022-present

This document describes OJD's work to alleviate burdens on the public defense system from January 2022-present. Sections I-III describe actions by trial courts, Section IV describes efforts led by the Chief Justice, and Section V summarizes State Court Administrator actions. The most recently added content is contained in Section II, Case Resolution Efforts Survey Results (May 2023). Highlights from the May 2023 survey include the following:

- **Developing attorney capacity through cases on warrant status:** Lane County Circuit Court monitors cases on warrant status and inactivates attorney appointments after six months. Deschutes County prioritized processing warrants; handling 1,650 warrants since April 2022 that were placed in pending status during the pandemic. This has eliminated a backlog without overwhelming public defenders, district attorneys or the jail.
- **Settlement conferences & scheduling:** In February 2023, Columbia County Circuit Court implemented a new criminal case management and docket plan that focused on efficiencies. Changes included elimination of status hearings that were for scheduling purposes, taking pleas and hearing other issues at pretrial conferences, and having in-custody defendants transported to the courthouse for pretrial conferences to provide an opportunity for the defendant to consult with their attorney. Deschutes increased settlement resources in major crime cases, avoiding over 13 weeks of jury trial time on the docket since January 2023.
- **Reducing court filings:** In Crook/Jefferson counties, district attorneys and defense counsel agreed to send a written notice to defendants advising them they were out of compliance on bench probation prior to filing a Motion to Revoke Probation and giving a defendant an opportunity to get into compliance prior to Court involvement and appointment of counsel. A defendant may still contact their last assigned attorney with any questions. This eases the number of filings in court.
- **Early Case Resolution:** Multnomah County is one of many judicial districts with early case resolution dockets. Beginning in June, this new docket will be for low-level felony cases where the defendant is out-of-custody. Defendants on this docket will all be represented by the same attorney.

I. Trial Court Actions

- General, statewide efforts:
  - Courts are working closely with OSCA staff to ensure data collection on unrepresented persons is as accurate as possible.
- Courts most impacted by the public defense system challenges:
  - Intensive daily evaluation of misdemeanor and felony arraignment dockets and jail custody lists (pre- and post- arraignment/release decision), as well as working closely with defense providers to understand provider capacity for that day/week to allocate appointments accordingly.
  - Continuing efforts to increase current defense provider capacity by reaching out to private bar attorneys who are qualified to work with OPDS and take court-appointed cases.
  - Closely evaluating defense provider capacity in the immediate, mid-, and long-term to forecast future representation issues.

1

- Developed or in the process of developing protocols to prioritize public defender assignments.

- For courts that are not currently impacted by the public defense system burdens:
  - Work collaboratively with stakeholders to anticipate and prepare for potential public defense provider shortages.
- Counties experiencing the most significant shortages have provided additional local efforts below.
- Multnomah County:
  - Actively monitoring defendant/public defender status (daily) – total days without attorney, number of set overs, approaching statutory timelines.
  - Developed protocols to prioritize limited public defender resources to ensure representation for defendants in custody and those charged with domestic violence and person crimes, maximize assignments to higher risk cases, and minimize cases with no public defender assigned.
  - Expanded scope of specialized Resolution Dockets to increase opportunities for case closure by plea or trial.
  - Assigned Senior (retired) Judges for specialized settlement dockets focusing on serious crime types.
  - Compiled detailed spreadsheets of oldest custody cases and worked with court data, Sheriff's office data, and lists from prosecution and defense to identify priority cases for trial or settlement.
  - Court-issued email reminders to lawyers regarding call and trial dates.
  - Issued temporary 30-day grace period from court appearances for new attorneys and newly felony-qualified attorneys.
  - Consolidated felony morning call dockets to reduce number of appearances.
  - Cross-trained OJD staff to allow for early resolution of cases in the Justice Center.
  - Worked with district attorney's office to improve discovery practices (DA developed new reminder system to ensure timely discovery).
  - Modified judge assignments to place judicial officers in felony arraignments for 3-week assignments (instead of the normal weekly judge rotation) for consistency in handling attorney appointment issues.
  - Created new analyst position at the Multnomah Circuit Court to focus on criminal case data analysis and implementation of procedural changes.
  - Expanding omnibus motions beyond dispositive motions to be heard in advance of trial.
  - Working with Sheriff's Department to address available staffing for court hearings to minimize transport delays for hearings and trials.
  - Exploring and implementing increased use of remote appearances to reduce in-person court appearances.
  - Working with justice system stakeholders to implement a two-week pilot to restructure the felony arraignment docket to allow more time for attorney-client communications and evaluate feasibility.
  - Working to develop a process to consolidate cases as early as possible—preferably at arraignment—to reduce the appointment of multiple attorneys to a single

individual.

- Worked with stakeholders to modify the Multnomah County Justice Reinvestment program procedures to assist in getting LS/CMI assessments scheduled and identifying priority cases in need of a judicial settlement conference.
- Extended the first court date setting for misdemeanors to allow attorneys additional time to catch up on their existing caseload.

- Washington County:
  - Implemented specialized limited duration settlement dockets.
  - Convening public safety stakeholder meetings to discuss and evaluate additional ways to address the immediate public defense provider shortage (e.g., Wingspan #3 Docket for unrepresented persons, duty attorney, etc.) and discuss stakeholder staffing/resources that may affect defense providers and their work with clients (e.g., jail staffing and bed levels, probation case officer staffing, etc.).
    - Wingspan 3 Dockets were comprised of backlogged out-of-custody criminal cases without court-appointed counsel. Local criminal justice system partners – with PDSC support – resolved backlogged out-of-custody criminal cases without court-appointed defense attorneys. Wingspan 3 Dockets occurred for five successive Court Mondays, February 13-March 13, 2023. As of April 2023, more than 60% of Wingspan 3 cases were resolved.
  - Working with OPDS to develop protocols to prioritize public defender assignments.
- Marion County:
  - Engaged in regular meetings with OPDS to discuss public defense providers concerns and identify potential solutions and prioritization of appointment.
  - Convened public safety stakeholder meetings to discuss and evaluate additional ways to address the immediate public defense provider shortage.
  - Development of specialized mass settlement dockets conducted inside the jail to reduce caseloads and transports.
- Coos County:
  - Convened public safety stakeholder meeting to discuss and evaluate additional ways to address the immediate public defense provider shortage.
  - Court continues to accept change of pleas up to the day before trial for good cause reasons.
  - Jury trial days currently limited to Tuesday through Thursday to alleviate public defender scheduling constraints.
  - Extended timelines for negotiation between parties.
  - Increased time from arraignment to final entry of plea in felony cases to parallel the time given in misdemeanor cases. This will allow more time for defense counsel to review discovery, negotiate and appear in court.
  - Modify local court practice to accept no contest pleas on misdemeanor and low level felony charges that otherwise would have required a guilty plea.
- Jackson County:
  - Responded to legislator request for information on specific issues in their county, such as the number of people in custody and the urgency of resolving the lack of

attorneys appointed.

- Umatilla County:
  - Worked with OPDS to set case assignment guidelines to ensure defendants are represented.
- Deschutes County:
  - Significantly increased settlement resources in major crimes cases. This also included one week of additional training (for the PJ who does these) at the National Judicial College in Reno, NV with the goal of learning additional case resolution strategies.
  - Increasing time from arraignment to first entry of plea to allow attorneys to gather discovery, meet with the client and return to court. This avoids needless continuances.
  - Created special "case resolution" days – 12 cases per day – that will be in person with clients and attorneys and a judge who will facilitate settlement, take pleas, and handle sentencing if appropriate. Defense attorneys will populate this docket and select the cases.
  - All of the above suggestions came from the heads of the local public defense service providers following a second working lunch organized by the court.

II. Case Resolution Efforts Survey Results (May 2023)

Courts provided the following information:

- "We have a robust pretrial program & services which secure court appointed application and eligibility as well as identify treatment court eligible participants early for early entry and disposition; We have an early disposition program prior to attorney appointment through a public defender; Settlement conferences are conducted on Measure 11 cases; All of these as well as DA Diversions, conditional discharges, etc. are cause to keep cases with fair resolution and caseloads at a decent amount. Our consortium dissolved through failed negotiations with OPDS which created a new contract with several attorneys that only made attorney situation worse for our district due to the amount of conflicts it caused and out of area attorney's getting double credit. However, with attorney's capped, we have sought out the bar and attorneys that are willing to go beyond their cap at hourly rate. We work with OPDS for preliminary approval and appointment. We have been able to ensure all defendants in and out of custody have had counsel timely." (Union/Wallowa Counties)

- "1. I have met with the DA to encourage reducing more cases to violations at the time of arraignment. This has resulted in more cases being resolved at the first appearance. 2. I met with parole and probation and probation officers are offering more structured sanctions on the probation violations so the formal probation violation may be dismissed if the offender accepts a sanction. This resolves the violation without court resources. 3. We have been utilizing judicial settlement conferences at a much greater frequency. 4. I have been prioritizing appointments for in-custody defendants and deferring appointments for out-of-custody defendants to conserve attorney resources; however, Lincoln County is now in the situation where all attorneys in our local consortium have reached capacity." (Lincoln County)

- “We have attempted to keep track of case counts for attorneys so we can know when they are close to completing their contract and we can triage cases until that occurs. We have reached out to other counties' attorneys that have a surplus so they can agree to take cases in our county. We haven't quite got to the point of limiting appointments for in-custody only cases, but that point is coming.” (Malheur County)

- “Consistent with earlier 2022 prioritization, Benton County Circuit Court places continued emphasis on settlement conferences.” (Benton County)

- “Our assumption has been that the best way the court can help reduce the number of unrepresented defendants is by efficiently resolving criminal cases. Our theory is that resolving cases frees attorneys up to take new cases. So, historically, every criminal case must have a settlement conference prior to being set for trial. To ensure that cases are actually set for trial, those settlement conference dates are set at arrangement. Trial dates are set at failed settlement conferences. More complex criminal cases may get assigned out of trial call for longer, more involved, settlement conferences. We have started preparing a training for newer judges to make those settlement conferences more effective. We also monitor criminal cases on warrant status and inactivate attorney appointments after six months. We have a court clerk affirmatively monitor our unrepresented list and connect with OPDS regularly. The PJ meets with community partners regularly to solicit feedback on how to improve case management and efficiency.” (Lane County)

- “The court is only now hitting a point where we have attorneys maxing out their case numbers. We are working closely with the PDSC analyst to determine which attorneys have not hit their case numbers and have been distributing cases to conflict providers or other attorneys in the same firm who are not case number limited. We are doing so to ensure that public resources are being properly protected.” (Grant/Harney Counties)

- “We have utilized weekly status hearings when a defendant has not had an attorney to continue to check on the status of getting one. The TCA communicates with OPDS before each status for the cases we have asked for highest priority to be given to. The PJ has also talked individually with potential attorneys to help facilitate appointments. We continue to prioritize criminal cases to encourage timely disposition, including allowing cases to change their plea on the day of trial.” (Yamhill County)

- “In February 2023 we implemented a new criminal case management and docket plan, focusing on a creating efficiency for all parties involved. We eliminated status and scheduling hearings where the only purpose of the hearing is to set the next court date. We restructured pretrial conferences so pleas can be entered at those hearings and attorneys can address issues preventing a case from moving forward, such as discovery, with a judge. We have worked with our jail to have in custody defendants transported to the courthouse for pretrial conferences so the defense attorney can speak with their client and/or review and sign a plea petition in court. We continue to embrace to the use of remote appearances for most hearings; however, we do require some in-person hearings. For instance, we realized defense attorneys were having a hard time connecting with some out of custody defendants when PTCs [Pretrial Conferences] were done remotely. We now have PTCs done in person, which is helping attorneys connect with their clients so they can move the case forward. There is an option to appear remotely still for PTCs if they are going to enter a plea. We have been communicating with our local consortiums and checking to see if they are reaching capacity. We are experiencing the shortage of defense attorneys when all of the local consortium attorneys are conflicted on a case and a private bar attorney is needed. We are planning on setting a meeting with OPDS to see what, if anything, we can do to address

this issue." (Columbia County)

- "We are allowing remote appearances by out-of-county attorneys for arraignments, release hearings and case management sessions. This allows OPDS to assign attorneys who otherwise would be reluctant to travel to southwest Oregon on a regular basis. We are also discussing with the jail the use of video conferencing between in-custody defendants and out-of-county attorneys. We have used and will continue to use senior judges to handle settlement conferences in major felony cases and multiple day civil trials. We have relaxed our practice of not allowing negotiations in criminal cases after the case has been set for trial. If requested, we will allow up to two weeks to negotiate a settlement even though a trial date has been set. We will consider late pleas on criminal cases up to a day before trial if circumstances have changed since the trial date was set, for example late discovery. We have met with representatives of OPDS, the DA and the local PD to discuss ways to reduce the time spent by attorneys on criminal cases. The DA's discovery procedure ensures timely production of materials to the defense. To reduce the trial schedule of the DA and defense counsel we have not been setting jury trials on Fridays, although this will change once the local PD office is fully staffed. We are allowing no contest pleas in misdemeanor and low level felony cases in circumstances where those pleas were not accepted before." (Coos/Curry Counties)

- "Significantly increased settlement resources in major crimes cases. Avoided over 13 weeks (approximately 67 days) of jury trial time on the docket since January 1, 2023 by conducting focused judicial settlement conferences that resulted in the resolution of major crimes cases. This strategy followed one week of additional training at the National Judicial College in the fall of 2022 for the Presiding Judge, who conducts these settlements, to learn additional case resolution strategies. Created special "case resolution" days – 12 cases per day – held in person with clients, attorneys and a judge who facilitates settlement, takes pleas, and handles sentencing if appropriate. Defense attorneys populate this docket and select the cases. Increased the time from arraignment to first entry of plea to allow attorneys to gather discovery, meet with the client and return to court. This avoids needless continuances. The above suggestions came from the heads of the local public defense service providers following a second working lunch organized by the court. Moved the trial readiness docket to Tuesdays instead of Thursdays to allow attorneys to more effectively anticipate and plan for their trial dockets the following week. This was the result of feedback provided by the local bar association, including public defense providers, during listening sessions conducted by the court in March 2023.Strategically processed over 1,650 warrants since April 2022 that were placed in a pending status during the pandemic. This has eliminated the backlog without overwhelming our local public defense providers, the District Attorney's Office or the jail." (Deschutes County)

- "In addition to encouraging settlement conferences, the local District Attorney's office has engaged in making offers at early appearances in an effort to settle those cases as soon as possible. So far, the consortium has had attorneys present at those appearances to provide limited guidance in those cases. We continue to have the privilege of a Senior Judge who provides additional service in settlement conferences. Judges on the bench have for some time prioritized cases as to making appointments for counsel for those who qualify. Until recently, we have been able to ensure that persons who remain in custody have local counsel appointed. For persons who remain out of custody, our practice has been to appoint OPDS and then continue the case for future appearance. Lately, this has also been true for cases where persons remain in custody, unless the judge is advised that local counsel who would qualify for an appointment to represent the person can accept the appointment. Otherwise, we believe that it is important to make sure that OPDS be advised as to the

current status of unrepresented persons so that other counsel might be available for appointment. We have also experienced local counsel who have contacted OPDS to participate in the recent civil program so that those persons can be qualified for appointment." (Linn County)

- We have worked to respond by:• Reducing the number of court appearances required to reach resolution of a given case. Allowing removal of unnecessary appearances upon email request by attorney. Specifically, only one case management conference is generally scheduled per case. That appearance and any follow up status hearing may be cancelled on the request of the attorney to set a plea/sentence hearing or trial.• We have continued to hold arraignments, case management conferences, status hearings and most misdemeanor pleas and sentencings by remote means.• Providing flexibility in mode of appearance: Attorneys may request that many other in person matters be scheduled remotely (and vice versa). We have simplified the process to request changes in the mode of appearance with forms available on our website.• We regularly hold remote settlement conferences for all case types when requested. We will begin allowing attorneys to select their own scheduled times through Bookings later this month.• We have held meetings with the full criminal bar and bench. The Presiding Judge speaks with the head of consortium regularly. (Clatsop County)

- "We have had several meetings with our interim District Attorney and representatives of the defense bar to discuss docketing strategies and priorities. We have a shortage of prosecutors and defense counsel so we have restructured our dockets to minimize overlap for lawyers who must appear in multiple courtrooms/treatment courts. We offer judicial settlement conferences for all serious felony cases. We have developed a "fast track" settlement docket to facilitate quick resolution for lower-level cases. We have developed docket strategies and plans for in-custody and out-of-custody unrepresented persons that are consistent across courtrooms." (Klamath County)

- "Our case resolution efforts have expanded to a coordinated effort looking at the number of filings, case management, case resolution and remote appearances and involving the Court, Public Defenders and District Attorneys. This includes regular meetings and communication. The results have included scheduling pretrial conferences 45 minutes twice a month for each attorney with a designated day and time freeing up the defense attorney's schedule. Defense attorneys are able to schedule out a pretrial conference for out of custody based on the status of their investigation and availability to spread out their responsibilities. Out of custody trials are scheduled deferring to a defense attorney's availability for trial. The District Attorneys have established standard plea offers for low level misdemeanors, so no one needs to wait for a formal plea offer to issue. The District Attorneys and Defense Counsel agreed to send a written Notice to Defendants advising them they were out of compliance on bench probation prior to filing a Motion to Revoke Probation and giving a Defendant an opportunity to get into compliance prior to Court involvement and appointment of counsel. A defendant may still contact their last assigned attorney with any questions. This eases the number of filings in Court. Exceptions are those who absconded from supervised probation. In custody defendants are subject to a mandatory settlement conference to facilitate case resolution prior to a trial. Out of custody defendants with a case pending more than 180 days may be referred to an informal settlement conference docket and that has been successful. Finally, we have made use of Plan B judges for additional jury trial days to work on case resolution for aging cases and that has been successful in addressing some of the backlog. The Court makes use of remote appearances for all pretrial conferences and other hearings and that has been beneficial for non-local representation. The Court makes every effort to balance the need for speedy case resolution and the needs of the defense bar to ensure

representation and I am very proud of our efforts. Currently all defendants in our judicial district with appointed counsel have an attorney assigned to them." (Crook/Jefferson Counties)

- "In addition to the other efforts in Multnomah, we are adding an Early Case Resolution Docket for low-level felony cases where the defendant will not be held in custody and they have not had an attorney appointed. At their arraignment hearing, these cases will be set on a Wednesday docket 2 weeks out. They will be represented for the Early Resolution Docket by Jon Sarre from Multnomah's Public Defense Consortium. This new docket structure will start at the beginning of June." (Multnomah County)

III. Case Resolution Efforts Survey Results (February 2022)

Courts provided the following information:

- "To continue to hold jury trials and keep cases moving during the pandemic, the Multnomah Circuit Court pioneered the development of a business process for fully remote jury selection to ensure that the court has enough jurors available for trials when social distancing limits the number of jurors we can have onsite. For that reason, we continue to conduct grand jury selection remotely to ensure that there are enough trial jurors onsite." (Multnomah County)
- "Our biggest issue was because of the small courtroom, Courtroom 108. We changed how we docketed so that WebEx hearings would be held in Courtroom 108 and we could use most of the time in the large courtroom for jury trials. We also are working with the County to get a different larger space for a replacement courtroom within the Courthouse so that we can do jury trials in both courtrooms again." (Tillamook County)
- "On criminal matters we have a case management system where the state is expected to make its best offer. We will also do JSCs on request for criminal matters. We require JSCs on civil matters and mediation or other dispute resolution on domestic relations. Occasionally we do JSCs on juvenile matters." (Clackamas County)
- "Our court has had a rule for some time that we would not allow negotiations in criminal cases after a case is set for trial. We have relaxed this rule and encouraged increased settlement conferences. This has proven helpful in processing cases. We have also had a great deal of help from a local Senior Judge who has made time available on a regular basis to act as a settlement judge. His experience on the bench has proven to be valuable in adding a "judicial credibility" to settlement efforts in criminal, domestic relations and civil cases. His contribution has been to offer whole days of time to attempt to assist in settlement. Additionally, we have during the pandemic proceeded with trials, bench trials and other dockets in person and by remote means." (Linn County)
- "We have continued to move cases along in a timely manner throughout the past 2 years in our District. This has included using alternate venues apart from the courthouses, such as the Community Building and the Fairgrounds, to conduct larger sized jury trials. We have used Plan B judges for settlement conferences in several murder cases and to hear a large volume of habeas corpus cases from the Shutter Creek prison. The crisis we currently face is the lack of attorneys to appoint for indigent defendants in criminal cases, both in and out of custody. In Coos, for the short term, we have relaxed our court practices in criminal cases to allow more time for defense counsel to investigate and negotiate before entry of final plea, encouraged the use of no contest pleas on misdemeanor and low level felony charges, and accepted late pleas on cases up to the

day before trial if good cause. We have also encouraged out of county counsel to appear remotely for preliminary proceedings in criminal cases such as arraignments, release hearings, requests for more time and trial settings. The large jail in Coos has limited the types of cases in which defendants would otherwise be held, which in turn has reduced the pressure of setting trials within 60 days and arranging for lawyers to take in-custody cases that need to be tried promptly." (Coos/Curry Counties)

- "In Jackson County we have a robust criminal settlement conference program focused on resolving pending Measure 11 cases. The goal is to reduce the number of people held in the jail on pretrial holds. It has been a very successful program. Several judges have participated in the judicial settlement conference program. We also have a judge focused on early resolution of criminal matters in misdemeanor and repeat offender cases. The District Attorney is also engaged in creative resolution of cases in an attempt to resolve misdemeanor non person crimes. I think these programs have helped our court keep up with the flood of criminal matters, particularly where we do not have adequate jail space or pretrial resources." (Jackson County)
- "Primarily focused on Crook County cases because COVID restricted our ability to conduct jury trials safely. In August 2021, we scheduled 15 jury trial days for the month instead of 6. We had 15 cases go to trial, 72 cases dismissed by the DA Office, and many others resolve through plea and sentencing. We are adding additional trial dates on the docket for the next 6-9 months to work on jury trial demand backlog. We also made use of mandatory settlement conference for in custody defendants and older cases to great success. Our strategic focus to catch up on older misdemeanor cases is to schedule all cases for settlement conferences and if resolved conduct the plea and sentencing immediately in the courtroom. Overall the use of judicial settlement conferences has been instrumental is case resolution." (Crook/Jefferson Counties)
- "Every Criminal Case must have a settlement conference prior to being set for trial. To ensure that cases are actually set for trial, those settlement conference dates are set at arrangement. The majority of criminal cases resolve short of going to trial. More complex criminal cases may get assigned out of trial call for longer, more involved settlement conferences. All Domestic Relations cases with less than two attorneys are automatically set for a status conference. At that status conference, all DR cases with no attorneys are set for a judge led settlement conference. DR cases with attorneys may be set for those settlement conferences. We have room to improve on Civil Settlement conferences. They can be set to be assigned on the trial docket but this option is contingent on judicial availability. We also have the option of using Plan B Judges to do civil settlement conferences. We had success doing this in 2021 but that success came at the cost in terms of staff time. We have discussed ways to streamline this administrative work of this project and will implement them soon." (Lane County)
- "We are continuing to move cases rapidly. We have opened up a settlement conference process to help improve communication between defense and prosecutors to move criminal cases and increase capacity for both sides." (Polk County)
- "Washington County Circuit Court has been operating on-site and in-person during the pandemic. Court operations have been restricted to implement COVID-19 hygiene and safety measures. Remote hearings -- with in-person and remote participants -- have allowed us to hear and resolve cases. Social distancing, in particular, has limited our ability to conduct criminal jury trials. We now have a backlog of criminal cases with very serious charges (e.g., murder, rape, burglary) waiting for jury trials. In some cases, criminal defendants are in custody waiting for trial without appointed defense counsel because of the current OPDS court-appointed counsel shortage crisis. Local criminal

justice system leaders are meeting now to brainstorm and implement ideas to resolve cases, especially old cases from the two year pandemic, short of trial." (Washington County)

- "We have been consistently holding trials throughout the pandemic, with the exception of a few weeks/months at the beginning. We have a Pro Tem Judge conducting family law settlement conferences. We have also had Plan B judges conduct settlement conferences on both criminal and civil cases, and I recently appointed myself a settlement conference on two murder cases that settled." (Josephine County)
- "We have been having jury trials since June 2020. We continue to have settlement conferences on all major felony cases in and out of custody." (Klamath County)
- "We have had the pleasure of working with Senior Judge Henry Kantor as a settlement judge on our criminal cases since August 2020. During that time, he has resolved 36 of 44 cases. Until late 2021, we referred only the most complex felony cases to Judge Kantor, making that resolution rate even more impressive. Because Judge Kantor conducts settlement conferences remotely by WebEx, his work has enabled defendants to reach resolution of their cases even during times COVID levels and restrictions were high." (Clatsop County)
- "We are reducing set overs of pleas and setting cases for trial. We have critical eye on trial continuances to ensure a culture of attorney expectations that trial will go on dates set unless actual good cause is demonstrated. I do want to address settlement conferences. Settlement conferences for districts with 1 or 2 judges greatly reduce our flexibility in setting trials." (Malheur County)
- "We opened a 10,000 sq. foot courtroom at the Deschutes County Fairgrounds in October of 2020 to move cases along during the pandemic. Since opening, we have concluded 27 jury trials at the fairgrounds courtroom. Prior to that, Deschutes County requested and was approved for use of Senior Judges (Plan B), to resolve primarily in-custody Measure 11 cases. The settlement conferences have proven effective in the 90% range. Deschutes County also renovated two courtrooms early in 2020 to allow for criminal cases to proceed to trial in our courthouse. Our most recent efforts include conversations with our OPDS providers to discuss how we can reduce case counts rapidly over the next several months. Early ideas include increased settlement conference resource and dedicated case resolution dockets. These conversations are ongoing." (Deschutes County)
- "Benton County Circuit Court effectively prioritized settlement conferences in 2022 to reduce the number of pending cases. Additionally, with the hire of a Release Assistance Officer, the court has resumed rigorous ACP reviews of all applications for appointed counsel." (Benton County)

IV. Actions taken by former Chief Justice Martha Walters and/or Chief Justice Flynn

- Worked with the Oregon State Bar (OSB) to expedite admission of out-of-state lawyers to practice in Oregon (comity rule).
    - As of April 2023, 21 attorneys have been assigned to 1,247 criminal & juvenile cases.
- Contacted the Professional Liability Fund to allow retired attorneys to practice on a limited basis.
    - 76 reinstatement applicants have been reinstated to an active or inactive

status. There are also currently an addition 38 reinstatement applications that are being processed or in-progress.

- Encouraged all judges and courts to convene local meetings and implement improvements.
- Wrote articles highlighting the value and importance of public defense providers and need for additional providers.
- Hosted and/or engaged in conversations at all levels of state government – from local jurisdictions to state workgroups and three-branch leadership discussions.
- Supported Oregon law schools' efforts to increase opportunities for engagement and awareness of public defense, including discussions with the Dean of the University of Oregon School of Law regarding actions the school could take to encourage law students to pursue careers in public defense and providing support for a request from the Willamette University College of Law to establish a public defense clinic.
- Encouraged all system stakeholders to identify potential solutions to address the public defense shortage.
- Directed collaborative efforts between Uniform Trial Court Rules (UTCR) Committee and Chief Justice's Criminal Justice Advisory Committee (CJAC) to review UTCR proposals from Oregon Criminal Defense Lawyers Association (OCDLA).
    - At the direction of the Chief Justice, a group of CJAC and UTCR committee members formed the Case Processing Subcommittee to address the UTCR proposals from OCDLA. The subcommittee's report was provided to the UTCR committee and the proposals were discussed at the March 17, 2023 UTCR committee meeting. Some proposals were recommended for adoption in whole or in part, others were not recommended, and two were referred back to the Case Processing Subcommittee for further discission and development.
- Encouraged local courts to identify and support efforts to improve system efficiencies, as well as efforts to resolve cases whether by plea or trial.
- Invited and welcomed stakeholder proposed solutions and, where appropriate, offer support and resources.

V. Office of the State Court Administrator (OSCA) Actions

- Added a full-time criminal analyst position to evaluate and develop data and identify opportunities for statewide improvements.
- Committed significant senior judge resources to support case resolution efforts and to meet counsel's requests for Judicial Settlement Conferences.
- Worked with OPDS to develop consistent data collection on unrepresented persons in each judicial district and developed public dashboard to show location and status of unrepresented persons.
    - Continue to make improvements to the public dashboard, including updating the dashboard to show cases where a defendant is in Department of Corrections' custody. Office of Public Defense Services (OPDS) and OJD continue to collaborate and now plan to create a dashboard to track attorney capacity for use by judges looking to appoint attorneys to public defense cases.
- Worked with OSB to create temporary Bar numbers in the Odyssey case management system to identify attorneys admitted through comity.

- Working with OSB to evaluate changes in conflict rules to increase representation opportunities.
- Assigned OSCA staff members to engage in state-level workgroups, subgroups, and local court meetings with stakeholders.
- Responding to requests for data, information relating to court processes, and other requests from legislators, legislator and legislative professional staff, and other interested parties.
- Working collaboratively with OPDS to improve and refine data collection efforts, as well as continue to provide opportunities for OPDS involvement on OJD-led stakeholder committee(s).
- Ongoing collaboration with OPDS to develop additional data report

Adding Jessica's Law Modifier

Revision History

Select a **County** to view the local business process.

Baker	Crook	Harney	Lake	Morrow	Union
Benton	Curry	Hood River	Lane	Multnomah	Wallowa
Clackamas	Deschutes	Jackson	Lincoln	Polk	Wasco
Clatsop	Douglas	Jefferson	Linn	Sherman	Washington
Columbia	Gilliam	Josephine	Malheur	Tillamook	Wheeler
Coos	Grant	Klamath	Marion	Umatilla	Yamhill

Proper recording of Jessica's Law charges is a requirement for accurate information regarding attorney appointment.

Jessica's Law may not be listed specifically on the charging instrument, but the modifier should be entered when both the following elements are present:

- Specific charge of:
  - **Rape in the First Degree (RPE1)** ORS 163.375
  - **Sodomy in the First Degree (SOD1)** ORS 163.405
  - **Unlawful Sexual Penetration in the First Degree (USP1)** ORS 163.411
  - **Kidnapping in the First Degree (KID1)** ORS 163.235
- Victim is indicated as under the age of 12

Statistically Relevant Data : **Jessica's Law (JLAW)** charge modifier.

Main Step

1. Review the charging instrument for any of the following offenses:
   - **Rape in the First Degree (RPE1)** ORS 163.375
   - **Sodomy in the First Degree (SOD1)** ORS 163.405
   - **Unlawful Sexual Penetration in the First Degree (USP1)** ORS 163.411
   - **Kidnapping in the First Degree (KID1)** ORS 163.235
2. *If one of the listed charges is present*, review the charging instrument for indication the victim is under 12 years of age.
3. From the *Charges (F12+C)* tab, add the charge and all charge details.
   a. Add the modifier to the *Add Charge Detail* dialog box.
      i. Click from the *Additional Statutes* header.

ii. Select the *Type* of **Modifiers (MOD)**.

iii. Select the *Code (Alt+O)* of **Jessica's Law (JLAW)**.

iv. Click **Continue (Alt+C)**.

 **Contact Us**

Release Date 08/15/2023

ACP Eligibility, Verifications & Recommendations

Revision History

Revision Date	Revision Description
	New Topic
11/13/2020	Updated to change all references to Affidavit - Eligibility - ACP (AFIN) to Affidavit/Declaration - Eligibility - ACP (ADIN). Updated per OCCW #690.
04/01/2023	In Verification of Eligibility, added a note about applications needing to include all information from the determination process. Additionally added an introduction to Updating the Event Status to Verified.
07/01/2023	Verification of Eligibility section, intro updated from two to one resource must be used in the important note.

Select a **County** to view the local business process.

Baker	Crook	Harney	Lake	Morrow	Union
Benton	Curry	Hood River	Lane	Multnomah	Wallowa
Clackamas	Deschutes	Jackson	Lincoln	Polk	Wasco
Clatsop	Douglas	Jefferson	Linn	Sherman	Washington
Columbia	Gilliam	Josephine	Malheur	Tillamook	Wheeler
Coos	Grant	Klamath	Marion	Umatilla	Yamhill

The recommendation of an applicant's financial eligibility derives from the ACP Calculation results containing the financial details from the Affidavit of Eligibility submitted by the applicant.

Both the ACP calculations and verification of eligibility need to be completed. Information on verification forms or calculators:

- Calculators
- Online Verification Resources *(Rights and access may apply)*
- Request for Verification Forms

NOTE: The court may only have time to perform the calculations to support the recommendation to the judge for arraignment. Verification can be completed at a later date. The judge takes the recommendation in consideration determining eligibility and IDCC amounts. The judge has discretion to order a higher or lower contribution amount based on the specifics of an individual case.

Odyssey Form(s):

- **Handout – ACP – Deferred Payment of Fees**
- **Memorandum & Declaration – ACP – Withdraw Counsel**

- **Order – ACP – Amending Limited Judgment**
- **Recommendation/Order/Judgment (ACP)**
- **Verification – ACP – Bank Account Information**
- **Verification – ACP – Employment & Earnings**
- **Verification – ACP – Indian Agency Benefits**
- **Verification – ACP – Monthly Expenses**
- **Verification – ACP – Oregon Savings Growth Plan**
- **Verification – ACP – PERS Benefits**
- **Verification – ACP – Property Ownership & Value**
- **Verification – ACP – Self Employed**

NOTE: The Verification forms are available in the Criminal case category only.

Statistically Relevant Data *:*

- ***ADIN Event Status:*** **Recommend Approve (RECA)**
- ***ADIN Event Status:*** **Recommend Deny (RECD)**

Calculations of Eligibility

Calculations of Eligibility

The ACP Calculator automatically applies the adopted *Federal Income Guidelines* and the *Privately Hired Attorney Fee Schedule* when providing the following recommendations of eligibility:

- To allow or deny appointment of counsel,
- To order or waive an application fee, and
- The recommended assessment of the contribution amount.

For each applicant, complete the ACP Calculator. **Print/Save/Scan** the calculation results.

Add the Affidavit of Eligibility and Related Documents

1. Add the **Affidavit/Declaration – Eligibility – ACP (ADIN)** event.
   a. Verify the **Date** filed.
   b. Relate  the requesting **Party**.
   c. Add the appropriate *Event Status* to identify the recommendation.
      i. From the *Event Status* header, click .
      ii. Select the appropriate *Event Status:*
         - **Recommend Approve (RECA)**
         - **Recommend Deny (RECD)**

iii. Click **Continue (Alt+C)**.

d. **Link/Relate/Scan** the following documents:

i. Affidavit of Eligibility

ii. Advice of Rights

iii. Signed Notice Right to Appeal

iv. Signed Release to Obtain Information for Verification

v. Calculations of Eligibility from the ACP Calculator

vi. *Contrary results from verification of eligibility*

NOTE: Scan each document as a Confidential document to the Affidavit/Declaration – Eligibility – ACP event.

Verification of Eligibility

Verification of Eligibility

The determination and recommendation of an applicant's financial eligibility is based upon the applicant's financial details contained within the submitted Affidavit/Declaration of Eligibility.

NOTE: Every ACP application needs to be auditable. The application, calculation used to determine eligibility (calculator printout or other worksheet), and screen prints of any resources used for verification, need to be scanned to the ADIN event, regardless if contradictive to the ACP application or not, as confidential documents.

Verify as many affidavits as practical, and only when there is information to verify. Scrutinize figures contained in affidavit and check that the make sense. Use information contained in affidavit to conduct interview and determine which aspects of affidavit would be valuable to verify.

IMPORTANT: To consider the affidavit "Verified," at least one resource must be used.

Statistically Relevant Data : Event Status: **Verified (VFRD)**

Verification of Eligibility

1. Verify a *Release to Obtain Information* and *Affidavit/Declaration of Eligibility* has been signed by the applicant.

   a. Perform a verification of the information. Use resources to:

      i. Verify wages and/or unemployment benefits.

ii. Check for any vehicles registered in the applicant and/or spouse's name.

iii. Determine the value of all vehicles.

iv. Inquire into any real property recorded under the applicant and/or applicant's spouse's name.

v. Obtain the real market value of any real property.

vi. *If applicable,* merge and attach the appropriate verification forms:

- **Verification – ACP – Bank Account Information**
- **Verification – ACP – Employment & Earnings**
- **Verification – ACP – Indian Agency Benefits**
- **Verification – ACP – Monthly Expenses**
- **Verification – ACP – Oregon Savings Growth Plan**
- **Verification – ACP – PERS Benefits**
- **Verification – ACP – Property Ownership & Value**
- **Verification – ACP – Self Employed**

2. **Link/Relate/Scan** all requests for verification and reports used to verify eligibility to be attached to the appropriate **Affidavit/Declaration – Eligibility – ACP (ADIN)** event.

Did the Search Reveal Real Property or Vehicles Under the Applicant or Spouse?

☐ **No** ☑ **Yes**

Yes

Obtain a Credit Report

The Oregon Judicial Department has established an account with Equifax Credit Bureau for obtaining credit reports of applicants. Equifax tracks and records all internet credit report requests in the name of the person requesting the file. BFSD is billed directly for these charges, and they are paid for out of the ACP budget.

For information on running a credit report, see the Equifax documentation on SharePoint.

IMPORTANT: It is recommended to only run a credit report when an applicant indicates owning or purchasing real property, vehicles, and/or boats.

Information obtained in a credit report will reveal:

- The date the loan was acquired;
- The amount financed;
- Scheduled monthly payments;
- Remaining balance;
- Timeliness of payments;
- Lines of credit;
- Second mortgages;

- Additional property;
- Vehicles; and
- Student loans.

IMPORTANT: Equifax access is required to run a credit report. Users cannot share User-IDs and Passwords. Contact the department supervisor to request access.

1. Verify the following documents are signed and available prior to running the credit report:

   - Release to Obtain Information for Verification, and
   - Affidavit of Eligibility.

   IMPORTANT: A signed Release to Obtain Information for Verification must be obtained prior to running the individual's credit report. When both the applicant and spouse have signed a Release to Obtain Information for Verification, run a Combined Report.

2. Run the credit report of the applicant.

   a. **Print** a copy of the *Credit Report.*

Calculations of Eligibility

Re-run the ACP Calculator using the updated information obtained via the verification process.

Print/Save/Scan the calculation results to be included with the application packet.

The ACP automatically applies the adopted *Federal Income Guidelines* and the *Privately Hired Attorney Fee Schedule* as the criteria to apply when providing the recommendations of eligibility to the judge.

Update the Event Status to Verified

The Verified event status should be added to the **Affidavit/Declaration – Eligibility – ACP (ADIN)** event anytime one or more verification resources are used. This includes receiving requested documentation for applicants who do not sign a *Release of Information*, i.e., paystubs or bank statements.

1. Click to open the existing appropriate **Affidavit/Declaration – Eligibility – ACP (ADIN)** event.

   a. From the *Event Status* header, click .

   b. Select the *Event Status* of **Verified (VRFD).**

   c. Click **Continue (Alt+C).**

IMPORTANT: Always add a new event status to maintain a history. Do not modify the existing status. A total of 2 event statuses are displayed within the ADIN event.

a. **Link/Relate/Scan** the following documents to the appropriate **Affidavit/Declaration – Eligibility – ACP (ADIN)** event:

- Credit Report
- Re-Run Calculations of Eligibility from the ACP Calculator
- *Contrary results from verification of eligibility*
  NOTE: Scan each document as a Confidential document to the Affidavit/Declaration – Eligibility – ACP event.

☑ Initial Recommendation

Initial Recommendation

Prepare Forms and Update Event Status

1. Merge and attach the **Recommendation/Order/Judgment (ACP)**form for signature for each applicant:

   NOTE: Verify the "Print Preview" has been checked within the Select Document dialog box.

   a. Enter the following information:

      i. **MAXIMUM Contribution Amount**

      - Enter the appropriate amount from the *PDSC Max Contribution Schedule*

      ii. **What is the RECOMMENDED Contribution amount?**

      - Enter the recommended contribution amount corresponding with the outcome of eligibility.
        - **Approve**: Enter the ACP Calculator recommended contribution amount
        - **Deny**: Leave blank

      iii. **Recommended Appointed Attorney**:

      - *If applicable,* enter the name of the attorney to appoint.

   b. Verify and complete each form merged as needed prior to printing.

   c. **Print** the merged form.

   NOTE: Unless the merged form contains only one document, the form must be printed and signed for each document to be scanned in individually to the appropriate event.

2. **Workflow** or provide the documents to the judge for signature.

3. Merge and attach the **Handout – ACP – Deferred Payment of Fees** form.
    a. **Print** the form.
    b. Provide the *Handout* to the defendant.

☑ Recommendation for Amendment

Recommendation for Amendment

The financial obligation originally entered is due regardless of the outcome of the case unless the judgment imposing the obligation is amended or vacated.

The court may increase or reduce the original court ordered contribution amount on its own in any of the following instances:

- There is a change in the applicant's financial situation
- Post limited judgment, non-compliance from applicant during verification process
- Post limited judgment, not eligible through verification process
- The original case's charge is reduced at the grand jury stage
- Appointed counsel is withdrawn, and no new counsel is appointed
- The applicant privately hires an attorney

IMPORTANT: BFSD and PDSC recommend courts only consider amending contribution amounts when the change is $100 or more.

Generate the Recommendation Memorandum and Order

1. Merge and attach the **Memorandum and Declaration – ACP – Withdraw Counsel** form.
    a. Enter the following information when prompted:
        i. Enter the currently assessed IDCC
        ii. Enter the previously ordered assessed IDCC amount.
        iii. Enter increased IDCC amount

        NOTE: If the IDCC was not increased, enter $0.00.

    a. Enter the applicable recommendations resulted from the corrections.
    b. **Attach** the form.
2. Merge and attach the **Order – ACP – Amending Limited Judgment** form.
    a. Enter the following information when prompted:

i. **Enter Date of Amended Order**

- Enter today's date **(t)**

ii. **Enter Increased IDCC Amount**

- Enter the increased IDCC Amount.
  NOTE: If the IDCC was not increased, enter $0.00.

a. Complete the form as needed.

b. **Attach** the form.

3. **Workflow** the *Memorandum and Declaration* and the *Order – ACP* to a judge for review and signature.

<<< Previous Steps

ACP Affidavit for Court Appointed Counsel

Next Steps >>>

ACP Fee Assessments
ACP Orders
ACP Judgments

References

ORS 151.487 Ability to pay; effect
ORS 151.485 Financial Eligibility

Contact Us

Release Date 08/15/2023

Adding Attorneys

Revision History

Select a **County** to view the local business process.

Baker	Crook	Harney	Lake	Morrow	Union
Benton	Curry	Hood River	Lane	Multnomah	Wallowa
Clackamas	Deschutes	Jackson	Lincoln	Polk	Wasco
Clatsop	Douglas	Jefferson	Linn	Sherman	Washington
Columbia	Gilliam	Josephine	Malheur	Tillamook	Wheeler
Coos	Grant	Klamath	Marion	Umatilla	Yamhill

Any attorney of record (privately retained or appointed) must be related to each associated party in Odyssey to ensure proper notice is provided.

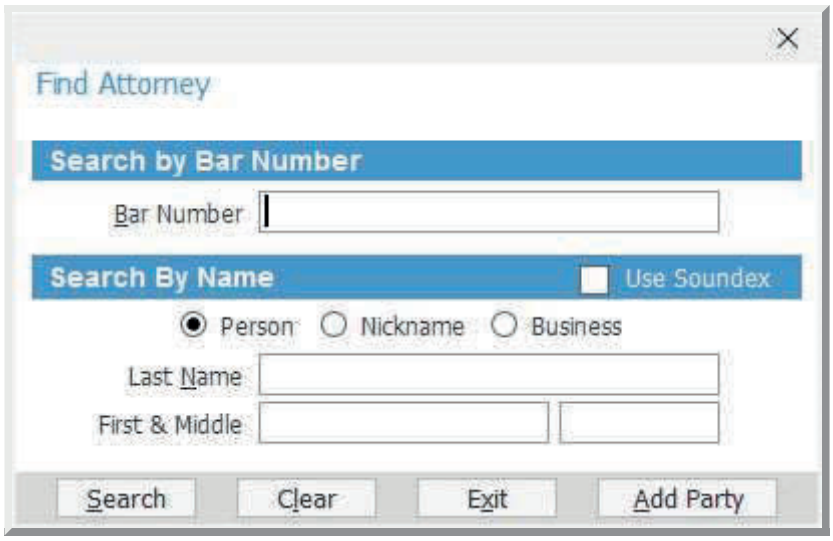
A party may have one or more attorneys or be marked **Pro Se**.

For parties with multiple attorneys, notices are generally provided to only the **Lead** attorney. The lead attorney for a party is denoted by a star next to their name. To change the lead attorney, **right-click** the name of the new lead attorney and select **Make Lead**.

Attorneys that are part of the Oregon State Bar Association are maintained as an attorney of record in Odyssey through an integration.

IMPORTANT: DO NOT update or change an attorney party record. All contact information and names are updated via the integration. For any attorneys not maintained through the OSB, such as pro hac vice attorneys, certified law students, or generic attorney records see Managing Other Attorney Records.





Attorneys may be added through keyboard shortcuts or the mouse.

To open the *Add an Attorney* dialog box using keyboard shortcuts:

1. From the *Parties (F12+P)* tab, select **Add Attorney (Alt+T)**.
2. Select the represented **Party**.
   a. From the *Select Party* dialog box, select the represented **Party**.
   b. Click **Continue (Alt+C)**.

To open the *Add an Attorney* dialog box using the mouse:

1. From the *Parties (F12+P)* tab, **right-click** the party to be represented.
   a. Select **Add Attorney**.

Add an Attorney **Add a Court Appointed Attorney** **Adding a Stand-In Attorney** **Pro Se Parties**

Pro Se Parties

Parties that choose to represent themselves in court are referred to as a **Pro Se** party.

IMPORTANT: Only mark a party pro se if the party identifies themselves are being self-represented – the absence of an attorney does not indicate the party is pro se.

1. Mark the party as **Pro Se**.
   a. From the *Add an Attorney* dialog box, select **Mark Pro Se**.
2. Click **Continue (Alt+C).**

Adding a Stand-In Attorney

1. Search for the attorney to add.
   a. From the *Add an Attorney* dialog box, click .
      i. In the *Find Attorney* dialog box, enter the **Bar Number (Alt+B)** or **Name (Alt+M)** of the attorney.
      ii. Click **Search (Alt+S)**.
      iii. Select the **Name** of the attorney to return to the *Add an Attorney* dialog box.
2. Enter the additional attorney details.
   a. Select the *Type* of **Stand-In (STIN)**.
   b. Enter a *Removed* date for tomorrow **(t+1)**.
   c. Select the *Reason* of **Stand-In Attorney (STIN)**.
3. Click **Continue (Alt+C)**.

   IMPORTANT: Do not select the option for Public Defender. This option does not refer to a local public defender's office and is not used by OJD.

Add a Court Appointed Attorney

1. Search for the attorney to add.
   a. From the *Add an Attorney* dialog box, click .
      i. In the *Find Attorney* dialog box, enter the **Bar Number (Alt+B)** or **Name (Alt+M)** of the attorney.
      ii. Click **Search (Alt+S)**.
      iii. Select the **Name** of the attorney to return to the *Add an Attorney* dialog box.
2. Enter the additional attorney details.
   a. Select the *Type* of **Court Appointed (CTA)**.
   b. Mark the **Appointed** checkbox.
3. Click **Continue (Alt+C)**.

IMPORTANT: Do not select the option for Public Defender. This option does not refer to a local public defender's office and is not used by OJD.

Add an Attorney

1. Search for the attorney to add.
   a. From the *Add an Attorney* dialog box, click .
      i. In the *Find Attorney* dialog box, enter the **Bar Number (Alt+B)** or **Name (Alt+M)** of the attorney.
      ii. Click **Search (Alt+S)**.
      iii. Select the **Name** of the attorney to return to the *Add an Attorney* dialog box.
2. Enter the additional attorney details.
   a. Select the appropriate *Type* from the drop-down list:
      - **Assistant Attorney General (AAG)**
      - **Assistant DA (ADA)**
      - **Attorney (ATTY)**
      - **Certified Law Student (CLS)**
      - **City Attorney (CAT)**
      - **County Counsel (CCA)**
      - **Court Appointed (CTA)**
      - **Deputy District Attorney (DDA)**
      - **District Attorney (DAT)**
      - **Privately Retained (PRV)**

- **Pro Hac Vice Attorney (PHV)**
- **Public Defender (PUD)**
- **Special Prosecutor (SPP)**
- **Stand-In (STIN)**

3. Click **Continue (Alt+C)**.

IMPORTANT: Do not select the option for Public Defender. This option does not refer to a local public defender's office and is not used by OJD.



Contact Us

Release Date 08/15/2023

Unrepresented Parties

Revision History

Select a **County** to view the local business process.

Baker	Crook	Harney	Lake	Morrow	Union
Benton	Curry	Hood River	Lane	Multnomah	Wallowa
Clackamas	Deschutes	Jackson	Lincoln	Polk	Wasco
Clatsop	Douglas	Jefferson	Linn	Sherman	Washington
Columbia	Gilliam	Josephine	Malheur	Tillamook	Wheeler
Coos	Grant	Klamath	Marion	Umatilla	Yamhill

Oregon is currently experiencing a shortage of public defense attorneys. The following business process has been developed to accurately track and report the number of individuals who are eligible for court appointed attorney, but no attorney is available to appoint. This process should be used for any case where a person has a right to appointed counsel, but no counsel is available to appoint such as criminal, civil commitment, and juvenile cases.

- Party is determined eligible for court appointed counsel
  An arraignment has been held (criminal cases only)
  Court follows local process to determine if an attorney is available (contact local consortium/PD, contact eligible attorneys from local bar list)
- Court determines that no attorney is available
  OPDS is added as the attorney record for the unrepresented party
  An order appointing OPDS is added to the case record
- Once an attorney is located for the eligible party
  The OPDS attorney record is inactivated.
  The new attorney record is added

This process will allow the Office of the State Court Administrator to accurately determine how many parties and cases statewide are currently eligible for, but in need of a court appointed attorney. Specifically, this will allow tracking of:

- The number of cases/parties needing an attorney by:
  County
  Case Type
  Offense
  Person
  Custody status of person
  Warrant status of person
  Number of appearances on case
  Number of previous attorneys
  Stage of case (pretrial, post-disposition)
  Number of times per case a party has been unrepresented
  The amount of time a party has been unrepresented

In Custody Data

OJD collects data from each county public jail roster (online) and matches the county jail data to Odyssey court data to identify individuals who are unrepresented and in custody. This data collection and matching process could fail if:

- the public jail roster or county website becomes unavailable,
- the county jail does not include enough information to match an individual in the county jail data to an individual in the Odyssey court data,
  the county jail data includes incorrect information,
- the individual uses an alias, and/or
- party records in Odyssey are not merged and/or there are not enough personal identifiers on the party records to make a match.

As a result, some unrepresented individuals may appear as 'Out of Custody' when they are actually 'In Custody'. Please email Report.Request@ojd.state.or.us with any errors you find on the Unrepresented Individuals dashboard and they will be corrected within one business day

Statistically Relevant Data : **Attorney record of OPDS**

☑ No Attorney Available for Appointment ☑ Attorney Appointed ☑ Additional Circumstances

Additional Circumstances

Attorney Representation at Arraignment

Agencies contracted with OPDS are required to provide representation at arraignment and first appearance. Contractors are required to notify the court and defendant of the attorney assigned to each case, per the OPDS contract.

7.1.2.2 Appearance at first proceedings
(a) Contractor shall provide representation at all arraignment and first appearance hearings, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract.
(b) Contractor shall work with OPDS and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor.
(c) Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case.

Attorney Withdrawal

If an appointed attorney who is part of a contract with OPDS withdraws from a case, the agency they are contracted with must notify and receive approval from the court and notify OPDS in writing, per

the OPDS contract.

7.1.5.1 Withdrawal from Case Only with Court Approval
If seeking to withdraw from representation, Contractor shall comply with the Oregon Rules of Professional Conduct, including but not limited to Rule 1.16, which requires the court's approval and prompt notification to the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

7.6.2 Case Activity, Disposition, and Withdrawal Data
Contractor shall maintain data, using codes specified by OPDS, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of OPDS. Contractor shall make the data available for OPDS review upon request.

Attorneys who are on the conflict list for OPDS are required to follow the Oregon Rules of Professional Conduct for withdrawing from cases. ORPC Rule 1.16 states as follows.

(c) A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation.
(d) Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers, personal property and money of the client to the extent permitted by other law.

Business Process

1. Add the **Order – Withdrawal of Attorney (ORWA)**.
2. From the *Parties (F12+P)* tab, inactivate the withdrawing attorney.
3. From the *Parties (F12+P)* tab, add **OPDS** as the attorney.

NOTE: If OPDS had previously been added as an attorney and is currently inactive, do NOT remove the inactive reason and removal date to reactivate.

Warrant Issued for Unrepresented Party

If a party has been determined to be unrepresented and OPDS has been appointed but has subsequently failed to appear or otherwise had a warrant issued, do not remove OPDS as the attorney.

- Once the warrant is returned, follow the process to determine if an attorney is available.
- If an attorney is not available, leave OPDS as the attorney until an attorney is found
- If an attorney is available, follow the Attorney Appointed process

Case or Probation Violation Dismissed

If the case is dismissed or the probation violation is withdrawn prior to the appointment of an attorney, inactivate OPDS.

Party Requests New Attorney

If a party requests a different attorney and the request is approved or fires an attorney and is otherwise eligible for court appointed counsel, inactivate the previously appointed attorney, and follow the No Attorney Available for Appointment process if no attorney is available.

Party Waives Appointed Counsel

If a party is eligible for court appointed counsel, but waives counsel and that waiver is approved by the court, add the **Waiver – Counsel (WVCS)** event and through the attorney add process check the box for **Mark Pro Se**. Follow local business process to set any due dates for follow up if required.

Party Declines Court Appointed Counsel

If a party indicates they are planning to retain an attorney, add the **Declined - Court Appointed Attorney (DCCA)**. This code will allow courts to indicate the reason an attorney was not appointed to a case. Follow local business process to set any due dates for follow up if required.

Attorney Appointed

Once an attorney is located, inactivate OPDS as an attorney and the new attorney added as the lead attorney for that party on the case record.

Entry from the Courtroom Minutes **Entry from the Case Record**

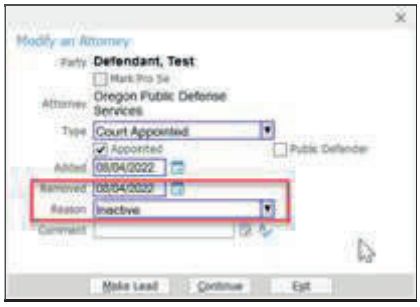
Attorney Appointed | Entry from the Courtroom Minutes

1. Select **Modify Attorney (Alt+M)**.
   a. Select **Oregon Public Defense Services** and click **Continue (Alt+C)**.
   b. From the *Modify Case Attorney Details* dialog box, select the active *Connection*.
   c. From the *Modify an Attorney* dialog box,

d. Add the **Removed** date of the date the new attorney is appointed.

e. Select the *Reason* of **Inactive (INAC)**.

f. Click **Continue (Alt+C)**.



g. Add the newly appointed attorney according to local business process.



2. Complete any additional data entry on the hearing minutes.

3. **Save (Alt+S)** the courtroom minutes.

Attorney Appointed | Entry from the Case Record

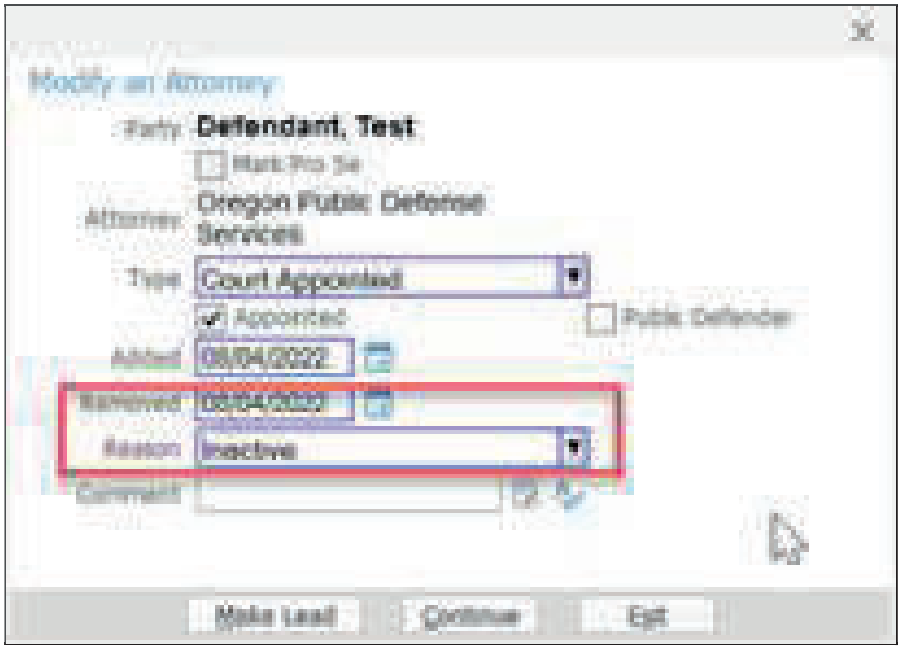
1. From the *Parties (F12+P)* tab, inactivate **OPDS** as the attorney.

   a. Click **Oregon Public Defense Services**.

   b. Select the active *Connection*.

   c. Add the **Removed** date of the date the new attorney is appointed.

   e. Select the *Reason* of **Inactive (INAC)**.



f. Click **Save.**



2. **Save (Alt+S)** the case.

NOTE: An Order or Notice substituting attorney may also be filed but is not required.

No Attorney Available for Appointment

Follow the local process for your court to determine if the defendant is eligible for court appointed attorney.

Once it is determined that no attorney is available for the eligible party, follow the process to add OPDS as an attorney to the unrepresented party.

Entry from the Courtroom Minutes **Entry from the Case Record**

No Attorney Available for Appointent | Entry from the Courtroom Minutes

1. From the Courtroom Minutes:

   a. Select **Events (Alt+E)**.

b. Select the *Type* of **Order – Appointing Counsel (ORAC)**.

c. Enter the **Signed** date.

d. Select the **Judicial Officer**.

e. Enter the *Comment* of **OPDS**.

f. **Save (Alt+S)** the event.

NOTE: The event type may vary by court depending on local business process. (ex: Multnomah may use Order – Appear and appoint counsel within that order).

2. Select **Add Attorney (Alt+D)**.

a. Select the **Defendant** checkbox.

b. Select the search icon.

c. Enter the *Bar Number* of **OPDS**.

NOTE: The court may use a local attorney party to indicate that no attorney is available, but OPDS must be part of the party name (ex: MAROPDS).

d. Select **Oregon Public Defense Services**.



e. Select *Type* of **Court Appointed (CTA)**.

f. Check the box next to **Appointed**.

g. Click **Save**.



3. Complete any additional data entry on the hearing minutes.

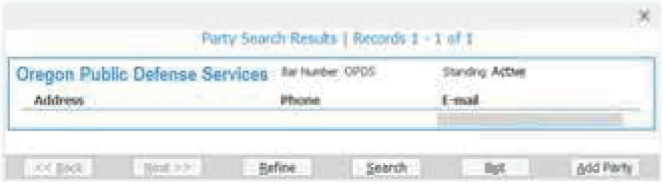
4. **Save (Alt+S)** the courtroom minutes.

No Attorney Available for Appointment | Entry from the Case Record

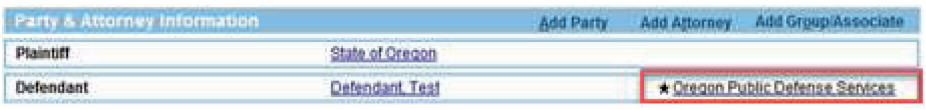
1. From the *Events (F12+E)* tab, add the **ORAC** event.
   a. Select the *Type* of **Order – Appointing Counsel (ORAC)**.
   b. Enter the **Signed** date.
   c. Select the **Judicial Officer**.
   d. Enter the *Comment* of **OPDS**.
   e. **Save (Alt+S)** the event.

   NOTE: The event type may vary by court depending on local business process. (ex: Multnomah may use Order – Appear and appoint counsel within that order).

2. From the *Parties (F12+P)* tab, add **OPDS** as the attorney.
   a. Click **Add Attorney (Alt+t)**.
   b. Select the checkbox next to the Defendant and **Continue (Alt+C)**.
   c. Select the Search icon.
   d. Enter the *Bar Number* of **OPDS**.
   NOTE: If already using a local attorney party to indicate that no attorney is available, OPDS must be part of the party name (ex: MAROPDS).
   e. Select **Oregon Public Defense Services**.



   f. Select the *Type* of **Court Appointed (CTA)**.
   g. Check the box next to **Appointed**,
   h. Click **Save**.



3. **Save (Alt+S)** the case.



Contact Us

Release Date 08/15/2023

SB 337 Unrepresented Crisis Plan
Judicial District

Local Crisis Team

Judicial District *

Court(s)

Presiding Judge

Trial Court Administrator

Data Analyst

Crisis Team Members

Crisis Team Meeting Dates

Overview - Current State of Crisis

Background

Key issues/findings contributing to the unrepresented crisis in your district, include relevant data or attach data review packet in 'Documents' section below.

Actions to Date

Actions/interventions to date to reduce the unrepresented crisis and outcomes resulting from those interventions.

Actions Taken on OCDLA Recommendations

Actions taken related to OCDLA proposals to modify the UTCRs.

Best Practices

Describe the best practices that the court and/or providers are already doing, and best practices court/providers will start doing.

Documents

No files uploaded

Attach PJ Order, Data Review Packet, and any other supporting documents. Limit to 25 MB per attachment!

Crisis Plan Interventions or Recommendations

Type

◯ Intervention ◯ Recommendation

Intervention or Recommendation

Describe intervention or recommendation.

Lever

☐ Filings ☐ Dispositions ☐ Attorney Capacity ☐ Add Attorneys ☐ Other

If Other, please describe

Intended Outcome or Goal

Describe what you expect to happen.

What If? Projections

Enter your projections here for new attorney MAC available.

Performance Measurement

Describe how progress towards intended outcome/goal will be measured or tracked. Include any new business processes or data entry protocols that need to be created. Include who will be impacted by any changes required.

Resources

Resources involved/needed and any limitations/barriers

Timeframe - When will you begin the intervention?

Start Date of Intervention

End Date of Intervention

Time to Take Effect

How long will it take to see results?

Was there community consensus on this intervention?

No

If no consensus, describe minority viewpoints

Reviewed by:

- [ ] OGC
- [ ] Data Analyst
- [ ] Trial Court Administrator

Approved by PJ?

- ( ) Yes
- (•) No

Select 'Final' when your plan is ready to be submitted to OSCA/CJC.

- (•) Draft
- ( ) Final

SB 337 Crisis Plans

Status	Judicial District	Court(s)	Presiding Judge	Trial Court ...	Data Analyst	Crisis Team Members
Final	8	Baker	Matthew B Shirtcliff	Amy Swiger	Stephanie D Guerena	Presiding Judge Matthew Shirtcliff TCA Amy Swiger District Attorney Greg Baxter
Final	21	Benton	Locke A Williams	Chris C Westfall	Stephanie D Guerena	Locke A Williams, PJ Chris C. Westfall, TCA Tiffany Quintero, OSCA
Final	5	Clackamas	Michael C Wetzel	Debbie D Spradley	Rachel A Woods	DA John Wentworth DDA Chris Owen CIDC President Shannon Kmetic
Final	18	Clatsop	Dawn M McIntosh	Julie L Vredeveld	Stephanie D Guerena	**INVITED:** Consortium Administrator Kris Kaino, defense attorneys Maryann Murk, Lane Borg, and Stacy Rodriguez, District Attorney Ron
Final	19	Columbia	Michael T Clarke	Crystal J Reeves	Rachel A Woods	
Final	15	Coos, Curry	Martin E Stone	Thomas Lankford	Stephanie D Guerena	Presiding Judge Martin Stone TCA Thomas Lankford Director SWOPD Stacey Lowe
Final	22	Crook, Jefferson	Annette C Hillman	Christa L Papke	Rachel A Woods	William Condron, 22nd Circuit Defenders LLC Jennifer Kimble, 22nd Circuit
Final	11	Deschutes	Wells B Ashby	Angie Curtis	Stephanie D Guerena	· Judge Ashby, Presiding Judge · Angie Curtis, Trial Court Administrator
Final	16	Douglas	Kathleen E Johnson	Christina Parazoo	Stephanie D Guerena	Richard Wesenberg, District Attorney Erik Swallow, Director, Umpqua Valley Public Defender
Final	24	Grant, Harney	Robert S Raschio	Samantha Dowell	Stephanie D Guerena	
Final	7	Hood River, Gilliam, Sherman, Wasco, Wheeler	Karen Ostrye	Rian Beach	Rachel A Woods	

Final	1	Jackson	Benjamin M Bloom	Tina Qualls	Rachel A Woods	Judge Benjamin Bloom Tina Qualls Matthew Rowan
Final	14	Josephine	Robert S Bain	Trina A Swaja	Rachel A Woods	Judge Robert S. Bain, Presiding Judge Trina Swaja, Trial Court Administrator Jennifer Scott, Court Supervisor
Final	13	Klamath	Andrea M Janney	John Powell	Stephanie D Guerena	Andrea Janney John Powell Tuesday Herring
Final	26	Lake	David M Vandenberg	John Powell	Stephanie D Guerena	None
Final	2	Lane	Jay A McAlpin	Elizabeth Rambo	Conor P Wall	**Required Members:** **Hon. Jay A. McAlpin**, Presiding Judge, Lane County Circuit Court
Final	17	Lincoln	Sheryl Bachart	Sally Bovett	Stephanie D Guerena	Judge Sheryl Bachart Guy Greco (consortium administrator) Lanee Danforth (DA)
Final	23	Linn	Thomas A McHill	Jim Belshe	Rachel A Woods	Thomas McHill, Circuit Court Michael B. Wynhausen, Circuit Court
Final	9	Malheur	Lung S Hung	Marilee Aldred	Conor P Wall	Lung Hung - PJ David Goldthorpe - DA Jordon Huppert - OPDS
Final	3	Marion	Tracy A Prall	Linda Hukari	Stephanie D Guerena	Judge Tracy Prall, Presiding Judge Linda Hukari, TCA Paige Clarkson, DA
Final	4	Multnomah	Judith H Matarazzo	Barbara Marcille	Rachel A Woods	Judith H. Matarazzo – Presiding Judge Cheryl Albrecht – Chief Criminal Judge
Final	12	Polk	Norm R Hill	UnCha Kim	Rachel A Woods	Court: PJ Norm R. Hill, HR Tim Park, TCA Un Cha Kim; Attorneys: Steve Walls, Matt Jarvis, Luke Miller, Scott Howell, Andrew
Final	27	Tillamook	Jon R Hill	Darryl R Spitzer	Stephanie D Guerena	

Final	6	Umatilla, Morrow	Daniel J Hill	Irma Solis	Stephanie D Guerena	The Sixth Judicial District is not required to have a crisis team and does not have one.
Final	10	Union, Wallowa	Thomas Powers	Michelle Leonard	Rachel A Woods	Thomas Powers, Presiding Judge Tina Routt, Court Manager Michelle Leonard, TCA
Final	20	Washington	Kathleen J Proctor	Richard E Moellmer	Conor P Wall	Presiding Judge Kathleen Proctor Chief Criminal Judge Oscar Garcia LEC Judge Maalik Summer
Final	25	Yamhill	Ladd J Wiles	Mandi M Montgomery	Stephanie D Guerena	Judge Ladd Wiles, Presiding Judge Brad Berry, District Attorney Christine Breton, OPDS

C.6

Ways & Means 6/9/23 Work Session on SB 337: Remarks from Senator Sollman

[1:39:55] Sen. Sollman: Thank you Madam Co-Chair. I just want you to put a couple of things on the record. One that I have previously stated in the subcommittee, but I wanted to reiterate, pertaining to the portion of the bill that was Senate Bill 1093 to help with the unrepresented persons crisis.

The legislative intent is that crisis teams are to be comprised of *at least* the presiding judge, district attorneys, and the executive director of the PDSC, or director's designee; however, consideration should include the ex-officio, non-voting participation of local public defense providers. As we know, the state relies on local public defense providers to help in this work. I also want to put on the record that the Public Defense Service Commission is directed to work in cooperation with the Judicial Department on the development of data driven approach to ensuring representation for financially eligible, unrepresented persons crisis across judicial districts, including, but not limited to an analysis of actual provider capacity in each judicial district, by case type and qualification, in any effort to identify and then reprioritize excess case capacity towards unrepresented defendants or persons.

I know this collaboration and data sharing has already begun, but I want to make clear that it is the intent for this to continue as we work toward solving the unrepresented persons crisis. And it goes much to what Representative Lewis had said earlier – there are counties that are doing actions, taking action, to alleviate some of the unrepresented crisis that are happening within their county and those have been successful models, and by all means it is not- it will not solve the problem, and we need 337 to make structural changes to prevent us from getting in that position again. But it is incredibly important because 1093 had to be included in this because as co-chairs and higher-up co-chairs, we continued to ask for a plan, a comprehensive plan, from the agency to ask how they would be addressing this. We didn't get that plan and it was important for us to put that in to say: "Well then, now you are directed to do a plan and to work with all of these groups to do so." And we've seen a successful model at some counties, and we hear of even Multnomah County having some success, so we are hopeful that that will continue, and I just wanted to put that on the record. Thank you.

Ways & Means 6/9/23 Work Session on SB 5532: Remarks from Senators Sollman and Steiner

[42:12] Sen. Sollman: Thank you Madam Co-Chair. Two-pager. Okay, here we go. Senate Bill 5532 is the budget bill for the Public Defense Services Commission. The Public Safety Subcommittee approved a total funds budget of $5,535.5 million, including $514.7 million General Fund and $20.8 million Other Funds and 113 and 112.8 FTE, which is an increase of 14.8% from the 21-23 legislatively approved budget.

The budget includes new or continued investments in $113.7 million General Fund for the emergency board action and the release of the $100 million special purpose appropriation, $21.2 million General Fund to fully fund caseloads, $5.4 million General Fund for the unrepresented defendant crisis, $3 million for the General Fund for nonunanimous jury convictions, $2.2 million General Fund to convert limited duration positions to permanent. The budget also

includes the establishment of a juvenile trial division and budgetarily differentiates the reimbursement of county discovery costs. A special purpose appropriation in the amount of $3 million General Fund is established for caseload costs that the Commission is unable to mitigate during the interim legislative periods.

The budget includes four budget notes related to the development of a comprehensive remediation plan and interim reporting, development of a quality management plan reporting on the internal auditing, and reporting on caseloads and expenses for non-unanimous jury convictions. I urge all my colleagues to read those budget notes.

The Subcommittee approved the existing performance measure and targets; however, the Subcommittee noted its dissatisfaction with both current reported performance as well as a lack of progress that the Commission has made to comply with the direction of the legislature related to updating the Commission's KPMs and targets. Direction is given to the Commission to report back to the 2024 Legislature. Lastly, and apart from the 2023-25 biennium recommendation, there are two adjustments to the current 2021-23 biennial budget that account for funds to be carried over in the 23-25 biennium for the unrepresented defendant crisis. The Public Safety Subcommittee recommends Senate Bill 5532 be amended by the -2 amendment and be reported out "Do pass as amended." Thank you.

[44:48] Co-Chair Rep. Sanchez: Thank you Senator. Is there discussion? . . .

[46:14] Sen. Sollman: Thank you Co-Chair. I just wanted to put a mention that 5532 includes package 081 – the continuation of the June Emergency Board to procure trial level criminal defense for eligible defendants through contracts with independent contractors, including non-profit, public defender notices, consortia of attorneys or law firms, private law firms, or individual attorneys. This includes an inflation adjustment of 8.8%. In the past, we have seen the agency hold on to the inflation adjustments and not pass them to the workers doing the work. I want to make sure to put on the record that we expect the inflation adjustment to be fully passed on to the public defenders to ensure their compensation can keep up with the pressures of inflation. Thank you.

[47:09] Co-Chair Rep. Sanchez: Thank you Senator. Senator Steiner, please.

[47:12] Sen. Steiner: This is my twelfth year serving on a budget committee, my eleventh on full Ways & Means, and, like many of you in this room, I know – Representative Smith you will resonate with this – we have been dealing with the Public Defense Services Commission and public defense services the entire time (and I'm sure before my time in the legislature).

Public defense is a constitutional obligation. There is a very important bill that I know nobody is perfectly happy with – Senate Bill 337, that will also incorporate what was Senate Bill 1093, that makes a substantial difference in restructuring this agency, in moving it over so that it's no longer in the judicial branch. And I am not trying to throw shade on the judicial branch. It's just been- they're not set up to run a separate agency under them the way the executive branch is. And, I have looked at this from a whole variety of perspectives, but obviously from the budget perspective, and I'm not saying anything that I haven't said to them to their faces. Right? So, I'm

not trying to stab anybody in the back here. I'm trying to say that they should feel free to clean house. They should look for every bit of help they can get from our incredibly skilled staff at LFO, especially Mr. Borden who has busted his tail to do extraordinary work with this agent *[sic]*, both during and outside of legislative session.

We are very eager to help get this on track to serve unrepresented defendants who are indigent and to make sure that we are meeting our constitutional obligation. Do I know that Senate Bill 337 is the perfect fix? No. But we're not going to find out unless we get it passed and have a chance to start working on it. It is the product of a lot of hard work by a lot of very smart people. And, so, this budget is only one part of the fix to the solution, but I'm going to continue to watch this incredibly closely. I don't think I have ever heard the word 'dissatisfied' in a pony before, which should tell you something, for those of you who are newer to this. We have a moral requirement, not let alone, a constitutional requirement, to do this right, and I am hopeful that under current leadership that can happen. I believe the intent is there, and we just need to let them know that we are their partners in doing this and we need to make sure that they know that we will have their backs if they're trying to do the right thing to get this cleaned up. Thank you Madam Chair.

[No further discussion. Objections made. Work session closed at 50:27.]

APPENDIX D: PDSC/OPDS

D.1 CHIEF JUSTICE FLYNN LETTER TO PDSC MEMBERS AND PDSC CONTRACT PROPOSALS TO ADDRESS THE UNREPRESENTED CRISIS

D.2 PDSC CRISIS PLAN GUIDANCE

D.3 2022 PDSC CRIMINAL CONTRACT TEMPLATE

D.4 2022 ADDENDUM TO PDSC CRIMINAL CONTRACT

D.5 EMERGENCY EXTENSION AND MODIFICATION TO 2022 PDSC CONTRACT WITH MARION COUNTY ASSOCIATION OF DEFENDERS, LTD

D.6 2023 PDSC DRAFT CONTRACT AND EXHIBIT

Meagan A. Flynn
Chief Justice

1163 State Street
Salem OR 97301
Phone: 503.986.5676
Fax: 503.986.5730
Oregon Relay Service:711

OREGON SUPREME COURT

August 23, 2023

Public Defense Services Commission
1175 Court Street NE
Salem, OR 97301

Re: PDSC Contract Proposals to Address the Unrepresented Crisis

Dear Commission Members:

As Judge McShane articulates in granting his recent temporary restraining order, the "failure to appoint counsel, while incarcerating pretrial detainees indefinitely, violates the Sixth Amendment's right to counsel and fundamentally impacts the liberty interest a pretrial detainee has under the Due Process Clause of the Fourteenth Amendment." The best solution to that constitutional crisis is obvious: for every person who is entitled to an appointed attorney, we would have an attorney who is qualified and willing to be appointed. Yet, despite the extensive time and energy that so many of you – and so many within all of the branches of state government – have devoted to that goal over the past year, we have failed to meet our constitutional obligation to those entitled to appointed counsel. I wish that Judge McShane's order had captured that widespread commitment to solving our crisis of unrepresented persons, but what matters is that the crisis continues. And I know that none of us have given up on solving the crisis ourselves.

To that end, I want to share some suggestions that have emerged from the work of the crisis teams that our courts have convened with local stakeholders and representatives of the Office of Public Defense Services. As contemplated by SB 337, the local courts have been hosting crisis team meetings and creating plans to address the significant and urgent need to provide representation for those with a constitutional right to appointed counsel. Although the plans are not yet finalized, many of the crisis teams have identified provisions of the current OPDS contracts that appear to create barriers to appointing qualified and willing attorneys for the individuals who are entitled to an attorney.

Attached to this letter is a document listing some of the suggestions that have emerged from those meetings. Some could be achieved immediately if PDSC were to waive certain contract provisions in at least some judicial districts. Others could make a difference in the near future. Please keep in mind that these suggestions are intended to address our immediate crisis and, thus, may not reflect long-term best practices for providing public defense services. But, given the immediate crisis, I encourage you to authorize and direct OPDS to make the suggested changes to ensure that those entitled to appointed counsel are provided with counsel at the earliest possible opportunity.

I look forward to seeing all of you at the meeting on Thursday and hope we can come to some decisions that will ensure that Oregon meets its obligation to provide counsel in all case types where there is a constitutional or statutory right to counsel.

Sincerely,



Meagan A. Flynn
Chief Justice

MAF:kl/23eMAF004kl
Attachment

PDSC Contract Proposals to Address the Unrepresented Individuals Crisis

1. Make Use of All Available Contractor Capacity

The following proposals reflect that a 300 MAC case count is only an estimate or average of a full-time caseload for providers; individual attorneys may be equipped to handle more or fewer in a given year depending on factors like attorney experience and outside commitments, staff support, and cases that resolve more or less easily than average for the case type. Indeed, in prior contract cycles, OPDS assumed that a significantly higher MAC number represented a permissible full-time caseload.

a) Allow attorneys with capacity to handle caseloads in excess of 25 cases per month to contract in advance to do so, such as contracts for 1.25 MAC or contracts to take a set number of additional cases at an hourly rate.[1,2]

b) Establish exceptions that would allow attorneys to accept more than the monthly limit when:
   - The attorney represents clients with multiple cases.
   - The attorney has previously represented that client.
   - The attorney is taking a conflict case from another county.
   - The attorney has the ethical capacity to take additional cases.[3]

c) OPDS should identify a process to ensure that the attorneys who accept appointment to such cases will be paid for that case, without need for further administrative review or action.

d) Approve waivers of the monthly intake limits, at least through the end of 2023. Currently, OPDS is asking providers to limit their intake of cases monthly to 25 weighted

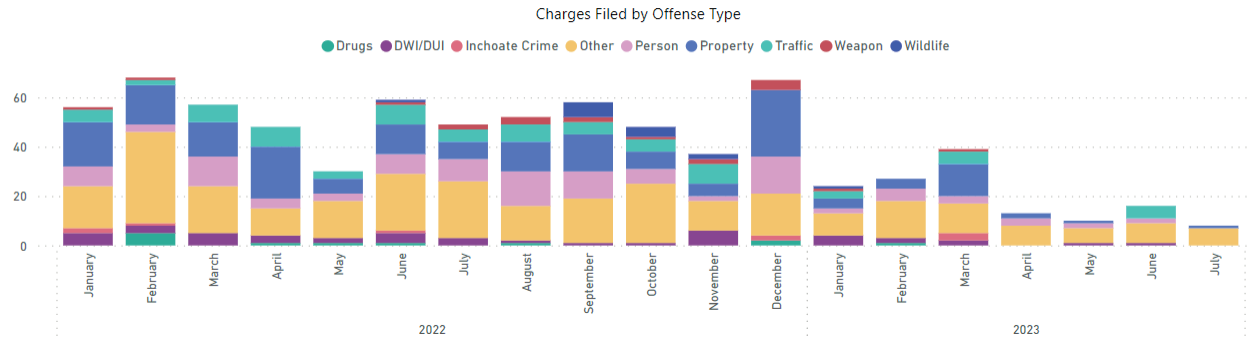
[1] Recitals 5. The monthly MAC for each attorney shall be pro-rated at one-twelfth of the attorney's existing contracted MAC, *Public Defense Legal Services Contract Terms for Criminal Case Types, Emergency Extension and Modification to Contract* (July 1, 2023, to September 30, 2023).

[2] Exhibit B Section C. The annual caseload limit for a 1.0 FTE attorney is 300 weighted cases per year, which corresponds to 25 weighted cases per month. *Draft Public Defense Services Commission Contract for Public Defense Services (2023).*

[3]Exhibit B Sections A and B. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Section B contains maximum number of cases an attorney may be assigned per calendar year. *Draft Public Defense Services Commission Contract for Public Defense Services (2023).*

cases per month.[4] Many providers are asking OPDS to allow attorneys to take cases based on the number of cases that are charged per month and the attorney's existing caseload. Because filings and case resolution vary dramatically month-to-month, the rigid limits do not fit the filing and attorney availability trends. A change of this nature would be especially helpful and responsive to the dynamics seen in frontier and rural counties, as demonstrated below.

Grant County Filings, 2022-2023



2. Eliminate Barriers to Tapping Excess Capacity

a) Expedite approval for caseloads greater than contract limits. Currently, providers must seek an exception from the Public Defense Services Commission to exceed the 115% caseload variance granted in the contract.[5] To immediately address the unrepresented crisis, attorneys with capacity to represent additional clients, consistent with the ethical obligations that the Oregon Rules of Professional Conduct impose, should be permitted to accept cases from the unrepresented list, especially for in-custody defendants. And OPDS should identify a process to ensure that the attorneys who accept appointment to such cases will be paid for that case, without need for further administrative review or action.

b) Expedite approval for criminal defense attorneys who are not currently under contract, to accept court appointments and be paid hourly for those cases.

---

[4] Recitals 5. The monthly MAC for each attorney shall be pro-rated at one-twelfth of the attorney's existing contracted MAC, *Public Defense Legal Services Contract Terms for Criminal Case Types, Emergency Extension and Modification to Contract* (July 1, 2023, to September 30, 2023).

[5] Recitals 5. Excluding murder and Jessica's Law cases, no attorney shall accept assignments to more than 15% of the pro-rated MAC without preapproval by the PDSC, and that limitation shall be adjusted proportionally to the attorney's MAC, *Public Defense Legal Services Contract Terms for Criminal Case Types, Emergency Extension and Modification to Contract* (July 1, 2023, to September 30, 2023).

c) Expedite process to amend contracts and adjust compensation or allow hourly representation when attorneys are qualified and have capacity to provide representation in case types that are more serious than what is included in the contractual agreement for unrepresented individuals. Existing process requires attorneys to take more serious cases at the contracted rate for less serious case types if MAC is available, removing the financial incentive to accept the appointment.

d) Allow attorneys who are contracted for 1 MAC to take privately retained work within reasonable limits.[6] Currently, attorneys who have the capacity to handle at least a full 300-case caseload elect to contract for less than 1 MAC solely because of a provision within the OPDS contract that prevents attorneys who have contracted for 1 MAC from taking privately retained work. This results in an unnecessary reduction in caseload capacity overall throughout the state because providers will only agree to a partial MAC in order to preserve their opportunity to take privately retained cases.

3. Preserve and Prioritize MAC

a) Ensure that available MAC capacity is not reduced by voluntary case transfers to another attorney within the same firm. Under the current contract, case weight is earned for partial representation, and when the case is transferred from one attorney to another, both the initial attorney and the new attorney may receive case weight for the same case, leading to double counting MAC capacity within the same firm.[7]

b) Require contractors to allocate capacity according to the priority set by the local court. In

---

[6] Section 7.2.2 (b), Case Assignment and Workload, no contract attorney funded to provide legal services to a Maximum Attorney Caseload may take on any other paid work. *Public Defense Legal Services Contract Terms for Criminal Case Types* (July 1, 2022, to June 30, 2023). Exhibit B. A. Overview. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. *Draft Public Defense Services Commission Contract for Public Defense Services* (2023).

[7] Section 10.1.6, Partial Representation, Cases where only a partial representation occurs because the court allows the attorney to withdraw due to an ethical conflict, is relieved by retained counsel, the case is transferred or reassigned by the court, contract administrator, or OPDS. Section 10.5, Partial Representation, when an attorney's appointment ends for any of the reasons stated in section 10.1.6, the full case weight of the case will be transferred to the new attorney. The attorney's case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type weight. *Public Defense Legal Services Contract Terms for Criminal Case Types* (July 1, 2022, to June 30, 2023).

an effort to stretch insufficient capacity, some presiding judges have issued orders specifying the priority for representation between the various individuals for whom they are appointing counsel. When providers assign cases, however, they sometimes are not prioritizing those eligible individuals who have been waiting the longest or who are in custody. OPDS should require contractors to follow the priorities specified by the presiding judge (*i.e.*, an attorney with capacity to take one new C-felony in a week should, absent conflict, take the first-priority C-felony on any list that the local court might create).

c) Require attorneys to withdraw from representation and close cases that have been in warrant status more than 60 days. Many contract providers have stated in crisis team meetings that cases in long-term warrant status are still consuming attorney time and preventing the attorneys from accepting new appointments. In a fully resourced environment, these attorneys would continue to assist all clients with resolving pending charges, but the reality requires difficult decisions about how best to use the limited resource of attorney capacity. The current contracts specify that attorneys may withdraw from a case in warrant status more than 180 days, and the 2023 contracts provide that attorneys must withdraw after 180 days. [8,9] But OJD data shows that 70% of individuals who are in warrant status will return in the first 60 days. Another 19% return within 61-180 days. Currently, 8% of warrants issued in 2021 are still outstanding. This is more than 7,000 warrants in misdemeanor and felony cases. Directing contracting attorneys to focus their capacity on individuals who are presently ready to engage in the court process and in need of counsel to do so would be a better allocation of resources.

d) Maintain the current contracting provisions that require attorneys to represent clients for no additional MAC credit if the reappointment happens within 365 days of the date the attorney was removed.[10]

e) Consider amending the portion of the contract that gives partial credit for shorter durations of representation as a way to ensure that MAC capacity is not allocated to cases where the represented individual is in warrant status and never engaged with their lawyer.[11]

---

[8] Section 7.1.2.5 Case Closure (c) A bench warrant for a client's FTA has been active for 180 days, *Public Defense Legal Services Contract Terms for Criminal Case Types* (July 1, 2022, to June 30, 2023).

[9] Exhibit B I.1.3. A bench warrant for a client's FTA has been active for 180 days, *Draft Public Defense Services Commission Contract for Public Defense Services (2023).*

[10] Section 7.1.2.6 Reappointment to Prior Clients, *Public Defense Legal Services Contract Terms for Criminal Case Types* (July 1, 2022, to June 30, 2023).; omitted from the 2023 PDSC Draft Contract and Exhibit.

[11] Section 10.5, Partial Representation, *Public Defense Legal Services Contract Terms for Criminal Case Types* (July 1, 2022, to June 30, 2023).

4. Increase Capacity through Other Available Resources

a) Authorize a payment or MAC credit for attorneys to provide limited representation to in-custody individuals through the date of a release hearing process. This would ensure that lack of representation is never the reason that an individual is held in custody.

b) Allow representation on specialized docket (such as specialty courts, DUII diversion, arraignment) at a flat rate, rather than based on caseload. This type of model more accurately reflects the demand on the attorney's time.

c) Expedite identification of attorneys with criminal law experience to fill the state-paid positions so that they can be assigned to represent individuals on a short-term basis until a contract attorney becomes available.

5. Longer-Term Considerations

a) Improve payment rates. Contract rates continue to be a barrier for recruiting and retaining public defense providers. The commission could consider the following contract adjustments for all providers:

- Cost of living adjustments to account for regional differences in the cost of cost of living and doing business.
- Scale rates based on case complexity and caseload size.
- Permit contract rate differential for more experienced attorneys. This incentive encourages flexibility in contracting and case assignment and discourages turnover.
- Funding for a second attorney on cases with higher level charges that go to trial.

b) Expedite a shift to an open caseload model for contracts, with time to disposition standards, a much more effective contracting methodology. OJD realizes that the Commission has not elected to pursue this approach in the next contract cycle, but OJD encourages the Commission to develop this model as soon as possible.

c) Set an expected attorney MAC that considers the number of attorneys available and the number of expected filings (e.g., consider changing MAC misdemeanor standard from 300 to 320 if that would resolve the crisis).

d) Limit full-value contracts to those willing and able to handle a full-contract caseload. The proposed contracts for the next biennium reflect a recommendation that a full-time provider can be appointed to 300 MAC of weighted cases per year. But some providers who contract for the full annual payment lack the capacity to represent enough individuals for a full, 300-MAC caseload, whether because of inexperience or self-imposed or supervisor-imposed caseload limits. All attorneys have an ethical obligation to provide "competent representation," which "requires the legal knowledge, skill,

thoroughness and preparation reasonably necessary for the representation."[12] And no one wants providers to represent more clients than the number for which they can provide competent representation. But, the disconnect between the number of providers contracted for the expected caseload and the number of providers actually handling that caseload makes accurate capacity projections impossible, fuels resentment among the providers who handle far greater caseloads for the same amount of money, and allocates funds to low-capacity providers that could be used to purchase additional provider capacity through programs designed to fund the cost of actual attorney capacity – through an hourly or excess-MAC program. One way to address those challenges in future contracts is to require that those electing to accept a full-payment contract represent that they have the capacity to handle the recommended MAC for a full-payment contract and that they, in good faith, intend to work toward that capacity.

[12] Oregon Rules of Professional Conduct Rule 1.1, Competence.

D.2

UNREPRESENTED CRISIS PLAN GUIDANCE

Public Defense Service Commission
Office of Public Defense Services

Public Defense Services Commission

Unrepresented Crisis Plan Guidance

Contact 3
Objective 3
Authority 3
Data Source 3
Scope 3
Definitions 4
Background 5
Best Practices for Courts 6
Guidance on Crisis Plan Development 8
Guidance on Crisis Plan Content 9
I. Reduce filings 11
Interventions So Far 11
Potential Interventions 11
Misdemeanors Treated as Violations 11
Prioritize Charging Decisions 11
Community Driven Alternatives 12
Treatment Court 13
Nonpreferred Interventions 13
II. Increase dispositions 14
Interventions So Far 14
Potential Interventions 14
Assignment Staff 14
Meaningful First Appearance 15
Global Resolution 15
Additional Support Staffing 16
Early Disposition Programs 17
Chief Justice Advisory Committee (CJAC) Case Processing Subcommittee 17
Nonpreferred Interventions 18
III. Increase number of attorneys 18

Interventions So Far 18
Forthcoming Programs 18
State employee trial-level appointed counsel 18
Stipends for law students working in public defense 19
Potential Interventions 19
Create new/continue relationships with hourly attorneys 19
Regional Contracts 20
Civil attorneys 20
Nonpreferred Interventions 21
IV. Increase Attorney Capacity 22
Interventions So Far 22
Potential Interventions 22
System efficiencies/UTCR changes 22
Pre-Arraignment Representation 23
Prioritize Attorney MAC 24
Training and Supervision 25
Social Workers 26
Appendix 27

Contact

Public Defense Service Commission

Office of Public Defense Services

Executive Director Jessica Kampfe; Jessica.Kampfe@opds.state.or.us

Guidance Coordinator: Laurie Bender; Laurie.Bender@opds.state.or.us

Objective

Oregonians accused of a crime are entitled, under the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, section 11, of the Oregon Constitution, to have a qualified attorney provided at government expense whenever the person is facing the potential loss of liberty and is unable to afford an attorney. Under current Oregon statutes, every financially eligible accused person in a criminal case is entitled to appointed counsel. Or. Rev. Stat. §§ 135.040, 135.045, 135.050, 135.055 (2021), Or. Rev. Stat. §§ 161.346(6)(d), 426.100, 426.307 (2021) (civil commitment proceedings). The current unrepresented persons crisis represents a threat to the constitutional and statutory rights of Oregonians and must be resolved.

This guidance document is intended to provide guidance for the judicial district coordinated public safety unrepresented defendant crisis plans (crisis plans), including guidance on how to prioritize the resolution of the cases of unrepresented persons who are in custody, and then the cases of unrepresented persons who are out of custody.

Authority

Oregon State Legislature, Senate Bill 337-C (2023), Sections 104-108, Relating to public defense; and declaring an emergency. Appendix – SB 337-C (2023).

Chief Justice Order (CJO) 23-024. Appendix – CJO 23-024.

Data Source

Oregon Judicial Department Unrepresented Individuals Dashboard

Scope

The scope of this guidance includes recommendations on the development and content of crisis plans. This document serves only as recommendations to presiding judges, as PDSC does not have the authority to direct courts, judges, or their work.

This guidance is applicable to the presiding judge (PJ) of each judicial district who is directed by CJO 23-024 to develop and implement a coordinated public safety unrepresented defendant crisis plan under SB 337-C Section 104(1)(a). It also applies to the crisis teams directed to assist in the development of these plans in judicial districts with a total population of over 100,000 under SB 337-C Section 104(2) and judicial districts with 20 or more unrepresented persons under CJO 23-024.

This document does not include direction to stakeholders outside of the applicable audience, nor does it include instructions to presiding judges on the convening or creation of the crisis teams. This direction comes from CJO 23-024.

Definitions

- **Unrepresented Person**: Also called unrepresented defendant/unrepresented case. An unrepresented person is a person who has been charged with a crime or who faces other potential or actual deprivations of liberty and qualifies for court appointed counsel for whom there is no available PDSC contracted attorney. For the purposes of this guidance and the crisis plans, the unrepresented person definition is narrowed to **only those individuals facing criminal charges at the circuit court level or civil commitments.** PDSC remains committed to providing representations for all eligible unrepresented individuals, but this guidance will focus on these case types only.
- **Person vs. Cases**: Frequently, a person qualifying for a public defender may have more than one open legal matter, i.e., case. For example, a person may be charged multiple criminal cases in one county, multiple criminal cases in multiple counties, or both in criminal and juvenile courts. Oregon's public defense contracts are for representation in a single judicial jurisdiction. Therefore, a person who is charged with multiple legal matters in multiple jurisdictions may have a public defender on one or more cases and remain unrepresented on one or more cases. PDSC tracks both the number of unrepresented people and unrepresented cases.
- **Maximum Attorney Caseload** (MAC): MAC is the maximum attorney caseload that OPDS has contracted for an attorney to accept appointment on during the contract period. MAC is the maximum number of cases an attorney should not exceed over the course of one year and varies according to the types and seriousness of various cases. If an attorney carries a mixed caseload including cases from more than one category, the caseload standards should be applied proportionally. Additional case weight is given to some cases in recognition of the greater attorney workload required for certain cases compared to an average case, such as out-of-jurisdiction cases and cases with extraordinary circumstances. Weighted MAC for a case is assigned to an attorney at the time of appointment. However, only partial credit is given if the attorney withdraws from the case within the first 89 days of representation. An attorney could accept either new case filings or cases from the unrepresented list using contracted MAC. Appendix – 2022-2023 Contract; 2023-25 Contracts with draft exhibits, Exhibit B
- **Caseload model vs. workload model**: Oregon's criminal public defense contracts are for a caseload. A caseload means the number of new cases that an attorney is appointed to during the contract period. A caseload model fails to account for the active cases that a lawyer was appointed to prior to the beginning of the contract cycle. A workload model means the number of open cases that an attorney has at a point in time. A workload model more closely aligns the contracted capacity with the attorney's ethical capacity. The legislature has directed the office of public defense services to move to workload model contracts in future contract cycles. However, our current forecasting and budget projections only allow for a caseload model during the 2023-25 biennium.
- **Capacity, ethical standards**: Both MAC capacity and ethical standards must be considered when appointing additional cases to a public defender. A lawyer has ethical capacity to accept

appointment on a public defense case when they have sufficient time to interview and counsel clients, interview client close in time to appointment, seek pretrial release, provide vertical representation (continuous representation by the same attorney from arraignment through case disposition), conduct investigations, request and review discovery, conduct legal research, prepare for pretrial, trial, and sentencing hearings. Due to PDSC's caseload model, some lawyers may find themselves at ethical capacity due to ongoing open cases from the last contract cycle prior to reaching their contracted MAC capacity. In 2006 the Oregon State Bar issued an ethics opinion 2007-178 applying RPC 1.7 to public defense workloads and held that pursuant to RPC 1.7 lawyers representing indigent clients must refuse to accept a workload that prevents them from meeting their ethical obligation to each client. Appendix – Oregon State Bar Ethics Opinion 2007-178 (2007).

- **Qualified Public Defense Provider**: A public defense provider is a licensed attorney who has submitted an Attorney Qualification application packet to the PDSC and been approved to handle a particular type of case. Appendix – PDSC Attorney Qualification Standards. The state of Oregon subcontracts with lawyers to provide public defense services either through contracts or through hourly rate agreements. The vast majority of our public defenders are contracted providers, they have contracts with the state to fulfill their contracted MAC for the contract period. A minority of public defender have hourly agreements with the state. They agree to take cases on an ad hoc basis for a set hourly rate.
- **Permissive Withdrawal:** ORPC 1.16(b) governs the permissive withdrawal from representation. It allows withdrawal for any reason if it can be accomplished without "material adverse effect" on the client. When faced with a defendant's request for substitute appointed counsel, trial courts have an obligation to consider the motion, but they also have discretion to decide whether to grant or deny the motion. The exercise of that discretion requires a balancing of a defendant's right to effective counsel and the need for an orderly and efficient judicial process. Appendix – Memo on Attorney Withdrawal.

Background

The Constitutions of the United States and Oregon and Oregon statutes require the appointment of competent and effective counsel for those who have been charged with a crime or face other potential or actual deprivations of their liberty interests and cannot afford counsel. The Public Defense Services Commission (PDSC) and Office of Public Defense Services (OPDS) are responsible for maintaining Oregon's public defense system and ensuring the availability of qualified, competent counsel for all those so entitled.

Even in the best conditions, there are, on any given day, a handful of persons entitled to court-appointed counsel in Oregon who do not currently have counsel appointed. Attorneys who provide defense services routinely have ethical conflicts that prevent them from accepting appointments, and the processes for bringing persons before the court lead to built-in, but relatively small, delays in the system. Typically, a person entitled to counsel is without appointed counsel for, at worst, only a few days as PDSC staff work with the courts and providers to locate counsel qualified and willing to take on representation.

Over the last two years, however, Oregon's public defense services capacity has experienced challenges in keeping pace with evolving representation needs of indigent persons accused of crimes (legal and non-legal). This has resulted in increases in the number of persons who do not have the court-appointed

counsel to which they are entitled and/or the average number of days in which that circumstance continues. At its core, the unrepresented persons' crisis is a supply and demand problem, Oregon currently does not have the supply of qualified attorneys to meet the demand of cases filed.

Best Practices for Courts

Mitigating Harm. The unrepresented person is already harmed by not being provided an attorney at his or her initial appearance. Courts should give substantial consideration to matters impacting procedural and substantive due process in order to mitigate the potential for further harm while the unrepresented person awaits the appointment of an attorney. Some practices that might be considered include:

- Releasing individuals from custody when an attorney is unavailable
- Dismissal without prejudice for individuals without counsel after a certain number of days
- Developing policy and/or guidelines related to 60-day, speedy trial issues
- Developing policy or standing order that excludes from trial any evidence developed while the client was in custody and unrepresented (*i.e.*, jail informants, or jail calls, or letters)
- Developing a policy that excludes any statements made on the record by and unrepresented person/defendant
- Developing a policy that gives unrepresented persons double credit for all time spent in custody without an attorney

Court Procedures. Before creating a crisis plan, PDSC recommends that all courts ensure they are following best practices when it comes to unrepresented persons. Courts should establish initial appearance procedures for a detained person, these procedures should determine their eligibility for court-appointed counsel, and the process by which counsel is assigned. If counsel is not available, ensure each jurisdiction is following OJD's business process for "Unrepresented Parties/Attorney Appointment and Data Tracking". Appendix. Standardizing and following these steps ensure that unrepresented people are being appropriately tracked and that the data is correct.

Prioritize Appointments. Beyond these basic steps, there are best practices in the act of assigning counsel. PDSC recommends that jurisdictions facing an unrepresented crisis prioritize case assignments. Prioritization needs to happen on three levels: Custody status, crime seriousness, and length of time unrepresented. While "first on-first off" is a good place to start, additional factors need to be considered in thinking about how to approach the list in a fair manner. The seriousness of the alleged crime should be balanced against the amount of time in-custody and the amount of time unrepresented. The priority should always be minimizing time in custody without representation. Then crime seriousness should be considered, followed by length of time unrepresented. This means that an in-custody misdemeanor should be assigned counsel before an out of custody felony, and an out-of-custody felony should be assigned counsel before an out-of-custody misdemeanor. Other factors that place restrictions on a person's liberties, such as ankle monitors and no-contact orders, should also be factored in for those on pre-trial release. A civil commitment should receive in-custody level priority as it poses the same, if not greater, threat to an individuals' liberty.

Recommended crime seriousness for cases to be addressed in accordance with rank

- Civil Commitment/Mental Health
- Felony Crimes (Class A, B, C)
    - Person
        - Murder/Manslaughter
        - Crimes against children
        - Domestic Violence
        - Other vulnerable victims
        - All other violent crimes
    - Weapon
        - Firearms crimes
        - Knives and edged weapons
        - Other weapons
    - Property
        - Invasion of personal property and homes
        - Commercial property
        - Public property
    - Drug
        - Commercial and super substantial quantities
        - Delivery
        - Other drug crimes
    - Public Order
    - Other
- Misdemeanor (Class A, B, C)
    - Person
        - Crimes against children
        - Domestic Violence
        - Other person crimes
    - Weapon
        - Firearms
        - Other weapons
    - Property
        - Personal
        - Commercial
        - Public
    - Drug
    - Public Order
    - Other

Consideration may be given to other factors when deciding how to prioritize cases. For example, accused persons who have successfully removed counsel more than once, especially if they have been adequately warned by the court at the withdrawal hearing, may be de-prioritized based on the circumstances and the availability of qualified counsel. There are other circumstances when a person, who may not be unrepresented but eligible for court-appointed counsel (i.e., pre-arraignment or warrant status), where the court may prioritize the appointment of an attorney for the purposes of resource and judicial efficiencies.

Finally, it is important to appoint appropriate counsel to cases. Courts should preserve felony qualified attorney MAC for felony cases. Courts can and should follow the procedures to place individuals on OJD's unrepresented list for misdemeanor cases rather than assign a felony qualified attorney if that likely means that attorney wouldn't be available for a felony case in the future. The current PDSC contract requires the public defense contractor to prioritize court appointments for the most serious case types for which it has contracted, qualified attorneys. Of course, misdemeanor qualified attorneys should be appointed to misdemeanor cases, and felony qualified attorneys can be assigned to lesser cases when a jurisdiction is not facing an unrepresented crisis.

Every jurisdiction's situation will be unique and good judgment should be used in applying any prioritization plan.

Guidance on Crisis Plan Development

Objective

Develop and implement a coordinated public safety unrepresented defendant crisis plan (crisis plan). The crisis plan must first prioritize the resolution of cases with unrepresented defendants who are in custody, and then prioritize out-of-custody unrepresented defendants.

In judicial districts with a population of over 100,000 people, or with 20 or more unrepresented persons, the PJ must convene a crisis team to assist in the development and implementation of the district's plan.

Plans must be submitted to the Criminal Justice Commission (CJC) no later than September 1, 2023.

Authority

Oregon State Legislature, Senate Bill 337-C (2023), Sections 104-108, Relating to public defense; and declaring an emergency.

Section 104 authorizes the Chief Justice to enter orders related to resolving the unrepresented defendant crisis and authorizes presiding judges to enter standing orders related to resolution of the unrepresented defendant crisis. See, CJO 23-024. The presiding judges' orders must be consistent with the crisis plan developed by the presiding judges and consistent with any orders entered by the Chief Justice under this section.

Scope

When creating a crisis plan, it is important to keep in mind scope. Scope defines the areas covered by the plan. The scope should only cover what is needed by its intended user (the judicial district). Limiting the scope is important to avoid the plan being too long or complicated.

The scope is limited by the authority of those involved. Presiding judges have additional authority through potential standing orders under section 104, but there are still going to be matters that are out of scope of the crisis plans. It is important to keep authority in mind when creating the plans and offering recommendations or alternatives when an option is outside of the courts' authority. While a recommendation may not be within the authority of the court it may still be valuable to include if it can provide aid to other authorities in creating solutions to the public defense crisis.

Some examples of things out of scope include:

Contracts. PDSC's contracts with their providers cannot be reopened or amended through this crisis plan process, though a recommendation of a specific amendment could be made for PDSC to consider.

Decriminalization. These plans cannot change existing law or direct DAs charging decisions; however, presiding judges may enter standing orders related to resolving the unrepresented defendant crisis that are consistent with any orders of the Chief Justice has issued.

Funding. Plans cannot dedicate/spend unallocated funds, either through the courts or through a stakeholder agency/organization. However, plans can make recommendations for spending which could be brought back to the Legislature for consideration.

Resources

Resources play a crucial role in shaping crisis plans. Limited resources, such as budgetary constraints, staffing, or time limitations, can restrict the range of possibilities and choices available during the planning process. It is important to keep the resources of both PDSC and local public safety stakeholders in mind when creating the crisis plans. This should not limit an individual jurisdiction's consideration of potential interventions or alternative sources of funding.

The Legislature set aside a $5 million special purpose appropriation (SPA) statewide for expenses related to the unrepresented defendants/persons crisis. These resources could be used to support parts of the crisis plans, but it would have to be authorized by the Legislature, which won't meet until February 2024. Accessing these funds will require clear communication of the need, and how those funds would resolve an issue, with consideration for equitable distribution. Which is why it is important these plans are well documented.

There is no opportunity to seek additional SPA funding for public defense services until February 2024, available April 2024. However, there is $1.5 million in Court Mandated Expenses earmarked for the unrepresented defendant/persons crisis and to continue enhanced hourly pay for attorneys under the Temporary Hourly Increase Program. All other funding allocations in the budget are primarily for contracted services.

Creating SMART Goals

SMART goals are an effective framework for setting objectives that are specific, measurable, achievable, relevant, and time bound. To create SMART goals, follow these steps. First, make your goals **s**pecific by defining precisely what you want to achieve. Next, ensure your goals are **m**easurable, meaning you can track progress and determine success. Third, set goals that are **a**chievable, considering your resources, skills, and limitations. Fourth, make your goals **r**elevant to your overall objectives and aligned with your values. Lastly, establish a **t**imeframe for your goals, providing a deadline or timeline for completion. By following the SMART criteria, you can create goals that are clear, attainable, and well-defined, increasing your chances of success.

Guidance on Crisis Plan Content

PDSC, along with OJD, identified four main levers that could reduce the unrepresented persons population.

- **Reduce filing**: Addresses the filing/indictment of cases. Reducing filings lowers the number of cases entering the court, thereby reducing the need for public defenders. These interventions focus on ways to reduce filings or move cases out of the criminal court system.
- **Increase dispositions**: Increasing the number of cases that close or decreasing the time cases are in the court system will reduce the time burden on public defenders. Closing cases faster frees up public defender time for other cases and increases their ethical capacity. These interventions include system efficiencies, and ways to resolve cases sooner.
- **Increase number of attorneys:** More public defense attorneys equal more capacity. These interventions focus on ways to bring in new attorneys and retain the attorneys already in the system.
- **Increase attorney capacity**: Addresses the prioritization and number of cases an attorney can be appointed to within PDSC's current contracts. These interventions focus on ways to increase capacity through prioritizing the assignment of cases to use contracted attorney MAC most efficiently, as well as ways to reclaim attorney time so they can increase workload capacity.

The following guidance is PDSC's recommendations on interventions that fall under these four levers and the goals, benefits, and potential downside of those interventions. Presiding judges and crisis teams can select from among these options or create their own options for their jurisdictions. Not all interventions are applicable to every jurisdiction, likewise, not every intervention will work the same in each jurisdiction. PDSC has staff available to provide additional information.

I. Reduce filings

Reduce filing: Addresses the filing/indictment of cases. Reducing filings lowers the number of cases entering the court, thereby reducing the need for public defenders. These interventions focus on ways to reduce filings or move cases out of the criminal court system.

Interventions So Far

- Pre-charge diversion programs have been considered in some counties and instituted in some municipal or justice courts.
- Counties may have considered filing triage policies, but no formal policies have been adopted.
- Measure 110 has greatly reduced the number of drug related filings.
- Restorative Justice Programs have diverted some cases out of the criminal justice system.

Potential Interventions

Misdemeanors Treated as Violations

Intervention: Create a policy for increasing the use of ORS 161.566 and 161.568, misdemeanors treated as violations.
Goal: Reduce the number of cases that require the appointment of defense attorneys by treating misdemeanor cases as violations.
Who Could Benefit: The court system benefits from reduced criminal case loads, allowing the use of public defense resources on the most severe cases and reducing those spent on less severe cases.
Timeframe: The intervention could be implemented immediately but would likely benefit from some time to create a uniform policy within the jurisdiction.
Does Policy Exist: There is no known policy for implementation of these statutes in this manner.
Stakeholders Required: The statutes allow either the DA or the Court to choose to reduce a misdemeanor to a violation. One or preferably both of those groups would be required to implement this intervention.
Background: ORS 161.566, ORS 161.568
Best Practice: None known.
Guardrails: None currently
Potential Negative Impact: A choice to prosecute as a violation effectively denies a defendant an appointed attorney which could limit their ability to assert their lack of guilt and could result in default judgments being entered against innocent people. Additionally, money judgements could be entered against people who do not have the ability to pay with long-term negative impacts to their financial stability and credit history.

Prioritize Charging Decisions

Intervention: Create a system to prioritize charging decisions based on available defense attorney resources.
Goal: Reduce the number of criminal cases flowing into the court system, thus reducing the demand on public defense resources.
Who Could Benefit: Courts, public defense providers, and clients benefit from lower caseloads/workloads. Additionally, courts benefit from lower operating costs
Timeframe: Policies could be implemented immediately upon completion.

Does Policy Exist: It is unknown whether any policies exist within any DAs offices at the current time, however district attorneys have been known to implement similar decisions in response to a drop in prosecutorial resources.
Stakeholders Required: Only the District Attorney's Office is needed to adopt this intervention; however, local law enforcement support would likely be helpful.
Background: Reducing filing is one of the four levers identified by the courts to reduce the unrepresented crisis. Reducing filings reduces the demand for public defense resources. In order for reductions in filings to be equitable and comply with due process and equal protection rules strict adherence to a policy is required.
Best Practices: Article 1 Section 15 of the Oregon Constitution sets out foundational principles of criminal justice which could be used to guide charging decisions, however no best practices are known.
Guardrails: The district attorneys would need to provide their own assurances that the cases they opt to not file or to dismiss under this policy would not have a noticeable impact on community safety.
Potential Negative Impact: There is a potential impact to public safety from cases not being filed. More research would be needed to determine if charging practices have an impact on crime rates. This intervention could be combined with other interventions to reduce the impact on public safety.

Community Driven Alternatives

Intervention: Implement community driven alternatives to the standard criminal court process, including pre-charge diversion programs, circuit court community courts, restorative justice programs, and police officer led interventions.
Goal: Reduce the number of low-level offenses (i.e., misdemeanor, lesser felony) that are processed through the criminal court system while maintaining or increasing community safety. Fewer cases in the system means less need for public defenders.
Who Could Benefit: Communities benefit from increased safety and increased involvement in the process of justice. Public defense clients benefit from increased access to 'wrap around services' and a lower likelihood of future arrests. Courts benefit from lower case counts and increased time to handle more serious cases.
Timeframe: Several months to initiate the process. Time is needed to gather resources, secure community involvement, and set up the actual process.
Does Policy Exist: No policy exists at the state level, however there are numerous examples of successful community court models around the state. There may be policy examples in other states which have faced similar issues.
Stakeholders Required: Courts**,** DA, local law enforcement, community services. OPDS or defense attorney involvement would be helpful but is not required if there is no threat of jail time for participants in the court.
Background: Community courts have existed around the country since the early 1990's with the aim of addressing low level crimes outside of the criminal justice system by addressing the systematic contributors of criminal behavior, such as homelessness, mental health, and drug addiction. Various Oregon courts have established community court programs with varying success. The Eugene Municipal Court for example reports that their participants were 28% less likely to be arrested in a one-year period than a control group. Appendix- Community Court, Eugene, Or. The courts operate by offering a centralized local for services and encouraging participation in those services as an alternative to the criminal process. Community Court can be either pre or post criminal charge, however the pre-charge model will result in the biggest reduction in use of defense resources.

Best Practices: The Center for Court Innovation has published a guide to starting and maintaining a community court. Appendix-What is a Community Court.
Guardrails: There would need to be checks put in place to assure that a community court is following best practices, that participants understand the rules of the program and their options in it, and that there were consequences for additional criminal behavior while in the program or for termination from the program.
Potential Negative Impact: A poorly handled community court can decrease the community's faith in the judicial system.

Treatment Court

Intervention: Increase Treatment Court case resolutions on existing cases.
Goal: Treatment Courts have been shown to drastically reduce recidivism in their participants (whether they successfully complete the program or not). Lower recidivism rates mean fewer overall cases moving through the criminal justice system.
Who Could Benefit: All participants in the system benefit from increasing the success of treatment courts. Participants benefit through access to treatment and recovery addiction services. Courts and system participants benefit from decreased caseloads and decreased recidivism rates, and the community benefits from lower crime and addiction rates.
Timeframe: The timeframe will vary drastically depending on whether the jurisdiction has an active treatment court program that can be expanded or is starting from scratch. Active programs can be expanded over a very short timeframe with buy in from stakeholders however starting a program from the ground up will take significantly longer.
Does Policy Exist: OJD has policies for treatment courts.
Stakeholders Required: Successful treatment courts require participation by all areas of the criminal justice system: OJD, courts, DAs, defense providers, Parole and Probation, local treatment agencies, local support services.
Background: Treatment courts have existed for about thirty years and have demonstrated great success in providing services to people whose criminality is driven by substance use disorders or mental health issues. Available statistics show that these courts are overwhelmingly successful at reducing rearrests of defendants who participate in them.
Best Practices: AllRise (formerly The National Academy of Drug Court Practitioners) has published best practices for treatment courts. Those standards were adopted by the Oregon Criminal Justice Commission and adapted into Oregon Specialty Court Standards. Appendix.
Guardrails: There are guardrails built into the best practice standards to assure that all stakeholders interests are being followed. The inclusion of so many different stakeholders in the multijurisdictional team assure that the program operates within the best practice standards.
Potential Negative Impacts: Treatment courts require an increased time commitment from stakeholders, especially the court.

Nonpreferred Interventions

- Delayed filings of accusatory instruments will not reduce the number of public defense resources needed in a county, only delay the need for them. Additionally, this makes it difficult to accurately track and forecast the need for defense attorneys in a jurisdiction.
- Shifting cases to municipal and justice courts, while it relieves the burden on defense resources in the circuit court, will only increase the need for defense providers in the municipal courts. Those courts do not contract through PDSC for defense attorneys but will inevitably draw from the same pool of available attorneys.

II. Increase dispositions

Increase dispositions: Increasing the number of cases that close without a trial or decreasing the time cases are in the court system will reduce the time burden on public defenders. Closing cases faster frees up public defender time for additional cases by increasing their ethical capacity. These interventions include system efficiencies, and other ways to resolve cases faster.

Interventions So Far

- Early Resolution Dockets, like the ones in Washington, Multnomah, and Marion Counties, have resolved numerous cases relatively quickly.
- The Chief Justice adopted new amendments to the Uniform Trial Court Rules directed at increasing system efficiencies within the courts, including removing deadlines for plea negotiations, pre-trial omnibus hearings, and increased remote options.
- While it is possible that individual participants in the criminal justice system have made efforts at increasing disposition of cases, such as individual deputy district attorneys or defense attorneys attempting to settle cases, no other system wide approaches are known.

Potential Interventions

Assignment Staff

Intervention: PDSC would hire staff or contract to handle assignment of cases to the defense providers in the county. Those staff members could be located within the courthouse or elsewhere but would be independent from local providers and court staff.
Goal: To ensure that the highest priority cases are being assigned first so that the unrepresented cases are distributed in the most equitable way possible according to PDSC and OJD guidelines. If successful, this could be expanded beyond the unrepresented cases to all cases that qualify for appointed counsel.
Who could benefit: Defendants waiting to be assigned counsel. Courts or defense providers will be able to reallocate resources currently designated to this task.
Timeframe: Positions authority would need to be approved by the legislature, then state guidelines for hiring would need to be followed, which include a minimum amount of time for the job to be posted, interview procedures, etc. Once hired, the new employee would need time to be trained on local practices before beginning to assign cases.
Does Policy Exist: Local jurisdictions have their own assignment policies and procedures, but there are no policies which allow a PDSC staff person to assign cases.
Stakeholders required: PDSC, Defense Providers, OJD, courts, The Legislature
Background: There are different practices for the case assignment and/or appointment or court-appointed counsel in the judicial districts in Oregon. In jurisdictions which support several defense providers, it can become chaotic and confusing to ensure that cases are being assigned appropriately in accordance with local agreements and OJD/PDSC priorities.
Best Practices: Best practices for specific case assignments do not exist at a state level and are more appropriately addressed at a local level so they account for local resources. PDSC and OJD have considered a list of priorities for assignment of cases that meet certain qualifications (such as possibly unfit defendants, murder cases, etc.).
Guidelines for successful public defense systems dictate that specific case assignments to attorneys should be independent of the judiciary. Appendix- ABA Ten Principles of a Public Defense Delivery System, Principle 1.

Guardrails: The position's independence from the judiciary and from local providers helps to assure that cases are distributed equitably between local providers according to locally agreed upon practices and the priority list established by the Presiding Judge.
Potential Negative Impact: This will require both OPDS funding and a supervision structure to support that employee with OPDS when those funds could potentially be used elsewhere.
This would absorb a task that is currently being performed by someone or some group within each jurisdiction. That group might have issue with the task being taken over by the State and it may result in loss of funding to the current provider of this service.

Meaningful First Appearance

Intervention: Provide defense providers access to the defendants sufficiently in advance of the arraignment such that a meaningful conversation about the charged offenses and release arguments can occur in advance of the first appearance.
Goal: To allow attorneys to adequately prepare for first appearances so that they can make informed arguments about release from custody at first appearances, hopefully reducing the need for subsequent release hearings, and ultimately to decrease the time to disposition of the cases.
Who could benefit: The courts, the jail, public defense providers, crime victims, and the defendants.
Timeframe: As quickly as the stakeholders could come to an agreement on the execution of this plan.
Does Policy Exist: Per contract, public defense contractor shall provide representation at all initial appearances, and when practicable, shall meet with client prior to the initial appearance to review available discovery. Section 7.1.2.2. However, local policies and arraignment procedures often limit attorney's abilities to meet with clients before arraignments with sufficient time and discovery to provide meaningful representation.
Stakeholders required: Local jails, courts, defense providers, district attorney's offices, pretrial release authorities.
Background: Meaningful First Appearances have been implemented in a number of jurisdictions across the country and have consistently concluded they reduce jail populations, speed up the disposition of cases, as well as increasing defendant's engagement in the process and improve case outcomes. Appendix- Muti-site Evaluation of the Presence of Counsel at Defendant's First Appearances in Court. In places where this has been implemented, the data has shown a small increase in sheriff or corrections deputies in the short term; but ultimately a cost savings across the board, reducing jail populations without requiring additional court time. Appendix- NLADA Access to Counsel at First Appearance Policy Brief.
Best Practices: Standards and best practices should be established for representation of clients at first appearance. Additionally, statutes are in place that direct a court's considerations in release determinations. ORS 135.245
Guardrails: Policies would need to be adopted that gave defense providers access to discovery, even if only a basic probable cause affidavit, with enough time to review that information and meet with the defendant prior to arraignment. Ideally, providers would be given enough time to conduct some basic release planning, such as contacting possible housing options or third-party supervisors.
Potential Negative Impact: None known.

Global Resolution

Intervention: Global appointment of attorneys and resolution for clients or unrepresented persons who have pending matters in more than one jurisdiction.

Goal: To increase dispositions of cases through global resolutions for clients who have cases in multiple jurisdictions by appointing an attorney to all case matters and allowing for remote appearances in a jurisdiction where the client or unrepresented person is not being detained.
Who could benefit: The defendants, the courts, the district attorneys, department of corrections would also save money and time on transporting sentenced defendants to multiple jurisdictions.
Timeframe: As soon as practicable.
Does Policy Exist: Various statutes and policies govern settlement negotiations on criminal cases. UTCR 4.040 authorizes parties to agree that a defendant in custody may appear by remote means at a proceeding to resolve multiple cases, when the appearance is required in a court not located in the county in which the defendant is in custody (effective August 1, 2023).
Stakeholders required: The courts, defense providers**,** district attorneys, sheriffs, DOC, local jails
Background: It is common for defendants to have charges in multiple jurisdictions around the state. Frequently global resolutions resolve all these matters at once which results in significant cost and time savings for the courts and court-appointed counsel.
Best Practices: Courts should allow remote appearances and acceptance of pleas when they can as well as working with counsel that may not be local to the jurisdiction.
Guardrails: It is important that PDSC guidelines for the Attorney Qualification Certification be followed to ensure that the attorney taking the case out of county is qualified to work that case. Additionally, it might be worthwhile to have consultation with local counsel on local practices. Court involvement may be required to assure that attorneys in separate jurisdictions are aware of and working on cases in other jurisdictions or that in custody defendants are available for remote hearings.
Potential Negative Impact: When a contracted public defender provides services outside of their county, they receive 1.5 times the normal case weight for handling out of county case, so this does tend to use up contract MAC quickly. Appendix-2023-25 Contracts with Draft Exhibits, Exhibit B. This is balanced by the fact that local counsel does not have to handle the case.

Additional Support Staffing

Intervention: Fund paraprofessionals, case managers, discovery management and litigation support.
Goal: Identify gaps in the defense counsel process where time is lost due to lack of personnel or process management. Provide defense counsel support personnel so that attorney time can be more efficiently expended on tasks which require an attorney rather than administrative tasks.
Who could benefit: Clients, public defense providers, court system, PDSC, the public
Timeframe: The timeframe will vary depending on what gaps are identified. If the issue can be resolved by reassigning work, the results could be near immediate. If the gaps are greater and would require additional personnel, a funding request may need to be made to the legislature.
Does Policy Exist: Policies around processes may exist that would help identify gaps.
Stakeholders required: PDSC, defense providers, the legislature
Background: Attorneys frequently spend significant amounts of time on administrative tasks in processing their cases rather than on working towards a resolution. Funding additional staff to handle the administrative tasks would allow attorneys to devote more time towards moving the case towards a disposition.
Best Practices: Local defense counsel would need to be consulted as to what support staff would most benefit them for the conditions they are working in.
Guardrails:
Potential Negative Impact: Reassigning work can result in other work not getting done. This would be a prioritization exercise and it would be important to monitor for unintended negative results.

Early Disposition Programs

Intervention: Early Disposition Programs
Goal: To reduce the number of unrepresented persons, reduce jail populations, produce better outcomes for clients.
Who could benefit: Corrections, District Attorney, Courts, defendants, and defense providers.
Timeframe: October 2023
Does Policy Exist: ORS 135.941; Public Defense Services Commission's Guidelines For Participation of Public Defense Attorneys in Early Disposition Programs
Stakeholders required: Defense providers, District Attorney, courts, corrections
Background: Early disposition programs are authorized by statute and have been implemented in several jurisdictions with varying degrees of success.
Best Practices: PDSC guidelines for early disposition programs ensure that clients who participate in the programs make knowing, intelligent, voluntary decisions with the advice of experienced counsel who has had access to discovery and a plea offer in advance of the hearing. Appendix- Early Disposition Program Guidelines.
Guardrails: Public defense providers participating in early disposition programs shall provide competent counsel, with sufficient capacity to ensure defense counsel has an opportunity for meaningful private communication and review of the discovery and plea offer with their client prior to the court appearance. There should be opportunity to setover the resolution date if more information or time is needed and no penalty for declining the plea offer.
Potential Negative Impact: Limited resources

Chief Justice Advisory Committee (CJAC) Case Processing Subcommittee

Intervention: CJAC's continued work with the Uniform Trial Court Rules (UTCR) Committee
Goal: To improve efficiencies in Oregon's criminal justice system.
Who could benefit: Clients, public defense providers, courts and criminal justice system partners
Timeframe: Annual Fall Meeting 2023
Does Policy Exist: The UTCR are statewide rules that apply in each of Oregon's 36 circuit courts
Stakeholders required: OCDLA, ODAA, OJD, CJAC, UTCR Committee, public defense providers
Background: OCDLA presented a series of proposals to the UTCR Committee in the fall of 2022 directed at improving efficiencies in the criminal justice system. CJAC and the UTCR Committee worked collaboratively to review and consider the proposed rule changes, modifications, or adoption of new rules to improve system efficiencies. New UTCR 4.040 and amended UTCR 4.010 and UTCR 7.010 will take effect on August 1, 2023. Several proposals were not recommended for approval; other proposals were withdrawn by OCDLA during the interim work period. Appendix-; UTCR Outcomes & Next Steps, Uniform Trial Court Rules & Committee.
Best Practices: Adopting uniform statewide rules would make practicing across multiple jurisdictions less onerous, and assist courts, prosecutors, and defense attorneys in efficient management of cases
Guardrails: The UTCR Committee meets twice a year; the annual fall meeting is the only time the Committee accepts proposals for changes to the UTCR.
Potential Negative Impact: If there are delays in implementation continued inefficiencies are exacerbating the public defense shortage crisis, the backlog of cases, and unrepresented persons entitled to court-appointed counsel.

Nonpreferred Interventions

Any actions that increase court appearance, especially if the client is required or they are in person, are generally unhelpful as they take up additional attorney time and are the most resource heavy.

III. Increase number of attorneys

Interventions So Far

- **Add Positions Above Forecasted Need (June 2022)**: In June 2022, OPDS used $6.9 million in emergency funds to add 31.5 MAC to targeted jurisdictions in Multnomah, Washington, Marion, and Lane Counties.
- **New Attorney Incentive Program (October 2022 – March 2023)**: An incentive payment of $20,000 was awarded to new attorneys contracting for 1.0 FTE prior to December 31, 2022, and a second $20,000 payment authorized for new attorney hires prior to March 31, 2023.
- **Retention Incentive Payment Program**: Payments totaling $15,000 per 1.0 FTE employee, with 12% dispersed each month between February and May 2023 and the final 50% dispersed in June 2023. Increased capacity and increased number attorneys.
- **OSB Comity program to reduce barriers for recruiting lateral hires from out of state (Fall 2022 – present)**: New Comity program created a procedure for lawyers with at least two years of active practice in another state to apply for admission to the Oregon Bar without taking a bar exam. This has lessened bureaucratic process and opened the path to admission to attorneys from all 54 U.S. jurisdictions, rather than the previous 40 under reciprocity.
- **Increased Hourly Rate Program**: PDSC approved raising the hourly attorney rate from $105 to a tiered rate ranging from $125-$200/hr for any case on the OJD Unrepresented Person List. Investigator rates were raised on these cases to $75/hr to be competitive with federal hourly rates. Beginning July 1, 2023, attorney rates were collapsed into three tiers from $164-$200/hr, investigator rates remain $75/hour on these cases.
- **Civil Attorney Program**: Civil bar attorneys are associated with and supervised by qualified public defense providers in trial level criminal prosecutions involving complex cases and cases with novel legal issues, where the civil lawyer primarily provides legal research and motion writing support and may be asked to argue legal issues in court.

Forthcoming Programs

State employee trial-level appointed counsel

Intervention: This pilot program will provide OPDS employees to serve as trial-level appointed counsel. The pilots will focus in two geographic regions of the state to respond to the unrepresented defendant/persons crisis. The priority of the state attorneys and staff are those unrepresented defendants in-custody followed by those unrepresented defendants out-of-custody.
Goal: Reduce the number of unrepresented individuals by directly increasing the number of attorneys available, these attorneys will be in addition to the forecasted/contracted MAC in a jurisdiction.
Who could benefit: These attorneys will only be available for jurisdictions within the pilot regions. Those regions are: 'Western' covering Multnomah, Washington, and Clackamas, and 'Southern' covering Jackson, Douglas, and Klamath. Within those counties the court system will benefit from a reduced number of cases on the unrepresented list and the people on the list will benefit from having an assigned attorney.

Timeframe: The agency has position authority for the Western team beginning in October 2023, and the Southern team beginning in December 2023. However, factoring in onboarding time, attorney likely be able to begin taking cases in November and January respectively.
Does Policy Exist: PDSC is currently creating the policy and working on starting up these offices. More information will be forthcoming as these offices are established, including how to assign PDSC trial attorneys.
Stakeholders required: PDSC, courts
Background: The Legislature approved funding for theses pilots in SB 337-C (2023). These pilots will run through July 2025. The Legislature will evaluate the long-term need for the pilot program positions to provide routine trial-level work after resolving the unrepresented defendant/persons crisis.
Guardrails: The details of these offices are still being established, while additional attorneys will be available soon in these regions, PDSC does not yet have full details of exactly when these attorneys will be available to take cases. Case assignment guidelines will help assure distribution of cases among state employees and contract defense providers.
Potential Negative Impact: The pool of attorneys for hire is limited. While attorneys may be hired from outside the state or from the federal system, these will be open recruitments so attorneys could come from the pool of contract attorneys. There is the potential that hiring a state attorney could cause attrition in a provider contract.

Stipends for law students working in public defense

Intervention: OPDS expects to receive a one-time external grant to fund summer stipends for students working in public defender offices.
Goal: Incentivize students to enter public defense by making previously unpaid internships financially viable. Will increase attorney capacity by freeing up attorney time, and potentially increasing MAC with Certified Law Students who can take misdemeanor cases under supervision.
Who could benefit: Trained law students can provide support to the offices where they work and are better equipped to take on caseloads after graduation. This funding will also offset money some providers are paying law students out of their contract funds.
Timeframe: Funds are expected to be dispersed for summer 2023, to be used by the end of September 2023.
Does Policy Exist: PDSC is currently finalizing the policy around fund disbursement.
Stakeholders required: PDSC, public defense providers, law schools
Guardrails: Providers will be required to document that funds were spent on students or else refund funds

Potential Interventions

Create new/continue relationships with hourly attorneys

Intervention: Assist and accommodate new practitioners to jurisdictions.
Goal: Overcome barriers to attorneys practicing in new or additional jurisdictions. This includes both creating resources or guides on local practice as well as allowing for more flexibility in hearing scheduling and remote appearance.
Who could benefit: Attorneys would be able to practice across various jurisdictions more easily. This would allow smaller jurisdictions with a smaller or more limited experience defense bar to have access to more attorneys statewide. This would also make global resolutions for clients with cases across various counties easier.
Timeframe: Many changes could be made quickly, such as appearance requirements and developing jurisdictional guides. Changes to dockets or attorney assignments could take longer to implement.

Does Policy Exist: No.
Stakeholders required: Courts, District Attorney
Background: OPDS has consistently heard from practitioners that they have difficulty practicing in surrounding counties due to conflicting docket schedules, rigid practices, and trouble navigating different local practices. This has led to some counties' attorney shortages being exacerbated by difficulty attracting attorneys from other parts of the state to take cases. The increased hourly rate for unrepresented persons has attracted new and returning attorneys to state public defense.
Best Practices: None
Guardrails: There would need to be a process for updating the guidance when policies changed
Potential Negative Impact: Limited fiscal resources

Regional Contracts

Intervention: Create Willamette Valley and Eastern Oregon regional trial teams to compliment the state employee trial attorney offices in Western and Southern Oregon by offering contracts to create regional offices to offer conflict/back up representation across unaddressed areas of the state: Central/Willamette Valley and Eastern Oregon.
Goal: Reduce the number of unrepresented individuals by directly increasing the number of attorneys available, these attorneys will be in addition to the forecasted/contracted MAC in a jurisdiction.
Who could benefit: These attorneys would be available for specific regions. Those regions are Marion, Yamhill, Polk, Benton, Linn, and 'Eastern' covering Malheur, Baker, Union, Grant/Harney
Timeframe: The agency would open a RFQ for submissions for contracts to begin as soon as October 1.
Does Policy Exist: These would follow PDSC contracting guidelines
Stakeholders required: PDSC, courts
Background: The Legislature approved funding for state attorney pilots in two regions in the State, however there is need for additional conflict coverage in remaining areas.
Guardrails:
Potential Negative Impact: This contract would not have the additional draw of state employee benefits and the pool of attorneys for hire is limited. Even if attorneys are contracting from outside the state or from the federal system, these will be open bids for contracts. There is the potential that creating more regional practices would cause attrition from other providers.

Civil attorneys

Intervention: The Supervised Civil Attorney Program will move into phase 2, funding civil bar attorneys to provide legal representation in court-appointed misdemeanor cases under supervision.
Goal: Train civil attorneys in public defense to allow them to gain experience and interest in continued work in public defense (even at a small level). This will also increase the capacity of existing public defenders by taking on misdemeanor cases.
Who could benefit: Jurisdictions with attorney shortages, civil attorneys seeking criminal and trial experience
Timeframe: 2023-2025
Does Policy Exist: No
Stakeholders required: Civil bar, Defense bar, PDSC
Background: This program was created based on early interest from civil bar attorneys to help with the attorney shortage for court appointed cases. The first phase – assistance with legal writing and research – was implemented in March of 2023. Phase 2 will recruit public defense providers to supervise civil

attorneys willing to take on misdemeanor cases under supervision until they can qualify under PDSC standards for misdemeanor representation. Both the supervisor and civil attorney will be paid hourly.
Best Practices: Civil attorneys must sign attorney agreements with PDSC and comply with Oregon Rules of Professional Conduct and PDSC attorney performance standards and guidelines. Supervising attorneys must develop an official agreement with the civil bar attorney regarding the nature and scope of the work and submit any necessary court support service requests to PDSC.
Guardrails: Supervising attorneys are responsible for obtaining PDSC authorization before exceeding $10K soft cap for each case involving a civil attorney. Once there is an official agreement between attorneys, the attorney of record will file a Notice of Representation, including the associate counsel, with the appropriate court.
Potential Negative Impact: The amount of time required to train and supervise civil attorneys may not offset the amount of work the civil attorneys are able to take on.

Nonpreferred Interventions

- **Increase hourly rate above most recent Commission approved rates.** Increasing the hourly rate would cause the PDSC to exceed its budget appropriation, and the PDSC would run out of available funds to pay attorneys before the end of the biennium. Further, an increase in the hourly rate to non-MAC attorneys would result in attorneys leaving MAC contracts to take advantage of the higher non-MAC hourly rate. This would cause further instability to our public defense delivery system.
- **Relax attorney qualification requirements.** Pursuant to ORS 151.216, the PDSC has adopted qualification standards for court-appointed counsel. These standards are to ensure the provision of competent, constitutionally adequate legal representation to each client. Outside of the Supervised Civil Attorney Program, appointing unsupervised attorneys without the experience laid out by the PDSC exposes each case to future post-conviction relief for inadequate assistant of counsel and would degrade the mission of PDSC to provide competent and effective counsel.

IV. Increase Attorney Capacity

Increase attorney capacity: Addresses the number of cases an attorney can be appointed to within the caseload standards and terms of PDSC's current contracts. These interventions focus on ways to increase capacity through prioritizing the assignment of cases to efficiently use attorney capacity, as well as ways to reclaim attorney time so they can increase capacity.

Interventions So Far

- Implemented tiered contracting rate to incentivize public defenders to represent clients on the most serious case types.
- Funded training, supervision, and investigation at Oregon's 10 public defender offices that handle trial-level criminal cases allowing attorneys to qualify up faster and increasing efficiencies.
- PDSC has added a 15% variance to provider contracts in recognition that some attorneys may be able to ethically accept cases above the caseload guidelines. Allowing a contract attorney to exceed the contract MAC by 15% each month is to allow some flexibility in capacity due to regional differences and an individual attorney's experience and resources.
- PDSC contracted with public defense contractors to require pro-rata monthly caseload numbers to achieve more uniform case assignments during the contract period. It is intended to protect attorneys from systemic pressures to accept appointment in a high number of cases early in the contract period. Section 10.3.3 of 2022-2023 Criminal Contract.

Potential Interventions

System efficiencies/UTCR changes

Intervention: Recommend adoption of the OCDLA sponsored UTCR changes and other efficiencies (see attached memos) and implement other efficiencies. These include allowing email/remote appearances at mass dockets, enforceable discovery deadlines, mandatory settlement conferences, and streamline release hearings.

Goal: Adopt local practices that help maximize the most efficient use of defense counsel time. For example:

- Reduce time spent at mass dockets by defense counsel. These mass dockets can usually be handled by just one district attorney, but each defense attorney must appear with their client, resulting in many defense attorneys waiting around sometimes hours for an extremely short conversation with the judge. This could be addressed by either allowing counsel to appear by phone, request set overs ahead of the hearing by email, or assigning specific times for counsel to appear.
- Enforceable discovery deadlines. A lot of time and effort is expended in preparing for trials that ultimately get postponed when the district attorney discovers new evidence at the last minute. This could be remedied by enforceable discovery deadlines or an evidentiary colloquy with the district attorney on the record at the pretrial hearing.
- Require plea offers early in the case, especially for misdemeanors. Many misdemeanor and probation violation cases end up dragging out needlessly long because the defense counsel does not know what the prosecutor is seeking in the case. Many misdemeanors could resolve at the first appearance if the attorney had an offer to present to the client.

- Mandatory Settlement Conferences for cases heading to trial. Many cases end up going to trial, which takes up a lot of resources from both the defense bar but also the prosecutors and the judiciary. Mandatory settlement conferences where there are parties on both sides present that are familiar with the case and have the authority to resolve it are a relatively limited expenditure of resources that could prevent a much more resource intensive resolution (i.e., trial).
- Other- There may be other places to make more efficient uses of our resources that may be discovered in conversation with practitioners in local jurisdictions, this is only a partial list of examples.

Goal: Increase access to justice and reduce inefficiencies in the criminal justice system, decreasing the time it takes to close a case, thereby increasing capacity in the public defense system to better serve current and prospective clients.
Who could benefit: Clients, criminal justice system
Timeframe: Fall 2024
Does Policy Exist: UTCR Rules and Supplementary Local Rules (SLR)
Stakeholders required: Criminal justice system partners, OCDLA, OJD, the UTCR Committee, legislators; public defense providers, District Attorney
Background: The OCDLA Public Defense Reform Task Force identified several procedural challenges that lead to inefficient use of attorney and court time. The Task Force proposed rules and rule changes to increase court efficiencies, increase disposition times and reduce or mitigate attorney time. The Task Force proposed rule changes to reduce multiple court appearance and streamline "check-in" or status hearings, to increase the effectiveness of judicial settlement conferences, to allow email requests to request a continuance of a hearing or status conference, and to allow for remote appearances.
Best Practices:
Guardrails: Prioritizing proposed rules, amendments, or modifications
Potential Negative Impact:

Pre-Arraignment Representation

Intervention: A pre-arraignment unit (two attorneys and one investigator) or dedicated pre-arraignment legal representation to meet with unrepresented persons in jail, work up release plan, advise detained person of charges, process, and transition to assigned counsel within 72 hours, if possible.
Goal: Provide meaningful pre-arraignment legal representation to arrested and detained persons to remove barriers to release and achieve better case outcomes
Who could benefit: Unrepresented persons, criminal justice system
Timeframe: The agency could implement October 1, with the execution of contracts, assuming available resources to implement program or dedicate existing resources.
Does Policy Exist: Per contract, public defense contractor shall provide representation at all initial appearances, and when practicable, shall meet with client prior to the initial appearance to review available discovery. Appendix- 2023-25 Contracts with Draft Exhibits, Section 7.1.2.2.
Stakeholders required: Corrections, District Attorney, courts, and public defense providers
Background: Without meaningful pre-arraignment representation, clients are held in custody longer, which research has shown to have negative impacts throughout the life of a case, including higher rates of conviction and post-sentencing incarceration. But, more relevant to the unrepresented persons crisis, is that meaningful pre-arraignment representation could reduce the number of unrepresented persons sitting in jail without counsel, allowing the agency to better focus resources on the truly unrepresented and reduce stakeholder/public pressure regarding the number of unrepresented persons in custody.

Best Practices: Providing timely access to legal representation could improve release and case outcomes for public defender clients.
Guardrails: Program is limited to persons booked on felony charges (including probation violations) and misdemeanor domestic violence or more serious misdemeanor offenses; homicide and more serious felony offenses are excluded since they are often more complex and rarely result in pretrial release. Limitations on scope of legal representation due to Oregon Rules of Professional Conduct (i.e., conflicts and competent representation).
Potential Negative Impact: Resource limitations; measurement of outcomes will require data collection overtime.

Prioritize Attorney MAC

Intervention: Prioritize case appointments/assignments so that attorney MAC is being utilized at the highest qualified case type
Goal: Public defense providers should be encouraged to work collaboratively with PDSC and the courts to provide competent and effective representation of clients while prioritizing the assignment of cases to available attorneys available for the most serious cases, taking into consideration the jurisdiction's need for qualified attorneys and the open and active caseload of each attorney.
Who could benefit: Clients, defense providers, criminal justice partners (OJD)
Timeframe: Prioritizing of cases will require time to analyze case trends within a jurisdiction, but once priorities are established the plan can be implemented immediately.
Does Policy Exist: The current contract requires the public defense contractor to prioritize court appointments for the most serious case types for which it has qualified attorneys. Appendix- 2023-25 Contracts with Draft Exhibits, Section 3.5.1. PDSC may adjust the MAC in the contract to meet the changing needs of the jurisdiction. The caseload model is a contracting model between PDSC and contractors predicated upon the number of appointments per contract cycle. A case that counsels are currently obligated to report is considered open (appointment through disposition). A contractor may close a case when a final judgment has been entered into the court register, a judge has signed an order removing the attorney from the case, or a bench warrant for client's failure to appear has been active for 180 days. Appendix- 2023-25 Contracts with Draft Exhibits, Section 7.1.2.5.
Stakeholders required: Public defense providers, courts, PDSC, and state criminal justice partners
Background: In 2021, PDSC implemented a contract model that included caseload standards based, in part, on the national caseload standards. With the adoption of caseload standards, the agency's ability to cover projected caseloads became contingent on the number of public defenders it can contract with and what qualification level those attorneys possessed, and the percentage of their maximum contracted caseloads they can ethically handle based on the complexity of the cases they are assigned. As Oregon does not have sufficient public defenders to cover the number of criminal cases filed, an attorney's case assignments will need to be prioritized to assure that the most serious cases have access to attorneys.
Best Practices: Defense counsel should not carry a workload, by reason of its excessive size or complexity, which interferes with providing quality representation, or has a significant potential to the breach of professional obligations. Appendix- ABA Criminal Justice Standards, 4-1.8(a), Oregon Rules of Professional Conduct 1.7.
Public defense contractors shall accept reappointment to a previous client when a case is reactivated following service of a bench warrant pursuant to PDSC Contract Section 7.1.2.5.
Guardrails: Defense providers should implement regular reviews of the workload of individual attorneys, as well as the workload of the entire office to assure that complete and ethical

representation of each client assigned. If workloads do not allow attorneys to provide that level of representation, then attorneys need freedom to adjust their workloads or decline additional cases. Additionally, PDSC will need to be able to monitor caseloads to assure that contractors are complying with the contractual requirements to prioritize appointments for the most serious case type.
Any policy will need to have provisions that prevent a court from overreaching into the attorney client relationship.
Potential Negative Impact: There is a concern that allowing the court too much authority into case assignments will let the court micromanage an attorney's caseload without access to all the information needed to properly evaluation the workload of each attorney.
If attorneys are prioritizing accepting representation on higher-level cases that necessarily means that lower-level cases will need to wait longer for an attorney who can accept appointment in their case.
An attorney who accepts only high-level cases may become more susceptible to burnout. Major felony cases are often more factually and emotionally intense, both factors which contribute to burnout amongst attorneys.

Training and Supervision

Intervention: Expand training, supervision, and in house investigation beyond non-profit public defender offices to better support private law firms and public defenders practicing as part of consortia
Goal: Invest in training and supervision for attorneys and in-house investigators for private law firms and public defenders practicing as part of consortia to adequately resource public defenders who are advocating for individuals on increasingly complex cases. Many national organizations provide high quality training for public defenders. Oregon should provide the opportunity for public defenders to also seek training opportunities with national trainers including scholarships.
Who could benefit: Clients, public defense providers, criminal justice system partners
Timeframe: October 1, 2023
Does Policy Exist: Legislative budget directive for OPDS to create a training program for independent contractors (SB 337)
Stakeholders required: PDSC, OPDS, public defense providers, Legislature
Background: Fully funding supervision, training, and investigation will increase attorney capacity in immediate and near-terms in several ways. In private law firms, where these services are already being provided, offices will be able to increase salaries to retain current attorneys and staff and recruit additional attorney and staff, growing capacity. The ability to bring on new, less-experienced attorneys to handle lower-level cases under supervision will free up current attorneys' capacity to take on more serious cases, increasing capacity in the higher-level caseloads. Similarly, providing sufficient supervision and training capacity to make productive use of certified law students (CLSs) and build capacity to assist civil bar attorneys with criminal defense basics.
Best Practices: National standards provide that Defense counsel should be provided with and required to attend continuing legal education. Appendix- ABA Ten Principles of a Public Defense Delivery System, Principle 9.
Guardrails: Establish policies and standards for funding training and supervision for public defense providers.
Potential Negative Impact: Limited fiscal resources; difficult to measure outcomes

Social Workers

Intervention: Local Public Safety Coordinating Committees (LPSCC) recommend including social workers for public defenders in justice reinvestment grants
Goal: To support public defense providers in meeting the legal and social support needs of clients by understanding and advocating on the immediate legal issues of the case or for holistic defense.
Who could benefit: Clients, public defense providers, criminal justice system
Timeframe: 2023-2025
Does Policy Exist: No
Stakeholders required: PDSC, public defense providers, LPSCC
Background: Social workers are embedded within the public defense structure to build and initiate community-based treatment plans for criminal defendants. Defense-based social workers have assisted in reducing recidivism and allowing the best use of limited system
Best Practices: Center for Holistic Defense
Potential Negative Impact: Limited fiscal resources

Appendix

Oregon State Legislature, Senate Bill 337-C (2023) 3

Chief Justice Order 2023-024 3

2023-25 Contracts with Exhibits B 4

2022-23 Contract & Addendum 4

Oregon State Bar Ethics Opinion 2007-178 (2007) 5

PDSC Attorney Qualification Standards 5

Memo Re: Attorney Withdrawal 5

Unrepresented Parties/Attorney Appointment & Data Tracking 6

Community Court, Eugene, OR 12

What is a Community Court? 13

Oregon Specialty Court Standards 13

ABA Ten Principles of a Public Defense Delivery System, Feb. 2002 14

NLADA Access to Counsel at First Appearance 15

Multi-Site Evaluation of the Presence of Counsel at Defendants' First Appearances in Court 15

Early Disposition Program Guidelines 17

UTCR Outcomes & Next Steps 17

Uniform Trial Court Rules & Committee 17

ABA Eight Guidelines of Public Defense Related to Excessive Workloads (2009) 24

Oregon Rules of Professional Conduct 24

Standards for the Defense Function .....

American Bar Association Formal Opinion 06-411 (2006) .....

PDSC Primer .....

Site Visits .....

A. Site Visit Report Coos County
B. Site Visit Report Douglas County
C. Site Visit Report Jackson County
D. Site Visit Report Klamath County
G. Site Visit Report Malheur County
H. Site Visit Report Umatilla & Morrow County

PUBLIC DEFENSE LEGAL SERVICES CONTRACT
TERMS FOR CRIMINAL CASE TYPES

July 1, 2022, to June 30, 2023

Table of Contents

GENERAL TERMS 4
1 DEFINITIONS AND RULES 4
1.1 Interpretation of Terms 4
1.2 Construction and Jurisdiction 4
1.3 Severability 4
1.4 Definitions 4
1.5 Financial Verification Required for Court Appointment 5
2 MUTUAL RIGHTS 5
2.1 Waiver 5
2.2 Termination 5
3 RIGHTS OF PDSC 5
3.1 Subcontracts and Assignment of Contract 5
3.2 PDSC Rights for Failure to Obtain Workers' Compensation 6
3.3 Termination by PDSC 6
3.4 Funding Modification, Suspension, or Termination 6
3.5 Contractor Workload 7
3.6 Review, Verification, and Inspection of Records 8
4 RIGHTS OF CONTRACTOR 8
4.1 Termination by Contractor 8
4.2 Work Outside Contract 8
4.3 Client Records 8
4.4 Personnel Records 9
5 MUTUAL OBLIGATIONS 9
5.1 Professionalism 9
5.2 Successors in Interest 9
5.3 Compliance with Applicable Law 9
5.4 Notice of Contract Modification, Suspension, or Termination 9
5.5 Modification or Termination Due to Legislative Action or Court Interpretation 10
5.6 Periodic Review 10
5.7 Other Contractors and Vendors 10
6 OBLIGATIONS OF PDSC 10
6.1 State Funding Shortfall 10
6.2 Contract Payment 10
7 OBLIGATIONS OF CONTRACTOR 10
7.1 Performance Obligations of Appointed Counsel 10
7.2 Quality Assurance Obligations of Contract Administrator 14
7.3 Special Obligations to State of Oregon 15
7.4 Capacity and Equipment 17
7.5 Record Keeping 18
7.6 Reports to OPDS 19
7.7 Client Clothing 19

7.8 Special Notices....20
7.9 No Dual Payments for Contract Work....21
7.10 Contract Administrator Duties....21
8 MUTUAL RISKS....22
8.1 Impossibility of Performance....222
8.2 Tort Liability....22
9 WIND-DOWN PROCEDURES....22
10 CASELOAD STANDARDS AND CASE WEIGHTING....22
10.1 Definitions....22
10.2 Caseload Standards....23
10.3 General Considerations....24
10.4 Case Weighting....25
10.5 Partial Representation....25
10.6 Out of County Representation....25
10.7 Co-Counsel....26
10.8 Extraordinary Case Circumstances....26
10.9 Case Count....26
SPECIFIC TERMS....27
1 PARTIES TO CONTRACT....27
2 TERM OF CONTRACT....27
3 NOTICE....27
4 TOTAL VALUE AND PAYMENT SCHEDULE....27
5 MAXIMUM ATTORNEY CASELOADS, SPECIALTY COURT, ADMINSTRATIVE, AND INVESTIGATOR BREAKDOWN....27
6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT....28
7 MERGER CLAUSE....28
PAYMENT SCHEDULE....29

GENERAL TERMS

1 DEFINITIONS AND RULES

1.1 Interpretation of Terms

Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

1.2 Construction and Jurisdiction

This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit arising under this contract to a court of competent jurisdiction in the State of Oregon.

1.3 Severability

If a court of competent jurisdiction declares, or the parties agree that any term or provision of this contract is illegal or in conflict with any law:

(a) The remaining terms and provisions shall remain valid; and

(b) The rights and obligations of the parties shall be construed and enforced as if the contract did not contain the term or provision held to be invalid.

1.4 Definitions

1.4.1 Public Defense Services Commission and the Office of Public Defense Services

(a) Public Defense Services Commission (PDSC) is the commission established under ORS 151.213. Office of Public Defense Services (OPDS) is the office established by the PDSC under the director to handle the cases assigned and to carry out the administrative policies and procedures for the public defense system.

1.4.2 Independent Contractor ("Contractor")

"Contractor" is an independent person or entity that signs this Agreement and agrees to provide public defense services for eligible individuals. The term contractor includes Contractor's agents, employees, members, officers, representatives, and successors. A contractor does not include subcontractors.

1.4.3 Client

A "Client" is a person whom OPDS or a state court has determined to be eligible for and entitled to court-appointed counsel at state expense.

1.4.4 Case

Any action in this state in which a Contractor has been appointed to represent or advise a Client under the terms of the Public Defense Services Contract in a matter to which there is a right to appointed counsel at state expense.

1.4.5 Maximum Attorney Caseload

Maximum Attorney Caseload is the limit on the number of cases to which an attorney can provide legal services in a one-year period, based on the Caseload Standards and Case Weighting Guidelines in Section 10.

1.4.6 Caseload Standards and Case Weighting Guidelines

These standards represent the number of cases to which an attorney can provide legal services in a one-year period. The standards provide different weighting to different case types, with increasing weight given to cases that involve more complexity and time.

1.5 Financial Verification Required for Court Appointment

All appointments and reappointments are subject to verification of financial eligibility for counsel at state expense and do not count as a case where:

(a) Finding of Ineligibility

The court finds, after screening or verification, that the client is not financially eligible for appointed counsel at state expense; or

(b) Withdrawal of Application for Counsel

The court withdraws counsel because the client withdraws the application for appointed counsel before the court completes verification.

2 MUTUAL RIGHTS

2.1 Waiver

Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

2.2 Termination

The parties may mutually agree in writing to terminate this contract at any time. Unless otherwise agreed in writing, termination or expiration of this contract does not affect any existing obligation or liability of either party. In lieu of terminating the contract, the Parties may agree in writing to amend this contract. This provision does not affect any other Termination rights provided herein.

3 RIGHTS OF PDSC

3.1 Subcontracts and Assignment of Contract

Contractor shall not subcontract for or delegate any of the services or duties required under this

contract or assign Contractor's interest in this contract without obtaining OPDS' prior written consent. Prior written consent must be obtained in each case a subcontract is sought. Under this contract, PDSC incurs no liability to third persons, including but not limited to subcontractors, by making contract payments to Contractor. Breach of this provision constitutes a material breach of this contract.

3.2 PDSC Rights for Failure to Obtain Workers' Compensation

If Contractor is obligated to secure and maintain workers' compensation coverage, and fails to do so or to provide OPDS with a certificate of exemption, OPDS may:

(a) Withhold payment of any amount due Contractor until such coverage or certification is provided;

(b) Suspend this agreement until Contractor complies; or

(c) Terminate this contract.

3.3 Termination by PDSC

3.3.1 Reasons for Contract Termination

Subject to Section 5.4's notice and opportunity to cure provisions below, OPDS may terminate this contract for any of the following reasons. This provision does not affect any other Termination rights provided herein.

(a) Contractor's breach of any material duty or obligation under this contract;

(b) Contractor's willful or repeated disregard of the procedures required by the courts in which Contractor provides services, provided however, that good faith legally compliant actions of Contractor undertaken to advance or preserve a constitutional or statutory right of a client shall not be deemed cause for termination;

(c) Contractor's demonstrated inability or failure to serve adequately the interests of its contract clients;

(d) Contractor's failure to abide by prevailing best practices standards of performance, Oregon Rules of Professional Conduct, the Caseload Standards established in section 10; or

(e) Demonstrated and substantial impairment of the Contractor's ability to provide constitutionally adequate legal services under this contract or fulfill the obligations of this contract.

3.3.2 No Appointments After Notice

When Contractor receives OPDS' notice of termination, Contractor shall not accept any further cases under the contract unless OPDS otherwise agrees in writing.

3.4 Funding Modification, Suspension, or Termination

At the time this contract is executed, sufficient funds either are available within the PDSC's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability and appropriation of funds. OPDS may modify, suspend, or terminate this contract if OPDS reasonably determines that funds will not be

sufficient to pay anticipated costs of public defense services and OPDS has complied with the procedures set out below in Section 6.1 (State Funding Shortfall).

3.5 Contractor Workload

3.5.1 Court Appointments

Except when Contractor has prior written authorization from OPDS, all attorneys under contract shall accept court appointments to all case types for which they are (1) competent pursuant to the Oregon Rules of Professional Conduct and (2) qualified pursuant to the PDSC's Qualification Standards, if a contractor elects a contract type based upon that attorney's qualifications. This rule does not apply to attorneys who provides ongoing and consistent monitoring and oversight to at least three other attorneys within the same office pursuant to a plan approved by OPDS. Contractor shall prioritize court appointments for the most serious case types for which it has qualified attorneys.

(a) Contractor shall be in control of the means and manner of performing its work. Contractor will prioritize its legal work at its discretion, but in doing so shall reasonably take into account Contractor's duties under this Agreement, Caseload Standards, public defender professionalism standards, and the Oregon Rules of Professional Conduct, as well as Contractor's and Contractor's attorneys qualifications and availability.

(b) Upon notice from OPDS, Contractor shall accept appointments to cases in adjacent jurisdictions, if the adjacent jurisdiction has a need for an attorney, and an attorney for Contractor has capacity, pursuant to the OPDS Case Counting Guidelines, to accept the appointment in the adjacent jurisdiction. OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment to a case in an adjacent jurisdiction. OPDS shall work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for routine mileage and parking expenses, pursuant to the PDSC's Payment Policy.

(c) No Contractor will be compensated on an hourly rate basis if they are part of a public defense contract, unless OPDS otherwise agrees in writing.

(d) No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing.

(e) Nothing in this section precludes a contractor from engaging in pro bono legal services.

3.5.2 Caseload Increase or Decrease

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, Contractor shall notify OPDS and OPDS shall schedule a meeting to discuss the circumstances surrounding the increase or decrease. OPDS may not decrease a Contractor's Maximum Attorney Caseload, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Rule 1.7 of the Oregon Rules of Professional Conduct. OPDS may adjust the number of Maximum Attorney Caseload in the contract to meet the changing needs of the jurisdiction if:

(a) The actual or reasonably expected number of available cases increases or decreases substantially, such that the proposed Maximum Attorney Caseload amount no longer corresponds with caseload needs;

(b) The introduction or discontinuation of a specialty court; or

(c) OPDS determines that an increase or decrease in Maximum Attorney Caseload capacity is necessary.

3.6 Review, Verification, and Inspection of Records

3.6.1 Request

OPDS may review or verify Contractor's records that relate to the performance of this contract. Contractor shall provide Caseload records and documents at the request of OPDS under the following conditions:

(a) On reasonable written notice; and

(b) As often as OPDS deems necessary during the contract term.

3.6.2 Production of Records and Access to Facilities

OPDS may conduct fiscal or performance audits and reviews to monitor and evaluate the services provided under this contract. On OPDS's request, Contractor shall provide access to its facilities and make records available to OPDS or agent at all reasonable times, and promptly respond to requests for information in connection with fiscal or performance audits. OPDS will not remove Contractor's original office records or other property from Contractor's premises without Contractor's approval. Contractor shall keep such data and records in an accessible location and condition.

3.6.3 Other Information

Upon OPDS's determination that a significant question or concern exists regarding Contractor's ability to perform this contract and subject to client confidentiality requirements in section 4.3, Contractor shall provide information that OPDS deems necessary.

4 RIGHTS OF CONTRACTOR

4.1 Termination by Contractor

Subject to Section 5.4's notice and opportunity to cure provisions below, Contractor may terminate this contract should PDSC breach any material duty or obligation under this contract.

4.2 Work Outside Contract

Contractor controls its own means and manner of performing work under this Agreement and outside of this Agreement. Contractor, at its sole discretion, may engage in additional paid work outside of this contract, subjection to Section 10 of this Agreement. Contractor shall fairly account for the time spent on non-contract work.

4.3 Client Records

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

(a) Privileged or confidential because of the attorney/client relationship; or

(b) Work product identifiable to a particular case or client unless the client expressly, knowingly,

and voluntarily agrees in writing. Contractor shall keep records, including time records, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

4.4 Personnel Records

Contractor is responsible for ensuring and maintaining documentation sufficient to show that its employees and agents are performing services in compliance with this contract. Contractor grants no right to OPDS or designee of OPDS to review private or confidential information (such as personal health, insurance, or leave information) in any personnel file unless the Contractor's employee expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records in such a manner as to allow OPDS or OPDS's designee reasonable access to non-confidential or non-private information, including but not limited to, compensation of individual staff members, performance reviews or concerns, and attorney caseload records. Notwithstanding any other provisions of this contract, Contractor does not waive any of its employees' constitutional, statutory, or common law rights or privileges to the confidentiality of private or confidential personnel records.

5 MUTUAL OBLIGATIONS

5.1 Professionalism

Contractor and OPDS shall work collaboratively and professionally on all aspects of contract administration.

5.2 Successors in Interest

This contract shall bind and shall inure to the benefit of the parties and their respective successors and assigns.

5.3 Compliance with Applicable Law

The parties shall comply with all federal, state, and local laws, regulations, and ordinances applicable to the work to be done under this contract. Such laws include, but are not limited to, those pertaining to tax liability and independent contractor status. Breach of this provision constitutes a material breach of this contract.

5.4 Notice of Contract Modification, Suspension, or Termination

A notice to modify, suspend, or terminate this contract shall be in writing and:

(a) State the reasons therefor;
(b) Specify what may be done to avoid the modification, suspension, or termination;
(c) Be provided no less than 30 days before the proposed date of the modification, suspension, or termination;
(d) Provide the recipient with at least 30 days to cure the alleged violation or breach.

5.5 Modification or Termination Due to Change in Law

OPDS and Contractor may renegotiate this contract if there is a significant change in workload, caseload, or increased cost of doing business due to changes in federal or state laws. In addition, OPDS may modify, suspend, or terminate this contract as needed to comply with applicable state or federal rules or law or a court of competent jurisdiction's interpretations of federal or state statutes that make some or all contract services ineligible for state funding.

5.6 Periodic Review

At the request of either party, OPDS and Contractor will periodically review case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides legal services, periodic review shall include a review by OPDS of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, OPDS shall notify the court and Contractors that appointment rates must be adjusted and corrected.

5.7 Other Contractors and Vendors

Contractor shall reasonably assist non-attorney vendors in billing for services provided at Contractor's request.

6 OBLIGATIONS OF PDSC

6.1 State Funding Shortfall

Notwithstanding anything to the contrary in this contract, if the Emergency Board or legislature does not appropriate sufficient funds, PDSC reserves the right to terminate this contract, subject to the below process. PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense service providers, including the private bar. PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the legal requirements to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. PDSC may unilaterally suspend or terminate the contract if the parties cannot agree to modification.

6.2 Contract Payment

Payment under this contract shall be based on the Payment Schedule included in the Specific Terms.

7 OBLIGATIONS OF CONTRACTOR

7.1 Performance Obligations of Appointed Counsel

7.1.1 Standard of Representation

Contractor shall fulfill all applicable state and national standards of performance, including those of

the Oregon State Bar, American Bar Association, National Juvenile Defender Center, and National Legal Aid and Defender Association. Contractor shall also satisfy applicable state and federal constitutional requirements for the provision of adequate and effective assistance of counsel and shall meet state and federal statutory requirements for counsel in the applicable proceedings. Counsel shall satisfy the requirements of this contract, including but not limited to the Caseload Standards and the Oregon Rules of Professional Conduct. Breach of this Section 7.1 constitutes a material breach.

7.1.2 Minimum Contractor Duties During all Stages of a Proceeding

Contractor shall comply with 7.1.1 and shall use its independent professional judgment in performing the below contractual duties regarding its representation in all proceedings related to the legal matter that is the subject of the representation, including but not limited to proceedings below. Representation under this contract includes, at minimum, the below listed items, but does not include related Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings not otherwise provided for under this contract.

7.1.2.1 Pre-appointment representation

Where an individual would be eligible for appointed counsel at state expense if charged with a crime or served with a petition in juvenile court, but exigent circumstances preclude an appointment order, Contractor shall commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written request from OPDS. In determining whether to authorize pre-appointment representation, OPDS will consider whether:

(a) The individual is a clear target of the investigation;
(b) The agency has a good faith basis to conclude the individual seeks counsel;
(c) It is reasonable for the agency to believe the person qualifies for public defense counsel; and
(d) The case is of a magnitude for which pre-indictment/petition appointment is reasonable.

7.1.2.2 Appearance at first proceedings

(a) Contractor shall provide representation at all arraignment and first appearance hearings, unless OPDS agrees in writing otherwise. Failure to provide such representation is a material breach of this contract.
(b) Contractor shall work with OPDS and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor.
(c) Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case.

7.1.2.3 Representation following the commencement of proceedings

Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

(a) Providing representation at all scheduled hearings and court proceedings.
(b) Filing timely motions to dismiss in cases subject to diversion agreements, conditional

discharge, or similar provisions;

(c) Filing petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed; and,

(d) To the extent ethically permitted, representing a client at a show cause hearing to determine the client's financial eligibility for appointed counsel.

7.1.2.4 Post-judgment proceedings

Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

(a) Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;

(b) Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;

(c) Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;

(d) Seeking court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;

(e) Filing a motion for new trial;

(f) Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when requested by a former Client;

(g) Consulting with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and

(h) Upon request, providing copies of the entire file to appellate or post-conviction relief counsel.

7.1.2.5 Case Closure

Contractor may close the case when:

(a) The final judgment has been entered into the court register, and the Contractor has met all other contractual obligations:

1. If the case is a probation violation, the attorney may close the case upon final disposition of the probation violation;
2. A judgment of dismissal constitutes a final judgment;
3. An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register;

(b) A judge has signed an order removing the attorney from the case; or

(c) A bench warrant for a client's failure to appear has been active for 180 days.

7.1.2.6 Reappointment to Prior Clients

Consistent with national best practices supporting the continuous representation of a client, and subject to Oregon Rule of Professional Conduct 1.7, Contractor shall ensure that the original contract attorney shall accept reappointment to a previous client when:

(a) A case was dismissed without prejudice and has been refiled;

(b) A case is reactivated following service of a bench warrant after contractor closed the file pursuant to Section 7.1.2.5; or

(c) A case is remanded to circuit court following an appeal unless specific circumstances warrant assignment of a different attorney.

7.1.3 Client Contact

7.1.3.1 In-custody Initial Contacts

Contractor shall, whenever possible, speak to and conduct initial interviews in person with in-custody clients:

(a) Within 24 hours of appointment; or

(b) By the next working day if the court appoints Contractor on a Friday, or if the day following the appointment is a court recognized holiday.

7.1.3.2 Out-of-Custody Contacts

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what the client must do to schedule an interview time.

7.1.4 Contractor Responsibilities Regarding Financially Ineligible Clients

Contractor shall consult Oregon State Bar Formal Ethics Opinion 2005-34, in conjunction with state and federal constitutional provisions, in determining what course to follow if Contractor learns that a client is ineligible for state-funded legal services under this contract.

7.1.5 Withdrawal

7.1.5.1 Withdrawal from Case Only with Court Approval

If seeking to withdraw from representation, Contractor shall comply with the Oregon Rules of Professional Conduct, including but not limited to Rule 1.16, which requires the court's approval and prompt notification to the court of any conflict of interest or any other reason requiring withdrawal from a case assigned under this contract. If the court approves Contractor's request to withdraw, the Contractor shall notify OPDS in writing. Consistent with the Oregon Rules of Professional Conduct, the Contractor shall ensure continuous representation of a client until withdrawal is granted and then assist in the prompt establishment of a new attorney/client relationship.

7.1.5.2 Limitations on Withdrawal

When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting OPDS

and obtaining OPDS's written permission.

(a) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in the same jurisdiction, the attorney shall take their existing cases with them unless OPDS authorizes otherwise.

(b) If a public defense attorney leaves a Contractor and continues doing public defense work funded by OPDS in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and OPDS to ensure the due administration of justice and protect the rights of their existing clients.

7.2 Quality Assurance Obligations of Contract Administrator

7.2.1 Quality Assurance Procedures

Contractor shall ensure that persons providing client representation under this contract, including any subcontractors OPDS approves, meet the standards of representation set forth in Section 7.1.1 of this contract. Contractor shall comply with quality assurance programs adopted by OPDS. Contractor shall establish and implement, as appropriate for Contractor's entity structure, quality assurance procedures consistent with the practices recommended in the Office of Public Defense Services *Best Practices for Oregon Public Defense Providers* (2010).

7.2.2 Case Assignment and Workload

Contractor shall ensure that the attorney assigned to represent a client under this contract:

(a) Possesses the qualifications for representation of the case-type involved (as set forth in PDSC's Qualification Standards for Court-Appointed Counsel) and has been approved for appointment to the applicable case type by OPDS. Contractor shall provide to OPDS the name and current qualifications, including a Certificate of Attorney Qualification and Supplemental Questionnaire, of any attorney providing representation under this contract, including attorneys who begin providing representation during the term of the contract.

(b) Has a current workload, including other paid work not covered by this contract, that will not interfere with competent and diligent representation that fulfills the Standard of Representation set forth in Section 7.1.1 of this contract. No contract attorney funded to provide legal services to a Maximum Attorney Caseload may take on any other paid work. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work). Contractor shall fairly account for the time spent on non-contract work.

(d) Provides continuous representation from the commencement of proceedings until the final disposition of the case.

7.2.3 Continuing Legal Education Requirements

Contractor attests to the PDSC that all attorneys providing representation under this contract have or will:

(a) Obtain 12 hours of continuing legal education credits related to the practice of juvenile law during each year of this contract, if the attorney is handling juvenile court cases;

(b) Obtain 12 hours of continuing legal education credits related to the practice of criminal and/or constitutional law during each year of this contract, if the attorney is handling criminal court

cases; and

(c) For attorneys with mixed caseloads including both juvenile and criminal cases, obtain 12 hours of continuing legal education credits during each year of this contract, apportioning those credits between programs related to juvenile and criminal law according to the percentage of the attorney's cases assigned under this contract in each of those practice areas.

7.3 Special Obligations to State of Oregon

7.3.1 Indemnity of PDSC By Contractor

Contractor shall protect, indemnify, defend, and hold harmless PDSC, OPDS, and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement.

7.3.2 Independent Status of Contractor

For purposes of this contract, Contractor is an independent contractor and has so certified under Oregon laws. Contractor shall perform all services under this contract as an independent contractor. OPDS may determine the scope and quality of the services to be provided, may modify the delivery schedule, and may evaluate the quality of the Services. OPDS will not control the means or manner of Contractor's performance. Contractor is responsible for determining the appropriate means and manner of performing the Services; for paying any and all taxes on compensation received hereunder; for supplying the tools, office and materials to perform the services. Contractor is not eligible for any social security, unemployment insurance, workers compensation benefits or any other benefit not expressly provided herein. Neither Contractor nor any of its subcontractors, employees, officers, agents, members, and representatives, is an employee of the State of Oregon or a state aided institution or agency, by reason of this contract alone. No joint employer relationship is established by this Agreement.

7.3.2.1 Ineligibility for Public Employee Benefits

Payment from contract funds does not entitle Contractor, its subcontractors, employees, officers, agents, members, and representatives, to any public employee benefits of federal social security, unemployment insurance, workers' compensation, the Public Employees Retirement System, leave benefits, or similar employment-related benefits.

7.3.2.2 Wages and Taxes

Contractor shall pay any compensation, wages, benefits, and federal, state, and local taxes to be paid under or as a result of the contract.

7.3.2.3 Workers' Compensation

As an independent contractor, Contractor shall provide workers' compensation coverage for all subject workers performing work under this contract, including Contractor if self-employed or a business partner, to the extent required by all applicable workers' compensation laws and for the entire contract term. Contractor, its subcontractors, if any, and all other employers working under this contract are "subject employers." As such, they shall provide coverage for workers'

compensation benefits for any and all of their subject workers as required by ORS chapter 656 and for the entire contract term.

7.3.3 State Tort Claims Act Not Applicable

For purposes of this contract, Contractor is not an officer, employee, or agent of the State of Oregon as those terms are used in ORS 30.265. The Oregon Tort Claim limits do not apply to any actions against Contractor. Contractor accepts responsibility for all decisions, actions or failures to act of its members, officers, employees, parties, agents, and subcontractors.

7.3.4 Equal Rights of Contractor's Employees

Contractor shall comply with Title VII of the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and with all applicable requirements of federal and state civil rights and rehabilitation statutes, rules, and regulations. Contractor also shall comply with the Americans with Disabilities Act of 1990, including Title II of that Act, ORS Chapter 659A, and all regulation and administrative rules established pursuant to those laws.

7.3.5 Contractor Insurance to Protect State of Oregon

Contractor shall secure and maintain insurance coverage as set out below. Contractor shall provide OPDS a copy of the certificate of insurance listing the coverage and additional insured information.

7.3.5.1 General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor and each law firm or sole practitioner member of a consortium shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred thousand dollars ($500,000) per occurrence for personal injury and property damage.

7.3.5.2 Casualty Insurance

At its expense in whole or in part from contract funds, Contractor shall procure and keep in effect during the term of this contract, sufficient casualty insurance to replace any and all property losses caused by theft, fire, flood, or other casualty.

7.3.5.3 Additional Insured

The liability and casualty insurance coverages required for performance of the contract shall name the State of Oregon, PDSC, OPDS, and their divisions, officers, and employees as additional insureds but only with respect to the Contractor's activities or failures to act related to this contract.

7.3.5.4 Cancellation or Change

There shall be no cancellation, material change, potential exhaustion of aggregate limits, or intent not to renew insurance coverage without PDSC written approval.

7.3.6 Malpractice Insurance

During the entire contract period, and at the Contractor's own expense in whole or in part from contract funds, Contractor shall ensure that each of its attorneys has malpractice insurance coverage in the minimum amount required by the Oregon State Bar. Contractor shall provide proof of such insurance to OPDS on request.

7.3.7 Internal Controls

Contractor shall establish internal controls, such as segregation of duties with respect to financial accounting, to ensure that contract funds are properly receipted, expended, and accounted for.

7.3.8 Oregon Judicial Case Information Network (OJCIN)

For juvenile cases, Contractor shall limit use of OJCIN, including the Oregon Judicial Information Network (OJIN) and the Oregon eCourt Case Information Network (OECI) to access only those cases that involve parties Contractor represents.

7.3.9 Protection of Consumer Personal Information

Contractor shall develop and implement appropriate privacy safeguards to protect the security of any consumer personal information that it will possess in its performance of this contract pursuant to the Oregon Consumer Identity Theft Protection Act of 2007, ORS 646A.600 to 646A.628.

7.4 Capacity and Equipment

7.4.1 Number of Persons Providing Services

Contractor shall secure, at its own expense in whole or in part from contract funds, all, members, personnel, or employees necessary to perform services that this contract requires. Contractor shall maintain an appropriate and reasonable number of attorneys and support services to perform its contract obligations.

(a) Contractor shall not require any attorney performing the services required by this contract to sign a noncompete agreement;

(b) Contractor shall maintain its ability to accept cases pursuant to the number of Maximum Attorney Caseloads as originally contracted for with the PDSC. If contractor is unable to do so for a period of 60 days, OPDS may temporarily remove funds, unless the inability to accept cases is pursuant to the Oregon Rules of Professional Conduct 1.7. The 60 days may be extended with written agreement by OPDS. Contractor shall immediately notify OPDS of any vacancy or potential attorney vacancy when it becomes aware of a vacancy or potential vacancy.

(c) Contractor must retain a minimum of 0.5 support staff for every Maximum Attorney Caseload funded by this contract. Support staff are persons who provide support for attorneys and clients through administrative, clerical, communicative, technical, or similar work. Support staff does not include contracted services such as answering services or photocopying services. Failure to retain a minimum number of support staff is a material breach of this contract.

7.4.2 Certification to OPDS

Contractor shall provide an updated attorney certification form for all attorneys providing legal services pursuant to the contract within 30 days of the contract's execution or upon OPDS' request, excepting attorneys who have submitted an updated attorney certification form within the past 12 months of the

contract's effective date. Contractor shall also provide certifications for any attorneys added during the contract. Contractor shall certify that the attorney added has read this contract, including the payment schedules and other specific terms, and understands the obligations of attorneys providing services under the contract and the duties and responsibilities of the contract administrator.

7.4.3 Interpreters

For out-of-court attorney/client communications, Contractor may use staff who are either qualified, as defined by ORS 45.275(8)(c), or who are certified by the Office of the State Court Administrator (OSCA), under ORS 45.291. For in-court interpretation, Contractor shall ensure that all interpreters who are staff employees or who subcontract with Contractor comply with all certification requirements established by OSCA and the Code of Professional Responsibility for Interpreters in Oregon.

7.4.4 Contractor Offices

Contractor shall maintain an office in the judicial district in which they have contracted to provide legal services. If a contractor has contracted to provide services in more than one judicial district, then contractor shall maintain an office in at least one of the judicial districts in which they have contracted to provide legal services. A failure to maintain an office is a material breach of this contract.

7.5 Record Keeping

7.5.1 Case Records

Contractor shall preserve all case documents, notes, files, physical evidence, or any other items created or received in the course of the representation of a client in an orderly and organized manner such that it can readily be made available to successor counsel, if one is appointed or retained. To the extent ethically possible, records shall be kept in a manner to be available on request for inspection by OPDS, or OPDS's designee or agent.

7.5.2 Financial Records

Contractor shall maintain financial records on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

7.5.3 Retention Period

For purposes of this contract only, Contractor agrees to maintain, store, and preserve all appointment, service, and financial records for a period of five (5) years after this contract expires. In addition, Contractor agrees to maintain, store, and preserve all case files a minimum of ten (10) years from the date the case is closed for all cases except aggravated murder and Measure 11 cases. Case files in aggravated murder and Measure 11 cases shall be maintained, stored, and preserved a minimum of twenty (20) years from the date the case is closed.

7.6 Reports to OPDS

7.6.1 Caseload Reports

By the 20th day of each month, or the following business day if the twentieth day falls on a weekend or holiday, Contractor shall provide to OPDS, in a format specified by OPDS, a monthly caseload report for the preceding month. Contractor must be current on case reporting at the time of their review meetings with their analyst.

7.6.2 Case Activity, Disposition, and Withdrawal Data

Contractor shall maintain data, using codes specified by OPDS, to track the disposition of, or withdrawal from, all cases reported under the contract. Contractor shall maintain data on other case activity upon the request of OPDS. Contractor shall make the data available for OPDS review upon request.

7.6.3 Other Reports

Contractor shall comply with OPDS requests for information and data related to Contractor's performance under this contract. Contractor shall provide information and data to OPDS in a reporting form that OPDS develops to the extent permitted by the Oregon Rules of Professional Conduct. Contractor shall comply with any due dates established by OPDS. Information and data may include information related to Contractor's non-contract work, to the extent permitted by the Oregon Rules of Professional Conduct. OPDS will keep all data and information regarding non-contract work confidential.

7.6.4 Penalty for Late Reports

Except with prior approval from OPDS, Contractor shall submit timely and properly completed reports regarding Contractor's performance under this contract. If Contractor fails to submit a reasonably accurate report on the due date, OPDS may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until OPDS receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

(a) Not received within 10 days of the due date: 5% of contract funds
(b) 30 days of the original due date: 10% of contract funds
(c) 60 days of the original due date: 15% of contract funds
(d) 90 days of the original due date: 25% of contract funds

7.6.5 Enforceability

The reporting and records retention requirements set forth in this section are enforceable after the termination or expiration of this contract.

7.7 Client Clothing

Prior to requesting preauthorization to purchase clothing for a client's court appearance, Contractor agrees to contact contractors who maintain "clothing rooms" to determine whether suitable clothing is

available. (Contact OPDS for a current list.) If Contractor receives preauthorization to purchase clothing for a client, that clothing shall be provided to a "clothing room" upon completion of the case.

7.8 Special Notices

Contractor shall provide OPDS written notice of any significant changes affecting this contract. Such changes include, but are not limited to:

(a) Contractor's ability to carry out duties under this contract;
(b) Contractor's ability to accept appointments;
(c) Contractor's ability to meet financial obligations; and
(d) Matters affecting Contractor's ability to provide services to clients.

7.8.1 Time Requirement for Notices

All notices shall be provided within thirty (30) days of the occurrence requiring the notice, unless a shorter time is provided herein.

7.8.2 Specific Notices and Responses Required

7.8.2.1 Insurance Cancellation or Change

Contractor shall provide notice of any material changes to any insurance policy listed in Sections 7.3.5 - 7.3.6 and immediate notice of the cancellation of any such policies.

7.8.2.2 Persons Providing Services Under the Contract

Contractor shall provide, to OPDS and the affected court, notice of the names of attorneys providing services under this contract and any changes in the number of persons providing services under this contract. Upon request by OPDS, Contractor shall provide a current list of attorneys and non-attorneys providing services under this contract and provide timely responses to OPDS surveys or other inquiries concerning the diversity of attorneys and others performing services for Contractor.

7.8.2.3 Events Which Could Impair the Contract

Contractor shall notify OPDS in writing within forty-eight (48) hours of when Contractor learns that one of the following has occurred:

(a) Criminal Charges

An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been charged with a crime.

(b) Criminal Conviction

An attorney or investigator performing services under this contract, or a person with responsibilities for the administration of this contract has been convicted of a crime.

(c) Formal Bar Complaint

A formal accusation of misconduct has been filed by the Oregon State Bar against an attorney performing services for Contractor.

(d) **Bar Discipline**

Disciplinary action is taken by the Oregon State Bar against an attorney performing services for Contractor.

(e) **Uninsured Practice of Law**

An attorney performing services for Contractor has engaged in the practice of law in an area not covered by Contractor's or the attorney's professional liability insurance coverage.

(f) **Unforeseen Events**

An attorney performing services for Contractor experienced an event that impacts their ability to perform services under this contract, including, but not limited to events such as fire, flood, burglary, embezzlement.

7.8.2.4 Nonassignment of Available Cases

Contractor shall notify OPDS immediately upon determining that the court is not assigning Contractor to cases available for appointment. OPDS shall propose a plan to Contractor and the court to resolve the nonassignment of available cases.

7.8.2.5 Contractor Shut-Off

If Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days' notice before refusing court appointments.

7.9 No Dual Payments for Contract Work

Contractor shall not:

(a) Expend funds under this contract for work performed outside the scope of this contract;

(b) Accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or

(c) Solicit or accept payment from a client for legal services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.

Breach of this section is a material breach of this agreement.

7.10 Contract Administrator Duties

Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following: selection of prospective contract attorney members; assigning cases and oversight of case assignments; timely and accurate tracking and reporting of caseloads to OPDS; management and disbursement of contract funds; working with OPDS to organize regular meetings to review data and ensure sufficient support to achieve program expectations; consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing; corresponding with OPDS regarding contract

inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations; maintaining records of all case reporting, financial and other records regarding contract members and making such records available to OPDS upon request; negotiating new contracts and contract changes with OPDS as necessary; actively participating in system improvement initiatives including multi-disciplinary training and partner meetings and providing training and mentorship to contract attorneys and staff. Contract administrators and OPDS will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

8 MUTUAL RISKS

8.1 Impossibility of Performance

Neither party shall be held responsible for delay or default under this contract if such delay or default was caused by theft, fire, flood, or other casualty or if the delay or default was beyond the party's reasonable control. In the event of circumstances beyond a party's control that may render timely performance by that party impossible, either party may terminate this contract, or the affected part, by written notice.

8.2 Tort Liability

Each party shall be solely responsible for the decisions, actions or failures to act of its own officers, employees, and agents committed in the performance of this contract or related to this contract.

9 WIND-DOWN PROCEDURES

In the event of a termination, suspension, or expiration of this Agreement, Contractor shall comply with the Oregon Rules of Professional Conduct and continue to provide legal services on all existing contract appointments on cases assigned before the effective date of the suspension, termination, or expiration, unless OPDS provides written notice of its desire for the Contractor to cease working on such contract appointments. If OPDS does not provide such cessation notice, OPDS and Contractor shall negotiate wind-down terms that allow Contractor to continue to provide legal services for existing clients. If wind-down terms cannot be agreed to, OPDS shall pay Contractor at the existing PDSC authorized hourly rate to wind-down their contract caseload.

10 CASELOAD STANDARDS AND CASE WEIGHTING

10.1 Definitions

10.1.1 Case: Any action in this state in which a Contractor has been appointed to represent or advise a client under the terms of the Public Defense Services Contract in a matter to which there is a right to appointed counsel at state expense.

10.1.2 Case Weight: The numerical multiplier assigned by this policy to apply to specific types of cases to generally recognize the greater or lesser attorney workload required for those cases compared to an average case under a numerical caseload standard.

10.1.3 Case Count: The term used when a case can be reported more than once.

10.1.4 Caseload: The term given to cases assigned to an individual attorney on an annual basis.

10.1.5 Non-Charge Representation: Matters where public defense attorneys represent clients who are eligible for public defense representation for matters that do not involve the filing of new criminal charges (*i.e.*, material witness or extradition).

10.1.6 Partial Representation: Cases where only a partial representation occurs because the court allows the attorney to withdraw due to an ethical conflict, is relieved by retained counsel, the case is transferred or reassigned by the court, contract administrator, or OPDS.

10.1.7 Public Defense Attorney: Counsel appointed to perform legal services for financially eligible individuals as required by Oregon Revised Statute, the Oregon Constitution, or the United States Constitution.

10.2 Caseload Standards

10.2.1 Contractor shall apply its own professional judgment and discretion to control the means and manner of providing services under this Agreement. Contractor agrees that all services provided under this contract shall meet all performance standards and duties under this Agreement. In doing so, Contractor acknowledges that caseloads standards are a reasonable public defense "best practice." The maximum number of annual case assignment for the below categories are:

Criminal

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

Juvenile

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

Statewide

- PCR/Habeas: 45
- PCR appeals: 50
- Juvenile appeals: 32
- Civil commitment appeals: 60

10.3 General considerations

10.3.1 Contractor will comply with the Caseload Standards in order to establish and maintain professional and responsible legal services under this Agreement, whether such caseload comes from OPDS or outside of OPDS. Contractors who have accepted the Maximum Attorney Caseloads of OPDS work agree not to take on any additional legal work, whether such work comes from OPDS or outside of OPDS. Contractor may unilaterally amend this Agreement to decrease their caseload below the Maximum Attorney Caseloads, subject to any client duties, the Oregon State Bar Rules of Professional Conduct duties, and the notice requirements in Section 5.4. Contractor shall not begin any legal work which exceeds the Maximum Attorney Caseloads prior to the effective date of the amendment. The Parties hereby agree that such amendment will decrease any compensation due to Contractor under this Agreement in a percentage commensurate with the percentage reduction in OPDS assigned work (e.g. a 25 percent reduction in OPDS assigned work would result in a 25 percent reduction in compensation due to Contractor).

10.3.2 No one funded to perform a Maximum Attorney Caseload may engage in any other paid work, unless OPDS otherwise agrees in writing. Contractor's non-contract work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

10.3.3 Caseload limits assume a reasonable even distribution of cases throughout the year.

10.3.4 When public defense attorneys are not contracted for a Maximum Attorney Caseload, their maximum caseload shall be based on the percentage of a Maximum Attorney Caseload for which contractor receives funding.

10.3.5 Specialty Courts: When an attorney is assigned to represent or advise clients in Specialty Courts, the attorney's maximum caseload should be reduced proportionally by the amount of time they spend preparing for and appearing at such dockets.

10.4 Case Weighting

The Maximum Attorney Caseload for a public defense attorney shall not exceed 300 weighted cases per year, with each case type below worth the following value in terms of weighted cases.

Criminal

- Murder: 50
- Jessica Law: 50
- Ballot Measure 11: 6.7
- Major (A/B) felonies: 2.2
- Minor (C) felonies: 1.8
- Misdemeanors: 1
- Probation violations: .36
- Civil commitments: 1.3

Juvenile

- Murder: 50
- Delinquencies: 2.3
- Probation violations: .36
- Dependency: 4.3

Statewide

- PCR/Habeas: 6.7
- PCR appeals: 6
- Juvenile appeals: 9.4
- Civil commitment appeals: 5

10.5 Partial Representation

When an attorney's appointment ends for any of the reasons stated in section 10.1.6, the full case weight of the case will be transferred to the new attorney. The attorney's case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type weight.

Length of Representation	**Weight**
0-14 days	0.25
15-30 days	0.5
31-89	0.75
90+ days	1.0

10.6 Out of County Representation

The case weight determined by section 10.4 will be doubled whenever a contractor takes a criminal or non-PCRP juvenile delinquency or dependency case in a county outside their contracted jurisdiction, with the following exceptions. When an attorney's appointment ends for any of the reasons stated in section 10.1.6 of these guidelines, the case weight will be determined based on the length of time they were on the case with partial weight being applied to the original case type's weight.

Length of Representation	Weight
0-14 days	0.5
15-30 days	0.75
31-89 days	1.0
90+ days	2.0

10.6.1 Murder cases, Jessica's Law cases, and cases assigned pursuant to a statewide contract are not eligible for double weight, except as provided in section 10.8 of these guidelines.

10.6.2 Multiple cases: The case with the highest case type eligible for doubling under 10.4 will receive double weight. The remaining cases will not receive additional weight except as provided in section 10.7 of these guidelines.

10.6.3 Sibling Groups: If an attorney accepts appointments for a sibling group in a county outside their jurisdiction, they will receive one (1.0) additional dependency weighting for the sibling group.

10.7 Co-Counsel

Attorneys will receive a full case weight for their work as co-counsel on Murder 1 and juvenile Murder cases. OPDS may grant up to full case weight for an attorney's work as co-counsel in Murder 2 and Jessica's Law cases where the attorney can provide evidence to OPDS why co-counsel is necessary and reasonable.

10.8 Extraordinary Case Circumstances

Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to OPDS's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by OPDS for this purpose.

10.9 Case Count

10.9.1 Delay

If a case to which an attorney is appointed has been interrupted for the following reasons for 365 days or more the case can be reported again:

a) Aid and Assist Delay;
b) Bench warrant; or
c) Dismissal.

10.9.2 Re-Trial or Resentencing

If a case to which an attorney is appointed comes back for re-trial or resentencing for the following reasons the case can be reported again:

a) After Direct Appeal or Post-Conviction Relief; or
b) After Mistrial or Hung Jury.

SPECIFIC TERMS

1 PARTIES TO CONTRACT

Pursuant to ORS 151.216 and ORS 151.219, this contract is between the Public Defense Services Commission ("PDSC") and _____("Contractor").

2 TERM OF CONTRACT

The contract term shall be from July 1, 2022, through June 30, 2023.

3 NOTICE

Each party shall provide to the other all notices regarding this contract:

(a) In writing, and

(b) Delivered to the other party at the email address below or to such person and email address as the parties provide to each other from time to time:

PDSC:
mail@opds.state.or.us

Contractor:_____
(Contract Administrator email address)

4 TOTAL VALUE AND PAYMENT SCHEDULE

For the services provided pursuant to this contract, PDSC shall pay Contractor a total of $_____ during the term of this contract. PDSC shall pay the total value in monthly installments as shown in the Payment Schedule. Payments shall be made by direct deposit into the account designated by Contractor.

5 MAXIMUM ATTORNEY CASELOADS, SPECIALTY COURT, ADMINSTRATIVE, AND INVESTIGATOR BREAKDOWN

Contractor shall provide legal representation in the Circuit Court of _____ County. Contractor shall procure _____ attorneys to provide legal services pursuant to this contract, in accordance with the Maximum Attorney Caseloads established by Section 10. Contractor shall maintain an additional support staff ratio to attorney of at least 0.5:1. The minimum number of support staff for this contract is _____. This includes:

A. Attorney Funding

The following comprise the total contract value:

Attorney rates funded:

Murder	_____ at _____ per year.
Major Felony	_____ at _____ per year.
Minor Felony and Civil Commitment	_____ at _____ per year.
Misdemeanor	_____ at _____ per year.

B. Specialty Courts: This includes _____attorneys for the following specialty court programs:

C. Administrative Fees: Contractor shall receive _____ per year to carry out the responsibilities of 7.10 of the general terms of this contract.

D. Investigation: Contractor shall procure _____ investigators at a rate of _____ per investigator per year.

6 ADDITIONAL AGREEMENTS AFFECTING THIS CONTRACT

Contractor may not distribute funds in a manner that violates the Oregon Rules of Professional Conduct, the Oregon or United States Constitutions, or any Oregon or federal statute. Attorneys providing legal services pursuant to this contract must comply with the Oregon Rules of Professional Conduct, including Rule 1.7.

7 MERGER CLAUSE

THIS WRITING TOGETHER WITH THE GENERAL TERMS CONSTITUTES THE ENTIRE AGREEMENT BETWEEN THE PARTIES. THERE ARE NO OTHER ORAL OR WRITTEN UNDERSTANDINGS, AGREEMENTS, OR REPRESENTATIONS REGARDING THIS AGREEMENT. NO WAIVER, CONSENT, MODIFICATION, OR CHANGE OF TERMS OF THIS AGREEMENT SHALL BIND EITHER PARTY UNLESS IN WRITING AND SIGNED BY BOTH PARTIES. IF MADE, SUCH WAIVER, CONSENT, MODIFICATION, OR CHANGE SHALL BE EFFECTIVE ONLY IN THE SPECIFIC INSTANCE AND FOR THE SPECIFIC PURPOSE GIVEN.

CONTRACTOR, BY THE SIGNATURE BELOW OF ITS AUTHORIZED REPRESENTATIVE, HEREBY ACKNOWLEDGES THAT IT AND ALL ATTORNEYS PERFORMING LEGAL SERVICES PURSUANT TO THIS CONTRACT HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS AND CONDITIONS.

Stephen I. Singer, Executive Director — Date
Office of Public Defense Services Public Defense Services Commission

Contractor — **Date**

Title or Representative Capacity

CONTRACT BETWEEN PDSC AND XXXX PAYMENT SCHEDULE

Contractor's Initials _____

D.4 ADDENDUM TO CRIMINAL AND JUVENILE CONTRACTS

This addendum memorializes agreed upon changes to the general terms of the criminal and juvenile contracts, with the new language in italics.

Amend general term 3.5.1(b) to state the following:

OPDS may request Contractor to accept appointments to cases in adjacent jurisdictions. If the Contractor accepts the appointment in the adjacent jurisdiction, OPDS shall work collaboratively with Contractor to select an attorney who is best suited to receive the appointment. OPDS shall also work with OJD to mitigate against attorney scheduling conflicts. These appointments will count toward the Contractor's overall contracted caseload and will receive additional case weight. In addition, Contractor shall be reimbursed by OPDS for all routine travel expenses, pursuant to the PDSC's Payment Policy.

Amend general term 4.3 to the following:

Contractor grants no right to PDSC or designee of PDSC to observe attorney/client consultations or to review information in case files that is:

(a) Privileged or confidential because of the attorney/client relationship; or
(b) Work product identifiable to a particular case or client unless the client expressly, knowingly, and voluntarily agrees in writing. Contractor shall keep records, including time records *if applicable*, in such a manner as to allow PDSC or PDSC's designee reasonable access to other information for review purposes. Notwithstanding other provisions of this section, Contractor does not waive any client's constitutional, statutory, or common law right or privilege.

Amend general term 7.3.1 to the following:

Contractor shall protect, indemnify, defend, and hold harmless PDSC, OPDS, and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that are related to, result from, or arise out of Contractor's or Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. *Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless PDSC, OPDS, or the State for their actions, decisions, work, activities, or failures to act related to this Agreement.*

Amend general term 7.8.2.5 to the following:

If Contractor is unable, or believes it will be unable, to accept court appointments to public defense cases, Contractor shall notify OPDS immediately and provide at least 30 days' notice, *or as soon as practicable if unable to provide at least 30 days' notice*, before refusing court appointments.

Amend general term 10.3.2 to the following:

No one funded to perform a Maximum Attorney Caseload may engage in any other paid *legal* work, unless OPDS otherwise agrees in writing. Contractor's non-contract *legal* work shall be proportional to their percentage of Maximum Attorney Caseload (e.g., an attorney with a .5 Maximum Attorney Caseload shall dedicate at least half of their time to contract work).

Contractor Signature: _____

Emergency Extension and Modification to July 1, 2022 to June 30, 2023
Public Defense Legal Services Contract ("Contract")
Between the Public Defense Services Commission ("PDSC") and
Marion County Association of Defenders, LTD ("Contractor")

Recitals

1. PDSC and Contractor are entering into this contract extension as an emergency measure due to the PDSC's biennial budget not yet being approved;
2. PDSC and Contractor will continue to operate under the same terms and conditions, with the exception of the attorney retention incentive package and modifications listed below, for three additional months to provide sufficient time for the PDSC's budget to be approved and for contracts to be prepared, and executed;
3. PDSC will offer new contracts once its biennial budget is approved, and those new contracts will begin October 1, 2023, unless the PDSC and Contractor mutually agree to terminate the contract early and begin a new contract;
4. Contractor will continue to accept case assignments during the three-month extension;
5. For each month of the extension period, the Maximum Attorney Caseload (MAC) for each attorney shall be pro-rated to one-twelfth of the attorney's contracted MAC per month, applying the caseload standards set forth in Term 10.2 and the case weighting set forth in Term 10.4. Excluding murder and Jessica's Law cases, no attorney shall accept assignments to more than 15% of the pro-rated MAC without preapproval by the PDSC, and that limitation shall be adjusted proportionally to the attorney's MAC;
6. Section 6.1 of the Contract establishes the PDSC's obligations when faced with a funding shortfall;

Extension

PDSC and Contractor agree to extend the terms and conditions of its existing public defense contract, including all addenda, until September 30, 2023. All terms and provisions stated in the Contract and all previous addenda to the Contract remain in effect except as specifically agreed and set forth below regarding case assignments and vacancies. This contract may be terminated early by mutual assent of both PDSC and Contractor.

Payment

In July, August, and September 2023, PDSC shall reimburse Contractor at a monthly rate equivalent to Contractor's existing monthly rate at the time this amendment is executed, with the exception of the attorney retention incentive package, which expires June 30, 2023. Financial amendments will only be authorized during the three-month extension period at PDSC's discretion. The total contract value is **$6,745,137** [$5,427,386], and the monthly installments are shown in the Payment Schedule included with this Emergency Extension and Modification.

Modifications to Case Assignment

Contractor's annualized MAC obligations expire June 30, 2023. The monthly MAC for each attorney shall be pro-rated at one-twelfth of the attorney's existing contracted MAC for the duration of this Emergency Extension and Modification, applying the caseload standards set forth in Term 10.2 and the case weighting set forth in Term 10.4. Excluding murder and Jessica's Law cases, no attorney shall accept assignments to more than 115% of the pro-rated MAC each month without preapproval by the PDSC, and that limitation shall be adjusted proportionally to the attorney's MAC. Contractor shall accept assignments to Murder and Jessica's Law cases when they have qualified attorneys who have capacity to receive the assignment.

6/29/2023

Laurie Bender
Chief Criminal Trial Counsel
Public Defense Services Commission

Date



6/27/2023

Contractor

Date

EXEC DIR

Title or Representative Capacity

Payment Schedule

Month	Monthly Payment
July 2022	$ 398,564
August 2022	$ 416,977
September 2022	$ 407,766
October 2022	$ 407,766
November 2022	$ 407,766
December 2022	$ 430,360
January 2023	$ 430,360
February 2023	$ 481,006
March 2023	$ 481,006
April 2023	$ 484,452
May 2023	$ 482,728
June 2023	$ 598,635
July 2023	$ 439,251
August 2023	$ 439,250
September 2023	$ 439,250
TOTAL	$ 6,745,137

PUBLIC DEFENSE SERVICES COMMISSION
CONTRACT FOR PUBLIC DEFENSE SERVICES

Table of Contents

Contents

I. DURATION OF CONTRACT 3

II. RULES 3

III. DEFINITIONS 4

IV. INDEPENDENT CONTRACTOR 5

V. ASSIGNMENT AND SUBCONTRACTING 5

VI. CONTRACTOR'S EMPLOYEES, MEMBERS, OFFICE, AND EQUIPMENT 5

VII. PERFORMANCE REQUIREMENTS 5

VIII. ATTORNEY TRAINING 5

IX. COMPENSATION AND METHOD OF PAYMENT 6

XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS 7

XII. CONTRACTOR REPORTING AND INSPECTION 7

XIII. EVALUATION OF CONTRACTOR 9

XIV. CORRECTIVE ACTION 9

XV. CONTRACT TERMINATION AND SUSPENSION 10

XVI. NOTICES 11

XVII. CONTRACTOR INSURANCE 11

XVIII. HOLD HARMLESS AND INDEMNIFICATION 12

XIX. RESPONSIBILITY OF CONTRACT ADMINISTRATOR 12

XX. COMPLIANCE WITH APPLICABLE LAW 13

XXI. NONDISCRIMINATION 13

XXII. CONFLICT OF INTEREST 13

XXIII. MERGER CLAUSE 14

CONTRACT FOR PUBLIC DEFENSE SERVICES

The Public Defense Services Commission, referred to as "the PDSC," and [entity name], referred to hereafter as "Contractor," agree to the provision of public defense services as outlined below for the period [date] to [date] in [county/counties]. The Contract incorporates Exhibits A (Compensation), B (Caseload and Workload Standards), and C (Additional Performance Requirements). The Contract Administrator is [ ].

The following are the underlying bases for the Contract:

- Oregon has a constitutional and statutory responsibility to provide public defense services, and pursuant to ORS 151.216, the Public Defense Services Commission has responsibility for ensuring those services are available in circuit and appellate courts.

- The PDSC desires to have legal services performed for eligible persons entitled to public defense representation by Contractor, as authorized by law.

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

- The PDSC and Contractor agree that any and all funds provided pursuant to this Contract are provided for the sole purpose of provision of representational services to eligible clients of Contractor, the training and educational expenses associated with providing those services, and overhead costs.

The parties agree as follows:

I. DURATION OF CONTRACT

This Contract shall commence on_____and terminate on_____, unless extended or terminated earlier in a manner allowed by this Contract.

II. RULES

A. Interpretation of Terms: Words, terms, and phrases not specifically defined in this contract shall have the ordinary meaning ascribed to them unless the context clearly indicates otherwise. When not inconsistent with the context, words used in the present tense include the future, words in the plural include the singular, and words in the singular include the plural. The word "shall" is mandatory and not merely directive.

B. Construction and Jurisdiction: This contract shall be construed in accordance with the laws of the State of Oregon. A party shall bring any action or suit arising under this contract to a court of competent jurisdiction in the State of Oregon.

C. Severability: If a court of competent jurisdiction declares, or the parties agree that any term or provision of this contract is illegal or in conflict with any other law, the remaining terms and provisions shall remain valid, and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the term or provision held be invalid.

D. Waiver: Either party's failure to enforce any provision of this contract shall not constitute a waiver by the party of that or any other provision.

III. DEFINITIONS

A. Eligible client: An eligible client is a person who has been determined by a court or the PDSC to be entitled to a court-appointed attorney, pursuant to Oregon statute, the Oregon Constitution, or the United States Constitution.

B. Case: A Case shall mean any action in which there is one eligible client on one charging instrument, or on one petition and its successor.

C. Full Time Equivalent Attorney (FTE): A FTE Attorney is an attorney under contract with the PDSC to provide representational services. FTE Attorneys shall be eligible for appointment to the maximum number of cases as described in Exhibit B, based upon their time commitment to the PDSC. A FTE attorney must provide at least .5 of a maximum attorney caseload.

D. Maximum Attorney Caseload: The measurement in Exhibit B that defines the caseload and workload limits for FTE attorneys.

E. Caseload: The number of cases assigned to a FTE Attorney on an annual basis.

F. Workload: The number of open cases assigned to a FTE Attorney at a given point in time.

G. Representational Services: The services for which the PDSC is to pay Contractor are representational services, which includes lawyer services and appropriate support staff services, investigation and appropriate sentencing and disposition advocacy, and legal services including but not limited to interviews of clients and potential witnesses, legal research, preparation and filing of pleadings, negotiations with the appropriate prosecutor or other agency and court regarding possible dispositions, and preparation for and appearance at all court proceedings. The services for which the PDSC is to pay Contractor do not include fees and expenses authorized as routine expenses or case support services as defined by the PDSC.

H. Misappropriation of Funds: Misappropriation of funds is the appropriation of funds received pursuant to this Contract for purposes other than those sanctioned by this Contract. The term

shall include the disbursement of funds for which prior approval is required but is not obtained.

IV. INDEPENDENT CONTRACTOR

Contractor is, for all purposes arising out of this Contract, an independent contractor, and neither Contractor nor its employees, members, agents, or successors shall be deemed employees of the PDSC. Contractor shall complete the requirements of this Contract according to Contractor's own means and methods of work, which shall be in the exclusive charge and control of Contractor, and which shall not be subject to control or supervision by the PDSC, except as specified herein.

V. ASSIGNMENT AND SUBCONTRACTING

Contractor shall not subcontract, delegate, or assign any of the services or duties required under this contract without obtaining the PDSC's prior written consent.

VI. CONTRACTOR'S EMPLOYEES, MEMBERS, OFFICE, AND EQUIPMENT

Contractor agrees that it has secured or will secure at Contractor's own expense, all persons, employees, office space, and equipment required to perform the services contemplated/required under this Contract. Contractor agrees that all attorneys performing services pursuant to this Contract shall maintain an office in the judicial district in which they have contracted to provide representational services at which Contractor can have confidential communication with public defense clients. If Contractor contracts to provide services in more than one judicial district, then Contractor shall maintain an office in at least one of the judicial districts in which they have contracted to provide representational services.

VII. PERFORMANCE REQUIREMENTS

Any attorney working under this contract shall use their independent professional judgment in their representation at all proceedings related to the legal matters that are the subject of the representation.

Contractor agrees to provide representational services and comply with the requirements of this Contract. Contractors agrees to comply with the Oregon Rules of Professional Conduct, the Oregon State Bar Performance Standards, American Bar Association Best Practice Standards, and to provide competent legal representation as mandated by Oregon and federal judicial opinions regarding the right to counsel.

Contractor agrees to adhere to the caseload and workload standards in Exhibit B and the additional performance standards in Exhibit C.

VIII. ATTORNEY TRAINING

Ongoing professional training is a necessity in order for an attorney to keep abreast of changes

and developments in the law and assure continued rendering of competent assistance of counsel. Contractor shall provide sufficient training, whether in-house or through a qualified provider of continuing legal education (CLE), to keep all of its attorneys who perform work under this Contract abreast of developments in relevant law, procedure, and court rules.

Contractor shall ensure all of its attorneys comply with the CLE requirements of the Oregon State Bar and obtain 12 hours of CLE credit specific to their contract (criminal or juvenile) during the contract period.

IX. COMPENSATION AND METHOD OF PAYMENT

The PDSC shall pay Contractor pursuant to the rates specified in Exhibit A, which may be amended during the term of the Contract by mutual assent of the parties. Payments shall be made in monthly installments by direct deposit into the account designated by Contractor. Compensation rates for Attorney FTE will be determined by the types of cases attorneys are qualified and agree to accept. All funds provided pursuant to this Contract are provided for the sole purpose of provision of representational services to eligible clients of Contractor, the training and educational expenses associated with providing those services, and overhead costs.

Contractor shall not expend funds under this contract for work performed outside the scope of this contract; accept funds from anyone other than PDSC for work performed under the scope of this contract, except for grants or funds for work study, job experience, internships, or other such grants or funds; or solicit or accept payment from a client for representational services on a matter within the scope of services of this contract or on a matter which Contractor has been appointed by the court.

In the event of Contractor failure to substantially comply with any items and conditions of this Contract or to provide in any manner the work or services as agreed to herein, the PDSC reserves the right to withhold any payment until corrective action has been taken or completed. This option is in addition to and not in lieu of the PDSC's right to termination as provided in Section XV of this Contract.

At the time this contract is executed, sufficient funds either are available within the Contract Authority's current appropriation or are expected to become available to finance the costs of this contract. However, payments under this contract are subject to the availability and appropriation of funds. The PDSC may modify, suspend, or terminate this contract if it reasonably determines that funds will not be sufficient to pay anticipated costs of the contract. The PDSC shall seek to apportion expenditure reductions equally and fairly among all public defense contract agencies. The PDSC shall seek first to modify the contract through negotiation with Contractor. In negotiating any modification, the parties will consider the funds available, the legal requirements to provide representation that satisfies state and federal constitutional rights to effective and adequate assistance of counsel, and the obligation of counsel to meet prevailing performance standards and rules of professional conduct. The PDSC may unilaterally suspend or terminate the contract if the parties cannot agree to modification.

X. CONTRACT MODIFICATION AND ADJUSTMENTS

If Contractor's caseload increases or decreases by 15% or more for six consecutive months, the PDSC shall notify Contractor and schedule a meeting to discuss the circumstances surrounding the increase or decrease. The PDSC may not decrease a Contractor's attorney FTE, or the financial value attached, without considering whether Contractor's declination of court appointments was required by Exhibit B. The PDSC may adjust the number of attorney FTE in the contract to meet the changing needs of the jurisdiction if:

- The actual or reasonably expected number of available cases increases or decreases substantially, such that the existing attorney FTE amount no longer corresponds with caseload needs;
- The introduction or discontinuation of a specialty court; or
- The PDSC determines that an increase or decrease in attorney FTE capacity is necessary.

XI. ESTABLISHMENT AND MAINTENANCE OF RECORDS

A. Contractor agrees to maintain accounts and records, including client case files, personnel records, property records, and financial records, which sufficiently and properly reflect all direct and indirect costs of services performed in the performance of this Contract.

B. Contractor's financial records shall be on an accrual basis. Contractor's records shall show that all disbursements or expenditures of contract funds were ordinary, reasonable and necessary, and related to providing direct services required under the contract or services necessary to performance of the contract.

C. Records shall be maintained for a period of 5 years after termination of this Contract unless permission to destroy them is granted by the PDSC. In addition, Contractor agrees to retain all public defense client case files as required by the Oregon State Bar, with a minimum of 10 years from the time of closure for all cases except murder and Ballot Measure 11 offenses, which shall be preserved for a minimum of 20 years.

XII. CONTRACTOR REPORTING AND INSPECTION

Contractor agrees to audits and inspections, and it agrees to submit to the PDSC reports, as prescribed below. Failure to comply with requested audits and inspections, or to submit required reports and records, may be considered a breach of this contract and may result in the PDSC withholding payment until the required reports are submitted and/or invocation of the Corrective Action procedures in Section XVIII (Corrective Action).

A. Position Profile

Contractor shall submit to the PDSC on September 1, and the first day of each subsequent quarter, a profile of Full-Time Equivalent (FTE) positions for both legal and support staff who

perform work on this Contract, distributed by type of case. The report will designate the name and compensation for each person who performs work on this Contract, in a format to be provided by the PDSC. The PDSC will not release this information except as required by law. If the employee splits his/her work between work under this Contract and other business, the report will indicate the amount of time that employee devotes to private matters compared to work under this Contract.

B. Caseload and Workload Reports

By the 20th day of the month, Contractor shall submit a monthly report to the PDSC detailing assigned and open cases, as required by the PDSC's Caseload and Workload Reporting Policy.

C. Other Reports

Contractor agrees to provide PDSC with other reports during the Contract if the PDSC commission determines additional reporting obligations are necessary and the PDSC provides a template to Contractor to submit the reports.

D. Audit and Inspection and Records

Contractor agrees to grant the PDSC full access to materials necessary to verify compliance with all terms of this Contract. At any time, upon reasonable notice during business hours and as often as the PDSC may reasonably deem necessary for the duration of the Contract and a period of five years thereafter, Contractor shall provide to the PDSC requested records and/or a right of access to its facilities to audit information relating to the matters covered by this Contract. Information that may be subject to any privilege or rules of confidentiality should be maintained by Contractor in a way that allows access by the PDSC without breaching such confidentiality or privilege. Contractor agrees to maintain this information in an accessible location and condition for a period of not less than five years following the termination of this Contract, unless the PDSC agrees in writing to an earlier disposition. Notwithstanding any of the above provisions of this paragraph, none of the Constitutional, statutory, and common law rights and privileges of any client are waived by this agreement. The PDSC will respect the attorney-client privilege.

E. Failure to Provide Reports

Except with prior approval from PDSC, Contractor shall submit timely and properly completed reports. If Contractor fails to submit a reasonably accurate report on the due date, the PDSC may withhold the following percentage of funds from Contractor's monthly payment, and each subsequent monthly payment, until the PDSC receives the report and supporting documentation. Funds withheld may be paid to Contractor once reporting is current.

- Not received within 10 days of the due date: 5% of contract funds
- 30 days of the original due date: 10% of contract funds
- 60 days of the original due date: 15% of contract funds
- 90 days of the original due date: 25% of contract funds

XIII. EVALUATION OF CONTRACTOR

The PDSC may review information to monitor Contractor activity, including attorney caseloads and workloads, support staff/attorney ratios for each area of cases, the experience level and supervision of attorneys who perform Contract work, training provided to such attorneys, the compensation provided to attorneys and support staff to assure adherence, and whether Contractor is meeting the performance requirements of this Contract.

At the request of either party, and at least twice per year, the PDSC and Contractor will meet to discuss case assignment trends and any other matters needed to determine contract compliance or any necessary contract modifications. In counties where more than one Contractor provides representational services services, these meetings will include a review by the PDSC of the number of appointments made to each Contractor. If the review shows that there is a substantial disparity in the actual appointment rates contemplated under the contracts, the PDSC shall notify the court and Contractors that appointment rates must be adjusted and corrected.

XIV. CORRECTIVE ACTION

If the PDSC reasonably believes that a material breach of this Contract has occurred, warranting corrective action, the following sequential procedure shall apply:

1. The PDSC will notify Contractor in writing of the nature of the breach.

2. Contractor shall respond in writing within five (5) working days of its receipt of such notification, which response shall present facts to show no breach exists or indicate the steps being taken to correct the specified deficiencies, and the proposed completion date for bringing the Contract into compliance.

3. The PDSC will notify Contractor in writing of the PDSC's determination as to the sufficiency of Contractor's corrective action plan. The determination of the sufficiency of Contractor's corrective action plan will be at the discretion of the PDSC and will take into consideration the reasonableness of the proposed corrective action in light of the alleged breach, as well as the magnitude of the deficiency in the context of the Contract as a whole. In the event Contractor does not concur with the determination, Contractor may request a review of the decision by the PDSC Executive Director. The PDSC agrees that it shall work with Contractor to implement an appropriate corrective action plan.

In the event that Contractor does not respond to the PDSC's notification within the appropriate time, or Contractor's corrective action plan for a substantial breach is determined by the PDSC to be insufficient, the PDSC may commence termination of this Contract in whole or in part pursuant to Section XV (Contract Termination and Suspension).

In addition, the PDSC reserves the right to withhold a portion of subsequent payments owed Contractor which is directly related to the breach of the Contract until the PDSC is satisfied the corrective action has been taken or completed.

XV. CONTRACT TERMINATION AND SUSPENSION

A. The PDSC may terminate this Contract in whole or in part upon 10 days' written notice to Contractor in the event that –

1. Contractor substantially breaches any duty, obligation, or service required pursuant to this Contract;

2. Contractor engages in misappropriation of funds; or

3. The duties, obligations, or services herein become illegal, or not feasible.

Before the PDSC terminates this Contract pursuant to Section XV A.1, the PDSC shall provide Contractor written notice of termination, which shall include the reasons for termination and the effective date of termination. Contractor shall have the opportunity to submit a written response to the PDSC within 10 working days from the date of the PDSC's notice. If Contractor elects to submit a written response, the PDSC will review the response and make a determination within 10 days after receipt of Contractor's response. In the event Contractor does not concur with the determination, Contractor may request a review of the decision by the PDSC Executive Director. In the event the PDSC Executive reaffirms termination, the Contract shall terminate in 10 days from the date of the final decision of the PDSC Executive Director. The Contract will remain in full force pending communication of the PDSC Executive Director to Contractor. A decision by the PDSC Executive affirming termination shall become effective 10 days after it is communicated to Contractor.

B. Contractor reserves the right to terminate this Contract with cause with 30 days written notice should the PDSC substantially breach any duty, obligation or service pursuant to this Contract. In the event that Contractor terminates this Contract for reasons other than good cause resulting from a substantial breach of this Contract by the PDSC, Contractor shall be liable for damages, including the excess costs of the procurement of similar services from another source, unless it is determined by the PDSC that (i) no default actually occurred, or (ii) the failure to perform was without Contractor's control, fault or negligence.

C. In the event of the termination or suspension of this Contract, Contractor shall continue to represent clients that were previously assigned and the PDSC will be liable for any payments owed for the completion of that work. Contractor will remit to the PDSC any monies paid for cases not yet assigned or work not performed under the Contract. The PDSC may request that Contractor attempt to withdraw from any case assigned and not completed. Should a court require, after Contractor has attempted to withdraw, the appearance of counsel from Contractor on behalf of any client previously represented by Contractor where such representation is no longer the obligation of Contractor pursuant to the terms of this Contract, the PDSC will honor payment to Contractor upon judicial verification that continued representation is required.

D. In the event that termination is due to misappropriation of funds, non-performance of the scope of services, or fiscal mismanagement, Contractor shall return to the PDSC those funds,

unexpended or misappropriated, which, at the time of termination, have been paid to Contractor by the PDSC.

E. Otherwise, this Contract shall terminate on the date specified herein, and shall be subject to extension only by mutual agreement of both parties hereto in writing.

F. Nothing herein shall be deemed to constitute a waiver by either party of any legal right or remedy for wrongful termination or suspension of the Contract.

XVI. NOTICES

Contractor will immediately notify the PDSC in writing if one of the following events occurs:

A. Bar Discipline. When it becomes aware that a complaint lodged with the Oregon State Bar has resulted in discipline, reprimand, suspension, or disbarment of any attorney who is a member of Contractor's staff or working for Contractor.

B. Criminal Charges or Conviction. When it becomes aware that an attorney or investigator performing services under this contract has been charged with or convicted of a crime.

C. Events Impacting Contractor's Ability to Perform Contract. When it becomes aware of an event that impacts its ability to perform services under this contract including, but not limited to, events such as fire, flood, burglary, or other damage to offices, buildings, or equipment used by Contractor to provide services.

D. Embezzlement or Misappropriation of Funds. When it becomes aware of embezzlement or misappropriation of funds as defined in Section III.

E. Ability to Accept Appointments to Eligible Clients. When it becomes aware that Contractor is unable to accept appointments to represent eligible clients.

XVII. CONTRACTOR INSURANCE

Without limiting Contractor's indemnification, it is agreed that Contractor shall maintain in force, at all times during the performance of this Contract, a policy or policies of insurance covering its operation as described below. Contractor shall provide a certificate of insurance or, upon written request of the PDSC, a duplicate of the policy as evidence of insurance protection.

A. General Liability Insurance

At its expense, in whole or in part from contract funds, Contractor, and each independent member of Contractor, shall procure and keep in effect during the contract term comprehensive general liability insurance with an extended coverage endorsement from an insurance company authorized to do business in the State of Oregon. The limits shall not be less than five hundred

thousand dollars ($500,000) per occurrence for personal injury and property damage.

B. Professional Liability Insurance

Contractor shall maintain, or ensure that its attorneys maintain, professional liability insurance for any and all acts which occur during the course of their work for Contractor, and the professional liability insurance must meet the minimum requires as established by the Oregon State Bar.

C. Workers' Compensation

Contractor shall maintain Workers' Compensation coverage as required by the State of Oregon.

XVIII. HOLD HARMLESS AND INDEMNIFICATION

Contractor shall protect, indemnify, defend, and hold harmless the PDSC and the State of Oregon from all liability, obligations, damages, losses, claims, suits, or actions of whatever nature that are related to, result from, or arise out of Contractor's employees' or agents' actions, decisions, work, advice, activities, or failures to act under this Agreement. Notwithstanding the above, Contractor has no duty to indemnify, defend, or hold harmless the PDSC for its actions, decisions, work, activities, or failures to act related to this Agreement.

XIX. RESPONSIBILITY OF CONTRACT ADMINISTRATOR

Contractor shall name a Contract Administrator, who is responsible for contract administration duties in this contract. Typical Contract administration duties include, without limitation, the following:

- Selection of prospective contract attorney members;
- Assigning cases in accordance with contract attorney qualification level and oversight of case assignments;
- Timely and accurate tracking and reporting of caseloads to PDSC;
- Management and disbursement of contract funds;
- Working with PDSC to organize regular meetings to review data and ensure sufficient support to achieve program expectations;
- Consulting with judges, court staff, and other system partners to ensure high quality representation and efficient case processing;
- Corresponding with PDSC regarding contract inquiries or complaints, including changes in contract attorneys and staffing that might impact contractor's ability to meet their contractual obligations;
- Maintaining records of all case reporting, financial and other records regarding contract members and making such records available to PDSC upon request;
- Negotiating new contracts and contract changes with PDSC as necessary;
- Actively participating in system improvement initiatives including multi-disciplinary training and partner meetings and providing training and mentorship to

contract attorneys and staff.

Contract administrators and PDSC will meet a minimum of three times a year to update on items in the contract, issues in the jurisdiction, and any other matters related to the contract and contract administration.

XX. COMPLIANCE WITH APPLICABLE LAW

Contractor shall comply with all federal, state, and local laws, regulations, and ordinances applicable to its status as an entity and the work to be done under this contract. Such laws include, but are not limited to, the following laws, regulations and executive orders to the extent they are applicable to this Contract: (i) Titles VI and VII of the Civil Rights Act of 1964, as amended; (ii) Title V and Sections 503 and 504 of the Rehabilitation Act of 1973, as amended; (iii) the Americans with Disabilities Act of 1990 and ORS 659A.142, as amended; (iv) Executive Order 11246, as amended; (v) the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act portion of the American Recovery and Reinvestment Act of 2009 (ARRA), including the Privacy and Security Rules found at 45 CFR Parts 160 and 164, as the law and its implementing regulations may be updated from time to time; (vi) the Age Discrimination in Employment Act of 1967, as amended, and the Age Discrimination Act of 1975, as amended; (vii) the Vietnam Era Veterans' Readjustment Assistance Act of 1974, as amended; (viii) Section 188 of the Workforce Investment Act (WIA) of 1998, as amended; (ix) ORS Chapter 659, as amended; (x) all regulations and administrative rules established pursuant to the foregoing laws; and (xi) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations. These laws, regulations and executive orders are incorporated by reference herein to the extent that they are applicable to the Contract and required by law to be so incorporated.

XXI. NONDISCRIMINATION

During the performance of this Contract, neither Contractor nor any party subcontracting with Contractor under the authority of this Contract shall discriminate on the basis of race, color, sex, religion, national origin, creed, marital status, age, sexual orientation, or the presence of any sensory, mental, or physical handicap in employment or application for employment or in the administration or delivery of services or any other benefit under this agreement.

Contractor shall comply fully with all applicable federal, state, and local laws, ordinances, executive orders, and regulations which prohibit such discrimination.

XXII. CONFLICT OF INTEREST

A. Interest of Members of PDSC and Contractor

No officer, employee, or agent of the PDSC, or the State of Oregon, who exercises any functions or responsibility in connection with the planning and implementation of the services funded herein shall have any personal financial interest, direct or indirect, in this Contract, or Contractor.

B. Interests of Contract Administrators and Officers

Contractor shall not acquire or rent real and/or personal property owned or rented by (a) an officer of Contractor, (b) a Contract administrator, (c) an individual related to an officer of Contractor or Contract administrator, or (d) a corporation owned by Contractor, a Contract administrator, an officer of Contractor, or relative of an officer of Contract or Contract administrator, without prior disclosure and approval by the PDSC

XXIII. MERGER CLAUSE

This writing, together with Exhibits A, B, and C, constitutes the entire agreement between the parties. There are no other oral or written understandings, agreements, or representation regarding this agreement. No waiver, consent, modification, or change of terms of this agreement shall bind either party unless made in writing and signed by both parties. If made, such waiver, consent, modification, or change shall be effective only in the specific instance and for the specific purpose given. Contractor, by the signature below of its authorized representative hereby acknowledges that it and all attorneys providing representational services pursuant to this contract, have read this agreement, understand it, and agree to be bound by its terms.

Agreed:

_____	_____
PDSC	Date
_____	_____
Contractor	Date

EXHIBIT A – COMPENSATION

The compensation for this contract is detailed below. These amounts may be amended:

- By mutual assent of the parties;
- Following receipt of Contractor's Profile Report, based upon a change in the attorney qualification status of its attorneys; or
- Following a contract modification authorized by Section X.

Compensation authorized by this contract may be withheld:

- When Contractor has a vacancy that has not been filled for 60 days;
- When Contractor fails to submit reports as required by Section XII;
- In response to the breach, corrective action, and termination provisions established in Sections XIV and XV.

Contractor shall be compensated at two rates based upon the number of Attorney FTE in their contract – Attorney 1 and Attorney 2. This contract includes funding for the following Attorney FTE:

Attorney 1:	FTE at	per year.
Attorney 2:	FTE at	per year.

In addition, the contract contains the following funds:

EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR CRIMINAL CONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following caseload and workload standards:

A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.

B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.

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

C. Case Weighting and Annual Caseload Limits: The annual caseload limit for a 1.0 FTE attorney is 300 weighted cases per year, which corresponds to 25 weighted cases per month. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:

- Murder: 50
- Jessica Law: 50
- Ballot Measure 11: 6.7
- Major (A/B) Felonies: 2.2
- Minor (C) Felonies: 1.8
- Misdemeanors: 1
- Probation Violation: .36
- Civil Commitments: 1.3

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

E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:

- 0-14 Days, 25%
- 15-30 Days, 50%
- 31-89 Days, 75%
- 90 Days or more, 100%

F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.

- The additional weighting does not apply to Murder or Jessica's Law cases;
- If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.

G. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:

- The attorney has represented the client for a year or more and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
- The case is retried following a hung jury; or
- The case returns for a new trial or sentencing following a direct appeal or post-conviction relief.

H. Extraordinary Case Weighting: Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to the PDSC's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by PDSC for this purpose.

I. Case Closure: Contractor shall close a client's case when:

1. The final judgment or order has been entered into the court register, and the

Contractor has met all other contractual obligations:

- If the appointment was for a probation violation, the attorney shall close the case upon disposition of the probation violation.
- A judgment of dismissal constitutes a final judgment.
- An attorney may not close a case that has been entered into a deferral, diversion, or conditional discharge agreement until the final judgment has been entered into the court register;

2. A judge has signed an order removing the attorney from the case; or

3. A bench warrant for a client's failure to appear has been active for 180 days.

EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR JUVENILECONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following caseload and workload standards:

A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the caseload and workload limits described below. Contractor agrees that all attorneys will accept appointments to case types that they are qualified, competent, and reimbursed. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts. Due to jurisdictional differences in practice, the annual caseload limits are subject to a 15% variance.

B. Annual Caseload Limits: Below is the maximum number of cases a 1.0 FTE attorney may be assigned per calendar year, if the attorney was assigned only cases from one case type.

- Murder: 6
- Delinquency 132
- Dependency 69
- Probation Violation 825

C. Case Weighting and Annual Caseload Limits: No 1.0 FTE attorney shall be assigned more than 300 weighted cases per year, which corresponds to 25 weighted cases per month. The maximum number of cases an FTE Attorney may be assigned is equal to the product of their percentage of FTE Attorney and the percentage of the year they are under contract (300 Weighted Cases x Percent FTE x Percent of Year under Contract). Each case type receives the following weights:

- Murder: 50
- Delinquency 2.3
- Dependency 4.3
- Probation Violation .36

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

E. Partial Representation Weighting: When an attorney's representation ends prior to the entry of a final order or judgment, the attorney shall be assigned a percentage of the case weight described in B, based upon the following formula:

- 0-14 Days, 25%
- 15-30 Days, 50%
- 31-89 Days, 75%
- 90 Days or more, 100%

F. Out of County Weighting: When an attorney accepts an appointment to a case outside the county or counties for which this contract is contemplated, the case shall receive twice the case weighting described in B. An attorney shall endeavor to accept appointments to current clients in other counties to support the best practice of one client, one lawyer.

- The additional weighting does not apply to Murder or Jessica's Law cases;
- If an attorney is assigned to an out of county client with more than one case, the most serious case type will be the case for which double credit is assigned.

G. Juvenile Case Weighting: The following rules apply to juvenile contracts specifically:

- Sibling Groups: When an attorney represents one or more children in a sibling group, they will receive a full case weight for the oldest child and half (0.5) of a case weight for each sibling; up to a maximum total weight of three (3.0). If an attorney represents a parent, they will receive one case weight. This rule applies to both dependency and termination cases.
- Post Disposition Additional Sibling: If a new petition is filed regarding a sibling of a child client or clients whose cases are post disposition, then the new appointment will receive one (1.0) additional case weight.
- Formal Accountability Agreements: Representation regarding a formal accountability agreement will receive half (0.5) of a delinquency case weight.
- Waiver Hearings: If the state files a motion requesting a waiver hearing in a case eligible for waiver, then the case will receive one (1.0) additional case weight. When an attorney continues to represent a client in criminal court after the juvenile court waives jurisdiction, the attorney will receive additional case weighting for the criminal case, consistent with these guidelines.

H. Additional Case Weighting: In addition to the assigned case weight in B, an attorney may treat the case as a new appointment and receive a new case weight:

- The attorney has represented the client for a year or more and the case has been delayed pursuant to a bench warrant, a dismissal without prejudice, or issues surrounding aid and assist;
- The case is retried; or
- The case returns for a new trial or sentencing following a direct appeal or post-adjudication relief.

I. Extraordinary Case Weighting: Cases that involve extraordinary circumstances and require work well beyond the range of work typically required for the type of case may be granted additional case weight, subject to the PDSC's discretion. No earlier than thirty (30) days after being appointed in any particular case and no later than thirty (30) days after final disposition, an attorney seeking additional case weight for extraordinary circumstances may submit such a request using the form provided by PDSC for this purpose.

J. Case Closure: Contractor shall close a case when one of the following has been entered into the court register, and the attorney has met their contractual obligations:

- Dependency, permanent guardianship, and termination-of-parental-rights cases
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and/or terminating the wardship over the child;
  - An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
  - An order or judgment disestablishing the parentage of the attorney's client;
  - An order or judgment terminating the parental rights of the attorney's client;
  - An order or judgment granting an adoption of the attorney's client; or
  - An order terminating or vacating the attorney's appointment.

- Delinquency cases
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and terminating the wardship over the youth;
  - An order terminating or vacating the attorney's appointment;
  - A bench warrant, which has remained in effect for 180 days.

EXHIBIT B – CASELOAD AND WORKLOAD STANDARDS FOR PCRP CONTRACT

Contractor agrees that its attorneys will provide legal services in accord with the following workload standards:

A. Overview: Contractor agrees to accept appointments to represent eligible clients, and to provide legal services in accord with this Contract to those eligible clients, when requested by the PDSC, unless doing so would violate the workload limits described below. A 1.0 FTE Attorney shall maintain an open caseload of 80 cases. Contractor shall ensure that 1.0 FTE attorneys funded pursuant to this contract do not engage in other paid legal work, unless the PDSC agrees in writing. The caseload standards for attorney FTE may be adjusted by the mutual assent of the PDSC and Contractor if a portion of Contractor's responsibilities include administration, training, supervision, or specialty courts.

B. General Case Counting Standards

- Representing one parent, legal guardian, or child in a dependency case counts as one case.
- Representing one parent, legal guardian, or child in a termination-of-parental-rights case counts as one case.
- Representing multiple children in a dependency case counts as one case for the first child and as 0.5 cases for each additional child.
- Representing one youth in a delinquency case up through the time of disposition counts as one case.
- Representing one youth in a delinquency case after disposition counts as .5 of a case.
- Pre-appointment representation of one child, youth, parent, or legal guardian, preapproved by OPDS, counts one case.
- Pre-appointment representation of multiple children, preapproved by OPDS, counts as one case for the first child and as 0.5 cases for each additional child.
- When representation on a case begins and ends within the same calendar month, the case can count toward the attorney's open caseload until the end of that calendar month unless the court allows the attorney to withdraw due to a conflict.

C. Case Count Adjustments

- Delinquency cases in which the alleged conduct, if committed by an adult, would constitute murder or a crime subject to ORS 137.707 shall be granted an additional case count.
- Any case in which the attorney accepts an appointment in a county other than those specified in this Contract shall be granted an additional case count.
- Cases that involve extraordinary circumstances and require work well beyond the range of work typically required in juvenile cases may be granted additional case

counts, subject to OPDS's discretion. No earlier than thirty (30) days after being appointed in any particular case, an attorney seeking approval for extraordinary circumstances case counts for that case shall use the form provided by OPDS.

- For any client or sibling group, the attorney may count a maximum of three cases in their open caseload, except that additional case counts granted pursuant to subsections (a) through (c) above shall be in addition to this maximum.

D. Case Closure

- For dependency, permanent guardianship, and termination-of-parental-rights cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and/or terminating the wardship over the child;
  - An order or judgment establishing a guardianship over the child, unless the attorney is actively working on the case;
  - An order or judgment disestablishing the parentage of the attorney's client;
  - An order or judgment terminating the parental rights of the attorney's client;
  - An order or judgment granting an adoption of the attorney's client; and
  - An order terminating or vacating the attorney's appointment.

- For delinquency cases, Contractor shall, thirty (30) days after the court enters any of the following types of orders or judgments, close the case and discontinue reporting it in their open caseload:
  - An order or judgment dismissing the petition;
  - An order or judgment dismissing the case and terminating the wardship over the youth;
  - An order terminating or vacating the attorney's appointment; or
  - A bench warrant for a youth's failure to appear has been active for 180 days.

EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR CRIMINAL CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.

B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.

C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.

D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC's written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.

E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings

not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.

F. Pre-appointment representation. Where an individual would be eligible for appointed counsel at state expense if charged with a crime, but exigent circumstances preclude an appointment order, Contractor may commence representation of a client prior to appointment by the court in order to preserve and protect the rights of the client, upon written approval from the PDSC. In determining whether to authorize pre-appointment representation, the PDSC will consider whether:

- The individual is a clear target of the investigation;
- The Contractor has a good faith basis to conclude the individual seeks counsel;
- It is reasonable for the Contractor to believe the person qualifies for public defense counsel; and
- The case is of a magnitude for which pre-indictment/petition appointment is reasonable.

G. Initial Appearances. Contractor shall provide representation at all arraignment and first appearance hearings, unless the PDSC agrees in writing otherwise. Contractor shall work with the PDSC and the court to determine schedules for providing representation at arraignments and first appearance hearings in jurisdictions in which there is more than one Contractor. Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. Contractor will include the attorney's contact information in the notice to the client.

H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- Providing representation at all scheduled hearings and court proceedings;
- Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
- Devote sufficient time to interviewing and counseling clients;
- Seek pretrial release of all detained clients when the client so desires;
- Assure all necessary investigation is conducted;
- Pursue all avenues of discovery from the prosecution, both formal and informal;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and
- Sufficiently prepare for all hearings, trials, and sentencings.

I. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of sentencing or other disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of sentencing or other disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing motions for reduction of certain felonies to misdemeanors, pursuant to ORS 161.705, when merited and requested by a former Client;
- Consulting with counsel representing the client on appeal or in post-conviction relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to appellate or post-conviction relief counsel.

EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR JUVENILE CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.

B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.

C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.

D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC's written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.

E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings

not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.

F. Pre-appointment representation. Pre-appointment representation (also referred to as "prepetition representation") means representation of a parent, legal guardian, or child during a child welfare investigation by the Oregon Department of Human Services and representation of a youth during a law enforcement investigation, before a court has appointed counsel for that person and typically before a proceeding under ORS chapter 419B or ORS chapter 419C has been initiated

Contractor may commence pre-appointment representation only with pre-approval from PDSC. In determining whether to authorize pre-appointment representation, PDSC will consider whether the agency has a good faith basis to conclude the individual seeks counsel, and it is reasonable for the agency to believe the person financially qualifies for public defense counsel.

G. Initial Appearances. Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless the PDSC agrees in writing otherwise. The Contractor shall work with The PDSC and the court to determine schedules for providing representation at these hearings in jurisdictions in which there is more than one Contractor. The Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. The Contractor will include the attorney's contact information in the notice to the client.

H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- Providing representation at all scheduled hearings and court proceedings;
- Filing timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- Filing or arranging for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
- Devote sufficient time to interviewing and counseling clients;
- Seek pretrial release of all detained clients when the client so desires;
- Assure all necessary investigation is conducted;
- Pursue all avenues of discovery from the prosecution, both formal and informal;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case; and
- Sufficiently prepare for all hearings, trials, and sentencings.

I. Post-Adjudication Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- Filing a motion for a review hearing under ORS 419C.626, as requested by a youth client;
- Consulting with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.

EXHIBIT C – ADDITIONAL PERFORMANCE REQUIREMENTS FOR PCRP CONTRACT

Contractor agrees to provide legal services in accord with the additional performance standards:

A. Continuity of representation. Continuity of representation at all stages of a case, sometimes referred to as "vertical" representation, promotes efficiency, thoroughness of representation, and positive attorney/client relations. Contractor agrees to make reasonable efforts to continue the initial attorney assigned to a client throughout all cases for that client assigned in this Contract. Nothing in this section shall prohibit Contractor from making necessary staff changes or staff rotations at reasonable intervals, or from assigning a single attorney to handle an aspect of legal proceedings for all clients where such method of assignment is in the best interest of the eligible clients affected by such method of assignment.

B. Client contact. Contractor agrees that an attorney will make contact with all clients as soon as possible and not later than 24 hours after arraignment or first appearance (excluding weekends and legal holidays) for in-custody clients, and no later than 72 hours (excluding weekends and legal holidays) for out-of-custody clients. During the initial contact, an attorney will make reasonable efforts to conduct interviews of clients or to schedule such an interview.

C. Conflicts/Withdrawal. Conflicts of interest may arise in numerous situations in the representation of indigent persons. Contractor agrees to screen all cases for conflict upon assignment and throughout the discovery process. Conflict decisions will be governed by the Oregon State Bar Rules of Professional Conduct. If a conflict rises to the point where withdrawal is necessary, Contractor shall promptly notify the court, shall ensure continuous representation of a client until withdrawal is granted, and, if withdrawal is allowed by the court, shall assist in the prompt establishment of a new attorney/client relationship.

D. Attorney Departure/Continuous Representation. When a public defense attorney leaves a Contractor, they shall comply with the Oregon Rules of Professional Conduct and may not move to withdraw from their cases without contacting PDSC and obtaining PDSC's written permission. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in the same jurisdiction, the attorney shall take their existing cases with them unless PDSC authorizes otherwise. If a public defense attorney leaves a Contractor and continues doing public defense work funded by PDSC in a different jurisdiction, the attorney shall work collaboratively with their former Contractor, their new Contractor, and PDSC to ensure the due administration of justice and protect the rights of their existing clients. In no event shall a contractor withdraw from their cases without ensuring that representation of a client will continue.

E. Proceedings Specifically Not Required. Representation under this contract specifically excludes matters related to Department of Motor Vehicle license suspension hearings, civil forfeiture proceedings, domestic relations, probate proceedings, and other civil proceedings

not otherwise provided for under this contract. Representation in these matters may be undertaken at an attorney's discretion pro bono.

F. Pre-appointment representation. Contractor may commence pre-appointment representation only with pre-approval from PDSC. In determining whether to authorize pre-appointment representation, PDSC will consider whether the agency has a good faith basis to conclude the individual seeks counsel, and it is reasonable for the agency to believe the person financially qualifies for public defense counsel.

G. Initial Appearances. Contractor shall provide representation at all shelter hearings, detention hearings, and other initial appearances, unless the PDSC agrees in writing otherwise. The Contractor shall work with The PDSC and the court to determine schedules for providing representation at these hearings in jurisdictions in which there is more than one Contractor. The Contractor shall provide prompt notification to the court and client of the specific attorney assigned to each case. The Contractor will include the attorney's contact information in the notice to the client.

H. Representation Obligations Following the Commencement of Proceedings. Contractor shall provide representation during the pendency of a case through judgment or other final order of the court on the case, including, but not limited to:

- Provide representation at all scheduled hearings and court proceedings;
- File timely motions to dismiss in cases subject to diversion agreements, conditional discharge, or similar provisions;
- File or arrange for the filing of petitions for writ of mandamus or habeas corpus arising from the case on which counsel is appointed. The PDSC may have special counsel for this case type and attorneys may request special counsel;
- Attend all meetings as appropriate and as requested by client where DHS, OYA and/or other state actors or parties are present and discussing matters relevant to the case
- Advocate for client at all court hearings;
- Meet and communicate with clients before court hearings and CRB reviews; in response to client contact; when a significant change of circumstances needs to be discussed; when notified that a youth or child's placement has been changed; or when a lawyer learns of emergencies of significant events impacting the youth or child.
- Devote sufficient time to interviewing and counseling clients in a developmentally and culturally appropriate manner;
- Seek pretrial release of all detained clients when the client so desires;
- Assure a thorough, continuing, and independent review and investigation of the case is conducted;
- Utilizing independent investigators and case managers/social workers/mitigation specialists, as appropriate, to provide comprehensive representation;

- Pursue all formal and informal avenues of discovery from the prosecution, the juvenile department, law enforcement, DHS, and OYA;
- Obtain and review all applicable recordings including, but not limited to, medical, dental, school, employment, military, and mental health records;
- Conduct or supervise sufficient legal research to fully understand and, if necessary, prepare legal briefings on client's case;
- Sufficiently prepare for all hearings, trials, and sentencings; and
- Endeavor to spend, on average, one-third of their time meeting with clients, one-third of their time on case preparation, and one-third of their time on court appearances and case-related meetings.

I. Post-Judgment Obligations. Following the entry of judgment or other final order in a case, counsel shall provide post-judgment representation in accordance with the Oregon Rules of Professional Conduct, including, but not limited to:

- Seeking modification or amendment of any judgment or final order that does not accurately reflect terms of disposition favorable to the client that were agreed upon in resolution of the case or pronounced by the court and through inadvertence or error not correctly included in a judgment or final order;
- Litigating issues of restitution arising from the case until a judgment on restitution is entered by the court;
- Completing questionnaires, forms, or other processes necessary to timely obtain appellate counsel for clients requesting an appeal;
- Seeking court orders or other remedies on behalf of a client if a term of disposition favorable to the client is not followed or implemented by a probation department, Department of Corrections, the Department of Human Services, the Oregon Youth Authority, or other entity having authority over the client in connection with the subject of the representation;
- Filing a motion for new trial;
- Filing a motion to set aside an order of the juvenile court pursuant to ORS 419C.610, as requested by a youth client;
- Filing a motion for a review hearing under ORS 419C.626, as requested by a youth client;
- Consulting with counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation; and
- Upon request, providing copies of the entire file to counsel representing the client on appeal, in a motion to set aside a judgment or order under ORS 419B.923 or ORS 419C.610, or in post-adjudication relief proceedings arising from the subject of the representation.

APPENDIX E: OCDLA UTCR PROPOSALS

E.1 (FORMER) CHIEF JUSTICE WALTERS LETTER TO CJAC TO EVALUATE OCDLA'S UTCR PROPOSALS

E.2 CHIEF JUSTICE FLYNN UPDATE ON OCDLA'S PROPOSALS

E.3 UTCR COURT EFFICIENCIES PROPOSED VS. RECOMMENDED

E.4 LETTER FROM OCDLA RE: CRISIS PLAN ASSISTANCE (WASHINGTON CO. EXAMPLE)

E.1

Martha L. Walters
Chief Justice

1163 State Street
Salem, OR 97301-2563
Phone: 503.986.5668
Fax: 503.986.5730
Oregon Relay Service: 711
Martha.L.Walters@ojd.state.or.us

OREGON SUPREME COURT

October 18, 2022

Criminal Justice Advisory Committee
The Honorable Rafael Caso, Chair
The Honorable Melvin Oden-Orr, Vice Chair
c/o Kimberly Rose, OJD Criminal Law Analyst & Committee Staff
Kimberly.Rose@ojd.state.or.us

Dear Chair Caso, Vice Chair Oden-Orr, and CJAC Committee Members,

Thank you all for your continued efforts to improve the administration of justice, support access to justice for all, and for advising me on issues in the state criminal justice system.

When I created CJAC in 2020, I asked the committee to recommend how courts can best serve individuals and entities in the criminal justice system including through the use of remote court proceedings. Consequently, a remote proceedings subcommittee was established, and its recommendations guided my decisions for criminal case types.

I am again asking for the committee's assistance in evaluating proposals for court and legal system efficiencies.

As you likely are aware, Oregon is facing an unprecedented public defense crisis. On any given day, more than 1,000 individuals charged with a crime are waiting for a court appointed attorney. Some remain in custody without an attorney. The Oregon Judicial Department (OJD) is working with the Public Defense Services Commission (PDSC) to address the immediate crisis, as well as the executive and legislative branches to consider structural and systemic changes needed to overhaul our public defense system in Oregon, so as to fully recognize and enforce the constitutional right to counsel.

The current public defense crisis is truly an all-hands-on-deck situation. Proposals to improve our justice system and court efficiencies, and to recruit and retain additional public defenders, are being not just considered seriously, but urgently, by the PDSC, every branch of state government, and public defense stakeholders.

As part of those efforts, the Oregon Criminal Defense Lawyers Association (OCDLA) has proposed UTCR amendments and has recommended a number of procedural changes that are intended to contribute some solutions to the current situation. I am grateful to the OCDLA for their expedient and thoughtful work, and I would like your help in evaluating them. Some of the OCDLA proposals and recommendations would result in significant procedural changes

impacting not only courts and defense bar, but also our other justice partners, including district attorneys, the Department of Corrections, and sheriff offices. The impact on the courts may vary, depending on the size of the court's criminal docket.

I request that CJAC convene a subcommittee for the purposes of evaluating the proposals, seek criminal justice system stakeholder input, and make recommendations to me and to the UTCR Committee on how best to move forward. I also request that CJAC coordinate its work with the UTCR Committee and include members of the UTCR Committee in its evaluation of the proposals.

There is an urgency to this work, so I request that you bring recommendations to me as you formulate them. If there are actions that courts can take that do not require UTCR changes, I would like to take them before the completion of the UTCR process. If you have recommendations that will impact the UTCRs, please get them to the UTCR Committee well in advance of the 2023 Spring UTCR Committee Meeting. The OCDLA proposals provide the genesis for this request, but please feel free to think more broadly about system efficiencies. As we are discussing ways to address the public defense crisis, others—courts and stakeholders—may also provide suggestions for the subcommittee to consider.

Please keep me informed as you work your way through these serious issues. I would appreciate a progress report by March 1, 2023, if not before.

You may also be aware that OJD is taking part in the three-branch legislative workgroup addressing the issues related to public defense. That work may include addressing system efficiencies and may inform the work of the UTCR Committee and CJAC.

I thank you in advance for your willingness to consider the OCDLA's proposals and recommendations and to work collaboratively with the UTCR Committee, along the timeline that I have requested, to identify and recommend solutions to alleviate this crisis. OJD Criminal Law Analyst Kimberly Rose and UTCR Reporter Aja Holland are available to coordinate this effort, and I encourage you to reach out to them with any questions or concerns. I have also attached copies of my letters to the UTCR Committee and the OCDLA, along with the initial letters from the OCDLA.

I look forward to working with you and considering your recommendations as you provide them, and I remain ever grateful for your service.

Sincerely,

Martha L. Walters
Chief Justice

MLW:jm/22eMLW037jm
Attachments

Martha L. Walters
Chief Justice

1163 State Street
Salem, OR 97301-2563
Phone: 503.986.5668
Fax: 503.986.5730
Oregon Relay Service: 711
Martha.L.Walters@ojd.state.or.us

OREGON SUPREME COURT

October 18, 2022

Uniform Trial Court Rules Committee
c/o Aja Holland, UTCR Reporter
Aja.T.Holland@ojd.state.or.us

Dear UTCR Committee Members,

Each year, our courts, practitioners, and court users across the state benefit from your thoughtful consideration of new proposals for amending the Uniform Trial Court Rules (UTCRs) and Supplementary Local Rules (SLRs). I know that it is a huge task, and I greatly appreciate each of you dedicating your time and talents to this effort.

I am so delighted that you are able to meet in person again after a long three-year break. And I regret that I am unable to join you, and thank you, in person this week. I hope the thoughts set out in this letter will help to guide your discussions and what undoubtedly will be difficult conversations. I write both to sincerely offer my thanks and to provide some additional background regarding several of the proposals.

As you know, this UTCR cycle, you have been asked to delve into several topics of the utmost importance to the functioning of our legal system. We need your careful evaluation of these proposals – including as to the challenges they seek to address and how UTCR amendments perhaps could solve them, and how they may present new opportunities to improve transparency, increase efficiency, promote consistency, and enhance our ability to ensure access, inclusion, and equitable outcomes for all.

First, some background about a few of the proposals:

- **Electronic Recording and Writing (Media in Courts) – UTCR 3.180**

  During the last UTCR cycle, the UTCR Committee made recommendations to a variety of UTCRs to update and clarify their application to remote proceedings. I approved the committee's recommended amendments (with an effective date of August 1, 2022) – with one exception. I am asking you to reconsider an earlier recommendation to amend UTCR 3.180 in light of comments received from the Bar Press Broadcasters Council (Council) and proposed amendments from members of that body. In past years, the Council has been instrumental in working with the Committee to ensure that our rules reflect the constitutional guarantees of open courts and freedom of speech and the press. Thank you in advance for being open to these comments and for giving them the full consideration to which they are due. I trust that you will develop a solution that preserves our principles of open courts and

freedom of the press, while also taking appropriate steps to protect the privacy and safety of court participants.

- **Proposals to Improve Court Efficiencies in Criminal Cases – UTCR 4.010, 4.020, 4.040, 4.060, 4.130, 4.140, and 7.010**

  As you likely are aware, Oregon is facing an unprecedented public defense crisis. On any given day, more than 1,000 individuals charged with a crime are waiting for a court appointed attorney. Some remain in custody without an attorney. The Oregon Judicial Department (OJD) is working with the Public Defense Services Commission (PDSC) to address the immediate crisis, and also with the executive and legislative branches to consider structural and systemic changes needed to overhaul our public defense system in Oregon, so as to fully ensure and enforce the constitutional right to counsel.

  The current public defense crisis is truly an all-hands-on-deck situation. Proposals to improve our justice system and court efficiencies, and to recruit and retain additional public defenders, are being considered not just seriously, but urgently, by the PDSC, every branch of state government, and public defense stakeholders.

  As part of those efforts, the Oregon Criminal Defense Lawyers Association (OCDLA) has proposed a number of UTCR amendments (mostly in Chapter 4, and one in Chapter 7) that are intended to contribute some solutions – on the ground, in the courts – to the current situation. I am grateful to the OCDLA for their expedient and thoughtful work in developing both these proposals and other recommendations that they have offered to OJD as ways to increase court efficiencies. Some of the OCDLA's UTCR proposals would result in significant procedural changes impacting not only courts and defense bar, but also our other justice partners, including district attorneys, the Department of Corrections, and sheriff offices. The impact of the proposals on courts may vary, depending on the size of the court's criminal docket.

  As some of you may know, in 2020, I established the OJD Criminal Justice Advisory Committee (CJAC), whose purpose is to consider and make recommendations to the Chief Justice on matters regarding the state's criminal justice system, to improve the administration of justice, and to achieve positive outcomes for individuals and communities. I have asked CJAC to evaluate the OCDLA proposals and to coordinate with the UTCR Committee in preparing recommendations for my consideration. I understand that you may want to discuss the proposals and put them out for public comment, but please work with CJAC before making recommendations to me. Specifically, please appoint members of the UTCR Committee to meet with CJAC as it evaluates the OCDLA proposals and appropriate next steps. You will want to be ready to address the OCDLA proposals by the time set for your spring 2023 meeting, so that you can decide whether to make final recommendations to the Chief Justice at that time. UTCR Reporter Aja Holland and OJD Criminal Law Analyst Kimberly Rose are available to coordinate this effort, and I encourage you to reach out to them with any questions or concerns.

  Thank you in advance for your considering the OCDLA's proposals in the manner I have outlined. I have also attached copies of my letters to CJAC and the OCDLA for your reference.

- **Accommodation Requests for Expression of Milk – UTCR 7.060**

  You also have been asked to consider whether court users should be allowed to request accommodations to express milk in the same manner as other ADA requests. This proposal represents an important step toward ensuring inclusion and fairness in our courts – more particularly, in ensuring that each person who enters our courtrooms can fully participate. This proposal dovetails with ongoing work that others – most notably, our Office of the State Court Administrator (OSCA) and the Oregon Supreme Court Council on Inclusion and Fairness (OSSCIF) – are doing to improve the availability of, and equitable access to, our court facilities. I know that we can do many things to modernize our court facilities, some of which require a more significant "lift," such as working with our counties to seek bond funds for improved or new courthouses. But this proposed change would be an important modernization step that we could take as part of this UTCR cycle, and I appreciate your consideration of it.

And now, the thanks:

First, I thank the retiring Committee members for your service – a HUGE thank you to judges Bushong, Hung, and Zennaché, and attorney Bryan Francesconi, for your six years of dedication to this Committee and all the work that that commitment entails. This Committee has both relied on and benefitted from your knowledge and experienced leadership, and your shoes will be very difficult to fill.

Second, I was sad to learn that Gene Hallman would be retiring from the practice of law – not only will the profession lose a skilled practitioner, but this Committee will also suffer a loss. I have many fond memories of my time serving on the Committee with Gene many years ago, and I wish him the very best in retirement and thank him for his longstanding and thoughtful service as a civil law representative for eastern Oregon.

Finally, I hope you will all join me in warmly welcoming Washington County Judge Miranda Summer to the Committee. Judge Summer is replacing Judge Ramon Pagán and he gave her his highest recommendation. I know that Judge Summer will bring both experience and a fresh perspective to the Committee, and I am always grateful when a new member agrees to take on this important and time-consuming responsibility.

I look forward to receiving your final recommendations in the spring, and I remain ever grateful for your service.

With warm regards and many thanks,

Sincerely,

Martha L. Walters
Chief Justice

MLW:jm/22eMLW036jm
Attachments

Martha L. Walters
Chief Justice



1163 State Street
Salem, OR 97301-2563
Phone: 503.986.5668
Fax: 503.986.5730
Oregon Relay Service: 711
Martha.L.Walters@ojd.state.or.us

OREGON SUPREME COURT

October 18, 2022

Oregon Criminal Defense Lawyers Association
Mae Lee Browning, Legislative Director
MLBrowning@ocdla.org

Dear Oregon Criminal Defense Lawyers Association (OCDLA),

I want to thank your organization – and its members – for your steadfast commitment to contributing solutions to Oregon's current public defense crisis. I am grateful for your expedient and thoughtful work in developing both a series of Uniform Trial Court Rule (UTCR) proposals and other recommendations for system efficiencies. Over the last few weeks, the Oregon Judicial Department (OJD) has carefully reviewed your proposals and we have developed the following plan for evaluating them.

First, as you know, in 2020 I established OJD's Criminal Justice Advisory Committee (CJAC). Its purpose is to consider and make recommendations to the Chief Justice on matters regarding the state's criminal justice system, to improve the administration of justice and achieve positive outcomes for individuals and communities. I have asked CJAC to discuss and evaluate your proposals and appropriate next steps, including seeking additional criminal justice stakeholder input, and to make recommendations to me. I have asked CJAC to coordinate its evaluation of your proposals with the UTCR Committee. You can reach out to OJD Criminal Law Analyst Kimberly Rose with any questions pertaining to CJAC review of the proposals.

Second, I have asked the UTCR Committee and CJAC to coordinate their evaluation processes. The committees have different expertise and coordination will be helpful. I anticipate the committees will work together as follows:

a. The UTCR Committee may consider the OCDLA proposals at its October 20, 2022, meeting and send them out for public comment;

b. The UTCR Committee will refrain from making recommendations on the proposals until it has conferred with CJAC;

c. Some UTCR Committee members will be appointed to meet with CJAC as it evaluates the proposals, including obtaining criminal justice stakeholder input; and

d. CJAC recommendations concerning UTCR proposals will be provided to the UTCR Committee before its March 2023 meeting.

UTCR Reporter Aja Holland will be coordinating this effort, and I encourage you to reach out to her with any questions about the process.

Third, the process I have outlined does not mean that the courts and other stakeholders will not take action until next year. OJD and individual courts already have taken some of the actions you proposed, such as expanded omnibus hearing opportunities in Multnomah County and changes to the integration between Odyssey and the Oregon State Bar that accommodate entry of temporary Bar admittees into the Odyssey system. I have asked CJAC to make recommendations to me as it proceeds with its work, and individual courts also may take more immediate action as warranted.

Fourth, as you undoubtedly are aware, OJD is also taking part in the three-branch legislative workgroup addressing issues relating to public defense. We are excited about participating with the executive and legislative branches, with valued input of public defenders, to discuss how we can reform our public defense system to recruit and retain more lawyers, establish a stable public defense workforce, and ensure that each and every individual who is constitutionally entitled to counsel secures representation at the appropriate time. That work may also include addressing system efficiencies and may inform the work of CJAC and the UTCR Committee.

Once again, thank you for all the work that you and your members do for our communities. Your work is so important and valued, and I am honored to be a part of helping Oregon find permanent solutions to these ongoing challenges. I look forward to seeing what we will accomplish together.

Sincerely,



Martha L. Walters
Chief Justice

MLW:jm/22eMLW038jm
Attachments

To:	**Chief Justice Martha Walters and the Oregon Judicial Department**
From:	**OCDLA Public Defense Reform Task Force**
Date:	**September 8, 2022**
Re:	**Legal System Efficiencies to Move Cases Along and Increase Capacity of Public Defense Attorneys and Staff**

As you know, Oregon faces an unprecedented crisis in access to justice, in particular for families with children in the foster care system (and at risk for termination of parental rights) and for low-income individuals who have been accused of crimes and not yet assigned legal representation. Courts, prosecutors, and defense attorneys all play key roles in the system of justice and it is our collective responsibility to come together to resolve this crisis. One way we can do that immediately is to identify inefficiencies in the justice system. Creating or improving efficiencies saves lawyer and court time. It increases capacity in the public defense system to better serve current clients or take on additional clients.

The OCDLA Public Defense Reform Task Force has identified a number of procedural challenges that lead to inefficient use of attorney and court time. Some of these suggestions overlap with the suggestions raised by defense attorneys in the Chief Justice's Multnomah County Summit in April 2022.

OCDLA will submit a Court Efficiencies Package to the UTCR Committee for consideration at its October meeting. **We request the Chief Justice's endorsement of the package and active participation in urging its passage before the UTCR Committee. In addition, due to the current crisis in access to justice, we request implementation of any of these changes that may be within the power of the Chief Justice on a more emergency basis.**

For procedural challenges that require action outside of the UTCR Committee, **we request the Chief Justice's leadership in helping resolve those challenges by:**

1) working within OJD to adopt changes within its purview;
2) issuing a package of Temporary CJOs where appropriate;
3) encouraging Presiding Judges to adopt certain efficiencies and procedures;
4) initiating/supporting legislation that impacts legal system efficiencies; and/or
5) facilitating on-going discussions and collaboration with key stakeholders and OPDS/PDSC.

Below are a few identified areas for action and collaboration:

1. Omnibus Hearings
2. Mass Scheduling Dockets
3. Reduce Multiple Court Appearances and Streamline "Check-In" Appearances
4. Initial Plea Offers

5. Negotiation of Plea Offers
6. Allow Emailed Requests Instead of E-Filing Motions/Declarations/Proposed Orders
7. Dismissals
8. Judicial Settlement Conferences
9. Global Resolutions and Probation Violations
10. Remote Hearings

1. Schedule Omnibus Hearings Before Trial, Not the Day of Trial

Problem: Courts in some jurisdictions (Multnomah. Washington, and Lane counties, for example) schedule the omnibus hearing the morning of trial, while other counties schedule the hearing a number of days before trial (Marion County, for example). This means that the defense attorney must prepare for the Motion to Suppress (for example) and prepare for trial at the same time. If the defense attorney succeeds on their Motion to Suppress and eliminates the basis on which the prosecutor can proceed with their case, the defense attorney has already spent several hours preparing for a trial that does not occur. The defense attorney could have spent those hours on other cases. If, at the Motion to Suppress hearing, the defense attorney is unsuccessful or only successful in eliminating one of several charges their client is facing, doing so may have changed the posture of the case such that the prosecutor presents a new plea offer, which the accused person accepts. In this situation, the defense attorney has spent hours preparing for a trial that does not occur.

Solution: Create a uniform statewide rule that requires scheduling the omnibus hearing at least 7 days in advance of the trial. Doing so creates earlier opportunities for advocacy that improves attorney-client relationships and creates new off-ramps to resolve cases earlier in the process.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. A rule requiring that omnibus hearings be scheduled a number of days before trial will help:
- Prosecutors and defense attorneys, by saving them time preparing for a trial that resolves at the omnibus hearing;
- The courts, by freeing up time on their dockets to schedule other trials;
- Law enforcement, by avoiding the overtime pay for trial;
- Witnesses, by avoiding appearing at a trial when the case resolves at a motion hearing; and
- Victims, by avoiding testifying at trial when the case resolves at the motion hearing.

2. Streamline Mass Scheduling Dockets

Problem: Defense attorneys spend hours at a mass scheduling dockets. Mass scheduling docket procedures vary from county to county and make it incredibly difficult for defense attorneys to practice across jurisdictions.

Solution A: Allow scheduling by email with a standard form that the parties efile a certain number of days before "call." This would allow a prosecutor and defense attorney who have a trial scheduled to begin on Tuesday to efile a form for Friday's "call" stating that they jointly request a reset.

Solution B: Another solution is for the court to provide a smaller time window for attorneys to appear. For example, a court could schedule a small number of cases every 15 to 30 minutes rather than scheduling all cases at 9 a.m., for example.

Solution C: Individual judge docketing would create the greatest efficiencies for practitioners and the public because a judge who is managing their own calendar will hold all parties accountable for wasting the court's greatest resource - judicial time - and will facilitate increased communication between the parties around discovery, motions, and witnesses, as well as create more opportunities for omnibus motions.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Reducing the number of or reducing the time spent at check-in type appearances will save prosecutors', defense attorneys', and courts' time. It will also help the general public that appears before the court because people will not have to arrange for time off of work to travel to court, arrange for childcare, and find public transportation, if available.

3. Reduce Multiple Court Appearances and Streamline "Check-In" Appearances

Problem: During a criminal case, there are often multiple court appearances where defense attorneys are required to check-in with the court to report the status of the case or request a new trial date or other court date. Defense attorneys must travel to court, wait for their case to be called, only to ask for a new date, which is time the attorney could spend working that case or their other cases. For the general public who are clients of public defense attorneys, multiple court appearances means that people have to take time off work and medical appointments, arrange for childcare and transportation to the courthouse, all which destabilizes prosocial connections. Multiple court appearances also creates the risk of bench warrants and creates opportunities to interact with higher risk individuals.

Solution: In each judicial district, identify all the court appearances required in a criminal case and reduce the number of required appearances. If a scheduling court date is needed, allow the parties, in lieu of appearing in person, to email a standard form a certain number of days (1 or 2 business days) before a scheduling/reporting court appearance. OJD could look into creating a uniform setover form for criminal scheduling/status-check appearances. The template/form would include a motion, declaration, and order all-in-one for the defense attorney to sign. The form could be a Word document or fillable form with checkboxes for the common reasons more

time is needed (for example, seeking an expert, more investigation required, have not received all of the discovery) and an area to write-in why the setover is being requested. Measures to assure that the defendant has notice of their next court date can be included.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Reducing the number of or reducing the time spent at check-in type appearances will save prosecutors', defense attorneys', and courts' time.

4. Initial Plea Offers

Problem: The issuing DDA who has just reviewed all the discovery to charge the case is in the best position at the time to craft an initial offer. This does not occur in all jurisdictions. Having an offer early in a case gives the defense attorney something to discuss with their client right away rather than wait weeks or months for a court date and the DDA issue a boilerplate offer.

Solution: DDAs should make an opening offer on misdemeanors and felony grid block cases as a matter of course when an indictment is issued. If there is no offer extended within the first 30 days of a case, DAs should be required to communicate in writing an individualized reason why an offer is not made.

Additional Systemic Benefits: A uniform statewide rule will help courts, prosecutors, and defense attorneys in moving cases along.

5. Allow Negotiation of Plea Offers Until Trial and Eliminate Plea Deadlines

Problem: In some counties, there is a triggering event that cuts off meaningful negotiations. Negotiations to settle a case oftentimes occur close to the trial date, especially the week before trial. Disallowing negotiations means that some cases will go to trial when they otherwise would be resolved with a plea. In Washington County, there is a Final Resolution Conference, after which no negotiations are allowed. More times than not, Final Resolution Conferences do not result in a plea. In contrast, there are no plea deadlines in Multnomah County. In Lane County, the prosecutor's plea offer states that the plea offer will be withdrawn if the accused files a Motion to Suppress or any other challenge to the evidence.

Solution: Eliminate barriers and deadlines to negotiate plea offers. In Washington County, allow negotiations to continue after the Final Resolution Conference up until the trial. In Lane County, prohibit the withdrawal of a plea offer based on the filing of a Motion to Suppress or any motion to challenge the evidence. This would result in more Motions to Suppress filed earlier on in the case, and in conjunction with a rule that those motions will be litigated *before* trial, this change would mean more cases would be resolved before trial without the need for preparation by both the defense and the prosecutor. In sum, there should never be a court rule that prevents negotiations at any time up to and including trial. The court should encourage negotiations up to

the time of trial. Additionally, the court should not agree to any rule or process or recognize any DA policy to the contrary.

Additional Systemic Benefits: A uniform statewide rule would help courts, prosecutors, and defense attorneys in moving cases along. Such a rule will also help law enforcement, witnesses, and victims from having to appear at a trial if the case can be resolved before trial.

6. Allow Emailed Requests Instead of E-Filing Motions/Declarations/Proposed Orders

Problem: In some counties, like Clackamas, a defense attorney can request a release hearing, for example, by sending an email to calendaring and copying the DDA on the email. The release hearing will then be set within 48 hours. In other counties, like Union and Wallowa, the court requires a motion, declaration, and proposed order be efiled and submitted stating the DDA's position. If the defense attorney does not know the DDA's position or the DDA has not responded with their position, the court will hold the motion pending the DDA's response before setting a release hearing. Public defenders who have moved from a county in which a motion/declaration/proposed order was required to one where those filings were not required comment on how much time is saved with the latter method.

Solution: Where possible, allow email requests instead of e-filed motion/declaration/proposed orders and establish uniformity statewide.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Such a rule would help the system as a whole by moving cases along.

7. Increase Effectiveness of Judicial Settlement Conferences

Problem: We appreciate the Chief Justice's efforts in finding retired judges to help resolve cases. Judicial settlement conferences can be very effective. DA offices, which are experiencing staffing issues, sometimes send DDAs to a settlement conference who do not have authority to settle the cases. They have to return to their office and staff the case with a supervising or senior DDA, which slows down case resolution.

Solution: Require a decision-making DDA negotiating authority in order to settle the case at the settlement conference.

Additional Systemic Benefits: A uniform statewide rule would help the system as a whole by moving cases along.

8. Dismissals

Problem: The prosecution controls the flow of cases into the system; the defense reacts to those decisions. The prosecution also controls what cases get diverted from the system into treatment

courts and which cases get dismissed. ORS 135.755 only allows the court, on its own motion, or the district attorney to request the court to dismiss a case in the furtherance of justice. Just recently, there has been a practice in Multnomah County of allowing the defense to request the court to consider dismissal of non-domestic violence misdemeanors in the furtherance of justice. The more criminal cases that are put into the system, the more public defense attorneys are needed. The more unresolved cases a public defense attorney has as part of their open caseload when those cases could be dismissed, the less capacity the attorney has to take on new cases.

Solution: The stakeholders, with the Chief Justice's leadership, should come together to take a look at what cases need to be in the criminal legal system and what cases should be diverted from the systems. Stakeholders should have an eye towards ensuring public safety and an acknowledgement of the detrimental effects of court-involvement on an individual trying to participate in their community.

9. Streamline Global Resolutions and Probation Violations

Problem: Defense attorneys are able to 'globally resolve' a client's cases. However, doing so almost always requires the client to do a plea and sentence in one county, then make a trip to the other county to do the same. Also, it is complicated for people on probation. People on probation can get their supervision transferred to a probation officer in the county where they live, but any alleged probation violation can often result in transfers from jail to jail, when the cases could be resolved all at the same time. Additionally, in some jurisdictions, people who are sentenced on a probation violation have to set a separate plea date on their other cases, which requires more hearings that the defense attorney must prepare for, delaying resolution of all cases in one court appearance.

Solution: Utilize remote hearings in courts and video appearances from jails to eliminate the time transporting clients from jurisdiction to jurisdiction and the time that defense attorneys spend traveling for those hearings. Require mandatory remote hearings in probation violation cases to avoid jail to jail transfers. Additionally, if a person admits to and is sentenced on a probation violation, the person should be able to resolve their other pending cases when they resolve the probation violation.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Such a rule would free up court time, prosecutors' time, defense attorneys' time, and law enforcement time by avoiding having to transport adults in custody.

10. Remote Hearings

Problem: Remote hearings are an area where the Chief Justice and OJD has an important role in advocating for increased consistency among counties. Each county has developed its own practices regarding remote hearings and many counties have returned to in-person hearings when

they had previously utilized remote hearings. We have heard from public defense providers that one of the reasons they will not accept some out-of-county cases is because the judges in that county won't allow telephonic appearances when the attorney believes it is appropriate.

Solution: Now would be a good opportunity for counties to learn from each other and assess the options available for remote hearings. Over the last 2 years, attorneys and judges learned the strengths and weaknesses of remote appearances. Everyone has been pushed to learn new skills and understand the impact of technology in our lives. We have all been asked to re-evaluate "the way things have always been." This is our opportunity to evaluate the status quo and create ways to make our system more accessible for all.

Additional Systemic Benefits: A uniform rule increasing the use of remote hearings statewide would make practicing across multiple jurisdictions less onerous. More remote hearings would reduce public defense attorneys' time spent traveling to and from the courthouse and sitting in court, which would free up their capacity to work on their other cases. It will also help the general public that appears before the court because people will not have to arrange for time off of work to travel to court, arrange for childcare, and find public transportation, if available.

Conclusion

With the Chief Justice's leadership, the above-mentioned problems and solutions could be solved within OJD, through the UTCR Committee, via legislation, and in stakeholder conversations where the expectation for a final work product are made clear. OCDLA will continue to solicit court efficiency ideas from our public defense attorneys and share them with the Chief Justice.

There are a number of issues outside of the Chief Justice's purview and which take up a lot of attorney time, such as communications with and visits to people in custody in local jails. Getting in touch with clients in jail is difficult and leads to considerable time spent going to and from the jail when a phone call or video visit would suffice. Not every jail allows defense attorneys to call in to their clients. What would be a 15-minute call turns into significant time spent by the attorney finding time to go to the jail during jail visiting hours and between the attorney's court appearances and office appointments, travel time to and from the jail, and meeting with their client in-person. Additionally, professional visiting hours at some jails may be too limited, especially for out of county defense attorneys on serious felony cases that require a lot of time with the client. There is no one solution to this problem. It will take stakeholders coming together in a good faith effort to find solutions, but first, with the recognition that the problem results in decreased public defender capacity.

OCDLA looks forward to working with our criminal legal system partners to increase efficiency and capacity for everyone.

To: **Uniform Trial Court Rule Committee**
From: **Oregon Criminal Defense Lawyers Association**
Date: **September 9, 2022**
Re: **Legal System Efficiencies to Move Cases Along and Increase Capacity of Public Defense Attorneys and Staff**

As Oregon faces an unprecedented crisis in access to justice, it is the collective responsibility of courts, prosecutors, and defense attorneys to come together to resolve the crisis. One way we can do that immediately is to identify inefficiencies in the legal system. Creating or improving efficiencies saves lawyer and court time. It increases capacity in the public defense system to better serve current clients or take on additional clients.

OCDLA solicited ideas from our members across the state to identify several procedural challenges that lead to inefficient use of attorney and court time. Some of these suggestions overlap with the suggestions raised by defense attorneys in the Chief Justice's Multnomah County Summit in April 2022. OCDLA has complied these suggestions into this package for the UTCR Committee to consider. This package will address:

- Omnibus Hearings, Pretrial Motions, and Motions to Suppress Evidence;
- Scheduling of Status Appearances;
- Procedure For Requesting and Scheduling Certain Appearances;
- Oral Argument on Motions to Postpone;
- Global Resolutions;
- Pretrial Dismissals; and
- Discovery Disclosures, Witness and Exhibit Lists for Trial, Plea Agreements, and Reduction of Multiple Court Appearances.

Thank you for your consideration. If you have any questions, please contact me at mlbrowning@ocdla.org.

Sincerely,



Mae Lee Browning
Legislative Director, Oregon Criminal Defense Lawyers Association
mlbrowning@ocdla.org
310-227-7659 (cell)

1. Omnibus Hearings, Pretrial Motions, and Motions to Suppress Evidence.

Problem: Courts in some jurisdictions (Multnomah. Washington, and Lane counties, for example) schedule the omnibus hearing the morning of trial, while other counties schedule the hearing a number of days before trial (Marion County, for example). This means that the defense attorney must prepare for the Motion to Suppress (for example) and prepare for trial at the same time. If the defense attorney succeeds on their Motion to Suppress and eliminates the basis on which the prosecutor can proceed with their case, the defense attorney has already spent several hours preparing for a trial that does not occur. The defense attorney could have spent those hours on other cases. If, at the Motion to Suppress hearing, the defense attorney is unsuccessful or only successful in eliminating one of several charges their client is facing, doing so may have changed the posture of the case such that the prosecutor presents a new plea offer, which the accused person accepts. In this situation, the defense attorney has spent hours preparing for a trial that does not occur.

Solution: Create a uniform statewide rule that requires scheduling the omnibus hearing at least 7 days in advance of the trial. Doing so creates earlier opportunities for advocacy that improves attorney-client relationships and creates new off-ramps to resolve cases earlier in the process.

Additional systemic benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. A rule requiring that omnibus hearings be scheduled a number of days before trial will help:

- Prosecutors and defense attorneys, by saving them time preparing for a trial that resolves at the omnibus hearing;
- The courts, by freeing up time on their dockets to schedule other trials;
- Law enforcement, by avoiding the overtime pay for trial;
- Witnesses, by avoiding appearing at a trial when the case resolves at a motion hearing; and
- Victims, by avoiding testifying at trial when the case resolves at the motion hearing.

Proposal:

UTCR 4.010 TIME FOR FILING PRETRIAL MOTIONS IN CRIMINAL CASES

(1) In the absence of a showing of good cause or an SLR to the contrary, motions for pretrial rulings on matters subject to ORS 135.037 and ORS 135.805 to 135.873 must be filed in writing not less than 21 days before trial or within 7 days after the arraignment, whichever is later.

(2) For any motion other than a motion to suppress, the opposing party may file a written memorandum of authorities in response to the matters raised in the motion not later than 14 days from the date of service or the date of filing the motion, whichever is later.

(3) A reply memorandum, if any, must be filed within 7 days of the service or filing of the responding memorandum, whichever is later.

(4) Notwithstanding subsections (2) and (3) above, the hearing on all motions subject to ORS

135.037 must be set at least 7 judicial days prior to the date set for trial, except for good cause shown or upon agreement of the parties.

Proposal:

4.060 MOTION TO SUPPRESS EVIDENCE

(1) All motions to suppress evidence:

1. Must be brought to hearing not less than 7 days before trial except, upon a showing of good cause, a judge may set the hearing within 7 days of trial, but in no case should the hearing be set upon the day of trial.
2. Must cite any constitutional provision, statute, rule, case, or other authority upon which it is based; and
3. Must include in the motion document the moving party's brief, which must sufficiently apprise the court and the adverse party of the arguments relied upon. If the evidence sought to be suppressed was obtained without a warrant, it is sufficient for the moving party to so state.

(2) Any response to a motion to suppress:

4. Must, in the absence of a showing of good cause or an SLR to the contrary, be served and filed, together with opposing affidavits, if any, upon which it is based, not more than 7 days after the motion to suppress has been filed;
5. Must state the grounds thereof and, if the relief or order requested is not opposed, wholly or in part, a specific statement of the extent to which it is not opposed; and
6. Must make specific reference to any affidavits relied on and must be accompanied by an opposition brief adequate reasonably to apprise the court and moving party of the arguments and authorities relied upon.

(3) When averments in an affidavit are made upon information and belief, the affidavit must indicate the basis thereof.

(4) Failure to file a written response shall not preclude a hearing on the merits.

2. Scheduling of Status Appearances.

Problem: Defense attorneys spend hours at a mass scheduling dockets. Mass scheduling docket procedures vary from county to county and make it incredibly difficult for defense attorneys to practice across jurisdictions.

Solution A: Allow scheduling by email with a standard form that the parties efile a certain number of days before "call." This would allow a prosecutor and defense attorney who have a trial scheduled to begin on Tuesday to efile a form for Friday's "call" stating that they jointly request a reset. For example, during the pandemic, Lane County created a checklist form for 35 day call that the parties efile by 5pm the day before "call." The proposal below addresses this solution.

Solution B: Another solution is for the court to provide a smaller time window for attorneys to appear. For example, a court could schedule a small number of cases every 15 to 30 minutes rather than scheduling all cases at 9 a.m., for example.

Solution C: Individual judge docketing would create the greatest efficiencies for practitioners and the public because a judge who is managing their own calendar will hold all parties accountable for wasting the court's greatest resource - judicial time - and will facilitate increased communication between the parties around discovery, motions, and witnesses, as well as create more opportunities for omnibus motions.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Reducing the number of or reducing the time spent at check-in type appearances will save prosecutors', defense attorneys', and courts' time. It will also help the general public that appears before the court because people will not have to arrange for time off of work to travel to court, arrange for childcare, and find public transportation, if available.

Proposal:

4.020. SCHEDULING OF STATUS (NON-SUBSTANTIVE) APPEARANCES.

When a case is set for appearance solely for the purpose of reporting on the status or progress of the case, by 5pm 2 judicial days before the hearing, the parties may file a form provided at www.courts.oregon.gov/forms reporting on the status of the case and requesting settlement conference, ready for change of plea/sentencing, unopposed setover request, or opposed setover request.

(1) Unless the technology is not available where the appearance is to take place, the court must allow parties to appear by remote means.

3. Procedure For Requesting and Scheduling Certain Appearances.

Problem: In some counties (Clackamas County, for example), a defense attorney can request a release hearing by sending an email to calendaring and copying the DDA on the email. The release hearing will then be set within 48 hours. In other counties (Union and Wallowa counties, for example), the court requires a motion, declaration, and proposed order be efiled and submitted stating the DDA's position. If the defense attorney does not know the DDA's position or the DDA has not responded with their position, the court will hold the motion pending the DDA's response before setting a release hearing. Public defenders who have moved from a county in which a motion/declaration/proposed order was required to one where those filings were not required comment on how much time is saved with the latter method.

Solution: Allow email requests instead of e-filed motion/declaration/proposed orders and establish uniformity statewide.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Such a rule would help the system as a whole by moving cases along.

Proposal:

4.040. PROCEDURE FOR REQUESTING AND SCHEDULING CERTAIN APPEARANCES

In lieu of a formal Motion and Order, and upon appropriate notice to opposing counsel, either party may request a Release Hearing, Release Revocation Hearing, Request to Modify Terms of Release, Change of Plea and/or Sentencing, or similar appearance.

(1) The request may be made by email or other electronic means, with opposing counsel included as a recipient of the communication. If the request is made in writing or orally, the requesting party shall provide opposing counsel's position, or, if unknown, certify that opposing counsel has been notified and indicate how and when that notification was conveyed.

(2) Upon receipt of the request for hearing, the court must set the hearing as soon as practicable, allowing sufficient time for the prosecutor to comply with any victim-notification requirements.

4. Oral Argument on Motions to Postpone.

Problem: There are often multiple court appearances where defense attorneys are required to check-in with the court to report the status of the case or request a new trial date or other court date.

Solution: Reduce the number of in-person court appearances when the issue could be resolved in other ways.

Proposal:

4.50 ORAL ARGUMENT ON MOTIONS IN CRIMINAL CASES

(1) Oral argument may be requested by the moving party in the caption of the motion or by a responding party in the caption of a response. The first paragraph of the motion or response must include an estimate of the time required for argument and a statement whether official court reporting services are requested. The court must allow oral argument unless:

~~(a) The motion requests a trial postponement; or~~

(b) The court receives documents that resolve the motion before the time set for hearing.

5. Global Resolutions.

Problem: Defense attorneys are able to 'globally resolve' a client's cases. However, doing so almost always requires the client to do a plea and sentence in one county, then make a trip to the other county to do the same. Also, it is complicated for people on probation. People on probation can get their supervision transferred to a probation officer in the county where they live, but any alleged probation violation can often result in transfers from jail to jail, when the cases could be

resolved all at the same time. Additionally, in some jurisdictions, people who are sentenced on a probation violation have to set a separate plea date on their other cases, which requires more hearings that the defense attorney must prepare for, delaying resolution of all cases in one court appearance.

Solution: Utilize remote hearings in courts and video appearances from jails to eliminate the time transporting clients from jurisdiction to jurisdiction and the time that defense attorneys spend traveling for those hearings. Require mandatory remote hearings in probation violation cases to avoid jail to jail transfers. Additionally, if a person admits to and is sentenced on a probation violation, the person should be able to resolve their other pending cases when they resolve the probation violation.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Such a rule would free up court time, prosecutors' time, defense attorneys' time, and law enforcement time by avoiding having to transport adults in custody.

Proposal:

4.130 REMOTE APPEARANCE IN LIEU OF TRANSPORTATION.

When, as a result of negotiations, an incarcerated defendant intends to resolve cases in more than one jurisdiction, any appearance required in a court other than the court of jurisdiction in the county in which the defendant is incarcerated, must be by remote means unless the parties agree otherwise.

6. Pretrial dismissals.

Problem: The prosecution controls the flow of cases into the system; the defense reacts to those decisions. The prosecution also controls what cases get diverted from the system into treatment courts and which cases get dismissed. ORS 135.755 only allows the court, on its own motion, or the district attorney to request the court to dismiss a case in the furtherance of justice. Just recently, there has been a practice in Multnomah County of allowing the defense to request the court to consider dismissal of non-domestic violence misdemeanors in the furtherance of justice. The more criminal cases that are put into the system, the more public defense attorneys are needed. The more unresolved cases a public defense attorney has as part of their open caseload when those cases could be dismissed, the less capacity the attorney has to take on new cases.

Solution: Criminal legal system stakeholders should take a look at what cases need to be in the criminal legal system and what cases should be diverted from the systems. Stakeholders should have an eye towards ensuring public safety and an acknowledgement of the detrimental effects of court-involvement on an individual trying to participate in their community. One solution is to allow the defense to move for dismissals.

Proposal: (Language borrowed from Washington CrR 8.3).

UTCR 4.140 PRETRIAL DISMISSAL

1. On Motion of Prosecution. The court may, in its discretion, upon written motion of the prosecuting attorney setting forth the reasons therefor, dismiss an indictment, information or complaint.

2. On Motion of Court. The court, in the furtherance of justice, after notice and hearing, may dismiss any criminal prosecution due to arbitrary action or governmental misconduct when there has been prejudice to the rights of the accused which materially affect the accused's right to a fair trial. The court shall set forth its reasons in a written order.

3. On Motion of Defendant for Pretrial Dismissal. The defendant may, prior to trial, move to dismiss one or more charges in an accusatory instrument.

(a) The defendant's motion shall be in writing and supported by an affidavit or declaration alleging that there are no disputed material facts and setting out the agreed facts, or by a stipulation to facts by both parties. The stipulation, affidavit or declaration may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding the motion to dismiss.

(b) The prosecuting attorney may submit affidavits or declarations in opposition to defendant's supporting affidavits or declarations. The affidavits or declarations may attach and incorporate police reports, witness statements or other material to be considered by the court when deciding defendant's motion to dismiss.

(c) The court shall grant the motion if there are no disputed material facts and the undisputed facts do not establish a prima facie case of guilt. In determining defendant's motion, the court shall view all evidence in the light most favorable to the prosecuting attorney and the court shall make all reasonable inferences in the light most favorable to the prosecuting attorney. The court may not weigh conflicting statements and base its decision on the statement it finds the most credible. The court shall not dismiss a sentence enhancement or aggravating circumstance unless the underlying charge is subject to dismissal under this section. If the trial court subsequently rules that some or all of the prosecuting attorney's evidence is inadmissible, the defendant may file a new motion to dismiss.

(d) If the defendant's motion to dismiss is granted, the court shall enter a written order setting forth the evidence relied upon and conclusions of law. The granting of defendant's motion to dismiss shall be without prejudice.

7. Discovery Disclosures, Witness and Exhibit Lists for Trial, Plea Negotiations, and Reduction of Multiple Court Appearances.

Discovery Timelines

Problem: Delayed and late disclosure of discovery is a significant contributor to delays in court proceedings and resolution of cases. Defense counsel's ethical obligation to fully and completely advise clients regarding all options in their case cannot occur without full and complete discovery.

Too frequently, discovery, including Brady evidence, is not disclosed and is revealed for the first time during hearings and trials, or even in post-conviction proceedings.

Solution: The timing of disclosure should be mandatory and immediate with specific timelines for initial, supplemental, and responsive discovery, as well as final witness and exhibit lists for trial. Initial discovery should require the DA to provide a copy of all discovery in their possession and control no later than the first appearance. Defense counsel should be afforded time to review this evidence prior to arguing initial release. Supplemental discovery should be disclosed to the defense within 10 or 14 days of it being in the state's possession and control, and responsive discovery should be provided within 14 days of a request. If the discovery is not available, a response should be sent to indicate the timeline for disclosure. The parties should be required to file final witness lists at least 30 days prior to trial, identifying the names of all witnesses that the party may present at trial, except solely for impeachment, and separately identifying those that the party expects to call and those it may call if the need arises. The parties should also be required to file final exhibit lists at least 30 days prior to trial, identifying each document or other exhibit that it may present at trial other than solely for impeachment, separately identifying those that the party expects to offer and those it may offer if the need arises. If the parties agree on an alternate schedule, the court should enter an order consistent with that agreement. Only those witnesses timely disclosed and identified on the witness list should be permitted to testify at trial, except for rebuttal witnesses whose testimony could not reasonably be anticipated before trial, or except for good cause shown. Only those exhibits timely disclosed and identified on the exhibit list should be considered for admission at trial, except for rebuttal exhibits that could not reasonably be anticipated before trial, or except for good cause shown.

Initial Plea Offers

Problem: The issuing DDA who has just reviewed all the discovery to charge the case is in the best position at the time to craft an initial offer. This does not occur in all jurisdictions. Having an offer early in a case gives the defense attorney something to discuss with their client right away rather than wait weeks or months for a court date and the DDA issue a boilerplate offer.

Solution: DDAs should make an opening offer on misdemeanors and felony grid block cases as a matter of course when an indictment is issued. If there is no offer extended within the first 30 days of a case, DAs should be required to communicate to defense counsel in writing an individualized reason why an offer is not made.

Negotiation of Plea Offers and Elimination of Plea Deadlines

Problem: In some counties, there is a triggering event that cuts off meaningful negotiations. Negotiations to settle a case oftentimes occur close to the trial date, especially the week before trial. Disallowing negotiations means that some cases will go to trial when they otherwise would be resolved with a plea. In Washington County, there is a Final Resolution Conference, after which no negotiations are allowed. More times than not, Final Resolution Conferences do not result in a plea.

In contrast, there are no plea deadlines in Multnomah County. In Lane County, the prosecutor's plea offer states that the plea offer will be withdrawn if the accused files a Motion to Suppress or any other challenge to the evidence.

Solution: Eliminate barriers and deadlines to negotiate plea offers. In Washington County, allow negotiations to continue after the Final Resolution Conference up until the trial. In Lane County, prohibit the withdrawal of a plea offer based on the filing of a Motion to Suppress or any motion to challenge the evidence. This would result in more Motions to Suppress filed earlier on in the case, and in conjunction with a rule that those motions will be litigated *before* trial, this change would mean more cases would be resolved before trial without the need for preparation by both the defense and the prosecutor. In sum, there should never be a court rule that prevents negotiations at any time up to and including trial. The court should encourage negotiations up to the time of trial. Additionally, the court should not agree to any rule or process or recognize any DA policy to the contrary.

Additional Systemic Benefits: A uniform statewide rule would help courts, prosecutors, and defense attorneys in moving cases along. Such a rule will also help law enforcement, witnesses, and victims from having to appear at a trial if the case can be resolved before trial.

Reduction of Multiple Court Appearances

Problem: During a criminal case, there are often multiple court appearances where defense attorneys are required to check-in with the court to report the status of the case or request a new trial date or other court date. Defense attorneys must travel to court, wait for their case to be called, only to ask for a new date, which is time the attorney could spend working that case or their other cases. For the general public who are clients of public defense attorneys, multiple court appearances means that people have to take time off work and medical appointments, arrange for childcare and transportation to the courthouse, all which destabilizes prosocial connections. Multiple court appearances also creates the risk of bench warrants and creates opportunities to interact with higher risk individuals.

Solution: If a scheduling court date is needed, allow the parties, in lieu of appearing in person, to email a standard form a certain number of days (1 or 2 business days) before a scheduling/reporting court appearance. OJD could look into creating a uniform setover form for criminal scheduling/status-check appearances. The template/form would include a motion, declaration, and order all-in-one for the defense attorney to sign. The form could be a Word document or fillable form with checkboxes for the common reasons more time is needed (for example, seeking an expert, more investigation required, have not received all of the discovery) and an area to write-in why the setover is being requested. Measures to assure defendant has notice of their next court date can be included.

Additional Systemic Benefits: A uniform statewide rule would make practicing across multiple jurisdictions less onerous. Reducing the number of or reducing the time spent at check-in type appearances will save prosecutors', defense attorneys', and courts' time.

Proposal:

UTCR 7.010 PLEAS, NEGOTIATIONS, DISCOVERY, AND TRIAL DATES IN CRIMINAL CASES

(1) At the time of arraignment, the court may either accept a not guilty plea and set a trial date or set a date for entry of a plea in accordance with subsections (2) and (3) of this section.

(2) Disclosures must proceed as follows, unless otherwise agreed by the parties or as ordered by the court pursuant to subsection (5) of this section:

(a) Disclosures required by ORS 135.815 through 135.835:

i. Initial disclosure: The state shall provide a copy of all discovery in the state's possession, custody, or control no later than the first appearance after any charging instrument is filed in the case.

ii. Supplemental disclosure: Materials that enter into the state's possession, custody, or control after the first appearance must be disclosed within 10 days from when they enter into the state's possession, custody, or control.

iii. Responsive disclosure: Additional discovery must be disclosed within 14 days of the request by either party, or alternatively, if the materials are not in the parties' possession within the 14 day deadline, the party should respond with a reasonable timeline for disclosure. The parties must make a good faith effort to disclose the materials within the 14 day deadline.

(b) Disclosure of witnesses and exhibits for trial:

i. At least 30 days prior to the trial date, each party must provide to the other party and promptly file a list of the names of all witnesses that it may present at trial other than solely for impeachment, separately identifying those the party expects to call and those it may call if the need arises. Only those witnesses timely disclosed under subsection (a) of this section and timely listed under this subsection will be permitted to testify at trial, except for rebuttal witnesses whose testimony could not reasonably be anticipated before trial, or except for good cause shown.

ii. At least 30 days prior to the trial date, each party must provide to the other party and promptly file a list that identifies each document or other exhibit that it may present at trial other than solely for impeachment, separately identifying those the party expects to offer and those it may offer if the need arises. Only those exhibits timely disclosed under subsection (a) of this section and timely listed under this subsection will be considered for admission at trial, except for rebuttal exhibits that could not reasonably be anticipated before trial, or except for good cause shown.

(3) At the first appearance following the filing of an accusatory instrument that commences a prosecution, the state must provide an initial plea offer. If there is no offer extended within the first 30 days of a case, the state is required to communicate to defense counsel in writing an individualized reason why an offer

is not made. Plea agreements, and negotiations shall be allowed to continue up to, and including, the day of trial. Discovery, and investigations must be concluded by a date as set by the court which is:

(a) For defendants in custody, not less than 21 days after arraignment but, in any event, not later than 35 days prior to the trial date; and

(b) For defendants who are not in custody, not less than 35 days after arraignment, but not later than the 35th day prior to the trial date.

(c) In no case shall the state condition an offer upon the requirement that the defendant forego filing motions to challenge the admissibility of evidence at trial or require that the defendant waive any constitutional or statutory right.

(4) Not later than the date set pursuant to subsection (2), trial counsel must report the following:

(a) Whether a jury trial is requested;

(b) The probable length of trial;

(c) The need for a pretrial hearing; and

(d) Any other matter affecting the case.

(5) Relief from the dates set pursuant to subsections (2) and (3) of this rule shall be granted for good cause shown. For purposes of this rule, good cause may include agreement of the parties.

(6) Upon the stipulation of the parties, any court appearance required under this rule or SLR may be continued to an agreed upon future date by notification to the court not less than one judicial day prior to the appearance. The court may reschedule the future appearance to accommodate the court's calendar upon notice to the parties.

E.2

Meagan A. Flynn
Chief Justice

1163 State Street
Salem OR 97301
Phone: 503.986.5676
Fax: 503.986.5730
Oregon Relay Service:711

OREGON SUPREME COURT

June 13, 2023
(BY EMAIL)

Oregon Judicial Department
Criminal Justice Advisory Committee (CJAC)
CJAC Case Processing Subcommittee
c/o Co-Chairs Judge Oden-Orr and Judge Francesconi
Melvin.Oden-Orr@ojd.state.or.us
Bryan.B.Francesconi@ojd.state.or.us

Oregon Criminal Defense Lawyers Association (OCDLA)
Mae Lee Browning, Legislative Director
MLBrowning@ocdla.org

Oregon District Attorneys Association (ODAA)
Daniel Primus, ODAA President
Daniel.Primus@umatillacounty.net

Uniform Trial Court Rules (UTCR) Committee
c/o Aja Holland, UTCR Reporter
Aja.T.Holland@ojd.state.or.us

Re: OCDLA Criminal Case Processing Submissions – UTCR Outcomes and Next Steps

Dear Members of the CJAC Case Processing Subcommittee and the UTCR Committee, and Representatives of OCDLA and ODAA,

I am writing to provide an update on the proposals that the OCDLA submitted to the UTCR Committee and to summarize next steps, as well as to express my appreciation to all involved in the process.

As a general reminder, OCDLA presented a series of proposals to the UTCR Committee for its fall 2022 meeting, intended to improve efficiencies in Oregon's criminal justice

system. As you all know, the cycle for evaluating and adopting the UTCRs is a deliberate process that ensures a thoughtful and thorough review – including an opportunity for public input – relating to proposed trial court rules that, if adopted, would have an impact on attorneys and court users across the state.

At its fall meeting, after considering the OCDLA's proposals, as well as a letter from then-Chief Justice Walters suggesting process considerations, the UTCR Committee agreed to work with the Case Processing Subcommittee of the Chief Justice's Criminal Justice Advisory Committee (CJAC), to consider the proposals in joint fashion and also to distribute the proposals for public comment (in their submitted form) before the Committee's spring 2023 meeting. That joint interim work resulted in a CJAC subcommittee recommendation memo that summarized benefits and obstacles involved in each proposal.

At its spring meeting, the UTCR Committee then separately evaluated each proposal, along with the CJAC subcommittee's memo. The UTCR Committee ultimately recommended adoption of one new rule similar to one in the OCDLA packet – proposed UTCR 4.130 (Remote Appearance in Lieu of Transportation), renumbered to UTCR 4.040 – which will permit the parties to agree that a defendant in custody may appear by remote means at a proceeding to resolve multiple cases, when the appearance is required in a court not located in the county in which the defendant is in custody (unless the court finds good cause to require in-person appearance). I have approved that recommendation; new UTCR 4.040 will become effective August 1, 2023.

The UTCR Committee also partially agreed with another OCDLA proposal – amending current UTCR 7.010(2) to expressly permit parties to present plea agreements up to and including the day of trial. Following the spring UTCR meeting, I solicited additional input on that proposal from our courts, including from Presiding Judges, Trial Court Administrators, and court staff members. That inquiry revealed concerns that, if the rule expressly allowed plea agreements to be presented up to the day of trial, parties could be encouraged to delay negotiations and agreement, which in turn could result in the need for the court to schedule multiple trials on the same dates – in anticipation that more cases would be settled immediately before trial. Based on that feedback, I have adopted a modified version of UTCR 7.010(2), which more simply removes plea agreements and negotiations from the type of activity that must be completed pursuant to certain deadlines. That modified rule – which becomes effective August 1, 2023 – should accomplish the proponents' goals, by in effect removing the deadlines that currently

apply to plea negotiations and agreements, but without inadvertently encouraging parties to delay resolving cases.

Finally, although the UTCR Committee did not recommend amending UTCR 4.010 (Pretrial Motions), the Committee recommended by consensus that the CJAC Case Processing Subcommittee should continue to consider that proposal, in light of any insights gained from Multnomah County Circuit Court's Omnibus Hearings Pilot project. The subcommittee met on March 23, 2023, and May 25, 2023, in part to continue discussion of the proposed amendment to UTCR 4.010. Based on feedback that I received from the subcommittee and others, I have adopted a modified version of UTCR 4.010, which is intended to accomplish the proponents' aims by allowing early resolution of pretrial motions in appropriate cases, including motions which may be dispositive or which, once ruled upon, may assist parties in reaching tentative plea agreements prior to trial. Amended UTCR 4.010 will allow a party to request, in the caption of the motion, that a pretrial motion hearing be held prior to the date of trial. If so requested, the hearing must be held at least 7 days before trial, absent good cause. That amendment becomes effective on August 1, 2023, but will be placed back on the fall 2024 UTCR Committee agenda for further consideration in the next rules cycle.

New UTCR 4.040 and amended UTCR 4.010 and UTCR 7.010 will take effect on August 1, 2023. Amended UTCR 4.010 and UTCR 7.010 have been posted for public comment at https://www.courts.oregon.gov/programs/utcr/pages/currentrules.aspx. The public comment period will be open until 5:00 p.m. on Friday, September 22, 2023, and any comments received will be discussed at the October 19, 2023, UTCR Committee meeting. I invite anyone who would like to comment on the amendment to submit feedback to the Committee. I ask that UTCR Committee members carefully consider any public comments received and, if necessary, make any further recommendations necessary to ensure that the rules, particularly UTCR 4.010, operate as intended and promote the fair and efficient resolution of criminal cases. I plan to carefully consider whether further modification of that rule may be required, based on any feedback that I receive from the committee, judges, trial court administrators, and the public.

Full descriptions of all of the UTCR Committee's actions for this rules cycle, as well as the text of all approved and disapproved rules, are also available at the link above under the "Future Rules" heading (see the document titled "Preface" for explanations).

As you know, the OCDLA submitted several other proposals which the UTCR Committee did not recommend for approval. Those include:

- UTCR 4.020 (new) – Allowing parties to file a form in lieu of attending a status conference or other status appearance;
- UTCR 4.040 (new) – Allowing parties to schedule certain hearings by email;
- UTCR 4.060 (repeal) – Repealing the motion to suppress rule (this proposal was withdrawn by OCDLA during the interim work period);
- UTCR 7.010 (amendments) – Setting discovery deadlines in criminal cases, requiring the state to provide an initial plea offer, and allowing continuances by party agreement (the latter two proposals were withdrawn by OCDLA during the interim work period).

Although the UTCR Committee did not recommend those proposals for approval as court rules, the Committee nevertheless made related recommendations that are scheduled for further action, as follows:

- The CJAC Case Processing Subcommittee and OJD's Law and Policy Workgroup will evaluate whether OJD's interactive form and eFiling system, Guide and File, should be used to facilitate the scheduling of certain criminal hearings, via use of a statewide form (this recommendation arose out of proposed UTCR 4.040);
- OJD will continue to evaluate other system-wide improvements and efficiencies in criminal cases – either by OJD or particular courts, or through other pathways, such as through legislative planning that could lead to creation of a body of Oregon Rules of Criminal Procedure.

I offer my sincere thanks to each of you for your hard work on these proposals over the last nine months. I greatly appreciate the OCDLA and its members taking the time to submit a thoughtful package of proposed rules to improve efficiencies in the criminal justice system and, relatedly, to address issues relating to Oregon's public defender crisis. I also appreciate the ODAA for participating and providing its perspective as to how OCDLA's proposed rules could affect its stakeholders at the local level. And I thank the dedicated members of the UTCR Committee, and also the CJAC Case Processing Subcommittee, for their collaborative and contemplative work. I truly appreciate the time and commitment that went into developing, advocating for, and evaluating the proposed

changes, and your collective ability to come together to reach agreements and make recommendations to help improve our court processes in criminal cases.

I look forward to continuing to work with you to make improvements through our court rules and otherwise. Thank you again for your excellent work.

Sincerely,



Meagan A. Flynn
Chief Justice

MAF:jm/23eMAF003jm

E.3

UTCR Court Efficiencies Proposals – UTCR Committee Recommendations & Additional Work

The following proposals were presented to the UTCR Committee during its fall meeting on October 20, 2022. At that meeting, the UTCR Committee opted to send the proposals out for public comment with no recommendation and to send the proposals to the Chief Justice's Criminal Justice Advisory Committee (CJAC) for feedback. The CJAC convened a Case Processing Subcommittee in early 2023 to review the proposals and provide feedback to the Chief Justice and the UTCR Committee. The UTCR Committee considered this feedback, as well as public comment, at its spring meeting on March 17, 2023. For a more thorough summary of the committee's discussion, you can view the Preface to the 2023 Uniform Trial Court Rules, posted at Oregon Judicial Department : Current Rules : Uniform Trial Court Rules & Committee : State of Oregon.

The chart below summarizes each proposal and action taken by the UTCR Committee at its spring meeting and identifies any further action planned by OJD. Proposals adopted by the Chief Justice, and effective August 1, 2023, are in green. Proposals that were not recommended, but where the UTCR Committee recommended additional action by OJD are in yellow. Proposals in gray were withdrawn by proponents. All other proposals were not recommended for approval by the committee and were not adopted by the Chief Justice.

Rule Number	Brief Summary of the Proposal	Modifications to Proposal by UTCR Committee	UTCR Committee Recommendation	Additional Work by OJD
UTCR 4.010	Require omnibus hearings one week prior to trial	None	Recommended disapproval[1], (motion to recommend approval failed by a vote of 4-5) but recommended future reconsideration by CJAC Case Processing Subcommittee in light of any findings from Multnomah Co. Omnibus Hearings pilot project.	The Chief Justice approved amended UTCR 4.010, requiring omnibus hearings to be held one week prior to trial, if requested by a party and unless good cause is found by the judge not to hold the omnibus hearing one week prior.
	Set a briefing schedule for omnibus motions and responses	The original proposal set out times for response/reply. The committee modified the proposal to allow the judge to set the briefing schedule	Recommended disapproval, (motion to recommend approval failed by a vote of 4-5) but recommended future reconsideration by CJAC Case Processing Subcommittee in light of any findings from Multnomah Co. Omnibus Hearings pilot project.	NA
UTCR 4.020	Allow parties to submit a form two days in advance and in lieu of appearance at a status	The committee removed this part of the rule from the final proposal	Recommended disapproval by default (no motion to recommend)	NA

[1] The committee can recommend approval by consensus or after a vote resulting in majority support for a recommendation. A proposed rule is recommended for disapproval if there is no motion to approve or if a motion to approve fails to receive a majority after a vote. A proposal can also be disapproved by consensus of the committee.

	conference or other non-substantive court appearance			
	Require the court to allow remote appearance at a status conference or other non-substantive appearance, unless the technology is not available	There was a motion to adopt this portion as a standalone rule	Recommended disapproval (motion to approve failed by a vote of 3-6)	None, although courts are working on requiring fewer "status appearances" or combining them with other hearings
UTCR 4.040	Allow parties to request certain hearing types (Release hearing, release revocation hearing, request to modify terms of release, change of plea or sentencing, or similar appearance) by email and require court to set the hearing as soon as practicable or on a date stipulated by the parties.	This rule was disapproved by consensus.	Recommended disapproval by consensus but recommended that OJD develop a form for parties to utilize	OJD is drafting a Criminal Case Scheduling Form with input from the CJAC case processing subcommittee, PTAC, and LPWG.
UTCR 4.060	Repeal the rule on motions to suppress (which includes substantive motion requirements and timelines for filing response)	Proposal was withdrawn by OCDLA at the second CJAC subcommittee meeting	Recommended disapproval by default (no motion to approve)	NA
UTCR 4.130	Require remote appearance when parties have agreed to resolve cases in more than one jurisdiction and the appearance is outside of the jurisdiction where defendant is incarcerated	The committee modified the rule to require the parties to agree to a remote appearance and to allow the judge to require an in-person appearance, for good cause.	Recommended approval with modifications	Renumbered to UTCR 4.040.
UTCR 7.010	Set timelines for discovery in criminal cases	A motion was made to change the scope from materials within the state's possession to materials in the DA's possession	Recommended disapproval (a motion was made to approve but did not receive a second so no vote was necessary)	NA
	Require the state to provide an initial plea offer at first appearance or within the first 30 days	Proposal withdrawn by OCDLA during the CJAC subcommittee's review process	Recommended disapproval by default (no motion to approve)	NA
	Allow plea agreements and negotiations to continue up to and including the date of trial	The committee modified the wording to allow parties to present plea agreements up to the date of trial.	Recommended approval with modifications	Circuit courts will be directed to consider changes to affected/superseded SLR
	Allow continuances by agreement of the parties	Proposal withdrawn by OCDLA at the 3/17/23 UTCR meeting	Recommended disapproval by default (no motion to approve)	NA

E.4

August 1, 2023

Presiding Judge Kathleen Proctor
Washington County Circuit Court
Via email only: Kathleen.J.Proctor@ojd.state.or.us

Dear Presiding Judge Proctor:

I appreciate an opportunity to attend your next Unrepresented Persons Crisis Plan team meeting so that I may present and answer questions about OCDLA's proposals to modify the UTCRs.

The SB 337 budget report, which provides OJD with funding to support the development of the crisis plans, includes an expectation that the crisis teams "will consider efforts to improve the timely processing of the cases of unrepresented defendants/persons, such as expanding jail visitation times for public defenders to meet with their clients, establishing agreed upon deadlines for the timely release of discovery, targeted docketing of court appearances, requests for hearings, remote hearings, and potentially the scheduling of omnibus hearings, and establishing agreed upon and reasonable deadlines for the acceptance of plea offers or consideration of the elimination of plea deadlines for certain case-types and circumstance."[1]

These proposals are ways to create/improve efficiencies in order to increase the capacity in the public defense system to better serve current clients or take on additional clients. Clear rules and standards will not only improve system efficiencies but also incentivize defense counsel to take out-of-county cases by making cross-jurisdiction practice less onerous.

Below are some general proposals that I would be happy to explain further in the crisis team meeting.

Sincerely,



Mae Lee Browning
Legislative Director, Oregon Criminal Defense Lawyers Association
mlbrowning@ocdla.org 310-227-7659

cc:
Judge Maalik Summer
Richard Moellmer
Rachel Woods
Tiffany Quintero

[1] https://olis.oregonlegislature.gov/liz/2023R1/Downloads/MeasureAnalysisDocument/80807

Lindsey Detweiler
Jessica Kampfe
David Hayes
Laurie Bender
Rob Harris
Kelly McHugh
Grant Burton
Ron Ridehalgh
Nate Law
Mary Bruington
Kevin Barton

OCDLA's Proposals to Increase Dispositions and Increase Attorney Capacity

Expand jail visitation times for defense counsel to meet with their clients

We are aware of and sympathetic to staffing shortages at the jails. Since jail visiting hours have been drastically reduced, efforts should be made to guarantee access to telephones for calling out to lawyers, and for lawyers calling in to clients, to schedule phone appointments between lawyers and their clients, to create standards for access to video visits, and to ensure that phone calls and video visits happen in a confidential setting.

Reduce the number of check-in appearances and time spent at mass dockets by defense counsel

Defense attorneys spend hours at mass scheduling dockets. Reducing the number of and the time spent at check-in type appearances will save prosecutors', defense attorneys', and courts' time. It will also help the general public that appears before the court because people will not have to arrange for time off of work to travel to court, arrange for childcare, and find public transportation, if available.

Each judicial district should identify all the court appearances required in a criminal case and reduce the number of required appearances for defense counsel and their clients.

One potential way to streamline mass scheduling dockets is to allow scheduling by email with a standard form that the parties efile a certain number of days before "call." This would allow a prosecutor and defense attorney who have a trial scheduled to begin on Tuesday to efile a form for Friday's "call" stating that they jointly request a reset. It may be helpful to look to the federal system regarding this practice.

Another way to streamline mass scheduling dockets is for the court to provide a smaller time window for attorneys to appear. For example, a court could schedule a small number of cases every 15 to 30 minutes rather than scheduling all cases at 9 a.m.

Individual judge docketing would create the greatest efficiencies for practitioners and the public because a judge who is managing their own calendar will hold all parties accountable for wasting the court's greatest resource - judicial time - and will facilitate increased communication between the parties around discovery, motions, and witnesses.

Eliminate outdated time standards for cases

Based on time standards set by OJD, judges will set matters for trial after a certain time period because of the guideline for resolving certain type of cases, irrespective of defense counsel's ethical obligations and required tasks of each case. This practice ineffectively prioritizes cases and can lead to additional delays. It is recommended that judges not schedule cases for trial based on the time standards set forth by OJD of how long it takes to resolve certain types of cases. Instead, allow defense counsel to request trial settings in accordance with their ethical duties and required tasks in every case.

Increase use of remote hearings

More remote hearings would reduce defense counsels' time spent traveling to and from the courthouse and sitting in court, which would free up their capacity to work on their cases. Efforts should be made in each judicial district to increase the option of remote hearings and streamline the process of requesting remote appearances.

Discovery deadlines and policies

The goal is to provide defense counsel with full discovery early in the case so that defense counsel can advise their clients regarding the options in their case; avoid delays in court proceedings that result from late disclosure of discovery; and reduce the motions and hearings required to request/compel discovery when defense counsel does not have full and complete discovery, so that defense counsel can spend that time working with their clients and advancing their cases. This can be achieved by implementing discovery timelines, implementing a Brady colloquy before entry of a plea and trial, and allowing depositions of witnesses.

Discovery timelines: Set specific timelines for discovery disclosure instead of relying on discovery being disclosed "as soon as practicable." The timing of disclosure should be mandatory and immediate with specific timelines for initial, supplemental, and responsive discovery. Initial discovery should require the DA to provide a copy of all discovery in their possession and control no later than the first appearance. Defense counsel should be afforded time to review this evidence prior to arguing initial release. Supplemental

discovery should be disclosed to the defense within 10 or 14 days of it being in the state's possession and control, and responsive discovery should be provided within 14 days of a request. If the discovery is not available, a response should be sent to indicate the timeline for disclosure.

Courts could adopt the following language:
Discovery disclosures must proceed as follows, unless otherwise agreed by the parties or as ordered by the court:

(a) Disclosures required by ORS 135.815 through 135.835:

i. Initial disclosure: The DA shall provide a copy of all discovery in the DA's possession, custody, or control no later than the first appearance after any charging instrument is filed in the case.

ii. Supplemental disclosure: Materials that enter into the state's possession, custody, or control after the first appearance must be disclosed within 10 days from when they enter into the state's possession, custody, or control.

iii. Responsive disclosure: Additional discovery must be disclosed within 14 days of the request by either party, or alternatively, if the materials are not in the parties' possession within the 14-day deadline, the party should respond with a reasonable timeline for disclosure. The parties must make a good faith effort to disclose the materials within the 14-day deadline.

Eliminate DA-created plea negotiation deadlines

Disallowing negotiations means that some cases will go to trial when they otherwise would be resolved with a plea. In some counties, the prosecutor's plea offer states that the plea offer will be withdrawn if the accused person files a Motion to Suppress or any other challenge to the evidence.

Barriers and deadlines to negotiate plea offers should be eliminated. Court-created plea negotiation deadlines will be eliminated as of August 1, 2023, however, DA-created deadlines remain. If DA offices were prohibited from withdrawing a plea offer based on the filing of a Motion to Suppress or any motion to challenge the evidence, it would result in more Motions to Suppress filed earlier on in the case, and in conjunction with a rule that those motions will be litigated *before* trial, this change would mean more cases would be resolved before trial without the need for preparation by both the defense and the prosecutor. In sum, there should never be a court rule that prevents negotiations at any time up to and including trial.

Attachment 3b

PDSC Summary

To: Jennifer Nash, Public Defense Services Commission Chair

From: Office of Public Defense Services

Date: September 19, 2023

Subject: PDSC Summary of and Response to Unrepresented Defendant Crisis Plans

Background

The Constitutions of the United States and Oregon and Oregon statutes require the appointment of competent and effective counsel for those who have been charged with a crime or face other potential or actual deprivations of their liberty interests, and who cannot afford counsel. The Public Defense Services Commission (PDSC) and Office of Public Defense Services (OPDS) are statutorily responsible for maintaining Oregon's public defense system and ensuring the availability of qualified, competent counsel for all those so entitled.

The public defense crisis in Oregon has been building for decades. In a 1994 report, the Oregon State Bar Indigent Defense Task Force noted the increasing problems with the funding and structure of Oregon's Public Defense system.[1] The Task Force expressed concerns about maintaining the quality of representation when faced with increasingly serious and complex crimes and the rising costs to practice law. The Task Force was especially alarmed by the lack of cost-of-living increases for public defenders which required them to accept an ever-increasing workload in order to receive more pay. Despite the concerns of the Task Force and other criminal defense partners and stakeholders, those same problems continued in Oregon's public defense system. In 2018, PDSC requested the Sixth Amendment Center (6AC) evaluate the state of public defense in Oregon. The 6AC completed their review in October 2018 and released their report in January 2019.[2]

The 6AC conducted their study of Oregon's public defense model and practices by forming a multidisciplinary advisory committee, including representatives from the PDSC, public defender offices, the legislature, the governor's office, members of the judiciary, and the district attorneys. The committee agreed to nine Oregon counties constituting a representative sample, and it followed a three-step process in each county involving data collection, court

[1] *Final Report of the Oregon State Bar Indigent Defense Task Force* (July 1994).

[2] Sixth Amendment Center, "The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services" (Jan 2019).

observations, and interviews with local stakeholders. The report found major deficiencies in the Oregon public defense system and distilled them into four groups. First, the report concluded that Oregon had created a complex bureaucracy which collected a significant amount of data but did not provide sufficient oversight or financial accountability, and in some cases hindered effective assistance of counsel. Second, that the complex bureaucracy obscured a fixed fee attorney compensation plan which pitted appointed lawyers' financial self-interest against the due process rights of their clients, something prohibited by national public defense standards. Third, the report opined the composition of the PDSC did not adhere to national standards because it did not represent all three branches of government. Finally, the report stated the PDSC lacked the statutory scope to ensure the state's obligation to provide effective assistance of counsel in every courthouse in Oregon.

The 6AC made three recommendations to address those deficiencies. First, the Oregon legislature should amend the statute establishing the PDSC to include appointments from every governmental branch. Second, the legislature should direct the PDSC to promulgate and enforce standards that ensure the right to effective counsel. This recommendation specifically included that PDSC should be authorized to create a workload standard and to ensure that all appointed attorneys had sufficient time to zealously advocate for their clients. Third, Oregon should abolish the fixed fee contracting model and other forms of case-credit compensation that incentivize lawyers to provide ineffective assistance of counsel.

The feedback OPDS has received from contract attorneys who have left the practice of public defense validates the 6AC concerns. Attorneys consistently cite low pay and oppressively high caseloads as the reasons they leave public defense. This is a common problem around the state. One public defender in Portland was carrying a caseload of 206 cases mixed between misdemeanors and minor felonies.[3] Excessive caseloads combined with pay rates considerably lower than those of prosecutors in their jurisdictions has driven many attorneys away from public defense, contributing to the shortage of defense attorneys. Each time an attorney left; their cases were absorbed by the remaining attorneys in the jurisdiction further contributing to those attorneys' already excessive caseloads. This cascade of increased caseloads greatly contributed to the exodus from public defense, placed significant strain on those attorneys who remained, and contributed to a system that the 6AC implied could not provide competent counsel to all defendants.

[3] https://www.oregonlive.com/news/2019/06/portland-public-defenders-toil-under-crushing-caseloads-stage-work-stoppage-to-draw-attention.html

OREGON OFFICE OF Public Defense Services

At the same time that the Oregon legislature funded the 6AC assessment of Oregon's public defense system, it also appropriated funds for the agency to work with the American Bar Association to develop standards for the time attorneys need to adequately represent clients in various case types and develop associated workload and caseload standards. HB 5201 (2018) Budget Report and Measure Summary.[4] Additionally, while the ABA study was in process, the legislature directed the PDSC, through HB 2003 (2021), to ensure that caseloads are in accordance with national and regional best practices.

In 2022, the agency adopted a maximum number of misdemeanor cases an attorney could be assigned per year by using a number utilized in both Washington and New York – 300 misdemeanors per year. The agency then used case weighting ratios from the Oregon Project to determine the appropriate weight to give other case types in relation to the 300-misdemeanor number.

Despite being a major step toward adopting a constitutional public defense system, the current caseload standards are not the end goal. During the time that the PDSC was adopting and implementing the current caseload standards, the ABA completed its Oregon Project.[5] Using the Delphi method, the Oregon Project determined the *minimum* amount of time that an attorney should spend on a case to meet the *minimum* standards of representation. Using that number, the current number of cases charged in Oregon (both criminal and juvenile), and the number of workable hours in a year, the ABA calculated the number of public defenders Oregon needs. Then, they subtracted the number of contract FTE to calculate the number of additional public defenders that Oregon needs to meet the minimum constitutional standards given the current caseloads.



Just this month, the RAND Corporation, the National Center for State Courts (NCSC), the ABA, and attorney Stephen Hanlon published new data-informed national public defense workload standards intended as a revision to the long discredited 1973

[4] *Available at* https://www.oregonlegislature.gov/lfo/Documents/2017-19%20Budget%20Highlights%20Update.pdf (last accessed 9/13/23)

[5] The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workload Standards (January 2022).

caseload standards.[6] The results of this study are new national public defense workload standards which build on the methods developed in, and the data gleaned from, prior caseload studies, and result in caseloads similar to the numbers in the Oregon Report. The national study encompasses significant research validating the need for caseload standards which are lower than those currently set by PDSC.

The end goal in developing caseload standards and caseload reporting that OPDS has engaged in over the past several years has been to create a workload model[7] in accordance with legislative direction in HB 2003 (2021) and SB 337 (2023). SB 337 is the most recent legislative response to the public defense crisis which, among other systematic changes, directs PDSC to establish a workload model for appointed counsel which enhances their ability to provide effective representation.[8] Using the Oregon Report standards and the caseload data OPDS has been collecting for the past 18 months. PDSC is working toward the implementation of a workload model. The new model of public defense will allow public defenders to dedicate the time required to provide competent and effective representation to each of their clients, however, will require a significant infusion of new public defenders into the system to meet the current demand.

The implementation of 2022-2023 caseload standards, —even though the standards were higher than those from the evidence-based best practice standards described above, —exposed the significant shortage of public defenders in the system. The resulting unrepresented persons symptom of the larger public defense crisis drew legislative attention to the issue and ultimately resulted in the passage of SB 377. Among other changes to public defense described above, SB 337 required that presiding judges of each jurisdiction create plans for how their jurisdictions would manage the unrepresented persons that resulted from the lack of public defenders. Those plans have been submitted to the Criminal Justice Commission

[6] Nicholas M. Pace, Malia N. Brink, Cynthia G. Lee & Stephen H. Hanlon, National Public Defense Workload Study, Research Report by Rand Corporation (2023) (available a https://www.rand.org/pubs/research_reports/RRA2559-1.html).

[7] Unlike yearly caseload maximums, workload models set a maximum number of weighted cases that an attorney can have open at any given time. For instance, a workload limit might be set at 59 low level felonies, meaning an attorney could be actively working on 59 low level felonies at any given time. If they resolved a case, they could take another case and so on. It is important to note that whatever the workload limit an attorney's own ethical obligations to their clients would limit an attorney's ability to accept new cases at times.

[8] SB 337 (2023) also changed the name of PDSC/OPDS, moved the agency to the executive branch, altered the composition of the commission, and directed the agency to hire government employees for trial level representation.

(CJC) and this document provides a review of the major themes of the plans. More information on any subject below is available upon request.

Oregon "Crisis Team" Plans

Pursuant to Section 104 of SB 337, the presiding judges of each judicial district created crisis plans to detail how that jurisdiction would address the symptoms of the public defense crisis. Some jurisdictions convened 'crisis teams' made up of representatives from the various stakeholders in the criminal court system including the court, public defenders, OPDS, and district attorneys to assist in developing the plans. OJD created four "levers" or areas of impact for the presiding judges to address in their plans. The Oregon State Court Administrator (OSCA) collated the crisis plans for all jurisdictions and submitted a summary report to the Criminal Justice Commission (CJC) for their review. The crisis plans that resulted from the jurisdictions contained a multitude of ideas for each lever but followed several identifiable themes. Those themes are discussed in detail below. The Chief Justice of the Oregon Supreme Court issued a separate letter addressing some of the ideas presented in the crisis plans. The proposals presented in that letter are also discussed below to the extent that they align with the crisis plans.

1. Add Attorneys/number of attorneys

The first lever identified by OJD is to add attorneys to a jurisdiction. PDSC/OPDS agrees that this is the most important intervention to accomplish the goal of solving this crisis. There are four major recommendations from the jurisdictional crisis plans for addressing this lever, and the PDSC largely agrees with each of them and has already begun implementing them where appropriate and when able.

A. Attorney Recruitment

OPDS has been prioritizing recruiting new attorneys, however recruitment has been difficult because of the historical and systematic difficulties described above. Public defense is not seen as a viable career for many new and experienced attorneys. To combat this perception, the PDSC approved new attorney incentives in October 2022. A lump sum of $20,000 was paid for any new contractor brought into the system and another $20,000 if that provider was still actively accepting cases three months later (both payments were pro-rated by MAC so an attorney who was only a .5 MAC received only $10,000 and $10,000 in incentives). It should be noted that recruitment without retention cannot fix the public defense workforce shortage. Increasingly attorneys are leaving public defense—often in their first 5 years of practice. This attrition undermines any gains made in recruitment.

Therefore, in conjunction with recruiting incentives, PDSC approved retention incentive payments designed to keep existing attorneys in the system at their current MAC. Each contractor received $15,000 pro-rated by MAC. Payments were spread between February and June 2023 and were only paid if the attorney continued to provide representation under a contract between those dates. Over the past year, OPDS has convened a Workforce Development Workgroup that brings together practitioners and stakeholders from across the state to collaborate on improving public defense attorney and support staff recruitment and retention. A primary focus of the group is to develop a pipeline from Oregon's law schools into public defense. OPDS has been working with the three Oregon law schools (University of Oregon, Willamette, and Lewis & Clark) to develop clinical or other practical skills criminal defense programs that will train law students and prepare them to enter public defense upon entry to the bar. The PDSC has also considered a rural fellowship program to channel lawyers into traditionally underserved rural counties as State employees on a temporary fellowship. The PDSC has heard proposals for the fellowship but has not adopted any of them to date. The PDSC also applied for and received a federal Edward Byrne Memorial Justice Assistance Grant ("Byrne JAG") in June of 2023. A significant portion of this grant is dedicated to funding stipends for students working in historically unpaid public defense—positions. The PDSC is dedicated in continuing to invest and grow our efforts to recruit and train new attorneys into public defense.

B. Better Compensation

OPDS agrees that all public defenders should be paid rates commensurate with market rate. SB 337 states:

> "SECTION 96. (1)(a) The Oregon Public Defense Commission shall conduct a survey and economic analysis to establish a formula for the commission to use to calculate an hourly pay rate, taking into account overhead expenses, market rates and regional differences in the cost of living, for appointed counsel who are not employees of the commission or a nonprofit public defense organization."

PDSC's 2023-2025 Legislative Adopted Budget has already been adopted, and additional funds for enhanced rates would require further legislative action. The agency continues to seek additional funding to bring compensation levels up to competitive market rates. The PDSC sought legislative approval for funding to bring the compensation of trial level attorneys up to the same level as OPDS' Appellate Division lawyers and Oregon Department of Justice Lawyers. While that package

was not approved, the Legislature did increase contract rates by 8.8% for 2023-2025 contracts.

C. Regional Conflict Teams

In many jurisdictions, conflict counsel is needed when all contracted public defenders have a conflict of interest. A conflict of interest may arise when the public defender or contract provider is already representing another defendant in the same case or has an adverse interest to the defendant based on a prior representation. When no public defender is available, the person is added to the OJD Unrepresented Persons List.

The creation of regional conflict teams aligns with the legislative directive in SB 337 requiring the commission to establish a trial division and to hire attorneys to serve as appointed counsel at the trial level in Oregon circuit courts. SB 337 approved funds for the establishment of 9 full-time attorney positions for a pilot program to hire state employees to serve as trial-level appointed counsel and supporting staff. The pilots will focus in two geographic regions of the state to respond to the unrepresented defendant/persons crisis. The priority of the state teams are unrepresented defendants in custody followed by those out of custody.

As mandated by SB 337, these attorneys will be able to respond to the unrepresented persons crisis by accepting cases in jurisdictions where the local public defenders are conflicted.

D. Attorney Qualification

OPDS is statutorily required to maintain qualification standards that attorneys must meet prior to accepting representation to a specific case type.[9] Current qualification standards are available on the OPDS website.[10] To qualify for more serious cases an attorney needs to demonstrate the requisite experience representing clients. The attorney qualification standards are periodically reviewed by OPDS staff and are due to be updated. It can be difficult for a new attorney to move up in the qualification standards without the help of more experienced attorneys. To that end, the PDSC has approved funding for training and supervision to help attorneys increase their qualification levels. Where in-office supervision is not available, OPDS works to support attorneys in serving as second chair in cases with

[9] ORS 151.216(j)(F)

[10] https://www.oregon.gov/opds/Forms/PDSC%20Attorney%20Qualification%20Standards.pdf

the goal of increasing their qualifications. Supervising attorneys can provide much needed mentorship to younger attorneys, which not only helps them improve their practice but also contributes to attorney retention.

2. Attorney Capacity

The second lever examined in the jurisdictional crisis plans is how to add attorney capacity to the jurisdictions' providers without adding additional attorneys to the system overall. This lever is also the focus of the Chief Justice's letter to the PDSC. Recommendations for this lever were numerous. PDSC started working toward some of these recommendations prior to the jurisdictional crisis plans, others are under consideration, and some are steps backward that OPDS cannot adopt without violating legislative directives and best practices.

A. Transition to an Open Caseload or Workload Model

The PDSC has been directed by the legislature to create a workload (or "open caseload") model. A workload model would account for the number of open cases that a provider is currently working on, weighted for complexity, and sets maximum limits based on that open workload, rather than the total number of case appointments over a period of time. Juvenile practitioners working under the Parent Child Representation Program (PCRP) have shifted to a workload model of 80 open cases per 1.0 FTE, though some cases may be weighted higher or lower based on the complexity of the case. The model appears to be running well in the PCRP context although the caseload limits may need to be adjusted in the future. PCRP counties have generally experienced fewer issues in the recruitment and retention of juvenile practitioners than non-PRCP counties. Additionally, PCRP jurisdictions have not experienced the challenges of having unrepresented persons in juvenile matters that some non-PCRP jurisdictions have

Instead of the current MAC model, a workload model would better account for an attorney's actual capacity for additional case appointments. A workload model, like the MAC model, would allow deference to an attorney's ethical responsibility to their clients. However, it would mitigate the current attorney shutoffs where an attorney has reached their contractual maximum attorney caseload. A workload model also gives the other parts of the public safety system a better idea of what caseload resources or barriers exist within their jurisdictions.

OPDS is currently collecting the data needed to implement a workload model that accounts for regional or jurisdictional needs. As previewed in the ABA report, a workload model will likely require significantly more attorneys to represent the

current caseloads. Though this change in contracting alone is unlikely to "fix" the unrepresented persons crisis, it is a necessary change to both comply with legislative directive and to promote a sustainable public defense system.

B. Make Changes to the OPDS Payment Process

Several recommendations revolve around overhauling the OPDS payment structure, to increase the amount of attorney payments (something OPDS supports but is currently limited in implementing by its legislatively adopted budget as discussed above), to pay attorneys based on seniority, adjust attorney pay to account for the region's cost of living, and to streamline the payment process so that attorneys are paid more easily or quickly by OPDS. Currently, the PDSC funds contract providers at four rates (misdemeanor, minor felony, major felony, murder). These rates are not strictly based on the attorney's experience, but rather the level of cases for which they are both qualified for *and contracted*.[11] This rate structure was introduced to incentivize attorneys to both increase their qualifications and take the most serious cases for which they are qualified. Under this system, a murder-qualified attorney who only wants to handle misdemeanor cases will be paid less than a murder-qualified attorney handling murders, even if they have similar years of experience.

PDSC's current contract provider and non-contract hourly rates do not allow for adjustments based on seniority or location of practice. Without a change in the legislatively adopted budget, the PDSC is unable to adjust the contract compensation and hourly rate structure. PDSC welcomes further discussion and aid to increase pay for public defenders.

OPDS has been working to reduce the time it takes to pay invoices through reforms in its accounts payable and audit processing (AP) department and streamlining the approval process to the extent possible. The PDSC's AP department consists of only four people processing over 100 invoices daily and, though they each consistently work over 40 hours a week, the increase in hourly billings has put a strain on the system. The PDSC continues to seek additional funding from the legislature to increase the number of staff and decrease processing times. PDSC has also dedicated to adopting a Financial/Case Management System which should address some of the complexities of the billing process.

[11] Attorney qualifications consider an attorney's experience, and more experienced attorneys are likely to be qualified for more severe case types.

C. Make Alterations to the MAC Limits

Another set of recommendations revolves around changing the MAC limits to allow a single attorney to take more cases within the contract cycle. Responding to external pressure to find attorneys for every person charged with a crime, the PDSC began to allow contracted attorneys to take cases beyond their current MAC, beginning with attorneys who were contracted for less than 1.0 MAC and eventually expanding to contractors who were contracted for a 1.0 MAC. This policy was met with mixed results. It helped to stem the increase in unrepresented persons, though the number still increased, however it undermined the purpose of setting caseload limits. Allowing attorneys to take additional cases had the unintended consequence of allowing other system pressures to continue to influence attorneys to take more and more cases. It also revived the unconstitutional practice of paying attorneys more to take additional cases in direct violation of the 6AC report and the directive of the legislature. It set up a financial incentive for attorneys with a mix of contract and hourly cases to spend more of their time on cases they could bill hourly and to quickly resolve their contract cases so they could accept appointment in more financially lucrative hourly cases.

Both the recently released National Public Defense Workload Study and The Oregon Report's caseload standards show that the PDSC's current caseload limits are higher than best practice dictates. As described above, the annual maximum caseloads are derived from the proportional amount of time an attorney must put into a case based on its severity. They do not yet consider the number of hours an attorney should spend on each case and the number of working hours in a year. OPDS has already had providers express reluctance to recontract unless the MAC limits are reduced to comply with the Oregon and national standards. Increasing an attorney's annual MAC in the wake of these new caseload studies creates ethical and post-conviction relief concerns. Courts in other states have viewed excessive attorney workload as a reason to overturn convictions and to sanction attorneys. It is unknown how an Oregon Court would view these issues, but there are no ethical exceptions for need and there is no provision to suspend the constitutional guarantees of competent representation because of a lack of attorneys.

D. Adjust Case Assignment Practices to Maximize Usage of Local Attorneys

Another set of recommendations deals with how jurisdictions allocate their limited attorney resource to assure that attorneys in their jurisdiction are taking the most cases possible. OPDS encourages jurisdictions to prioritize which cases they assign and district attorney offices to prioritize which cases they charge to account

for the lack of defense attorneys. The PDSC Unrepresented Crisis Plan Guidance lists the PDSC's suggested prioritization based on crime seriousness.[12] Local courts can make their own prioritization schedule in consultation with local providers, and OPDS has accounted for local court's prioritization requests to the best of its ability when assigning counsel.

Attorney retention is an important part of preserving MAC, and OPDS has worked with providers and local courts to retain attorneys and thus limit withdrawals and interoffice reassignments. When an attorney leaves public defense, their cases, and therefore their MAC, need to be redistributed. These new attorney case assignments require the office to use additional MAC, exacerbating capacity shortages.

Beyond the above interventions, due to the independent contractor relationship that the PDSC has with its contractors, further control on how a contractor allocates its attorneys' MAC is extremely limited.

E. Refuse Contracts to Attorneys Who Accept Too Few Cases

There is a suggestion in both the jurisdictional crisis plans and the CJ letter that OPDS solely contract with attorneys and entities who complete the full 300 weighted misdemeanor cases in a contract period. The PDSC has contracted for an attorney's time, not a specific number of cases. An attorney contracted at 1.0 MAC has agreed to dedicate 100% of their working hours to public defense work. The contracts specify that an attorney working full-time on public defense cases should not be able to provide adequate representation to more than 300 misdemeanor clients in a year or the weighted equivalent for other case types, but that does not necessarily mean, much less require, that an attorney should be able to handle all those cases each year. OPDS has committed to support attorneys providing ethical representation for all their clients and supports attorneys in exercising their ethical responsibility to limit their caseloads.

OPDS saw an increase in contracted MAC during the retention incentive period (February 2023- June 2023) when providers were offered additional money to continue at their current MAC or to increase it. OPDS recommends investing in additional retention incentive programs as a means to increase MAC.

F. Remove Attorneys from Cases with Active Warrants

[12] PDSC Unrepresented Crisis Plan Guidance, page 7. Available at, https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf

The final recommendation in this lever is to change how OPDS handles case weight for cases where a warrant is issued for the defendant. OSCA suggests removing an attorney from a case and discounting the amount of case weight that attorney receives for that case to save capacity in the jurisdiction. It is their belief that a judge unilaterally removing the attorney from the case as attorney of record will reduce the attorney's caseload, thus potentially freeing up ethical capacity, and allowing an attorney to take additional cases either under their contract or under the hourly attorney program.

OPDS does not agree with OSCA that removal of attorneys from cases in warrant status will result in a significant saving in MAC and expects other legal challenges to the policy, if adopted, which will cost additional attorney time and effort, reducing the overall attorney availability to accept cases. Partial weight is not determined by the age of the warrant, rather the length of time an attorney has been appointed to the case. This was demonstrated recently in Washington County where the removal of attorneys from 588 cases resulted in minimal MAC recovered after partial case weighting was applied.[13]When the warrants are served, those defendants will require attorneys appointed to their cases again, likely using more MAC than leaving the original appointments in place. Implementing a workload model, as discussed above, will more efficiently address the problem of caseload turnover than removing attorneys from warrant cases and will result in fewer legal difficulties as the cases progress.

If the policy is adopted, OPDS recommends certain safeguards be put in place to protect clients. First, the court should be required to provide notice to the client and attorney prior to removing the attorney from a case to allow time for the attorney to object. Second, the court should wait until the warrant has been active for 90 days to exclude the bulk of warrants which are returned. Third, all removals must happen via court order to be legally effective, preserve judicial transparency, and provide the attorneys an official withdrawal date from the case. Fourth, when informing a defendant that an attorney has been appointed, the court should include language that if there is a warrant outstanding for greater than the length of time chosen by the county their attorney may be removed from their case.

[13] Washington County's Presiding Judge identified 605 cases in warrant status for more than 30 days. Of those cases, 588 had their attorney removed. Based on the length of time the attorney had been appointed to the case, 561 of the removed cases qualified for the full case weight since the attorney had been appointed for more than 90 days at the time of removal. After partial weighting on the remaining cases, the MAC recovered by removal of attorneys was less than .01 MAC.

3. Decrease Filings

The third lever identified by OJD is to decrease the number of filings in the criminal system. This would decrease the number of cases moving through the system, preserving attorney capacity for other cases. These interventions or recommendations, while supported by the PDSC, are within the purview of law enforcement and district attorney offices rather than the PDSC.

A. Decrease Criminal Filings or File Low Level Crimes as Violations

As noted in the OSCA report, in many jurisdictions district attorneys have decreased filings or increased their willingness to reduce misdemeanors to violations. While many expressed a willingness to continue to use discretion to reduce cases moving through the judicial system, many others put their jurisdictions on notice that reductions in filings were mostly due to their own staffing shortages. These jurisdictions, and the state as a whole, have an opportunity to look at the effect of uncharged conduct on their local public safety system.

As the PDSC is working with OJD for a data-driven approach to ensuring representation for qualified persons, we invite our other partners in the public safety system to take advantage of recent data to direct how they will proceed in their criminal filings and prosecutions to ensure the collective public safety resources are being best utilized.

For example, due to the shortage of attorneys for lower-level cases, data may support the conclusion that certain crimes or individuals with little to no criminal history are adequately deterred from the initial interaction with police alone, making further prosecution an unnecessary use of resources. Violation treatment could be a sufficient way to balance the needs and resources of the public safety system and the needs of victims. Despite possible data indicators, several district attorneys suggested that they did not feel comfortable reducing the level of criminal filings without legislative directive. This may indicate a need for additional guidance from either the Oregon District Attorneys Association, the legislature, or the judiciary regarding what cases are appropriate for discretionary or alternative treatment.

B. Increase Specialty Court Dockets

PDSC strongly supports diversion and treatment courts. Treatment courts have been shown to drastically reduce recidivism in their participants, whether they successfully complete the program. Successful treatment courts require participation by all areas of the justice system: OJD, district attorneys, defense providers, Parole and Probation, and local treatment and support services. These

programs can save on not only defense attorney MAC but other jail and prosecution resources long term.

Treatment and other specialty courts are an important investment for reducing filings in the criminal system. Their success will depend on the increased funding of treatment services, housing, and community supervision. Finally, it is worth noting that several treatment courts require that district attorneys agree to departure sentencing from presumptive or mandatory prison sentences for the defendant to participate. While the district attorney's input may be important from a public safety standpoint, it can create unnecessary barriers to entry into treatment when they have the sole veto over participation, even when participation is recommended by other system partners like probation or the court. The treatment court admission processes should be reviewed and implemented commensurate with national best practices and where appropriate, allow judges to be the gatekeepers to treatment court participation instead of prosecutors.

C. Increasing Law Enforcement Assisted Diversion and Pre-filing Diversion Programs

The PDSC supports the use of community driven alternatives to traditional prosecution, such as Law Enforcement Assisted Diversions (LEAD) and pre-filing diversion programs. These programs provide access to community resources like addiction treatment and housing support that address the root cause of criminality in appropriate cases. Programs like these do not require an appointed attorney because there is no prosecution and so do not contribute to the use of MAC in a jurisdiction. Existing programs have placed safeguards to protect community safety while participants work their way through the program, and several programs have reported successful outcomes in both reducing recidivism and decreasing the burden on the criminal court system.

4. Increase Dispositions

The final lever is aimed at decreasing the time cases are open in the criminal system. The PDSC supports removing barriers to case resolutions, so far as they still protect the attorney-client relationship and the ethical obligations of defense attorneys.

A. Make Use of Remote Appearances

Courts across the state increased their use of remote appearances during the COVID-19 pandemic, and some continue to take advantage of these efficiencies to minimize attorney time spent in court on non-substantive hearings. Some courts have scaled these accommodations back, and others still do not provide remote appearance options at all. The PDSC encourages all courts to consider whether non-substantive case hearings could be handled remotely or via email to save attorney time and allow them to dedicate their time to additional cases.

B. Utilize Judicial Assisted Settlement Conferences

The practice of judicial assisted settlement conference is an effective means of resolving felony cases, particularly the more serious, protracted cases, or represented persons with multiple cases in multiple jurisdictions. Plan B judges are often available to facilitate the settlement conferences in jurisdictions with limited judicial resources.

C. Review Access to Jail and Prisons for Defense Attorneys

Defense attorneys are frequently confronted with difficulty visiting their clients housed in jails or prison. Attorneys are required to visit their clients frequently for various case tasks, and difficulty scheduling those visits, or long wait times for the visits, make it difficult for the attorneys to accept appointments in additional cases. Consistent visiting hours (not regularly cancelled or shut down), as well as availability on evenings and weekends are essential for allowing attorneys the ability to meet with their clients while also making court appearances during the day. The PDSC encourages courts to work with local providers and jail staff to make certain that jail visiting hours do not conflict with mandatory court dockets whenever possible.

Confidential phone or video access to clients in custody for short conversations or updates can dramatically increase attorney capacity. Increased client communication also improves client-attorney relationships and decreases client requests for new attorneys. OPDS is partnering with the Coos/Curry Trial Court Administrator and jails to develop a new way for defense attorneys to schedule private video meetings with clients in custody. Using iPads and a scheduling platform similar to that used for the Southern Oregon Facilitation Initiative will allow lawyers to visit clients remotely. If successful, this program could be rolled out in other jurisdictions—particularly those where jails are located at a significant distance from attorney offices. Additionally, PDSC encourages courts to work with local providers and jail staff to make certain that jail visiting hours do not conflict with mandatory court dockets whenever possible.

D. Create Early Resolution Dockets

Early Resolution or Early Disposition Dockets are specialized dockets where prosecutors, courts, and defense attorneys fast-track an agreed upon subset of cases to expedite their processing through the criminal court system. Several jurisdictions have created or suggested early disposition dockets to reduce case backlogs.[14] OPDS has participated in the creation and funding of these dockets when requested. The PDSC has previously released guidelines for the participation of public defense attorneys in these programs.[15] The agency is committed to supporting these dockets so long as, among other requirements, they allow for the establishment of an attorney-client relationship, necessary pre-trial discovery review, and sufficient time for a client to make knowing, intelligent, voluntary, and attorney-assisted decisions whether to accept an early resolution offer. PDSC expects to continue to contract with attorneys to provide representation to persons eligible for these programs provided the program parameters do not penalize clients or sanction attorneys for any insistence that they comply with PDSC or ORPC standards.

Recommendations:

The public defense crisis has been years or decades in the making and the solutions to the crisis will take some time to bring to fruition. PDSC is committed to making the systemic changes needed to create a sustainable, equitable, and constitutionally required public defense system. This will include the reforms laid out in SB 337, moving to a workload model, bringing on state employed public defenders, and ensuring fair compensation for contracted public defenders and support staff.

While the agency works toward putting the long-term solutions into place, it is also committed to implementing near-term changes to mitigate the harms seen throughout the public safety system from the lack of public defenders. The PDSC has begun the process of hiring state employed trial level attorneys and has already added attorneys above the forecasted MAC. The Commission remains dedicated to its mission of providing constitutionally competent public defense. PDSC will

[14] For instance, Washington County created the Wingspan 3 docket to expedite cases over a period of a few weeks. Although the process was successful in its goal of quickly moving cases off the unrepresented list, none of the system partners recommended continuing the program or attempting another program like it.

[15] Available at https://www.oregon.gov/opds/commission/reports/EDPGuidelines.pdf



continue to work with public safety partners to implement short term reforms to address the ongoing crisis while protecting the accused constitutional rights.

As PDSC and OPDS work to implement systematic reform efforts, increase the recruitment of new public defenders, and retain the attorneys currently providing appointed defense work, the agency is grateful for the aid offered by our partners in the public safety system. Law enforcement's help in diverting people out of the criminal court system as well as prosecutors using their discretion to reduce the number of crimes charged all reduce the demand on the public defense system and saves public defense resources. PDSC encourages courts to continue working with their local providers to prioritize the use of public defense resources, to maximize efficiencies in the criminal court process, and avoiding putting additional strain on attorneys providing public defense representation.

Attachment 3c

SB337 Executive Summary

Senate Bill 337 (2023) Report

Review of Oregon's Public Defense Unrepresented Persons Crisis Team Plans

Executive Summary

September 30, 2023

Oregon Criminal Justice Commission

Ken Sanchagrin, Executive Director

Executive Summary

The State of Oregon is experiencing an ongoing public defense crisis, in which persons charged with crimes or otherwise loss of liberty, do not have access to the qualified defense attorneys necessary to represent them in pending cases. In recognition of this crisis, the Oregon Legislature enacted Senate Bill (SB) 337 during the 2023 Regular Legislative Session, which ushered in numerous structural changes to Oregon's public defense system designed to address both the immediate crisis and to provide future system stability. Sections 103 to 108 of SB 337 required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated public safety unrepresented defendant crisis plan, to be submitted to the Oregon Criminal Justice Commission (CJC) by September 1, 2023. SB 337 further required the CJC to issue a report by October 1, 2023, that describes the information conveyed in the crisis plans.

As required by SB 337, the CJC received coordinated public safety unrepresented crisis plans from all 27 Oregon judicial districts by September 1. Upon receipt, CJC staff reviewed the crisis plans, with analysts independently reviewing the content of each plan while coding the substantive information contained therein so that common themes within the plans could be identified. Based on this analysis, this report was generated and submitted to the Oregon Legislature by October 1, 2023, as required by SB 337. The following themes and key takeaways were identified in the report.

Retention of existing public defenders in Oregon is paramount. Unequivocally, the crisis plans emphasize that Oregon *must* retain its current public defense workforce and address fair compensation of these attorneys. These are the attorneys in the best position to immediately make an impact on the unrepresented person crisis, as they are either already highly qualified or in a position to gain expertise and qualifications to take on more serious case types.

Concerns exist regarding the status of public defense consortia following the passage of SB 337, and these concerns could impact efforts to retain the current public defense workforce. A number of judicial districts cited concerns about the impacts of SB 337 in their local communities and relayed examples of how these reforms could lead to the loss of consortia attorneys within their districts, thus exacerbating the current unrepresented defendant crisis.

Recruitment strategies must be strengthened and refined to attract new attorneys to public defense. Oregon must attract new attorneys to public defense and improve working conditions and pay so that new and experienced attorneys remain in the profession. Enhanced recruitment work, such as creating law school-to-public defense pipelines, loan forgiveness opportunities, and clinics in underserved parts of the state, would benefit Oregon's public defense system in the long term. In addition, promising retention programs, such as the incentive payments piloted by OPDS, should ideally be continued if evidence demonstrates their effectiveness.

Continued work is needed to improve information and data coordination and communication between state and local agencies. Building on the efforts made by the Office

of the State Court Administrator and OPDS during the development of the crisis plans, these state agencies should continue to work toward improved collaboration and communication in both data tracking and role definition, to ensure that accurate and timely information is readily available to local circuit courts, public defense providers, and other system partners. Access to timely, detailed data is key to addressing the crisis.

Movement toward an open workload model is necessary and short-term allowances should be made for attorneys to exceed existing MAC, but only with careful oversight. As urged by many judicial districts, the Public Defense Services Commission should continue working towards adopting an open workload model. In the short term, attorneys who believe they are capable of greater ethical capacity beyond their current MAC should have the opportunity to take on caseloads in excess of limits for increased pay. Great caution, however, should be exercised to avoid the ethical quandary identified in the abandoned fee-per-case model.

Courts and local public safety systems should continue to seek out and implement efficiencies wherever possible. Local systems, led by their presiding judges, should continue the widespread collaboration and innovation that has already engendered the identification and/or implementation of wide-ranging system efficiencies. Judicial districts and their crisis teams should also challenge themselves to learn from the good work of other jurisdictions, as seeking out more attorneys, alone, will not yield immediate results.

OPDS should continue to work toward improved responsivity and customer service. OPDS should continue its efforts to improve responsivity to providers, particularly in the areas of payment processing times and expediency of decision-making. The agency may benefit from either new financial management equipment and/or more accounts payable staffing to increase the swiftness with which invoices and other accounting issues are resolved.

Additional effort should be made find opportunities to reduce filings and increase case dispositions. Both state and local actors may benefit from revisiting additional strategies to reduce filings and increase expediency in achieving dispositions. Some plans included practical interventions that would lead to more system offramps, such as more funding for specialty courts and diversion programs, while other plans spotlighted creative recommendations that would benefit from greater stakeholder examination, such as reducing barriers to treating some offenses as violations and providing statutory guidance on when dismissing cases in furtherance of justice may be appropriate.

A copy of the report may be obtained by contacting the Oregon Criminal Justice Commission at (503) 378-4830 or cjc.grants@cjc.oregon.gov. The full report may also be accessed online at: https://www.oregon.gov/cjc.

Attachment 3c
CJC Report

Senate Bill 337 (2023) Report

Review of Oregon's Public Defense Unrepresented Persons Crisis Team Plans

September 30, 2023

Oregon Criminal Justice Commission

Ken Sanchagrin, Executive Director

Executive Summary

The State of Oregon is experiencing an ongoing public defense crisis, in which persons charged with crimes or otherwise loss of liberty, do not have access to the qualified defense attorneys necessary to represent them in pending cases. In recognition of this crisis, the Oregon Legislature enacted Senate Bill (SB) 337 during the 2023 Regular Legislative Session, which ushered in numerous structural changes to Oregon's public defense system designed to address both the immediate crisis and to provide future system stability. Sections 103 to 108 of SB 337 required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated public safety unrepresented defendant crisis plan, to be submitted to the Oregon Criminal Justice Commission (CJC) by September 1, 2023. SB 337 further required the CJC to issue a report by October 1, 2023, that describes the information conveyed in the crisis plans.

As required by SB 337, the CJC received coordinated public safety unrepresented crisis plans from all 27 Oregon judicial districts by September 1. Upon receipt, CJC staff reviewed the crisis plans, with analysts independently reviewing the content of each plan while coding the substantive information contained therein so that common themes within the plans could be identified. Based on this analysis, this report was generated and submitted to the Oregon Legislature by October 1, 2023, as required by SB 337. The following themes and key takeaways were identified in the report.

Retention of existing public defenders in Oregon is paramount. Unequivocally, the crisis plans emphasize that Oregon *must* retain its current public defense workforce and address fair compensation of these attorneys. These are the attorneys in the best position to immediately make an impact on the unrepresented person crisis, as they are either already highly qualified or in a position to gain expertise and qualifications to take on more serious case types.

Concerns exist regarding the status of public defense consortia following the passage of SB 337, and these concerns could impact efforts to retain the current public defense workforce. A number of judicial districts cited concerns about the impacts of SB 337 in their local communities and relayed examples of how these reforms could lead to the loss of consortia attorneys within their districts, thus exacerbating the current unrepresented defendant crisis.

Recruitment strategies must be strengthened and refined to attract new attorneys to public defense. Oregon must attract new attorneys to public defense and improve working conditions and pay so that new and experienced attorneys remain in the profession. Enhanced recruitment work, such as creating law school-to-public defense pipelines, loan forgiveness opportunities, and clinics in underserved parts of the state, would benefit Oregon's public defense system in the long term. In addition, promising retention programs, such as the incentive payments piloted by OPDS, should ideally be continued if evidence demonstrates their effectiveness.

Continued work is needed to improve information and data coordination and communication between state and local agencies. Building on the efforts made by the Office

of the State Court Administrator and OPDS during the development of the crisis plans, these state agencies should continue to work toward improved collaboration and communication in both data tracking and role definition, to ensure that accurate and timely information is readily available to local circuit courts, public defense providers, and other system partners. Access to timely, detailed data is key to addressing the crisis.

Movement toward an open workload model is necessary and short-term allowances should be made for attorneys to exceed existing MAC, but only with careful oversight. As urged by many judicial districts, the Public Defense Services Commission should continue working towards adopting an open workload model. In the short term, attorneys who believe they are capable of greater ethical capacity beyond their current MAC should have the opportunity to take on caseloads in excess of limits for increased pay. Great caution, however, should be exercised to avoid the ethical quandary identified in the abandoned fee-per-case model.

Courts and local public safety systems should continue to seek out and implement efficiencies wherever possible. Local systems, led by their presiding judges, should continue the widespread collaboration and innovation that has already engendered the identification and/or implementation of wide-ranging system efficiencies. Judicial districts and their crisis teams should also challenge themselves to learn from the good work of other jurisdictions, as seeking out more attorneys, alone, will not yield immediate results.

OPDS should continue to work toward improved responsivity and customer service. OPDS should continue its efforts to improve responsivity to providers, particularly in the areas of payment processing times and expediency of decision-making. The agency may benefit from either new financial management equipment and/or more accounts payable staffing to increase the swiftness with which invoices and other accounting issues are resolved.

Additional effort should be made find opportunities to reduce filings and increase case dispositions. Both state and local actors may benefit from revisiting additional strategies to reduce filings and increase expediency in achieving dispositions. Some plans included practical interventions that would lead to more system offramps, such as more funding for specialty courts and diversion programs, while other plans spotlighted creative recommendations that would benefit from greater stakeholder examination, such as reducing barriers to treating some offenses as violations and providing statutory guidance on when dismissing cases in furtherance of justice may be appropriate.

A copy of the report may be obtained by contacting the Oregon Criminal Justice Commission at (503) 378-4830 or cjc.grants@cjc.oregon.gov. The full report may also be accessed online at: https://www.oregon.gov/cjc.

Table of Contents

Authors and Contributors ..... 7.
Acknowledgments 7
1. Introduction 8
2. Background 8
2.1 Public Defense Crisis **8**
2.2 How Public Defense Operates in Oregon **9**
2.3 Contract Model Changes **10**
2.4 Maximum Attorney Caseload Model **10**
3. Scope of the Public Defense Crisis 12
4. Factors Contributing to the Unrepresented Persons Crisis 16
4.1 Lack of Attorneys **16**
4.2 Lack of Experienced Public Defense Attorneys **17**
4.3 Conflict Cases **17**
4.4 Concerns with Public Defense Reforms 18
4.5 Other Factors 18
5. Addressing the Public Defense Crisis: SB 337 Crisis Plans 19
5.1 Crisis Plan Development **19**
5.2 The Four Levers **20**
5.3 Analysis of Crisis Plans **20**
5.4 Number of Attorneys 22
More Attorneys 22
Attorney Recruitment and Retention 23
Increasing Public Defense Attorney Compensation 24
Increasing Shared System Respect of Public Defense Attorneys 25
5.5 Attorney Capacity **25**
Expanding Caseloads/Exceeding MAC 26
Prioritizing Unrepresented Cases 27
Improving Data Tracking, Sharing, and Transparency 27
Removal of Appointed Counsel from Warrant-Status Cases 28
Local/Regional Conflicts Coordinators 28
Increase Provider Supports 29

Establish Duty Attorneys 29
Presiding Judge Oversight of Attorney Appointments 29
5.6 Filings 29
Diversion and Specialty Court Programs 30
Treating Misdemeanors as Violations 31
Addressing Probation Violations Differently 32
Other Filing Reductions 32
5.7 Dispositions 32
Judicial Settlement Conferences 33
Global Resolution / Settlement Dockets 34
Specialty Dockets 34
5.8 Other Considerations 34
Remote Appearances 35
Flexible Docketing/Scheduling 35
Court Timelines 36
5.8.2 Court Protocols, Practices, and Procedures 36
Plea Processes 37
Discovery Improvements 38
Status Hearings 38
Conflict Case Management 39
Jail Access Improvements 39
Collaboration and Communication 40
5.8.3 Public Defense Model and Contracting Reforms 41
Open Caseload Model 41
PDSC Contracting Changes 41
Concerns About SB 337's Impacts on Consortia 42
5.8.4 OPDS Service Delivery 42
Customer Service Improvements 42
Payment Processing Issues 42
Expedited Decision-Making 42
Audits 43
5.9 Other Considerations 44

Judicial Infrastructure 44
Statutory Improvements 44
Court-Appointed Counsel Eligibility 45
6. Discussion 45
6.1 Theme: Retention of existing public defense attorneys is paramount..... 45
6.2 Theme: Concerns exist about changes to consortia contracting..... 45
6.3 Theme: Strengthen and refine recruitment of new attorneys..... 46
6.4 Theme: Continue to improve information and data coordination and communication between state and local agencies 47
6.5 Theme: Conflict cases represent a small, yet important focal point in addressing the unrepresented persons crisis..... 47
6.6 Theme: Move to open workload model and allow attorneys to exceed existing MAC, but only with careful oversight..... 48
6.5 Theme: Continue to increase court and system efficiencies wherever possible..... 48
6.6 Theme: OPDS customer service responsivity..... 50
6.7 Theme: Seeking additional opportunities in reducing filings and increasing dispositions..... 50

List of Tables

Table 4.1. Unrepresented Cases and Share of Conflict Cases by County ……..….17
Table 5.3. Share of Levers and Considerations Included in Judicial District Crisis Plans…..21
Table 5.4. Specific Interventions Proposed by Judicial Districts Related to Increasing the Number of Defense Attorneys……. ……..….23
Table 5.5. Specific Interventions Proposed by Judicial Districts Rel.to Attorney Capacity....26
Table 5.6. Specific Interventions Proposed by Judicial Districts Rel. to Decreasing Case Filings...…….…….…….…….…….30
Table 5.7. Specific Interventions Proposed by Judicial Districts Rel. to Case Dispositions 33
Table 5.8.1. Detail on Flexible Docketing/Scheduling Approaches Identified in Crisis Plans 35
Table 5.8.2.1. Detail on Court Protocol/Procedure Changes Identified in Crisis Plans...…….37
Table 5.8.2.2. Detail on Other Areas or Approaches Identified in Crisis Plans…….39
Table 5.8.3. Detail on Public Defense Model Reforms Included in Crisis Plans……41
Table 5.8.4. Detail on OPDS Service Delivery Highlighted in Crisis Plans……..43

List of Figures

Figure 3.1. Unrepresented Individuals and Unrepresented Cases…….13
Figure 3.2. Number of Unrepresented Individuals by County……..14
Figure 3.3. Unrepresented Individuals by Custody Status...…….15
Figure 3.4. Unrepresented Individuals by Offense Group or Case Type……..15

Authors
Ken Sanchagrin, J.D., Ph.D. – Executive Director, Oregon Criminal Justice Commission
Bridget Budbill, J.D. – Senior Policy Analyst, Oregon Criminal Justice Commission

Contributors
Kelly Officer – Research Director, Oregon Criminal Justice Commission
Emma Dunn – Research Analyst, Oregon Criminal Justice Commission

Acknowledgments
The Oregon Criminal Justice Commission thanks the Oregon Judicial Department's Office of the State Court Administrator, the Office of Public Defense Services, the Oregon Criminal Defense Lawyers Association, the Public Defenders of Oregon, the Oregon Defense Consortia Association, and the members of the 27 judicial district crisis teams, for sharing their collective expertise.

1. Introduction

The State of Oregon is in the midst of an ongoing public defense crisis, in which persons charged with crimes or otherwise loss of liberty, do not have access to the qualified defense attorneys necessary to represent them in pending cases. In recognition of this crisis, the Oregon Legislature enacted Senate Bill (SB) 337 during the 2023 Regular Legislative Session.[1] SB 337 ushered in numerous structural changes to Oregon's public defense system designed to address the immediate crisis and to provide future stability.

One of the approaches taken by the Legislature to address the crisis in the short term is found in sections 103 to 108 of SB 337. In relevant part, SB 337 §104 required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated public safety unrepresented defendant crisis plan, to be submitted to the Oregon Criminal Justice Commission (CJC) by September 1, 2023. SB 337 further required the CJC to issue a report by October 1, 2023, that describes the information conveyed in the crisis plans.

2. Background

2.1 Public Defense Crisis

In Oregon, persons charged with a crime or otherwise facing loss of liberty, such as during civil commitment or Psychiatric Security Review Board proceedings, are entitled to have a qualified attorney appointed, and paid for, by the state, if the person is unable to afford to hire one.[2] Since 2021, parts of Oregon have experienced public defense representation shortfalls, meaning there are not enough qualified attorneys available to represent persons accused of crimes.[3] During the last two years, the crisis has only grown, both in size and scope, now extending to almost two-thirds of Oregon's judicial districts.[4] This deficit is ongoing at the time of this report and presents myriad system challenges, particularly the delay of the constitutional and statutory rights afforded to persons accused of crimes, some of whom are presently confined in Oregon jails.

---

[1] SB 337 (2023 Regular Legislative Session), https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB337.

[2] US Const, Amend VI; US Const, Amend XIV; Or Const, Art I, § 11; ORS 135.040 (right to court-appointed counsel in Oregon); ORS 135.045 (court appointment of counsel); ORS 135.050 (eligibility for court-appointed counsel); ORS 135.055 (compensation and expenses of appointed counsel); ORS 161.346(6)(d) (Psychiatric Security Review Board hearings); ORS 426.100(3) (advice of court in civil commitment hearings); ORS 426.307 (court hearings in civil commitment proceedings).

[3] *See generally* Office of Public Defense Services, *Unrepresented Persons*, https://www.oregon.gov/opds/general/Pages/Unrepresented.aspx; Legislative Fiscal Office Analysis, Joint Emergency Board, December 9, 2022 (2021-2022 Interim), *Item 3: Public Defense Services Commission Unrepresented Defendant-Persons Crisis*, https://olis.oregonlegislature.gov/liz/2021I1/Downloads/CommitteeMeetingDocument/257530.

[4] Oregon has 27 judicial districts, 21 of which have jurisdiction serving areas that correspond with the boundaries of the county in which the circuit court is seated. Five judicial districts have jurisdiction serving two counties, and one judicial district has jurisdiction serving five counties. *See* Oregon Judicial Department, *Find a Court*, https://www.courts.oregon.gov/courts/Pages/default.aspx.

Further, crime victims are also impacted, as the state is unable to proceed with their cases unless and until an attorney is appointed to represent the person or persons accused of criminal conduct.

2.2 How Public Defense Operates in Oregon

The Public Defense Services Commission (PDSC) is a board of commissioners responsible for establishing and maintaining Oregon's public defense system while ensuring public defense services are "consistent with the Oregon Constitution, the United States Constitution[,] and Oregon and national standards of justice."[5] The PDSC works in tandem with the Office of Public Defense Services (OPDS), the administrative agency that carries out the management functions required to operate public defense services in circuit courts and appellate courts in this state.

Oregon's trial-level public defenders are presently private contractors rather than county or state employees.[6] The private contractor model can take several forms. First, public defense work can be provided through employment at one of the state's nonprofit public defense offices, which operate primarily in more populous judicial districts along the I-5 corridor. Examples of nonprofit public defense offices include Multnomah Defenders Inc., Metropolitan Public Defender, Inc., Public Defender Services of Lane County, the Public Defender of Marion County, and Southwest Oregon Public Defender Services, among others.

Second, attorneys can contract through consortia agreements where a group of lawyers is issued a contract for work shared amongst them. Consortia operate statewide, such as the Portland Defense Consortium in Portland, Los Abogados, LLC, in Jackson County, the 22nd Circuit Defenders, in Crook and Jefferson counties, and Linn Defenders, in Linn County, among others.

Third, OPDS contracts directly with individual attorneys taking on public defense cases. Finally, a small number of attorneys take case work through hourly-rate agreements. All funds to pay for the variety of contracts required to provide public defense flow through OPDS. The PDSC approves these public defense contracts and corresponding management policies and contracts for public defense services with qualified public defense practitioners.

To qualify to contract for public defense work in Oregon, a licensed attorney must submit a qualifications packet to OPDS for approval.[7] Additionally, while providing public defense is often discussed in terms of *attorney* capacity, other experts and service providers are also required to provide competent representation to clients, such as legal support staff, language interpreters, case investigators, expert witnesses, and mitigators, among others.

---

[5] ORS 151.216(1)(a) (describing the duties of the PDSC).
[6] Among the systemic changes enacted in SB 337 is the creation of regional trial-level public defense offices, through which public defense attorneys will be state employees for the first time. *See* SB 337 §3(4).
[7] Public Defense Services Commission and Office of Public Defense Services, *Unrepresented Crisis Plan Guidance*, Appendix at 5, PDSC Attorney Qualifications Standards (July 14, 2023), https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf.

2.3 Contract Model Changes

The compensation model for public defense work has undergone several large-scale systemic changes in the last few years. Prior to 2021, attorneys contracting with OPDS for public defense work were paid a flat fee-per-case. In 2019, the Sixth Amendment Center released a report examining Oregon's public defense system.[8] The report found that Oregon's flat fee-per-case model put attorneys in an ethical bind between maintaining a reasonable caseload that allows time for competent representation of their clients and taking on higher caseloads to earn better wages. Based on this finding, the Sixth Amendment Center advocated for the end of the fee-per-case model in Oregon and a transition to an hourly rate model and/or a model that relies more directly on hiring governmental attorneys to handle trial-level cases. In 2021, PDSC voted to shutter the fee-per-case model and shifted the public defense contracts to a full-time equivalent (FTE) model, where public defense providers contract for a maximum annual caseload.

Public defense contracts were further modified in 2022 to create attorney compensation tiering by qualification levels, with the highest level of compensation being afforded to murder- and felony-qualified attorneys, as those cases require the highest levels of experience and professional effort to handle. This tiering means that public defense attorneys carrying murder and felony-heavy caseloads are compensated more than attorneys carrying misdemeanor caseloads. Another facet of the 2022 contracting model was the move from the FTE model to the "Maximum Attorney Caseload" model, which focused on a more individualized approach to attorney caseloads based on case types and attorney qualifications.

2.4 Maximum Attorney Caseload Model

Maximum attorney caseload (MAC) is the maximum number of new cases a given attorney may work on over the course of the contract period under their contract with the PDSC. Cases are weighted by the severity of case type. The severity of cases an attorney carries affects the maximum number of cases an attorney is able to accept. An attorney qualified to carry murder cases will likely have a lower MAC than an attorney qualified to carry exclusively misdemeanor cases, as the former requires more attorney time and expertise than the latter. For example, if an attorney is qualified to take murder cases, that attorney may take no more than six murder cases, annually, if that is the only type of case taken. If an attorney is taking only misdemeanor cases, that attorney may take no more than 300 cases annually. Importantly, the MAC model creates a hard cap, as attorneys may not exceed the number of cases stated in their contracted yearly MAC, unless granted special dispensation to do so by OPDS.

As most attorneys have varied caseloads consisting of different case types, their MAC is divided proportionally in the PDSC contract. For some cases, weight is given, in addition to regular MAC calculations, to recognize the increased work required to manage a given case, such as

[8] Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services* (January 2019), https://sixthamendment.org/6AC/6AC_Oregon_report_2019.pdf.

cases out of the attorney's regular practice jurisdictions and cases with other extraordinary conditions. This weighted MAC is assigned to an attorney when the attorney is appointed to a given case. Should an attorney withdraw from a case prior to the 90-day mark of representation, only partial credit is given towards the attorney's annual MAC calculation.

While the MAC model presents a standardized approach to ensuring adequate time is afforded to representing defendants on an attorney's caseload, the abilities of certain attorneys may fall outside of the standardized MAC caseload limits. This variation is often discussed in terms of an attorney's ethical capacity, which is an independent evaluation of the totality-of-circumstances of what an individual attorney may competently handle based on the nature of the case at hand (the level of severity of the charges, the client's condition, etc.), in light of the attorney's total caseload and overall qualifications and experience. [9]

For instance, PDSC guidance notes that some attorneys may reach their ethical capacity prior to MAC capacity due to ongoing case work from the previous contracting cycle. Alternatively, the ethical capacity of a novice attorney may fall below the standardized MAC limit and grow over time as they gain experience in the field. Finally, some attorneys may be able to take cases above the MAC and still provide ethical representation. In this final example, OPDS has a process for reviewing requests to exceed MAC on a case-by-case basis.[10]

The determination of whether and when an attorney should be permitted to exceed MAC is best understood within the Oregon Rules of Professional Conduct (ORPC), binding ethics rules that all attorneys in Oregon must follow as a condition of maintaining licensure.[11] Violating the ORPC may lead to an attorney's law license being suspended, or, in very serious cases, an attorney's disbarment (losing one's license to practice law). ORPC 1.1 concerns an attorney's abilities and preparedness when representing a client, requiring that an attorney "shall provide competent representation to a client," which requires the attorney to possess "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."[12] ORPC 1.7(a) concerns conflicts of interest for an attorney's current clients and, in relevant part, provides that a conflict of interest occurs when, "the representation of one client will be directly adverse to another client," or "there is significant risk that the representation of one or more

[9] OPDS lists ethical caseload considerations as the following: "sufficient time to interview and counsel clients, interview client close in time to appointment, seek pretrial release, provide vertical representation (continuous representation by the same attorney from arraignment through case disposition), conduct investigations, request and review discovery, conduct legal research, prepare for pretrial, trial, and sentencing hearings." Public Defense Services Commission and Office of Public Defense Services, *Unrepresented Crisis Plan Guidance*, 4-5 (July 14, 2023), https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf.

[10] Currently, contracted attorneys may apply to take cases in excess of their contracted-for MAC, upon approval from OPDS. Attorneys must submit the following form to be considered: https://oropdefense1.workflowcloud.com/forms/feb93532-673c-4416-8b52-21a7fbe5b192.

[11] Oregon State Bar Association, *The Oregon Rules of Professional Conduct* (2022), https://www.osbar.org/_docs/rulesregs/orpc.pdf.

[12] *Id*. at 3.

clients will be materially limited by the lawyer's responsibilities to another client[.]"[13] When public defense providers raise concerns about taking on more cases than they may ethically handle (beyond their ethical capacity), these concerns are tethered to whether the additional cases will "be directly adverse" to current clients or "materially limited" by "responsibilities to another client" should an attorney not have adequate time and resources to competently address the specifics of each client's legal problems.[14]

Notwithstanding a conflict of interest contemplated in ORPC 1.7(a), ORPC 1.7(b) allows an attorney to represent clients, in relevant part, when the attorney "reasonably believes" that the attorney "will be able to provide competent and diligent representation to each affected client" and "each affected client gives informed consent, confirmed in writing."[15] Other ORPC standards may also be implicated when an attorney exceeds ethical capacity.

3. Scope of the Public Defense Crisis

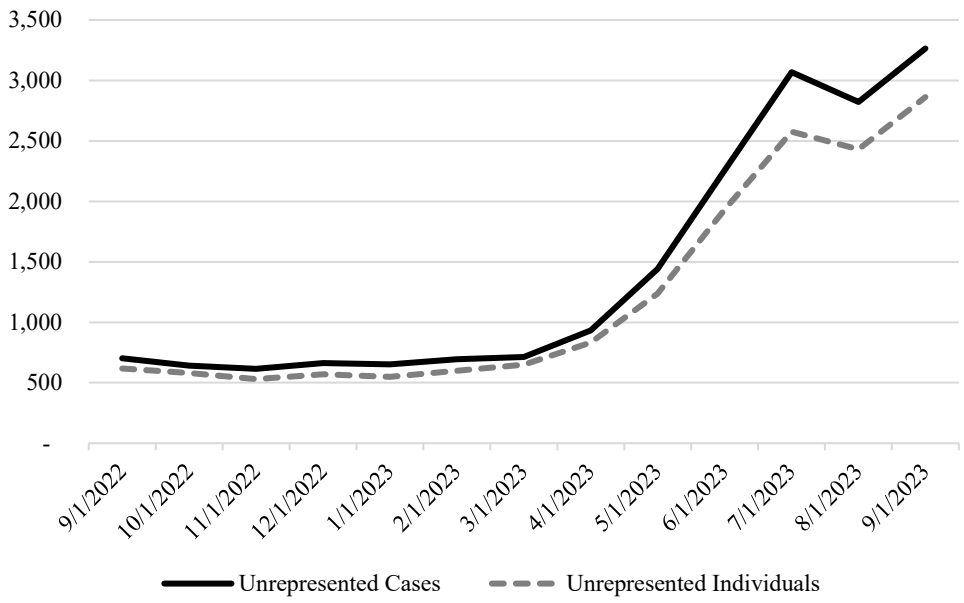
The change in contracting processes by the PDSC in 2021 corresponded with the beginning of the unrepresented crisis in Oregon. As discussed above, it was at this time that the PDSC shifted from fixed rate contracts paid per case to a full-time equivalent model, before further refining the contracting model by employing the MAC approach in 2022. At the same time, the continuing negative impacts of the COVID-19 pandemic on court processes and insufficiently resourced public defenders leaving the practice area, combined with the case model shifts, led to an increasingly serious insufficient representation crisis.[16]

In March 2023, many public defense contractors began reaching MAC for the fiscal year. Consequently, the number of unrepresented cases began an upward climb each month until July 2023, when contracts were extended through September 2023. OPDS began requiring that public defense attorney contractors were not to exceed 1/12 of their annual MAC in monthly contract case appointments. For a 1.0 FTE, that resulted in a limit of 25 weighted cases per month, not allowing for monthly fluctuations in case filings. The point of the monthly MAC limit is to avoid the front-loading of contract appointments that occurred in fiscal year 2023.

---

[13] *Id*. at 6.
[14] *Id*.
[15] *Id*.
[16] Oregon Public Defense Services Commission, *Reference Document - 82nd Legislative Assembly, Joint Ways and Means Subcommittee on Public Safety*, 36 (2023) ("There is a high attorney attrition rate that is a leading cause for defendants being unrepresented."); Aimee Green, *Oregon is losing public defenders. How much money will bring them back?*, The Oregonian (February 22, 2023) https://www.oregonlive.com/news/2023/02/oregon-is-losing-public-defenders-how-much-money-will-bring-them-back.html (explaining that, "[u]ncompetitive pay, high caseloads and representing many clients with enormous needs has led many public defenders to leave for other jobs"); Allison Frost, *Head of Oregon Office of Public Defense Services on progress toward solving the attorney crisis*, Oregon Public Broadcasting (August 22, 2023), https://www.opb.org/article/2023/08/22/head-of-oregon-office-of-public-defense-services-on-progress-toward-solving-the-attorney-crisis/ (in an interview with OPDS Executive Director Jessica Kampfe, Kampfe stated that Oregon "saw public defenders leaving the practice because they were under-resourced").

Figure 3.1. Unrepresented Individuals and Unrepresented Cases



As shown in Figure 3.1, which relies on data from data dashboards maintained by the Oregon Judicial Department (OJD), over the past twelve months, the number of unrepresented individuals, as well as the number of cases without a court-appointed attorney, shifted from a relatively steady state into a period of exponential growth.

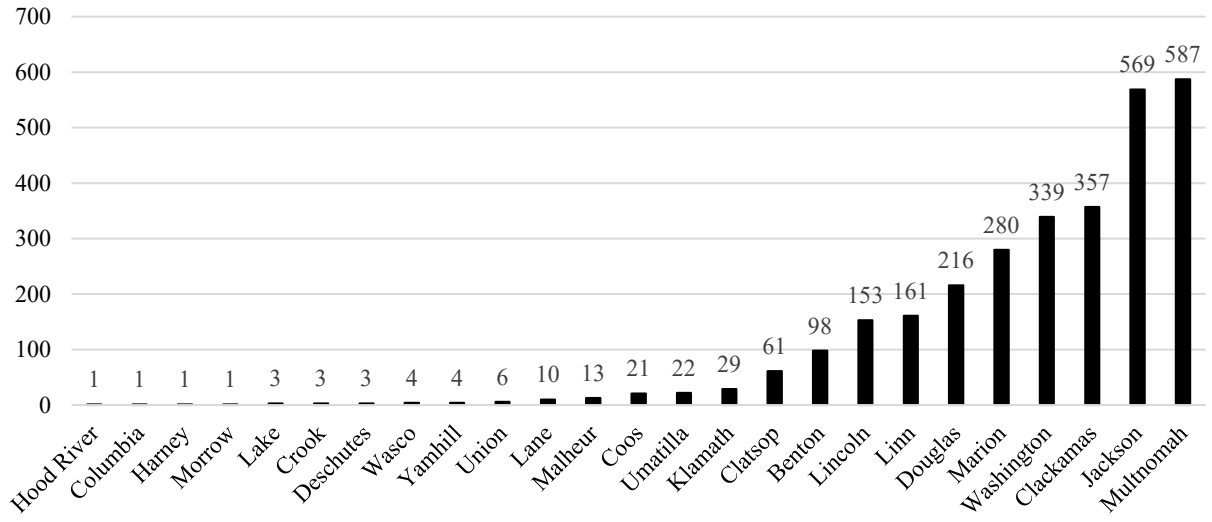
Between September of 2022 and March of 2023, there was an average of 585 unrepresented individuals, accounting for an average of 669 cases. By June of 2023, however, the number of unrepresented individuals had grown by 198 percent compared to March 2023. By September 2023, the number of unrepresented individuals had increased by an additional 48 percent compared to June, leading to the current total of 2,862 unrepresented individuals accounting for 3,264 cases without a court-appointed attorney.

The statewide unrepresented individual and case totals point to an entire system in crisis. It is important to note, however, that while the statewide numbers are very concerning, there is significant geographic variation in the distribution of unrepresented individuals across the state. In some of Oregon's counties, there are few, if any, defendants without representation, while in others, several hundred defendants find themselves without court-appointed counsel.

Figure 3.2, below, presents the number of unrepresented individuals as of September 15, 2023, by county, for those jurisdictions that have at least one unrepresented defendant. Twenty-five of Oregon's 36 counties have at least one unrepresented defendant.

Further, among those counties with at least one unrepresented defendant, there is a clear demarcation visible in Figure 3.2, as nearly two-thirds of the counties reported fewer than 30 unrepresented defendants. The remaining counties, alternatively, report higher numbers of unrepresented defendants, with Jackson County and Multnomah County experiencing the most acute problems, as both jurisdictions reported over 550 unrepresented individuals within their local system as of September 15, 2023.

Figure 3.2. Number of Unrepresented Individuals by County



One particular concern in this crisis is the share of unrepresented defendants who are in custody. Given that a case cannot proceed without representation for a defendant, those individuals who are in custody cannot advance their cases and therefore are much more likely to remain in custody while waiting for a court-appointed attorney to become available. For these individuals, the lack of an attorney represents not only a denial of their constitutional right to representation but also may represent an infringement on essential liberty interests, given that they have yet to be convicted of a crime.

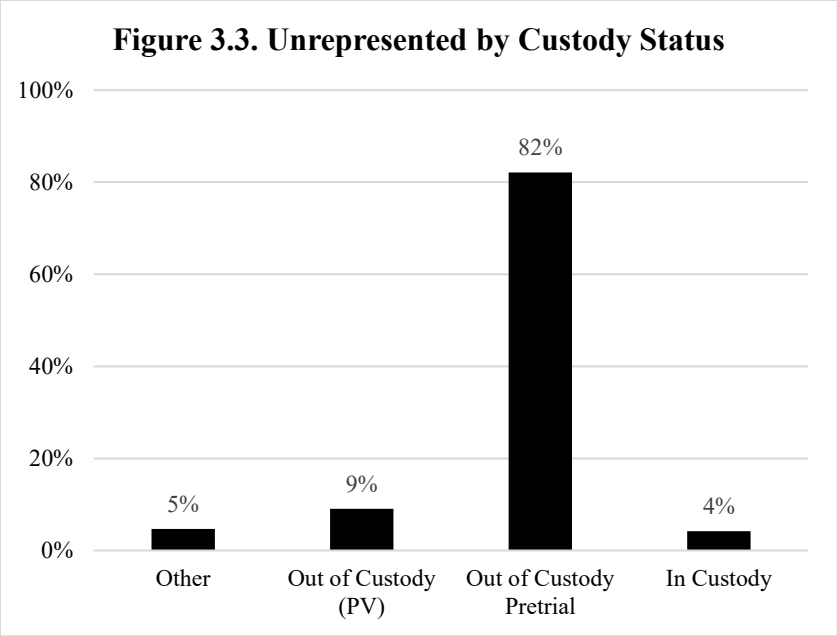
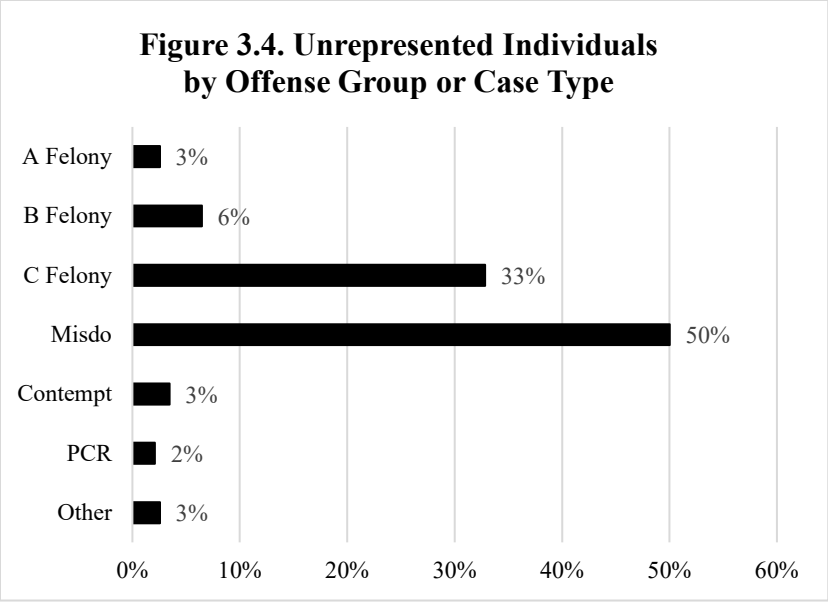


Figure 3.3, above, displays the breakdown of unrepresented individuals by custody status as of September 15, 2023. A little over four percent, or 139 defendants, are being held in custody without representation.[17] Nearly 90 percent of unrepresented defendants are currently out of custody, with the vast majority of those waiting at the pretrial stage of their case. The remaining five percent, constituting the "other" category, consists of individuals with a post-conviction status and non-criminal cases.



After in-custody status, another concern is related to the types of cases impacted by the unrepresented crisis. Figure 3.4, left, displays the share of unrepresented individuals broken down by offense group or case type as of September 15, 2023. By far, the largest share of individuals without a defense attorney are those charged with misdemeanors, as this group makes up just over 50 percent of all unrepresented

[17] Moreover, on August 17, 2023, Federal District Judge Michael McShane ordered that all defendants held in the Washington County jail without court-appointed lawyers must be released within 10 days of their initial court appearance. At the time, this order applied to the 36 defendants lodged in the jail and will apply in the future to any similarly situated defendant. *See Betschart v. Garrett*, No 3:23-cv-01097-CL (D Or Aug 17, 2023).

cases. The proportion of unrepresented misdemeanors may be influenced by court prioritization of more serious charges with limited attorney appointments. The second largest group of unrepresented defendants are those charged with Class C felonies, constituting one-third of all cases. Together, Class C felony defendants, as well as those charged with misdemeanors, make up the vast majority of all individuals who lack court-appointed attorneys, accounting for over 80 percent of the total population. The remainder of the unrepresented defendants is spread across A felonies and B felonies, which account for three and six percent, respectively, as well as individuals lacking representation in cases related to contempt, post-conviction relief, and "other" types of cases, which includes civil commitment, habeas corpus cases, guardianship, termination of parental rights, adoption, violations, and other procedural matters.

4. Factors Contributing to the Unrepresented Persons Crisis

As discussed previously, this representation crisis in Oregon coincided with the shift in contracting models employed by the PDSC in response to the Sixth Amendment Center report. Other factors have also contributed to the unrepresented persons crisis, in addition to this administrative change. Furthermore, as demonstrated in the 27 crisis plans, each jurisdiction has arrived at, and is experiencing, the crisis differently. The crisis plans provide important insight into the local factors underlying the complexity of this statewide problem. In the paragraphs that follow, some common themes are discussed.

4.1 Lack of Attorneys

It is clear from the crisis plans that staffing is a serious problem across Oregon. Many crisis plans identified a lack of qualified attorneys as a chief concern in their district. Specific issues ranged from difficulties in hiring, leading to multiple long-term vacancies within public defender offices, to retention issues whereby the departure of experienced attorneys exceeded the influx of new public defenders. It was also interesting to note the precarious position many jurisdictions find themselves in with regards to staffing. In one district, for example, the sudden departure of one defense attorney from its local consortium brought the district into crisis mode, as previously manageable unrepresented defendant numbers spiked from less than five to over 60 almost overnight with the loss of just one experienced attorney. Similarly, another jurisdiction cited the staffing difficulties associated whenever local defense attorneys go on various types of leave.

It is also notable that staffing concerns are not just limited to the defense bar in many jurisdictions. Many crisis plans, particularly in rural areas of the state, cited a lack of access to attorneys in general across their jurisdictions. Further, several jurisdictions discussed staffing concerns and vacancies within local prosecutors' offices as also playing an important role in the crisis. For example, the district attorney in one judicial district is currently working to improve discovery access and protocols within their jurisdiction. These efforts, however, are limited by the lack of available staff to work on these reforms, which impacts both the office of the local district attorney, as well as the speed and effectiveness of these reforms for the local public defense community.

4.2 Lack of Experienced Public Defense Attorneys

The staffing concerns and challenges described above also impact the caseloads and types of cases public defense attorneys can take across many jurisdictions. Over the past several years, there has reportedly been a significant departure of experienced public defenders from the public defense system in Oregon. Even when departed individuals are replaced, the new attorneys are often only qualified to take misdemeanor cases and/or low-level felonies. Several judicial districts cited this challenge as being especially acute in their local areas and as contributing to the unrepresented persons crisis.

4.3 Conflict Cases

The localized impact of conflict cases was also apparent in many crisis plans. "Conflict cases" are those cases that present a conflict of interest to some or all local providers in a given county or judicial district, which arise when the public defender is already representing another defendant on a given case or the public defender has an adverse interest to the defendant based on a prior representation. As shown in Table 4.1, below, the statewide share of cases without a defense attorney that are attributable to conflicts of interest is just over seven percent. There is, however, wide variation in the share of unrepresented conflict cases by county. In eight counties, accounting for nearly one-third of jurisdictions with unrepresented defendants, the share of unrepresented cases attributable to conflict is over 75 percent.

Table 4.1. Unrepresented Cases and Share of Conflict Cases by County

Court	Cases	Conflict Cases	Pct Conflict	Court	Cases	Conflict Cases	Pct Conflict
Benton*	136	--	--	Lane	11	11	100%
Clackamas	370	0	0%	Lincoln	166	15	9%
Clatsop	62	3	5%	Linn	182	0	0%
Columbia	1	1	100%	Malheur	17	1	6%
Coos	33	33	100%	Marion	305	20	7%
Crook	4	3	75%	Morrow	1	0	0%
Deschutes	3	1	33%	Multnomah	601	20	3%
Douglas	257	10	4%	Umatilla	26	0	0%
Harney	1	1	100%	Union	7	3	43%
Hood River	1	1	100%	Wasco	5	5	100%
Jackson	679	0	0%	Washington	380	106	28%
Klamath	32	0	0%	Yamhill	5	5	100%
Lake	3	0	0%	Statewide	3,288	239	7%

*No conflict case data was received for Benton County.

The counties with a large share of conflict cases vary from rural jurisdictions with lower attorney capacity, such as Wasco, Harney, and Hood River Counties, to jurisdictions with a larger defense provider base, such as Lane County. On the other end of the spectrum, just over one-third of counties report a conflict case rate below five percent. Based on this data, as well as on the discussion presented in many of the crisis plans, conflict cases are the driver of the crisis in many

jurisdictions, while in others, they play little to no role. Importantly, this demonstrates the need for targeted interventions in some jurisdictions to address this specific issue. It may also help judicial districts to keep conflict cases in mind when considering whether to allow attorneys to withdraw from existing cases, as more withdrawals may increase the number of conflicts.

4.4 Concerns with Public Defense Reforms

Another theme that emerged from several of the crisis plans is a concern over and/or skepticism of the system reforms contained in SB 337. Two examples, one of which was provided by JD 16 (Douglas) and another by JD 18 (Clatsop), provide an illustration of this issue:

> "[Douglas County has] one firm with attorneys that handle both criminal and juvenile dependency matters. A partner in the firm has indicated that they do not intend to hire more attorneys for criminal work because she understands that OPDS will no longer be contracting with law firms after the next contract cycle, and she is not willing to invest in hiring and training if her contract will be ending."[18]

> "OPDS should continue to contract with local private bar members and consortiums for indigent representation, particularly in rural areas of the state. Moving to public defender offices and an hourly only model as currently planned will significantly reduce the availability of experienced and qualified attorneys in Clatsop County and other rural areas. Announcement of the planned change for the next contract cycle has already had a negative impact on recruitment of new attorneys."[19]

Similarly, several crisis plans called for caution as Oregon moves to reform its public defense system by expressing concerns about one-size-fits-all statewide policy solutions and the potential unexpected impacts on local jurisdictions, particularly those in rural and frontier areas. Of particular significance are concerns regarding the changes to the public defense service delivery model as applied to existing consortia, discussed further below.

4.5 Other Factors

Finally, myriad other factors contributing to the unrepresented defendant crisis were cited within the crisis plans. These included changes in the law resulting in increased workloads for local

[18] Oregon Judicial Department Office of the State Court Administrator, *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, Appendix B.1-124, *Judicial District 16 – Douglas County*, https://www.courts.oregon.gov/Documents/OSCA%20report_Unrepresented%20Crisis%20Plan_PUBLISHED.pdf.
[19] *Id*. at B.1-143.

justice systems, including the cases of *Ramos v. Louisiana*[20] and *Watkins v. Ackley,*[21] which have increased the number of post-conviction relief cases and will likely lead to numerous new trials for previously convicted defendants, as well as other statutory changes and increases in "plain error" returns from the Oregon Court of Appeals to local courts.[22]

5. Addressing the Public Defense Crisis: SB 337 Crisis Plans

5.1 Crisis Plan Development

The Office of the State Court Administrator (OSCA) assisted the 27 Oregon judicial districts in their implementation of the requirements of SB 337 §§103-108. First, on July 7, 2023, the Chief Justice of the Oregon Supreme Court released Chief Justice Order (CJO) 23-024, which launched the crisis planning work, required a consistent framework for the crisis plans, and required every judicial district to craft a crisis plan regardless of present crisis status.[23]

While Section 104 of SB 337 required judicial districts with a total population of over 100,000 to convene a crisis team, the CJO expanded that requirement for crisis teams to all judicial districts with more than 20 unrepresented defendants as of the date of the order, which included an additional five judicial districts.

The crisis teams convened by the presiding judges under SB 337 and CJO 23-024 were required to include at least the presiding judge, district attorneys, and the OPDS executive or designee in the jurisdiction. Ten days following the release of CJO 23-024, OSCA provided circuit courts with additional guidance, including a facilitator's guide and a template designed to streamline plan development and build consistency in the topics addressed.

In addition to an online data dashboard developed by OJD in collaboration with OPDS in August 2022, OSCA created local data packets for each judicial district to help crisis teams understand the nature of the unrepresented persons crisis locally. In addition to materials, OSCA also provided staff support and crisis plan feedback to all 27 judicial districts. OPDS also provided staff support to the crisis plan teams and drafted crisis planning guidance, discussed below, to help judicial districts conceptualize recommendations and interventions to local crisis drivers.

---

[20] *Ramos v. Louisiana*, 590 US __, 140 S Ct 1390 (2020) (U.S. Supreme Court holding that the Sixth Amendment requires guilty verdicts be unanimous in criminal trials).
[21] *Watkins v. Ackley*, __ Or __, __, 523 P3d 86 (2022) (Oregon Supreme Court retroactively applying jury unanimity rule in state post-conviction proceedings).
[22] *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* at B.1-12 (explaining that an uptick in plain error returns from the Oregon Court of Appeals has led to "increases in the number of criminal cases on remand" and requiring additional appointed counsel). *See generally* ORAP 5.45(4)(b) (plain error requirements).
[23] Order Requiring Development and Implementation of Coordinated Public Safety Unrepresented Defendant Crisis Plans in Each Judicial District, Oregon Chief Justice Order 23-024, July 7, 2023 https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll10/id/3217/rec/11.

5.2 The Four Levers

In preparation for judicial districts to begin their crisis planning, OPDS drafted, and PDSC adopted, guidance to help courts in addressing the public defense crisis.[24] OPDS and OSCA worked together to align the guidance with the OSCA materials developed to help judicial districts develop their crisis plans. A key piece of the guidance and planning materials was the introduction of four approaches, called "levers," that were identified as categories for recommendations and interventions that may increase public defense representation capacity or decrease strain on existing public defense resources in Oregon. The four levers include:

(1) **Reducing filings**, meaning reducing the number of criminal cases filed in Oregon circuit courts or diverting cases from criminal courts, meaning fewer public defenders are required to cover fewer overall cases;

(2) **Increasing dispositions**, meaning increasing the speed with which cases are closed in Oregon circuit courts, thereby reducing the time public defenders are spending on cases, allowing attorneys to increase ethical capacity and promoting system efficiencies;

(3) **Adding attorneys**, meaning increasing the number of public defense attorneys available to take cases in Oregon circuit courts, focusing on ways to recruit new attorneys to public defense work and to retain attorneys already in the public defense system; and

(4) **Adding attorney capacity**, meaning increasing the capacity of individual public defense attorneys by way of prioritizing appointed cases and developing interventions to increase attorneys' ability to use contracted MAC efficiently.

5.3 Analysis of Crisis Plans

As required by SB 337, the CJC received coordinated public safety unrepresented crisis plans from all 27 Oregon judicial districts by September 1. Upon receipt, CJC staff began to review the crisis plans, with analysts independently reviewing the content of each plan while coding the substantive information contained therein so that common themes within the plans could be identified. Further, by employing a coding procedure, the CJC may identify and communicate commonalities within the plans in tabular formats for quick reference for lawmakers, policymakers, interested stakeholders, and members of the public.

Each judicial district's plan included, in relevant part, sections discussing the status of the unrepresented persons crisis locally, actions already taken to remedy the problem or protect

[24] Public Defense Services Commission and Office of Public Defense Services, *Unrepresented Crisis Plan Guidance*, 9-10 (July 14, 2023), https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf.

against it, and recommendations or interventions proposed to further reduce or eliminate the number of unrepresented persons without appointed counsel.

In assessing the actions taken and proposals raised to remedy the crisis, the CJC divided its review into two streams: (1) actions or proposals that fit into the "Four Levers" created by the OPDS/PDSC guidance, and (2) other considerations raised, when the actions or proposals fell adjacent to or outside of those four categories. The CJC's high-level categorization of these items is displayed in Table 5.3, below, which also reports the total number of plans identifying a given intervention or consideration.

Table 5.3. Share of Levers and Considerations Included in Judicial District Crisis Plans

Plan Considerations	Total	Pct.
Four Levers		
Filings	20	74.1%
Dispositions	16	59.3%
Number of Attorneys	25	92.6%
Attorney Capacity	21	77.8%
Other Considerations		
Conflict Coordination	5	18.5%
Collaboration & Communication	22	81.5%
Flex Scheduling/Docketing	21	77.8%
Court Policies & Procedures	22	81.5%
Jail Access	7	25.9%
PD Contracting Reform	12	44.4%
OPDS Service Delivery	6	22.2%
Other Considerations	4	14.8%

As shown in Table 5.3, above, a majority of the crisis plans focused on the four levers. Generally, the lever that was cited the least was the disposition lever, although it was still included in nearly 60 percent of the crisis plans. Interventions related to filings and attorney capacity were included in approximately three-quarters of the crisis plans.

By far the most commonly cited intervention, however, the need for more qualified public defense attorneys. Indeed, only two jurisdictions did not cite a need for additional attorneys within their local areas. In addition to the four levers, the crisis plans also identified a litany of other considerations or factors relevant within local jurisdictions as a means for addressing the unrepresented crisis.

The two most common approaches cited within the plans focused on collaboration and communication and revisions to court policies and procedures. The next most common area identified was with scheduling and docketing, which focused on reducing the logistical burdens associated with litigation, with a keen focus on promoting greater efficiencies.

The other identified considerations fell well below the items listed above, as the next most common consideration was reform tied to the current PDSC contracting system, which was included in nearly half of the crisis plans. Finally, around one-fifth of plans identified a few other notable considerations, including the impacts of conflict cases and the need for conflict case coordination, changes in jail access for public defense attorneys, and suggestions for changes in service delivery at OPDS. The subsections that follow contain additional detail on specific recommendations related to the top-level categories in Table 5.3, above. In each subsection, this detail includes a listing of the judicial districts including specific items from their crisis plans.

It is important to note that the manner in which judicial districts worked within the OSCA template varied across plans, with some plans providing significantly more detail than others. Thus, when interpreting the tables in the following sections, the absence of a tally for a given intervention or consideration does not necessarily indicate an absence of that intervention or consideration within a given district. Rather, the tables should simply be interpreted as a record of which districts viewed a given intervention or issue as central to their plan for addressing the unrepresented defendant crisis at this given time. Additionally, it is also important to note that the following tables are divided into two groups: (1) those plans authored by jurisdictions required to formally convene crisis teams by SB 337 and CJO 23-024, and (2) those jurisdictions not required to convene crisis teams.

5.4 Number of Attorneys

More Attorneys

By far the most common intervention suggested was for the Oregon criminal legal system to address the number of attorneys available to take public defense work; over 90 percent of the judicial districts raised this issue in at least one way in their crisis plans. As shown in Table 5.4, on the following page, the ways in which this was suggested varied widely and included recommendations ranging from bolstering opportunities for law students to become exposed to public defense work in law schools to allowing existing Oregon-licensed attorneys to become qualified to take on higher-level case types more swiftly.

The most oft-repeated need was straightforward: *Oregon needs more public defense attorneys*. Increasing the number of attorneys available to take on public defense work in Oregon was presented as a key need to curtail the unrepresented persons crisis by 18 judicial districts, which accounts for two-thirds of all jurisdictions.

Table 5.4. Specific Interventions Proposed by Judicial Districts Related to Increasing the Number of Defense Attorneys

Judicial District	Hire More Attorneys	Pay	Recruitment & Retention	Loan Forgiveness	Training & Mentoring	System Respect	Judicial Outreach
JD 1 – Jackson	X	X	X	X			
JD 2 – Lane	X		X		X		
JD 3 – Marion	X	X			X		
JD 4 - Multnomah	X	X	X		X		
JD 5 – Clackamas	X						
JD 11 – Deschutes	X	X		X			
JD 16 – Douglas	X						X
JD 20 – Washington	X	X	X		X	X	X
JD 23 – Linn	X	X	X				X
JD 25 – Yamhill	X						X
JD 6 – Umatilla							
JD 7 – Gorge†							X
JD 8 – Baker							X
JD 9 – Malheur	X						X
JD 10 – Union/Wall	X						
JD 12 – Polk					X		
JD 13 – Klamath	X	X	X		X		
JD 14 – Josephine	X	X	X				
JD 15 – Coos/Curry	X		X				
JD 17 – Lincoln	X	X	X				
JD 18 – Clatsop		X		X	X		X
JD 19 – Columbia							X
JD 21 – Benton	X						
JD 22 – Jeff/Crook	X		X	X	X		
JD 24 – Grant/Harn							
JD 26 – Lake			X				
JD 27 – Tillamook		X	X	X	X		
Total	**18**	**11**	**12**	**5**	**9**	**1**	**9**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Attorney Recruitment and Retention

Second to hiring more attorneys was the need to improve recruitment and/or retention strategies. As a general matter, 12 of 27 judicial districts, or about half, discussed the importance of increasing the number of new lawyers who seek out public defense work and helping the attorneys who enter public defense work to stick it out. Recruitment discussions included ideas such as the aggressive promotion of public defense work within law schools, expanding the

range of locations at which public defense jobs are posted,[25] creating law school-to-public defense work pipelines in Oregon's law schools by way of establishing public defense clinics in areas of state outside of the three counties with law schools (Multnomah, Marion, and Lane), and offering Oregon law students opportunities to learn solo practitioner skills. Other suggestions included incentives like supplemental income and housing stipends to encourage new attorneys to seek out public defense work, particularly in rural areas, where recruiting and retaining all lawyers is increasingly difficult.

Relatedly, some jurisdictions focused on other areas that could boost recruitment and/or retention. Loan forgiveness[26] and tuition reimbursement programs were suggested by five judicial districts, or about 18 percent of the plans, while the need for a variety of training programs, such as Continuing Legal Education opportunities,[27] mentoring opportunities for new lawyers,[28] and chances for non-criminal attorneys to gain knowledge of the criminal system to enable them to take cases, were discussed as a need by one-third of judicial districts. Judges in nine districts also reported performing recruitment outreach to their local bar associations to seek out attorneys willing to take on casework to assist in reducing the unrepresented case count.

When the share of judicial districts advocating for increased recruitment/retention generally are combined with those providing specific feedback on means for achieving those outcomes through loan forgiveness, mentoring, and other specific areas, it becomes clear that this intervention was one of the most commonly cited areas necessary to improve the current crisis, as 22 of 25 judicial districts flagged at least one of these items.

Increasing Public Defense Attorney Compensation

Beyond bringing more individuals into the profession, a specific focus on improving compensation for public defense attorneys was a key point made by 11 judicial districts, or around 40 percent of the plans. In some crisis plans, pay equity with other system partners—particularly prosecutors—was the central discussion point. In others, representing both urban and rural areas across the state, the current cost of living and housing crises were the central discussion point, as high costs of living were seen as a barrier to attracting new attorneys both into the profession broadly and into many local jurisdictions more specifically. Further, cost of

[25] OPDS has created a "Careers" webpage on its agency website that allows any public defense provider in the state to post job vacancies in a centralized place for public defense job seekers to find aggregated public defense job postings. It also provides a place for attorneys seeking public defense work to submit an interest card to connect with public defense job opportunities. *See* https://www.oregon.gov/opds/general/pages/jobs.aspx.
[26] During the 2023 Regular Legislative Session, Senate Bill 413 was introduced, which, among other things, proposed establishment of a Public Defense Services Student Loan Repayment Assistance Program through the Oregon State Bar to assist eligible public defense attorneys with outstanding student loans. The bill did not advance.
[27] JD 20 (Washington) organized a public defense crisis CLE to inform local public defense attorneys as to the unrepresented persons problem and to generate discussion of solutions. *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-156.
[28] JD 22 (Jefferson/Crook) has developed a "mentor model" wherein less experienced attorneys team up with more senior attorneys to gain trial skills, allowing them to eventually qualify for increasingly complex case-type assignments. *Id*. at B.1-165-66.

living issues also pose barriers to retention, as many defense attorneys are forced to leave their public defense jobs to make ends meet.

Concern regarding compensation is not going unheeded in Oregon, as some efforts are being made in this area. For example, the PDSC approved an incentive payment approach, wherein any newly contracted attorney who was working at full MAC would receive a $20,000 one-time payment upon joining the public defense community and another $20,000 if that attorney was still taking cases three months later.[29] This approach was coupled with retention incentive payments of $15,000, pro-rated by MAC. Additionally, during the 2023 Regular Legislative Session, contract rates were increased by 8.8 percent, and additional incentive payment funds have been allocated to the PDSC by the Legislature.[30] OPDS reports seeing overall improvement in recruitment rates, although slowly, and retention rates have increased following reports of public defense attorneys leaving the practice over the past several years.

Increasing Shared System Respect of Public Defense Attorneys

Finally, while only formally identified in a single crisis plan, a common refrain from public defense providers of all types is the need to improve understanding of and respect for the role of public defense providers in judicial districts. Consequently, this has led to the belief that public defense work is not valued as keenly as other public safety roles and is often cited as a key contributor to attorney burnout, exacerbating existing barriers to effective recruitment and retention rates. Improvements in this area, which may not require any formal investments, could potentially yield swift and significant improvements in public defense attorney retention efforts.

5.5 Attorney Capacity

The second most commonly discussed lever was attorney capacity, which focuses on ways to make the most of the time and energy of the existing public defense attorneys in Oregon. Increasing or protecting the capacity of public defense attorneys was identified as an area for intervention by almost 78 percent of the crisis plans, which accounts for 21 of the 27 judicial districts. Of the four levers employed by the crisis plans, the range of recommendations and interventions to improve attorney capacity was broadest. Table 5.5, on the following page, provides a more detailed breakdown of the specific proposals by judicial district.

[29] These payment incentives were pro-rated based on the amount of MAC a newly contracted attorney was working, e.g., a new attorney working .5 MAC was eligible for a one-time $10,000 payment and an additional $10,000 incentive payment three months later.

[30] Office of Public Defense Services Public Defense Providers Information, *Public Defense Contract Terms – Contracts & Extensions FAQ*, https://www.oregon.gov/opds/provider/pages/contract-terms.aspx (explaining that, "[i]n 2023, Oregon's legislature allocated $9.9 million as one-time incentive compensation for the retention of both recently hired contract providers as well as experienced contract providers").

Table 5.5. Specific Interventions Proposed by Judicial Districts Related to Attorney Capacity

Judicial District	Prioritize Appointment	Local/Region Coordination	Warrants & Withdrawal	Duty Attorneys	PJ Oversight	Appt Process Changes	Expand/ Exceed MAC	Data Tracking	PD Provider Supports	Unrep Person Case Review
JD 1 – Jackson	X		X	X			X	X	X	
JD 2 – Lane	X	X	X				X			
JD 3 – Marion	X	X	X	X	X		X		X	
JD 4 - Multnomah	X						X	X	X	X
JD 5 – Clackamas										
JD 11 – Deschutes	X	X	X							
JD 16 – Douglas			X					X		
JD 20 – Washington	X	X					X	X		
JD 23 – Linn			X				X			
JD 25 – Yamhill	X		X					X		
JD 6 – Umatilla										
JD 7 – Gorge†							X	X		
JD 8 – Baker								X		
JD 9 – Malheur	X						X	X		
JD 10 – Union/Wall	X						X			
JD 12 – Polk	X					X	X	X		
JD 13 – Klamath	X	X		X			X			
JD 14 – Josephine	X		X	X			X			
JD 15 – Coos/Curry	X		X				X	X	X	
JD 17 – Lincoln	X						X	X		
JD 18 – Clatsop	X		X				X	X	X	
JD 19 – Columbia								X		
JD 21 – Benton										
JD 22 – Jeff/Crook							X			
JD 24 – Grant/Harn								X		
JD 26 – Lake			X				X			
JD 27 – Tillamook										
Total	**15**	**5**	**11**	**4**	**1**	**1**	**17**	**14**	**5**	**1**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Expanding Caseloads/Exceeding MAC

The most common discussion point within the attorney capacity lever contemplated expanding existing caseloads or finding methods of exceeding existing MAC, as 63 percent of the crisis plans made a proposal of this kind. Plans explained this recommendation by conveying that, in many cases, local attorneys felt that their contracted-for MAC was lower than their ethical capacity, meaning that at least some public defense attorneys believe themselves capable of

taking on heavier caseloads than their existing MAC allows.[31] A process exists for public defense attorneys to request the ability to exceed their contracted MAC on a case-by-case basis from OPDS.[32]

It is worth noting, however, that any push towards increasing caseloads, particularly when doing so is accompanied by increasing pay, runs the risk of reinstituting the fee-per-case framework that the 2019 Sixth Amendment Center report concluded puts attorneys in a constitutionally dubious position by forcing them to choose between manageable caseloads and higher pay.[33]

Prioritizing Unrepresented Cases

More than 50 percent of crisis plans, representing 15 of 27 judicial districts, discussed prioritizing cases on the unrepresented persons list so that available attorney MAC would be exercised on cases in greatest need of representation. How prioritization would take place varied by judicial district but was commonly based on factors including whether the unrepresented person was in custody, how long the charges filed had been pending, and the severity of the charges levied.[34]

Improving Data Tracking, Sharing, and Transparency

More than 50 percent of judicial districts also discussed the importance of improving data tracking and sharing amongst state and local agencies involved in the unrepresented persons crisis. Data tracking issues largely focused on improving the means of tracking and efficiently sharing the status of unrepresented cases and available attorney MAC between state and local systems and carefully tracking attorney MAC locally to ensure that courts were informed in a

[31] For example, the crisis plan issued by JD 17 (Lincoln) conveyed that a majority of defense attorneys in this judicial district felt that MAC was lower than their true ethical capacity, noting that, "[o]nly one attorney expressed the current MAC was also their ethical capacity. All other attorneys expressed, based on their skill and experience, they could ethically manage larger caseloads[.]" However, it was also expressed that attorneys felt "no financial incentive" to do so because they are "not appropriately compensated based on their level of experience and expertise." *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* n 12 at B.1-131.
[32] *See* n 10.
[33] Other sources have discussed this issue. *See* Malia N. Brink, Stephen F. Hanlon, Cynthia G. Lee, and Nicholas M. Pace, *National Public Defense Workload Study*, xv, 55 (2023) https://www.rand.org/content/dam/rand/pubs/research_reports/RRA2500/RRA2559-1/RAND_RRA2559-1.pdf (describing, in light of outdated caseload standards, how public defense attorneys with excessive caseloads "are forced to triage cases, choosing which cases to focus attention on while allowing others to be resolved without appropriate diligence" and leading to a justice system that denies "all people who rely on it – victims, witnesses, defendants, and their families and communities – efficient, equal, and accurate justice" and "[e]xcessive workloads create conflicts for lawyers in violation of their ethical obligations").
[34] JD 23 (Linn) also prioritized civil commitment cases. *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, supra note 12 at B.1-168.

timely manner of which available public defense providers could be appointed to cases in need of counsel.[35]

Removal of Appointed Counsel from Warrant-Status Cases

Another commonly identified intervention in the attorney capacity area was a recommendation to remove appointed counsel from cases where the defendant is in "warrant status," meaning that the person has an active warrant out for their arrest but has not appeared in court as required. This status leaves appointed attorneys with contracted-for MAC taken up by these appointed cases but without assurance that these cases will be resolved any time soon.[36] Eleven plans flagged this issue, indicating that the removal of appointed attorneys from warrant-status cases could free up available attorney MAC, thus making more existing attorney MAC available for appointment to unrepresented cases.

The crisis plans with this recommendation nearly all identified a locally appropriate time period for determining when an attorney should be shifted away from a warrant status case, although it is notable that there was substantial variation in this time period between jurisdictions (ranging from 30-90 days). Notably, while discussions of warrant status cases were common in crisis plans, there is disagreement over whether removing attorneys from appointed cases in warrant status will result in increased attorney MAC, based on existing PDSC contract provisions. As such, it would be prudent to further explore the impacts of warrant status case removals.[37]

Local/Regional Conflicts Coordinators

Nearly a fifth of judicial districts recommended the creation of local or regional appointment coordinator positions for unrepresented cases. The purpose of these coordinators would be to serve as local hubs for efficiently managing appointment of attorneys with available MAC to

---

[35] A recent letter from the Oregon District Attorneys Association (ODAA) to the Joint Committee on Ways and Means Public Safety Subcommittee and Oregon public safety leaders, to which CJC was copied, also relayed interest in data amongst system partners. ODAA noted that making information such as local attorney capacity available to circuit courts, public defense providers, and prosecutors "would allow [j]udges to appoint attorneys more efficiently and expeditiously." Dan Primus, *Letter to Joint Committee on Ways and Means Public Safety Subcommittee Co-Chairs Janeen Sollman and Paul Evans*, 2, transmitted via email (September 29, 2023).

[36] Oregon Judicial Department data shows that approximately 70 percent of individuals on warrant status return to court within 60 days; likewise, individuals who have not returned to court within 60 days are much less likely to do so imminently. *Summary of Circuit Court Unrepresented Defendant Crisis Plans, supra* n 12 at 8.

[37] OPDS disagrees with the suggestion that having local judges remove attorneys from warrant status cases after 30, 60, or 90 days will result in increased available MAC. Rather, OPDS is concerned that removing attorneys who are familiar with the client and the case from the cases in warrant status will use up more attorney MAC in subsequent proceedings with the appointments of new attorneys to wholly unfamiliar cases. OPDS has suggested some safeguards to put in place for jurisdictions that elect to proceed with removing attorneys in warrant status cases after a certain time threshold. *See* Office of Public Defense Services, Crisis Team Update, Attachment 5a, *PDSC Summary of and Response to Unrepresented Defendant Crisis Plans*, 72 (September 19, 2023) https://www.oregon.gov/opds/commission/Lists/Meetings%20Schedule/Attachments/223/PDSC%20Agenda%20&%20Meeting%20Materials%2009%2021%202023Amended.pdf (materials circulated for September 21, 2023, PDSC meeting).

prioritized unrepresented cases, thereby relieving the duty of sourcing attorneys from courts at arraignment.

Increase Provider Supports

Nearly one fifth of jurisdictions included recommendations to increase defense provider supports in their local areas by funding administrative positions to assist public defenders in managing caseloads and social workers or case managers to help meet client needs. A related provider support recommendation was to streamline the ways OPDS pays for interpreters to allow language translation work to be coordinated more efficiently and to give attorneys and appointed clients more time to collaborate on representation.

Establish Duty Attorneys

Four judicial districts recommended establishing duty attorneys to work on a salaried basis without a contracted-for caseload to free up MAC for other attorneys. Currently, attorneys of this type are most commonly found working arraignment dockets where they provide limited representation in a manner that does not establish a lawyer-client relationship. Two plans, submitted by JD 1 (Jackson) and JD 3 (Marion), specifically mentioned this type of approach, while others propose utilizing duty attorneys for specialty courts.

Presiding Judge Oversight of Attorney Appointments

Another recommended action receiving a singular mention included having a presiding judge generally exercise oversight of public defense provider appointments and periodically reviewing the circumstances of in-custody cases to assess whether opportunities existed for early resolution or other means for expediting case processing. Another singular mention concerned changing appointment processes for certain case types. In this instance, JD 12 (Polk) described pursuing changes in the appointment process for Jessica's Law cases[38] to better manage local attorney MAC for cases requiring heightened qualifications.

5.6 Filings

Three-quarters of all Oregon judicial districts (20 of 27, total) made recommendations related to decreasing the number of criminal case filings in Oregon circuit courts or diverting cases out of criminal courts. Table 5.6, on the following page, provides a breakdown, by judicial district, of more specific interventions proposed in the crisis plans.

[38] Jessica's Law applies when a person is charged with a first-degree sex offense where the alleged victim is under 12-years-old and carries a 25-year mandatory minimum prison sentence. *See* ORS 137.700(2)(b)(D-G).

Table 5.6. Specific Interventions Proposed by Judicial Districts Related to Decreasing Case Filings

Judicial District	Treat Misds as Violations	Policies to Avoid PV's	Diversion Programs	Specialty Courts	Data Sharing	FTA Policy Changes	Filing Reductions
JD 1 – Jackson	X		X				
JD 2 – Lane			X				
JD 3 – Marion			X	X			
JD 4 - Multnomah			X	X			
JD 5 – Clackamas	X	X					
JD 11 – Deschutes							
JD 16 – Douglas							
JD 20 – Washington							
JD 23 – Linn		X	X				
JD 25 – Yamhill							
JD 6 – Umatilla							
JD 7 – Gorge†							
JD 8 – Baker						X	
JD 9 – Malheur							X
JD 10 – Union/Wall							
JD 12 – Polk							
JD 13 – Klamath	X		X				
JD 14 – Josephine							
JD 15 – Coos/Curry	X						
JD 17 – Lincoln	X	X	X				
JD 18 – Clatsop	X	X			X		
JD 19 – Columbia							
JD 21 – Benton							
JD 22 – Jeff/Crook		X					
JD 24 – Grant/Harn							
JD 26 – Lake						X	
JD 27 – Tillamook							
Total	**6**	**5**	**7**	**2**	**1**	**2**	**1**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Diversion and Specialty Court Programs

The most common recommended action in this category was diversion programs, although suggestions of this type were only found in approximately one-quarter of the crisis plans. Diversion programs seek to avoid criminal justice system intervention as much as possible and can include programs such as law enforcement assisted diversion programs that seek to connect individuals with unmet needs to services rather than entering the justice system. Three judicial districts described employing specialty court programs as means to provide opportunities for

participants to avoid conviction.[39] The use of specialty courts as an intervention, however, would likely benefit from additional discussion and consideration given that success through specialty court supervision is frequently non-linear, which means that not all participants will avoid prosecution. Further, it takes significant time to successfully complete specialty court programs, meaning attorney resource savings would not be realized immediately. Establishing duty attorneys, as discussed above, may help in supporting courts with this recommendation.

Treating Misdemeanors as Violations

Treating certain misdemeanors as violations was recommended by six judicial districts, representing nearly a quarter of jurisdictions. Charging lower-level, nonviolent conduct as a violation, which is legally distinct as noncriminal conduct, most often obviates the necessity of appointing public defense providers, thereby likely saving public defense resources as well as myriad other system resources.

However, caselaw suggests that for this intervention to be *most* effective in conserving court-appointed attorney resources, jurisdictions looking to pursue it should consider charging conduct as violations as often as possible from the *start* of proceedings (which was commonly suggested in plans, at arraignment), rather than seek to have misdemeanors reduced to violations after misdemeanor charges have been filed. As filing of the misdemeanor charge triggers due process protections, even upon reduction to a violation, proceedings may require inquiry as to whether the violation offense nevertheless retains "too many penal characteristics to not be characterized as 'criminal prosecutions.'"[40] Charging conduct as violations from the outset may reduce the likelihood of having to engage in this analysis, saving both defense and prosecuting attorney resources.

Additionally, while reducing charges from crimes to violations has the potential to greatly reduce criminal filings, it should also be noted that this is reliant on prosecutors employing their discretion to do so when the circumstances of the cases at hand are deemed appropriate. Therefore, absent something like a written policy explaining which cases should be treated as violations, it may be more difficult to predict the potential impact of these recommendations.

[39] Only courts that described use of specialty court programs as an intervention in their local public defense crisis response plans are counted herein; Oregon's judicial districts have many specialty courts not counted in this report, as they were not included as a component of the unrepresented persons crisis plan.
[40] *State v. Whitten*, 278 Or App 627, 632, 379 P3d 707 (2016) (quoting *State v. Fuller*, 354 Or 295, 297, 311 P3d 861 (2013)); *Brown v. Multnomah County Dist. Ct.,* 280 Or 95, 100-09, 570 P2d 52 (1977) (laying out a five-factor test to assess whether an "ostensibly civil penalty" is nonetheless a criminal prosecution for the purposes of constitutional protections, the five factors being: (1) type of offense; (2) penalty; (3) collateral consequences; (4) punitive significance; and (5) arrest and detention).

Addressing Probation Violations Differently

Five judicial districts recommended policies that would address certain probation infractions differently to avoid citing an individual with a probation violation, which requires court appearances and public defense appointment resources.[41] JD 23 (Linn), for instance, proposed that their local parole/probation department explore increasing its use of local sanctions for minor infractions in lieu of filing a show cause petition. Similarly, JD 18 (Clatsop) proposed an intervention whereby the prosecuting attorney would send a warning letter to probationers, giving them an opportunity to get back into compliance before filing a show cause order.

Other Filing Reductions

Similar to the proposals related to probation violations, other filing-reduction responses included discussion of increasing the use of show-cause hearings rather than charging individuals for Failure to Appear or Contempt offenses. In addition, some crisis plans advocated for increased opportunities for data-sharing amongst system stakeholders to inform prosecutor charging decisions with an eye toward reducing filings, overall. Finally, one plan noted a general temporary reduction in filings as a means of reducing the immediacy of the crisis in their local jurisdiction, though any resources saved will necessarily have to respond once regular filings resume.

5.7 Dispositions

Nearly 60 percent of all crisis plans included approaches designed to increase the speed with which case adjudications are reached. These case disposition interventions may increase attorneys' ethical capacity, and potentially save MAC, by reducing the time public defenders spend on individual cases. Table 5.7, on the following page, provides a breakdown, by judicial district, of specific interventions proposed by judicial districts related to case dispositions.

[41] ORS 135.553 governs the use of citations for probation violations.

Table 5.7. Specific Interventions Proposed by Judicial Districts Related to Case Dispositions

Judicial District	Settlement Conferences	Early Resolution	Global Resolution	Specialty Dockets
JD 1 – Jackson	X	X		
JD 2 – Lane				
JD 3 – Marion	X	X	X	X
JD 4 - Multnomah	X	X		
JD 5 – Clackamas				
JD 11 – Deschutes	X			
JD 16 – Douglas		X		
JD 20 – Washington		X	X	X
JD 23 – Linn		X	X	
JD 25 – Yamhill				
JD 6 – Umatilla				
JD 7 – Gorge†	X			
JD 8 – Baker				
JD 9 – Malheur			X	
JD 10 – Union/Wall	X	X	X	
JD 12 – Polk		X		
JD 13 – Klamath	X	X	X	X
JD 14 – Josephine				
JD 15 – Coos/Curry	X			
JD 17 – Lincoln	X	X		X
JD 18 – Clatsop	X			
JD 19 – Columbia				
JD 21 – Benton				
JD 22 – Jeff/Crook	X			
JD 24 – Grant/Harn				
JD 26 – Lake				
JD 27 – Tillamook				
Total	**11**	**10**	**6**	**4**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Judicial Settlement Conferences

To reach case dispositions more efficiently, 11 crisis plans, accounting for 40 percent of judicial districts, indicated that they would use judicial settlement conferences to resolve cases before trial, thus aiming to decrease attorney workload and save public defense resources.

For example, JD 1 (Jackson) indicated that they are currently employing settlement conferences with a focus on resolving cases with the most serious charges, as resolutions in those cases would potentially reduce the need for lengthy trials. Ten judicial districts, recommended employing an early resolution or disposition program, in which persons without criminal histories accused of nonperson offenses may be eligible for community-based interventions sanctions rather than prison time.[42]

[42] *See* ORS 135.941 (establishing early disposition programs) and ORS 135.942 (describing program purposes).

Global Resolution / Settlement Dockets

Global resolution or settlement dockets were also identified as a means for increasing case dispositions, as this approach was included in 6 crisis plans. This approach is aimed at addressing an accused individual's total case count during a single appearance or fewer appearances. For instance, JD 13 (Klamath) recommended the use of "global settlement days," where, one day per month, a judge will be made available all morning to resolve cases. A deputy district attorney will also be assigned to the global settlement docket and would be required to make plea offers on all scheduled cases. After the parties negotiate, the defendants would have the opportunity to submit their plea to the judge and resolve their case or cases.

Specialty Dockets

Similarly, four judicial districts described using specialty dockets to increase disposition efficiencies. JD 3 (Marion), for example, proposed expanding their specialty courts and diversion programs, which include a veteran's court, adult drug court, mental health court, juvenile drug court, and their intensive supervision program for nonviolent property and drug offenders. These programs, per the plan, will create additional offramps from system involvement and provide opportunities to address the underlying causes of crime while also leading to early dispositions, therefore potentially saving public defense attorney capacity.

5.8 Other Considerations

The crisis plans also contemplated interventions that fell outside of the four levers described above. In this section, these other considerations will be divided into five subsections, including actions taken or recommendations related to flexible docketing and scheduling, court rules and protocols, public defense contracting reforms, OPDS service delivery, and a catchall "other" category containing recommendations that did not necessarily fit into the other identified categories. Table 5.8.1, below, provides a breakdown, by judicial district, of more specific flexible docketing and scheduling interventions proposed in the crisis plans.

5.8.1 Flexible Docketing and Scheduling

Allowing for some degree of flexible docketing and scheduling opportunities was a popular approach or intervention identified in the crisis plans, as it was mentioned in 21 of 27 plans, accounting for over 81 percent of all judicial districts. Specific approaches related to increasing flexibility are shown in Table 5.8.1.

Table 5.8.1.

Detail on Flexible Docketing and Scheduling Approaches Identified in Crisis Plans

Judicial District	Remote Appearance	Flex Scheduling	Court Timelines
JD 1 – Jackson	X		X
JD 2 – Lane	X	X	X
JD 3 – Marion	X	X	X
JD 4 - Multnomah	X		
JD 5 – Clackamas			
JD 11 – Deschutes	X	X	X
JD 16 – Douglas	X	X	
JD 20 – Washington			
JD 23 – Linn	X	X	X
JD 25 – Yamhill	X		
JD 6 – Umatilla			
JD 7 – Gorge†	X	X	X
JD 8 – Baker			
JD 9 – Malheur	X	X	X
JD 10 – Union/Wall		X	X
JD 12 – Polk			X
JD 13 – Klamath	X	X	X
JD 14 – Josephine	X		
JD 15 – Coos/Curry	X		X
JD 17 – Lincoln	X	X	X
JD 18 – Clatsop	X	X	X
JD 19 – Columbia	X		
JD 21 – Benton			
JD 22 – Jeff/Crook	X		
JD 24 – Grant/Harn			
JD 26 – Lake	X		
JD 27 – Tillamook	X		X
Total	**19**	**11**	**14**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Remote Appearances

The most commonly cited approach in this category was the use of remote appearances, although the extent to which a remote option is utilized in a given district varies. In JD 1 (Jackson), for example, remote appearances are allowed when they align with court protocols, while JD 2 (Lane) grants requests to appear remotely when other parties' substantive rights are not impacted. Similarly, JD 7 (Gorge counties) routinely permits attorneys to appear in non-evidentiary criminal proceedings remotely. JD 11 (Deschutes) offered that they have, maintained remote proceedings as a means of promoting efficiency and allowing public defenders to work on other matters while waiting for their cases to be called. Finally, JD 9 (Malheur) allows attorneys to file a short form (no motion needed) to appear remotely at hearings where a remote option is offered.

Flexible Docketing/Scheduling

Eleven crisis plans identified current or proposed practices designed to increase scheduling flexibility or efficiency. JD 23 (Linn), for example, allows parties to remove cases from the calendar if they do not believe an appearance is necessary for moving the case forward. In JD 7 (Gorge counties), given the large geographic nature of the district, which covers five counties, dockets are staggered so that attorneys are not put in a position to appear in two places at the same time. JD 7 also routinely allows docketing changes to accommodate attorney availability. In JD 9 (Malheur), the criminal motion docket is set up using time slots, and all of the cases or matters relevant to a specific attorney or firm will be included in a single slot, thus avoiding the common

issues with 'cattle call' status hearings, where attorneys are forced to sit through others' cases.[43] Finally, in JD 10 (Union/Wallowa), the court uses an "unavailable date" program,

> "where participating attorneys submit, and keep current, their unavailable dates to the court. [The court] manage[s] this within our two-county district. In return, the attorneys are assured that when we are scheduling outside of court, their unavailable dates will be considered, so long as we are not barred by statutory limitations. If a hearing is scheduled on a date the attorney had listed in their unavailable dates with docketing staff and it is not barred by statutory time limitations, the court will reset without a motion to continue."[44]

Court Timelines

Finally, 14 crisis plans identified changes in court timelines or schedules. For instance, JD 11 (Deschutes) has already, "[e]xtended the length of time between arraignment/initial appearance and entry of plea to provide time for attorneys to meet with their clients and gather information in an effort to reduce unnecessary hearings."[45] In JD 9 (Malheur), alternatively, the court has worked with the District Attorney's (DA) Office and arranged that when a plea offer is to be given, the DA will submit the plea details to the defense at least one week prior to the scheduled hearing where a defendant would potentially enter a plea.

5.8.2 Court Protocols, Practices, and Procedures

Perhaps the most jurisdiction-specific recommendations were actions and interventions grouped together as modifications to local court protocols, practices, and procedures intended to increase system efficiencies. In all, 22 crisis plans, accounting for over 81 percent of all judicial districts, described at least one change to local court protocols that are either already in effect or are planned to be implemented in response to the unrepresented defendant crisis. As shown in Table 5.8.2.1 (following page), the CJC grouped these efforts into nine categories.

[43] *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-131.
[44] *Id*. at B.1-82-83.
[45] *Id*. at B.1-86.

Table 5.8.2.1. Detail on Court Protocol/Procedure Changes Identified in Crisis Plans

Judicial District	Allow Pleas Until Trial	Omnibus Hearings	No Contest Pleas	Discovery	Status Hearings	Modify PJO or SLRs	Reduce # of Hearings	Revise Show Cause Filings	Trial Practice Changes
JD 1 – Jackson	X								
JD 2 – Lane	X	X		X			X		
JD 3 – Marion	X	X		X					X
JD 4 - Multnomah		X		X					X
JD 5 – Clackamas	X								
JD 11 – Deschutes	X								
JD 16 – Douglas				X					
JD 20 – Washington					X				
JD 23 – Linn									
JD 25 – Yamhill	X			X	X				
JD 6 – Umatilla									
JD 7 – Gorge†	X								
JD 8 – Baker								X	
JD 9 – Malheur	X	X		X		X			X
JD 10 – Union/Wall	X								
JD 12 – Polk							X		X
JD 13 – Klamath									
JD 14 – Josephine	X	X							
JD 15 – Coos/Curry	X	X	X		X				X
JD 17 – Lincoln	X	X		X	X		X		
JD 18 – Clatsop	X			X	X	X			X
JD 19 – Columbia	X	X							
JD 21 – Benton									
JD 22 – Jeff/Crook	X								X
JD 24 – Grant/Harn									
JD 26 – Lake								X	
JD 27 – Tillamook									X
Total	**15**	**8**	**1**	**8**	**5**	**2**	**3**	**2**	**8**

†Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Plea Processes

The most commonly discussed court practice in the plans was the plea-bargaining process, specifically whether pleas were allowed up until the date of trial (or, in some instances, very close to the day of trial), as this item was included in 15 crisis plans, which represents just over half of the judicial districts. While plea bargaining was a commonly identified area, however, there was substantial variation in the approaches taken within the districts. In JD 2 (Lane), for instance, the practice of allowing plea agreements and negotiations up until the day of trial was

already an established practice. Similarly, this practice is in place in JD 3 (Marion), JD 7 (Gorge counties), JD 14 (Josephine), and JD 11 (Deschutes), among others.

In other districts, however, this item is more nuanced. In JD 9 (Malheur), for example, plea negotiations are allowed until the Friday before trial, and the trial call or trial status hearing was moved to the earlier part of the day on Fridays so that all parties will have sufficient notice regarding which cases are proceeding to trial the following week. JD 15 (Coos/Curry), proposed modifying their practice related to guilty pleas. In this instance, the district has already modified the local plea practice by accepting no contest pleas on misdemeanors and low-level felony charges. In the past, formal guilty pleas were the only option in these cases. The change, therefore, provides an additional option to defendants that may result in the resolution of more cases via plea.

Discovery Improvements

Improvements in discovery practice were discussed in eight crisis plans, although the changes or reforms related to discovery varied across judicial districts. In JD 2 (Lane), for example, the crisis team proposed establishing a workgroup to discuss, collaborate, and resolve issues related to discovery. Included in the JD 2 plan was the observation that "the proliferation of digital evidence (in the form of law enforcement body camera videos and surveillance videos in commercial and private properties) and coordination challenges between law enforcement agencies has led to frustrating discovery delays" impacting all system players within the district.[46]

Recommendations ranged from implementing an electronic discovery process to establishing local deadlines for production of discovery. In JD 3 (Marion), an intervention related to discovery was included, calling for more efficiency in discovery management systems, adjustments to internal workflows for discovery, and the financing of systems that are better integrated across system partners. In JD 4 (Multnomah), current practice mandates discovery deadlines for misdemeanor cases, and their case management conferences for Measure 11 cases seek to address and facilitate the discovery process between the parties. In JD 15 (Coos/Curry), the Coos County DA is willing to implement an e-discovery procedure should resources allow.

Status Hearings

Holding regular status hearings for unrepresented defendants was identified in five crisis plans. In both JD 25 (Yamhill) and JD 15 (Coos/Curry), for instance, status hearings for unrepresented defendants are held weekly and there is coordination with OPDS in advance of the hearings. JD 17 (Lincoln), similarly, holds status hearings with the aim to reduce the likelihood of an out-of-custody unrepresented defendant failing to appear. Less common suggestions included modifying local judicial orders or supplementary rules to increase efficiencies, reducing the number of hearings required to address issues, and revising show-cause filing practices.

[46] *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-15.

Table 5.8.2.2. Detail on Other Areas or Approaches Identified in Crisis Plans

Judicial District	Conflict Management	Jail Access	Collaboration
JD 1 – Jackson			X
JD 2 – Lane	X		X
JD 3 – Marion			X
JD 4 - Multnomah		X	X
JD 5 – Clackamas			X
JD 11 – Deschutes	X		X
JD 16 – Douglas			
JD 20 – Washington		X	X
JD 23 – Linn			X
JD 25 – Yamhill			X
JD 6 – Umatilla			X
JD 7 – Gorge†			X
JD 8 – Baker	X		X
JD 9 – Malheur		X	X
JD 10 – Union/Wall			X
JD 12 – Polk			X
JD 13 – Klamath			X
JD 14 – Josephine			X
JD 15 – Coos/Curry	X	X	X
JD 17 – Lincoln		X	X
JD 18 – Clatsop		X	
JD 19 – Columbia			X
JD 21 – Benton			
JD 22 – Jeff/Crook		X	X
JD 24 – Grant/Harn			X
JD 26 – Lake			
JD 27 – Tillamook	X		
Total	**5**	**7**	**22**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Conflict Case Management

Many crisis plans also identified the need for conflict case management, improvements to jail access, and the importance of collaboration and coordination in their plans. Table 5.8.2.2, left, provides a breakdown, by judicial district, of more specific interventions proposed in the crisis plans.

First, five plans cited issues or interventions related to conflict coordination within their districts. JD 2 (Lane), for example, recommended the creation of a conflict resolution team comprised of the presiding judge, a representative from Public Defender Services of Lane County, and a representative from the Lane County Defense Consortium. This team will meet to discuss, prioritize, and resolve conflicts by identifying and reaching out to attorneys identified by the team as capable of handling these types of cases.

Both JD 11 (Deschutes) and JD 15 (Coos/Curry), alternatively, proposed creating a regional conflict resolution team, which could be used to identify additional attorney capacity within a given region to help link out-of-county attorneys with cases that have conflicts within a neighboring county. Similarly, JD 27 (Tillamook) proposed employing a regional conflict coordinator who could perform tasks like those proposed for regional conflict teams.

Jail Access Improvements

One quarter of crisis plans, representing seven judicial districts, described a variety of ways in which local jurisdictions will or are already working with jail staff to improve defense attorney

access to clients and unrepresented persons in local correctional facilities. Discussions included improving remote access to clients and unrepresented persons by way of investments in video conferencing equipment and iPads for facilities that either lack it entirely or need more.

Other discussions included means by which persons in custody may receive documents and addressing ways to ensure that messages from attorneys are received by their clients in custody. Means to confidentially share electronic discovery was another issue raised. Physical space limitations were also noted, such as a lack of sufficient visitation space or a lack of confidential space available for clients to consult with attorneys. Addressing limited visitation hours, including both in-person visitation and remote opportunities, was also noted in several plans.

As examples, JD 9 (Malheur) noted that the jail has "only two visitation rooms available, it is not clear whether persons in custody always receive messages to call their attorneys, and the jail is not able to hand-deliver documents – they must be mailed.[47] JD 9's crisis plan noted that the presiding judge and jail lieutenant will set up time to discuss barriers as well as set up training of jail deputies regarding any proposed solutions.

JD 17 (Lincoln) has already begun pursuing solutions to allowing persons in custody to confidentially review discovery by remote means (on iPads, currently) to better client access, and overall, supporting practices that will keep cases moving more expeditiously.[48] The Lincoln County Sheriff's Office and the presiding judge have met and identified resources to kickstart this intervention. Likewise, JD 18 (Clatsop) has similarly begun collaboration with the Clatsop County Sheriff's Office to improve communication between attorneys and their in-custody clients, and the crisis plan reports that "[t]he jail is moving forward on both interim and long-term solutions that will make attorney visits more efficient."[49]

Collaboration and Communication

Finally, a majority of plans, accounting for over 80 percent of judicial districts, cited local collaboration and communication as essential for managing the crisis. Some districts cited their local communication and problem-solving approaches as a best practice. Others, like JD 14 (Josephine), lauded the regular communication that occurs between their defense providers and the courts, which allows these system partners to manage attorney capacity and to know when local providers are approaching limits in MAC. Similarly, JD 18 (Clatsop) specified that the court was in daily communication with their local consortium attorney and OPDS as the court seeks to monitor both attorney MAC and ethical capacity. Other jurisdictions, such as JD 19 (Columbia), identified communication as one of their interventions. In this instance, JD 19's crisis plan noted that increased communication between local consortia and the court was necessary to indicate why certain cases cannot be accepted by local practitioners.

[47] *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-76.
[48] *Id*. at B.1-134-35.
[49] *Id*. at B.1-142.

5.8.3 Public Defense Model and Contracting Reforms

Table 5.8.3. Detail on Public Defense Model Reforms Included in Crisis Plans

Judicial District	Open Caseload Model	Contracting Changes	SB 337 Concerns
JD 1 – Jackson			
JD 2 – Lane			
JD 3 – Marion	X	X	
JD 4 - Multnomah			X
JD 5 – Clackamas			X
JD 11 – Deschutes		X	X
JD 16 – Douglas		X	X
JD 20 – Washington	X	X	X
JD 23 – Linn			
JD 25 – Yamhill			
JD 6 – Umatilla			
JD 7 – Gorge†	X	X	X
JD 8 – Baker			
JD 9 – Malheur	X	X	
JD 10 – Union/Wall			X
JD 12 – Polk		X	
JD 13 – Klamath		X	
JD 14 – Josephine	X	X	X
JD 15 – Coos/Curry	X	X	
JD 17 – Lincoln	X	X	
JD 18 – Clatsop		X	X
JD 19 – Columbia			
JD 21 – Benton			
JD 22 – Jeff/Crook			X
JD 24 – Grant/Harn			
JD 26 – Lake			
JD 27 – Tillamook			X
Total	**7**	**12**	**12**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Open Caseload Model

Seven judicial districts expressed a desire for Oregon to move to an open caseload model, which the PDSC is pursuing.

JD 3 (Marion), uniquely, submitted several ideas ranging from instituting a rolling workload model based on attorney experience and qualifications to employing a public defense unit funding model designed to supply all necessary staff, investigators, overhead costs, benefits, liability insurance, software and equipment, and technology supports to local providers.

PDSC Contracting Changes

Twelve plans identified potential contracting changes that PDSC could adopt. Similar to many other plans in this area, JD 12 (Polk), for instance, suggested that PDSC should permit higher contractual MAC for more experienced attorneys who have ethical capacity. JD 12 also proposed that PDSC should amend future contracts to allow attorneys to be removed from cases where the attorney has had no contact with a client without that case being counted against the attorney's MAC. JD 13 (Klamath) proposed that PDSC should include line-item additions to contracts allowing attorneys to provide docket specific services without using full MAC.

Concerns About SB 337's Impacts on Consortia

Finally, as briefly touched on previously, many judicial districts expressed reservations about the impacts of SB 337. Many of these concerns centered on the potential unintended impacts of changes to the consortia contracting model, particularly in rural areas where the consortia model is the primary means of providing defense services in their area. In JD 16 (Douglas), one local consortia provider has stopped hiring new attorneys due to concerns with SB 337. Similarly, in JD 18 (Clatsop), JD 7 (Gorge counties), and JD 14 (Josephine), among others, there are serious concerns that changes to the consortia model will lead to reduced availability of experienced public defenders. In all, 12 judicial districts (nearly half) expressed reservations.

5.8.4 OPDS Service Delivery

Customer Service Improvements

Five plans identified OPDS customer service operations as a challenge within the unrepresented persons crisis, as noted in Table 5.8.3 (following page). For instance, JD 12 (Polk) recommended simplifying the OPDS process for attorneys requesting the ability to take additional cases above contracted MAC (launched by submitting an online form for OPDS review). JD 15 (Coos/Curry) identified several areas for improvement in the communication between OPDS and the county and local provider, such as providing a single point of contact to allow for timelier decisions.

Payment Processing Issues

Similarly, six plans referenced payment system improvements at OPDS as an intervention that would improve local outcomes.[50] JD 3 (Marion), for example, recommended that OPDS streamline the payment of interpreters. JD 12 (Polk) requested that PDSC prioritize funding requests for expert witnesses and other supports for defendants who are in custody. JD 12 also recommended that OPDS increase staffing to ensure that delays in funding requests improve.

Expedited Decision-Making

With regards to decision making, JD 15 (Coos/Curry) recommended that OPDS expedite decisions on requests for experts and other case specific needs to reduce case delays experienced locally. The district also recommended that OPDS streamline contracting processes. Two other plans made similar suggestions regarding more expedient decisions from ODPS.

[50] Relevant to resolving this issue is some context about OPDS' existing payment processing system, which is reportedly outdated and cumbersome to operate. The agency has ongoing exploration efforts targeting a new financial and case management system. *See* Office of Public Defense Services, *PDSC Financial and Case Management System, Business Case Version 3.0* (August 15, 2022), https://www.oregon.gov/opds/general/SiteAssets/Pages/FCMS/FCMS%20Business%20Case.pdf; *see also* Office of Public Defense Services, *Financial Case Management System Project*, https://www.oregon.gov/opds/general/Pages/FCMS.aspx.

Audits

Finally, JD 3 (Marion) and JD 12 (Polk) recommended audits for OPDS; JD 3 recommended an audit to be performed by the Secretary of State to ensure transparency related to expenditure of funds and to build external trust, and JD 12 recommended OPDS conduct periodic internal audits to examine root causes of payment processing delays.

Table 5.8.4. Detail on OPDS Service Delivery Highlighted in Crisis Plans

Judicial District	Customer Service	Payments	Decision Making	OPDS Audit
JD 1 – Jackson		X		
JD 2 – Lane				
JD 3 – Marion	X	X		X
JD 4 - Multnomah				
JD 5 – Clackamas				
JD 11 – Deschutes				
JD 16 – Douglas				
JD 20 – Washington				
JD 23 – Linn				
JD 25 – Yamhill				
JD 6 – Umatilla				
JD 7 – Gorge†				
JD 8 – Baker				
JD 9 – Malheur				
JD 10 – Union/Wall	X	X	X	
JD 12 – Polk	X	X	X	X
JD 13 – Klamath				
JD 14 – Josephine	X	X		
JD 15 – Coos/Curry	X	X	X	
JD 17 – Lincoln				
JD 18 – Clatsop				
JD 19 – Columbia				
JD 21 – Benton				
JD 22 – Jeff/Crook				
JD 24 – Grant/Harn				
JD 26 – Lake				
JD 27 – Tillamook				
Total	**5**	**6**	**4**	**2**

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

5.9 Other Considerations

Finally, there were several suggestions and interventions contained in crisis plans that did not fit into the categories covered above.

Judicial Infrastructure

In the JD 9 (Malheur) crisis plan, for example, the overall lack of judicial and courthouse resources was identified as an impediment to handling its current caseload. Specifically, JD 9 identified building a new courthouse and adding a new circuit court judge position as a long-term solution to its case processing needs. JD 9's existing courthouse has only one courtroom, meaning that only one of its two judges may hold court in that location at a given time, and there is no jury assembly room, also limiting the district's case processing capacity. Additionally, because there are only two judges in JD 9, each judge is responsible for 722 cases, on average, as of the date of the crisis plan submission. This case-per-judge average leaves JD 9's judges with an average case-to-judge ratio that is 100 cases *higher* than the next-highest judicial district, JD 5 (Clackamas). JD 9's plan suggests that supporting greater judicial infrastructure would foster greater case disposition efficiencies.[51]

Statutory Improvements

JD 2 (Lane) offered two statutory amendment proposals that would provide greater flexibility and clarity to existing laws. First, the JD 2 crisis plan suggests that the Legislature should consider removing time barriers to alternate dispositions, such as those found in ORS 161.566(1) (misdemeanors treated as violations) and ORS 161.570(2) (offenses, such as non-person Class C felonies, treated as misdemeanors). For example, ORS 161.566 contemplates treating any misdemeanor as a Class A violation upon election by the prosecuting attorney. However, the prosecuting attorney must make this election "orally at the time of the first appearance of the defendant or in writing filed on or before the time scheduled for the first appearance of the defendant."[52] If no election is made "within the time allowed, the case *shall* proceed as a misdemeanor,"[53] and the opportunity to reduce the offense to a violation is lost.

JD 2 also recommended the Legislature consider providing additional clarity on when courts may dismiss a criminal case in furtherance of justice, per ORS 135.755. Pursuant to this statute, a circuit court, either sua sponte or upon motion by the prosecuting attorney, may order proceedings dismissed in "furtherance of justice."[54] JD 2 notes that further Legislative guidance

[51] While not listed recommendations to resolve the unrepresented persons crisis, two other crisis plans noted the impact that insufficient judicial capacity has had on resolving criminal cases more expediently. JD 5 (Clackamas) noted that, based on population, their district should have at least 14 judges (JD 5 presently has 11 judges). *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-59. JD 10 (Union/Wallowa) noted that they have only one judge eligible to handle all criminal cases in a two-judge district. *Id*. at B.1-81.
[52] ORS 161.566(1).
[53] *Id*. (emphasis added).
[54] ORS 135.77 (dismissal on motion of court or district attorney).

on appropriate factors to consider would clarify whether this statute may be employed to dismiss proceedings due to the "absence of an available attorney."[55]

Court-Appointed Counsel Eligibility

Lastly, JD 3 (Marion) suggested stricter review processes[56] for determining which individuals accused of crimes should qualify for public defenders to avoid devoting limited resources for defendants who may exceed some eligibility criterion.[57]

6. Discussion

When viewed as a census of local efforts to stem the unrepresented person's crisis, plan themes can be organized into takeaways to inform continued progress. What follows are summary discussions of key themes observed within the 27 crisis plans.

6.1 Theme: Retention of existing public defense attorneys is paramount

Unequivocally, the crisis plans emphasize that Oregon *must* retain its current public defense workforce and address fair compensation of these attorneys. These are the attorneys in the best position to immediately make an impact on the unrepresented person crisis, as they are either already highly qualified or in a position to continue increasing expertise and qualifications to take on more serious case types. There are indications that incentive pay bumps have already shown effectiveness in retaining attorneys, as well.

6.2 Theme: Concerns exist about changes to consortia contracting

A significant issue raised by multiple judicial districts is concern over future system changes (spurred by SB 337) that may make consortia more difficult to operate. Consortia members, in follow-up conversations, noted the lesser-recognized duties consortia administrators serve, namely as de facto coordinators for the local defense bar in many rural and frontier areas in Oregon. With SB 337's move towards individual contracts for all current consortia attorneys, confusion and concern exists within courts and consortia defense providers about how this

---

[55] JD 2 also referenced New York Criminal Procedure Law Section 210.40 as a potential source for generating discussion regarding factors that aim to balance "the rights of defendants, victims, and community safety." *See* New York Criminal Procedure Law Section 210.40 (motion to dismiss indictment; in furtherance of justice), https://www.nysenate.gov/legislation/laws/CPL/210.40.

[56] ODAA also highlighted consideration of "[l]egislative or judicial review" of the court-appointed counsel eligibility threshold, explaining that doing so could "potentially result in a higher threshold the ensures indigent defense services reach those truly in need." Primus letter, *supra* note 34 at 1-2.

[57] Eligibility for court-appointed counsel in Oregon is governed by a clutch of statutes and policies, including ORS 135.050 (eligibility for court-appointed counsel), ORS 151.485 (financial eligibility), and standards established as part of the duties of the PDSC pursuant to its statutory charge in ORS 151.216(1)(j)(A). Applicants must, among other things, apply for appointed counsel to the circuit court in which the proceedings requiring appointed counsel have arisen. *See generally* "Court Appointed Attorney," Oregon Judicial Department Forms Center, https://www.courts.oregon.gov/forms/pages/court-appointed-attorney.aspx.

coordination will take place in the future and with other disincentives consortia members encounter that may drive them to stop taking public defense work.

JD 7 (Gorge counties), as an example, explained that, "[i]t is already a challenge to entice criminal practitioners to take jobs or cases in this geographical area," and, accordingly, "[a]ny limitations that create uncertainty for potential candidates are a barrier to increasing capacity."[58] JD 14 (Josephine) likewise expressed concern regarding SB 337's changes regarding consortia contracts plainly: "[e]xperienced criminal defense attorneys are already leaving or considering other legal career path opportunities * * * [and] [t]he 14th Judicial District stands to lose many public defenders if consortiums are eliminated."[59]

While SB 337 does not, strictly speaking, prohibit consortia from operating, it does change the way in which contracts would be managed – individual attorneys could contract with OPDS on an individual basis and then could opt to pool resources to create their own consortia, but concerns, as noted above, still exist regarding prohibitions on outside retained work, caseload caps, and uncompensated coordination work that consortia contract administrators currently provide, among other things.

Additionally, about one in five judicial districts expressed concern of any statewide policy changes that do not adequately consider how those changes may impact certain districts, particularly those located in less urban areas. The districts for whom this is a concern are overwhelmingly rural or frontier communities, who often express unique challenges that may only be present within a single, or just a few, jurisdictions.

6.3 Theme: Strengthen and refine recruitment of new attorneys

Oregon does not have enough attorneys qualified to do the work, and it loses attorneys in public defense frequently enough that this burnout erodes the potential to expand the provider pool of experienced attorneys the state badly needs. As such, Oregon should continue to build upon existing efforts to recruit new attorneys to the practice. This strategy, of course, takes a longer timeline to realize results for at least two reasons: (1) the very nature of targeting students assumes lag time before they graduate and pass the Oregon bar; (2) barred new attorneys must still develop the skills over time to take on higher cases without burning out and leaving public defense for more lucrative and/or less stressful work.

Part of recruitment is improving compensation – pay increases have reportedly assisted with retention, based on OPDS' incentive payments. Public defense attorneys relayed anecdotes about new public defenders seeking out second jobs to meet cost-of-living needs. Good work is underway in garnering more interest from law students, but a key distinction between public defense nonprofits and law firms that do on-campus recruiting is that firms can promise students jobs with pay a year or so in advance. Public defense offices cannot presently do that. Building law school pipelines into public defense practice, which could ideally include some degree of

[58] *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-66-67.
[59] *Id*. at B.1-114.

future employment certainty, would help students commit to public defense practice earlier and make the entry of new lawyers into public defense more predictable.

6.4 Theme: Continue to improve information and data coordination and communication between state and local agencies

Within this theme are two key conclusions: (1) addressing the unrepresented crisis would be aided by better data tracking and transparency; and (2) conflict coordination is key to keeping more judicial districts from descending into full-fledged, multi-pronged unrepresented person crises.

First, the need for data that can be shared at the local level between system partners in the trenches, as well as between state entities and local partners, was raised across the board. OJD and OPDS are, indeed, engaged in ongoing data improvement work, and the level of data-driven engagement by OJD and OPDS during the crafting of the crisis plans represents an excellent foundation for future analysis. As an example, OJD and OSCA provided each judicial district with detailed local data sets in preparation for development of crisis plans so that each team could consider the crisis drivers, locally, and respond with tailored solutions. However, improvements in overall data sharing and coordination between state agencies and local judicial districts was raised by 14 crisis plans, representing about half of the judicial districts in the state.

To respond to these local data needs, the agencies would ideally continue efforts to identify commonly sought-after data, prioritize capturing most impactful data, resolve what process changes are required to capture them, develop a timeline for achieving improvements, and share with public defense attorneys and local stakeholders a plan for making this information more easily obtainable in real-time.

More globally, improvements in information and data coordination will also increase the understanding of current and future public defense needs, an example of which is the new committee being run by the Oregon Department of Administrative Services (DAS) to forecast case counts. Additionally, increased transparency in the methods employed to translate case counts into caseloads – whether that be via MAC or any other means – is critical to engaging all partners in crisis resolution. Put differently, all stakeholders need to understand how Oregon determines caseload needs now and in the future. Improving stakeholder understanding and overall transparency in this area would also lead to increased trust in these processes.

6.5 Theme: Conflict cases represent a small, yet important focal point in addressing the unrepresented persons crisis

Statewide, conflict cases account for a relatively small number of cases involving unrepresented defendants. As of the drafting of this report, there were 239 “conflict” cases, representing seven percent of the total unrepresented cases in the state. Despite these small numbers, the potential impact of conflict cases cannot be understated. In one-quarter of the state’s judicial districts, conflicts cases are the sole driver of the unrepresented crisis. In these areas, conflict coordination is essential, whether that be within each jurisdiction individually or via regional coordinators that can help shift resources between counties when and where they are needed

quickly. Thus, there needs to be recognition of the outsized influence conflict cases can play in certain jurisdictions when crafting local solutions as well as an understanding that targeted interventions in some jurisdictions may be required to address this specific issue.

6.6 Theme: Move to open workload model and allow attorneys to exceed existing MAC, but only with careful oversight

A common refrain in crisis plans was dissatisfaction with the current MAC approach to contracting. PDSC and ODPS, also dissatisfied with the limitations of MAC, is making progress towards adopting an open workload contracting model in the future. Unlike previous contracting models, OPDS will soon do so with caseload forecasting assistance performed by DAS, per system modifications through SB 337.

Significantly, many plans recommended increasing attorney caseloads, either by way of OPDS assigning more cases to attorneys or by allowing attorneys to exceed their contracted-for caseload when ethically appropriate. While the contracting model, specifically, will be modified as PDSC continues to steer its contracting model towards an open workload approach, it bears emphasis that assigning attorneys higher caseloads, without other system conditions changing in step, may trigger more problems than it solves.

First, high caseloads, particularly without commensurate compensation, is the most commonly stated reason that attorneys leave public defense. Assigning higher caseloads may push more of Oregon's public defense attorneys out of this line of work, further exacerbating the dearth of attorneys with this skillset.

Second, while undoubtedly some attorneys are capable of competently managing more cases than their contracted-for MAC, allowing attorneys to take hourly rate cases in excess of their contracted-for MAC has the potential to bring Oregon back to the ethical conundrum it was looking to solve in changing the contract model a few years ago: pitting a public defender's ethical obligation to only take so many cases as one may competently represent against the potential to increase take-home pay in a line of legal work serially underpaid. Any move toward increasing caseloads, therefore, should be done carefully and with appropriate oversight.

6.5 Theme: Continue to increase court and system efficiencies wherever possible

Many crisis plans embraced innovation in detailing the efforts local systems have already gone to, or are working towards, in supporting increased court efficiency and flexibility whenever possible. These efforts are readily reflected in progress made in adopting, in whole or in part, components of the Oregon Criminal Defense Lawyers Association's (OCDLA) recommended Uniform Trial Court Rules, in addition to those adopted in CJO 23-020, such as liberally

allowing for remote appearances and shifting dockets around to make most efficient use of attorney time.[60]

A smaller but significant subset of plans are tackling discovery timelines, processes, and technological improvements that aim to streamline a complicated process and better use limited attorney time (of both prosecutors and defense attorneys). Given the complexity and expense of discovery system upgrades, and potential benefits of more statewide consistency (particularly during a crisis in which defense attorneys are increasingly being asked to work outside of their home jurisdictions), stakeholders and the Legislature may benefit from considering statewide uniformity and perhaps system upgrade funding opportunities. Any statewide changes would be wise to consider the impacts that changes in discovery production timelines, processes, and technology systems will have on the stakeholders producing and receiving discovery and support those needs, too.

A substantial number of judicial districts described consideration or adoption of other OCDLA recommendations, among other local practice modifications. The degree to which many of the plans followed recommendations, or the ways in which their own local practice modifications change court functions, day-to-day, however, was often difficult to parse precisely through the crisis plans alone. Ideally, if a longer timeline were available, CJC would seek to visit representatives from judicial districts to gain a working knowledge of new and changing on-the-ground practices. Doing so would allow CJC to explain the benefits of those increased efficiencies in the greatest detail possible across all jurisdictions.

Likewise, while a quarter of plans substantively addressed issues wherein public defenders have limited access to clients in jails, it is likely that these same challenges exist in other jurisdictions even if not described in the plans. Therefore, judicial districts that had not previously considered jail access as an opportunity for system efficiency may benefit from considering what colleagues in other districts are doing to increase attorney access to in-custody clients.

Overall, given that the use of the court and system efficiencies were not universal in the crisis plans, it would be beneficial for judicial districts and other system partners to look at the crisis plans of their neighbors and colleagues to determine whether additional progress can be made at home. The crisis plans, across the board, all contain pragmatic ideas and valuable analysis and could spur other jurisdictions and system partners to adopt approaches being used in other similar districts. This would allow for the greater proliferation of the unique ideas found in the plans while also allowing individual jurisdictions to retain their autonomy and fit additional system reforms into their preexisting local processes and approaches.

[60] OCDLA submitted Uniform Trial Court Rules (UTCR) proposals in September 2022. Of the UTCR proposals submitted by OCDLA, Chief Justice Flynn adopted modified versions of UTCR 4.010 (allowing earlier resolution of pretrial motions) and UTCR 7.010(2) (removing plea agreements and negotiations from activities required to be completed by certain deadlines) via CJO 23-020 (effective August 1, 2023). *See* Uniform Trial Court Rules (2023), https://www.courts.oregon.gov/rules/UTCR/2023_UTCR.pdf.

6.6 Theme: OPDS customer service responsivity

Complaints that OPDS has customer service challenges, and, in particular, that it does not process payments quickly enough, has been an ongoing critique since before the unrepresented persons crisis exploded. OPDS is aware of these critiques and is continually striving for faster processing times. The agency notes that it has only four accounts payable staff working exclusively in-person to process approximately 100 invoices, daily, and the agency has seen an increase in hourly-rate payment submissions since the unrepresented persons crisis began.[61]

To the extent that processing payments continues to be an issue in the future, with legislative approval, the agency should explore possibly hiring more accounts payable staff to aid in processing invoices and other financial tasks faster, perhaps on a limited duration basis initially, and/or regarding an improved financial management system.

6.7 Theme: Seeking additional opportunities in reducing filings and increasing dispositions

As a general observation, a majority of the crisis plans addressed the insufficient number of attorneys and attorney capacity, which, in some cases, was linked to also support increasing disposition efficiency. As it will take time to increase the number of qualified attorneys available in Oregon, it may be worthwhile for local jurisdictions, or the Legislature, to further examine creative ways in which to decrease filings and increase dispositions.

Ready examples of this might include allocating more funding to specialty courts (particularly while also considering pairing them with duty attorney suggestions from a number of the crisis plans) and other diversionary programs, particularly behavioral health programs, as a few plans also emphasized the impacts that insufficient behavioral health services have on the criminal justice system.

The Legislature may also consider exploring JD 2's suggestions about statutory modifications that would increase opportunities for criminal charges to be reduced to violations in certain circumstances and provide clarity for when judges may dismiss cases in furtherance of justice.

[61] *PDSC Summary of and Response to Unrepresented Defendant Crisis Plans*, *supra* note 28 at 72.