



# Oregon

**Oregon Public Defense Commission**

198 Commercial St. SE, Suite 205

Salem, Oregon 97301-3489

Telephone: (503) 378-2478

Fax: (503) 378-4463

[www.oregon.gov/opdc](http://www.oregon.gov/opdc)

2 June 2025

Governor Tina Kotek  
254 State Capitol  
Salem, OR 97301-4047

Dear Governor Kotek:

On 17 April 2025, coinciding with my appointment as Interim Executive Director at the Oregon Public Defense Commission, you provided me with a letter of expectations outlining your goals for the beginning of my tenure at the agency. One of the expectations included in that letter was a requirement to provide you with “a timeline for when OPDC believes the unrepresented crisis will end in the six crisis counties and statewide.” To fulfill this requirement, I am submitting this letter and executive summary, as well as a detailed memorandum attached to this letter.

**Executive Summary of the OPDC 12-month Plan for Ensuring Every Oregonians in Need of Representation has Access to an Attorney**

As of the beginning of May 2025, nearly 4,400 Oregonians statewide were in need of an attorney that could not be provided to them. While this is a statewide concern, the vast majority of the individuals in need of public defense services reside in six counties, Coos, Douglas, Jackson, Marion, Multnomah, and Washington. The issue is particularly pronounced in the last two jurisdictions, Multnomah and Washington, where the number of unrepresented individuals has grown by over 185 percent in the last twelve months.

OPDC is committed to ensuring that all Oregonians in need of representation have access to an attorney and the agency is focused on identifying and implementing any and all changes in agency policy, procedure, and practice that can have an immediate positive impact on the number of unrepresented individuals. In this letter and in the supporting memorandum attached to it, OPDC identifies seven areas where the agency can make immediate changes that will begin to put the state on a trajectory toward meeting our goal of providing defense representation to all who are entitled to it.

***Intervention One: Address Bureaucratic Rules and Barriers to Exceeding Maximum Attorney Caseload Caps.*** Effective in the 2025-2027 contract cycle, OPDC will change its contract terms

so that it can facilitate the appointment and compensation of sufficiently experienced attorneys with ethical capacity to take cases above current MAC limits, up to 115 percent, on a voluntary basis. OPDC preliminary analysis of this policy indicates that this program could allow up to 69 attorneys in the six counties with the most unrepresented individuals and up to 107 additional attorneys statewide to increase their capacity for taking cases by up to 15 percent.

***Intervention Two: Expand the collection and analysis of data regarding representation being provided to clients consistent with ABA Public Defense Principle Four: Data Collection and Transparency.*** OPDC is committed to collecting and analyzing data regarding public defense services being provided within the state consistent with the American Bar Association’s Ten Principles of a Public Defense Delivery System. Data gathered from numerous sources, including the Oregon Judicial Department and public defenders themselves, will allow OPDC to identify and communicate important datapoints concerning the changing nature of public defense, the quality of public defense services being provided across the state, and to ensure that attorneys working in excess of 100 percent MAC are capable of providing consistently high quality services to clients across their entire caseloads.

***Intervention Three: Implement contract and policy adjustments approved by the OPDC Commission in April 2025.*** OPDC is working to implement contract and policy adjustments that will result in additional MAC capacity across the state by changing our approach to (a) weighting cases where attorneys withdraw early during the legal process, (b) partial MAC weighting for second or subsequent attorneys within a single firm; (c) compliance with contractual terms and conditions, and (d) caseload requirements for new first year attorneys. Agency estimates indicate that these policy changes could result in additional capacity equal to 30.59 MAC at full implementation.

***Intervention Four: Adjust non-profit provider contracts to allow public defender offices to hire cohorts of new attorneys.*** Effective in the 2025-2027 contract cycle, OPDC will change its contract terms to better facilitate the hiring of cohorts of new public defenders at non-profit public defense firms. This change will allow non-profit public defense firms to better compete for top legal talent both locally and across the country, will provide more flexibility and predictability in hiring for both local providers and OPDC, and will contribute to higher retention rates among non-profit public defense firms.

***Intervention Five: Continue to develop and support Public Defense Law Clinics at Oregon’s three law schools.*** Attracting and training the next generation of career public defenders must begin as early as possible. Currently, the state has four public defense law clinics housed within its three law schools, which, during the 2024-2025 academic year, provided hands on training for 50 students through representation of clients in over 400 cases.

***Intervention Six: Collaborate with system partners to expand the use of Special Resolution Dockets.*** During the 2025-2027 contract cycle, OPDC is committed to maximizing the use and effectiveness of special resolution dockets as far as practicable across the state. OPDC is also committed to deploying the OPDC Trial Division to develop and staff these dockets wherever possible, as the open workload model of the Trial Division provides the flexibility needed to resolve a high number of cases. To date, the Trial Division has established special dockets in Coos and

Jackson Counties both of which have reduced the number of unrepresented individuals in those jurisdictions. The Trial Division is also negotiating the creation of additional special dockets in other counties as well.

***Intervention Seven: Continue utilizing the flexibility of the OPDC Trial Division to help mitigate the crisis in counties with high numbers of unrepresented individuals. Advocate for the continued, thoughtful expansion of the OPRC Trial Division.*** The OPDC Trial Division is a key resource the state can leverage in addressing the number of unrepresented Oregonians. The three Trial Division offices are located in Jackson, Marion, and Multnomah counties and are taking cases in all six of the jurisdictions with the largest numbers of unrepresented individuals. The Trial Team prioritizes *Betschart* and other in-custody cases, with a secondary focus on in-custody clients with serious charges, clients who have been on the unrepresented list for long periods of time, and cases that are particularly complex due to clients' mental health needs, language barriers, and other factors. Overall, the staff at the Trial Division offices are collectively working at over 100 percent of MAC.

A deeper discussion and analysis examining the scope of the challenges Oregon faces in public defense as well as the solutions being implemented by OPDC is attached to this letter. The supporting documentation also contains a timeline for implementation of the seven interventions outlined above, many of which will be implemented for the 2025-2027 contract cycle and some of which will be implemented immediately. It is my belief that through continued partnership with the Governor's Office, as well as key system partners and stakeholders, OPDC will be able to take a leadership role in resolving the current challenges that face our justice system related to indigent defense.

Sincerely,

A handwritten signature in black ink, appearing to read "Kenneth Sanchagrin", with a long horizontal flourish extending to the right.

Kenneth Sanchagrin  
Interim Executive Director

cc:

Chris Warner, Chief of Staff  
Constantin Severe, Deputy General Counsel  
Jennifer Nash, Chair, Oregon Public Defense Commission



**Date:** 2 June 2025

**To:** Governor Tina Kotek  
Constantin Severe, Deputy General Counsel

**From:** Ken Sanchagrin, Interim OPDC Director

**Re:** Response to Letter of Expectations from Governor Kotek, dated 17 April 2025

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## **1. Introduction and Background**

On 17 April 2025, Oregon Governor Tina Kotek enacted a change in leadership at the Oregon Public Defense Commission (OPDC). Specifically, Governor Kotek replaced the OPDC Executive Director and issued a letter outlining her expectations for the agency to guide its new Interim Director. It required, among other things, that the Interim Director provide the Governor “with a timeline for when OPDC believes the unrepresented crisis will end in the six counties and statewide.” The information that follows provides an analysis of the current unrepresented problem, both through a statewide and local lens, and it offers the agency’s 12-month plan for ensuring that all Oregonians who require representation have access to an attorney.

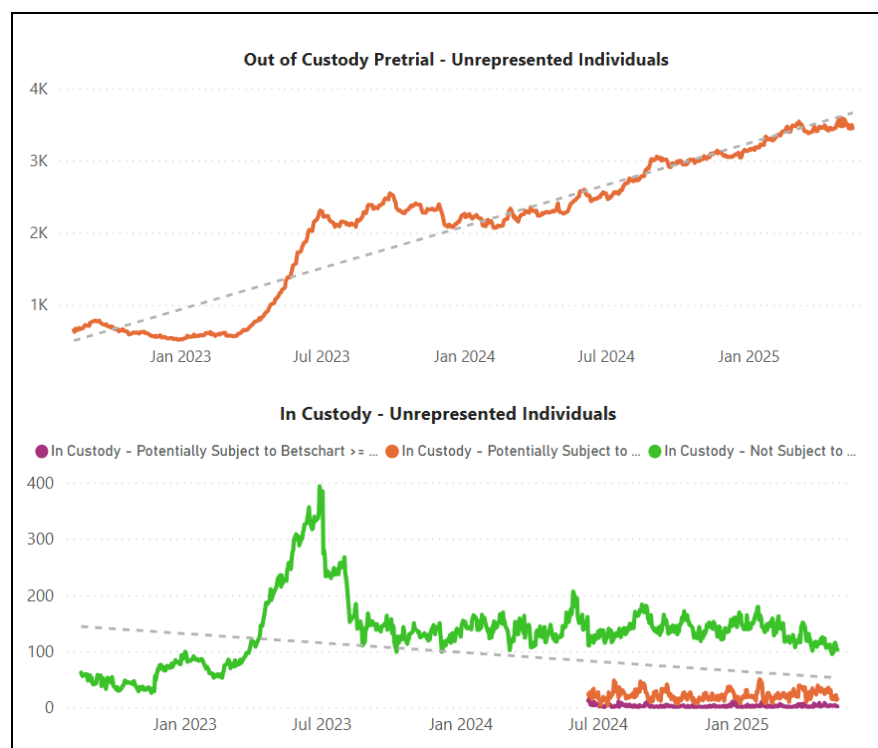
This report primarily focuses on seven interventions, all of which can be implemented within the next several months. As outlined in the Governor’s letter, the crisis “is years in the making and will take concerted action by everyone to solve.” OPDC completely agrees with this framing of the problem as a systems issue and looks forward to working with system partners in the coming months to further craft and refine additional interventions for addressing the challenges we face as a state in providing public defense. The discussions and interventions contained in this memorandum, however, focus on the immediate actions that OPDC can take to reduce the number of individuals in need of public defense representation over the next 12 months.

This memorandum is organized into four sections. In the next section, a retrospective background on the challenges within public defense is presented from both a statewide

perspective as well as through a regional lens. It then transitions to a more detailed examination of the six counties with the highest number of unrepresented individuals by providing a discussion of local data as well as local dynamics in those areas. Section three introduces seven interventions that will have positive impacts on the public defense system in the short term, as well as a discussion of the timeline needed for implementing those interventions and the expected impacts. Section four, finally, offers a brief discussion of future efforts that will require collaboration with system partners, stakeholders, and others, to address additional reforms that could positively impact the challenges facing the indigent defense system.

## 2. Background

### 2.1. Statewide and Regional Trends in the Number of Unrepresented Individuals



**Figure 1.** *Statewide Trends in Unrepresented Individuals both Out-of-Custody and In-Custody between 8/17/22 and 5/15/2025.*

As of the beginning of May 2025, nearly 4,400 individuals statewide were in need of an attorney that could not be provided for them.<sup>1</sup> Utilizing data from the Oregon Judicial Department,<sup>2</sup> Figure 1 displays trends in the number of in- and out-of-custody unrepresented individuals starting in August of 2022 through 15 May 2025.<sup>3</sup> The top portion of the panel reports data concerning out-of-custody unrepresented individuals and shows a steady upward trend over time. Indeed, from the beginning of the data

<sup>1</sup> Cozine, Nancy, and Jessica Rosier. "Current State of the Unrepresented Crisis." Presentation delivered to the Oregon Legislature Ways and Means Subcommittee on Public Safety. May 15 2025. Link: [Judicial branch](#)

<sup>2</sup> Oregon Circuit Courts Trends Over Time Dashboard, maintained by the Oregon Judicial Department. Link: [Microsoft Power BI](#)

<sup>3</sup> For consistency, all data displayed from the Oregon Judicial Department is current as of 15 May 2025, unless otherwise noted.

tracking in August 2022 until the middle of May 2025, the number of unrepresented individuals has increased more than fourfold. These increases can be broken into two distinct phases. First, there was substantial growth between March and June of 2023, as the number of unrepresented individuals more than tripled over a four-month period. Second, this substantial growth was then followed by a period of relative stability until the late spring of 2024, when a longer term, slightly more moderate upward trend resumed that has continued, largely unabated, until the present time.

Figure 1 tells a slightly different story concerning in-custody unrepresented individuals. Similar to the patterns discussed above regarding out-of-custody trends, the number of in-custody individuals in need of an attorney spiked during the four-month period between March and the end of June of 2024. Departing from the previous discussion, however, following the peak at the end of June 2024, the number of in-custody individuals in need of an attorney fell by more than half before stabilizing and experiencing a slight downward trend overall that continues to the present day.

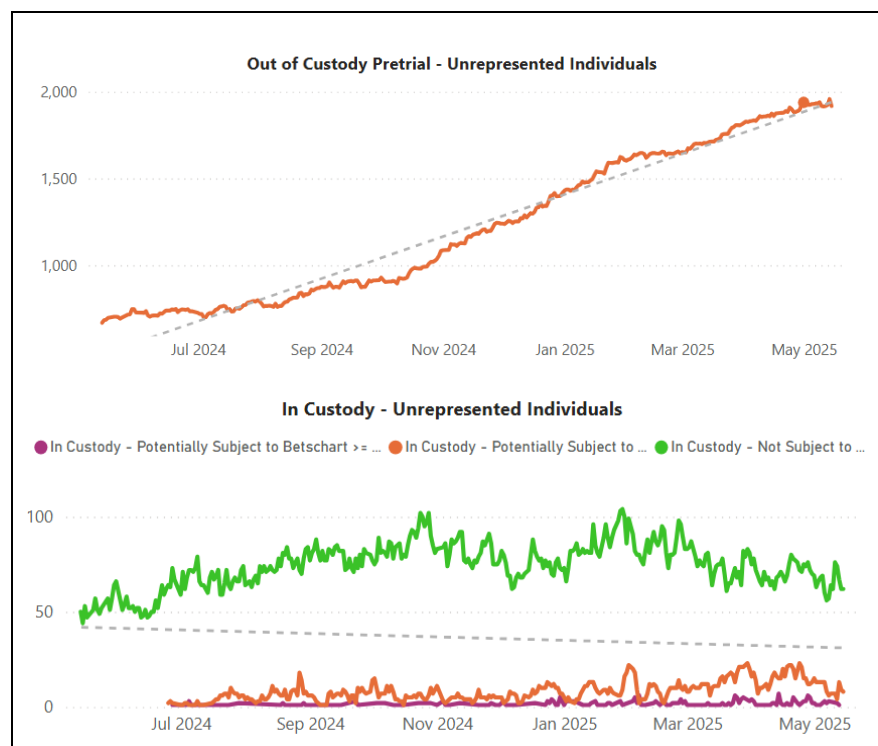


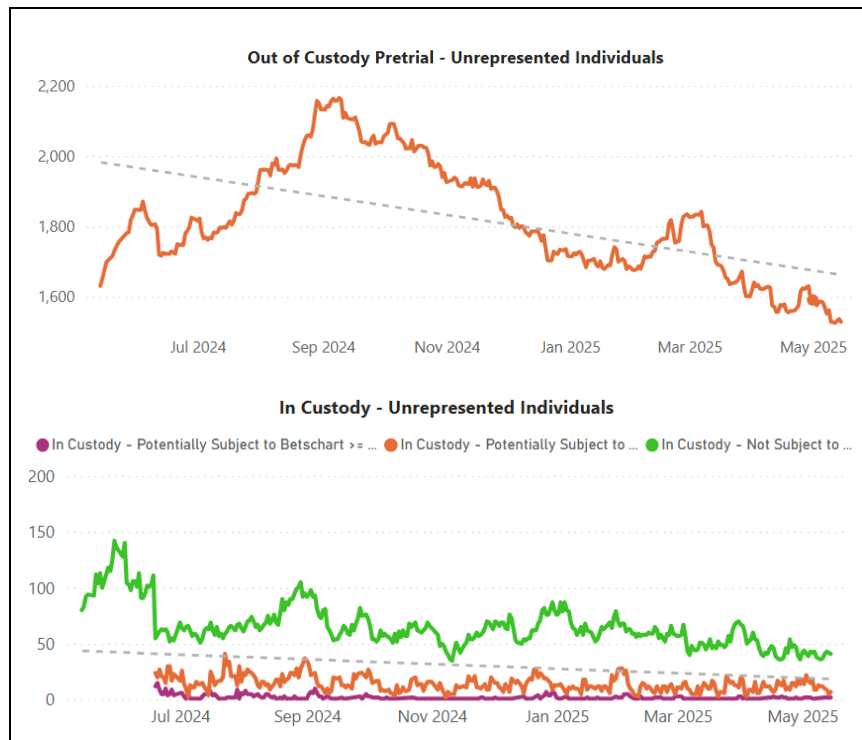
Figure 2. Trends in Unrepresented Individuals in Multnomah and Washington Counties (Past 12 Months)<sup>4</sup>

It is important to note, however, that a statewide analysis masks important differences and trends that exist at the county level. Indeed, the geographic concentration of unrepresented individuals in certain areas has led to the informal designation of six jurisdictions as “crisis counties,” because those jurisdictions have faced ongoing, consistent challenges providing representation for defendants within their borders. Furthermore, two counties,

Multnomah and Washington, currently face the most critical challenges, as the number of unrepresented individuals within those jurisdictions has escalated substantially in recent months. Figure 2 displays the trends in unrepresented individuals for those two

<sup>4</sup> See *supra* note 2.

jurisdictions over the past year. During the past twelve months, Multnomah and Washington Counties experienced steady, substantial growth in the number of out-of-custody individuals in need of attorney, as the collective number of unrepresented individuals increased by over 185 percent. Also, during this time the nature of the crisis changed in those jurisdictions. Individuals charged with misdemeanors, for instance, only accounted for about a third of unrepresented individuals in mid-2024. Today, however, misdemeanors account for nearly two-thirds of all individuals in need of an attorney in those two jurisdictions.



**Figure 3.** *Trends in Unrepresented Individuals in Oregon Counties other than Multnomah and Washington (Past 12 Months)*<sup>5</sup>

individuals has been followed by a general downward trend that continues to the present day. Indeed, while overall out-of-custody numbers have only fallen by a little over six percent during the past year, since the most recent peak in September of 2024, the share of unrepresented individuals has fallen by nearly 30 percent. Similarly, the number of unrepresented in-custody defendants has also witnessed a modest decline over the past twelve months.

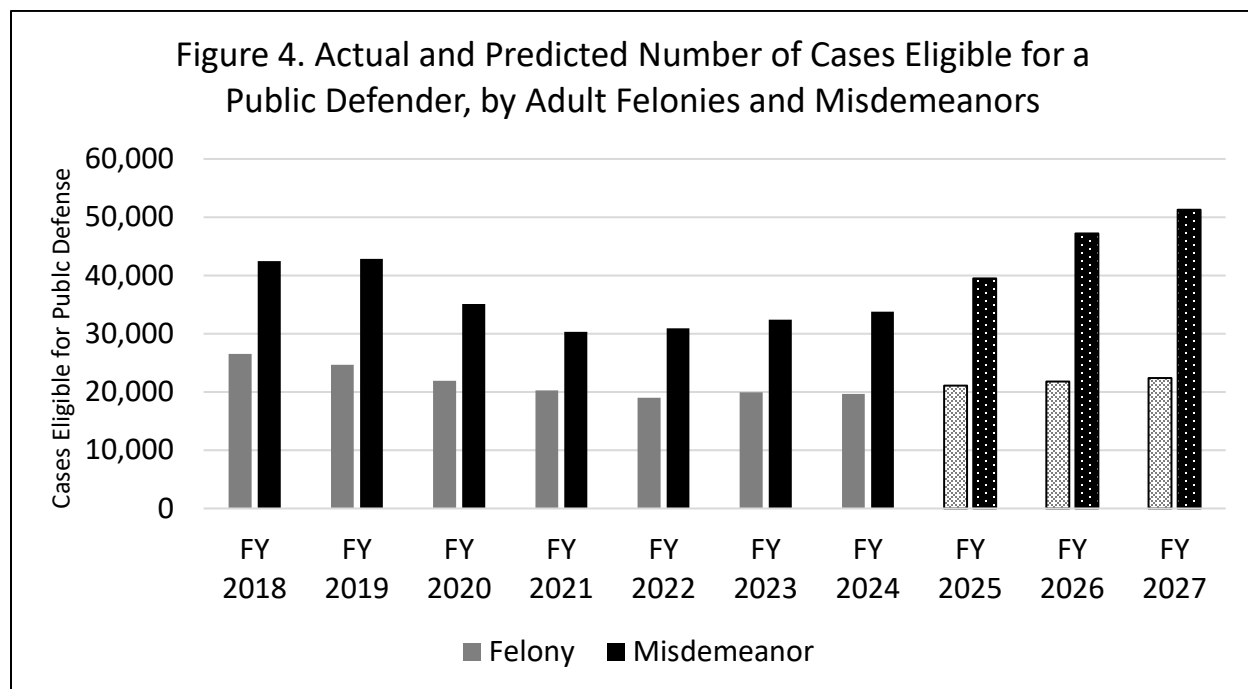
<sup>5</sup> See *supra* note 2.

<sup>6</sup> The general conclusions discussed in this paragraph also apply to Coos, Douglas, Jackson, and Marion counties when they are grouped together. In those jurisdictions, the trend is characterized by an increase in the number of out-of-custody unrepresented individuals through the beginning of the panel, lasting until the end of November 2024. Since the end of 2024, however, the number of out-of-custody unrepresented individuals has fallen by nearly a quarter. The pattern for unrepresented in-custody individuals in these four counties is nearly identical to that reported above in Figure 3.

When Multnomah and Washington Counties are removed from the analysis, the remaining statewide trends in unrepresented individuals look quite different. Figure 3 displays trends for both in- and out-of-custody unrepresented individuals for all Oregon counties excluding Multnomah and Washington over the last twelve months.<sup>6</sup> As shown in Figure 3, a period of growth between May and September of 2024 in the number of out-of-custody unrepresented

## 2.2. Looking to the Future: Trends in Case Filings

The current challenges within public defense began during a period of historically low caseloads within Oregon’s judicial system following the COVID-19 pandemic. Using data from the *October 2024 Oregon Public Defense Caseload Forecast*,<sup>7</sup> Figure 4 reports the trends in cases eligible for court appointed counsel for adult felonies and misdemeanors since FY2018. It also includes forecasted data for fiscal years 2025, 2026, and 2027, which show the predicted trends in cases eligible for court-appointed attorneys over the next few years.

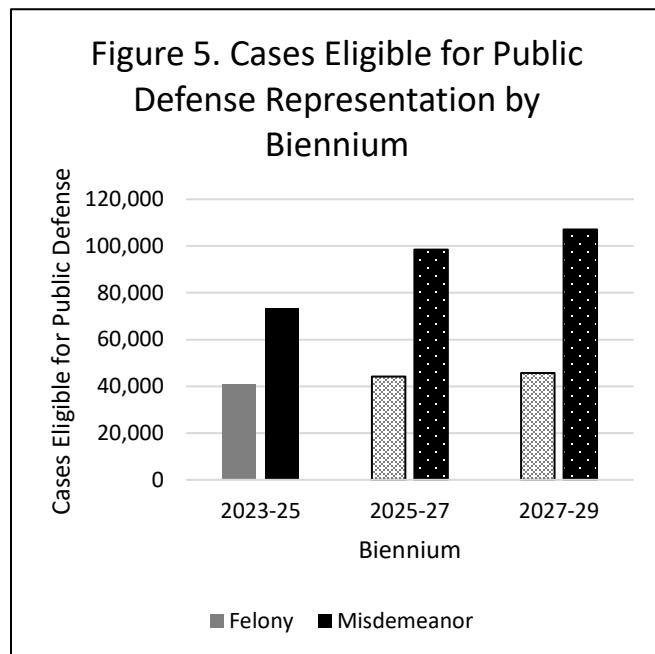


As shown in Figure 4, filings of cases eligible for public defense representation fell as the state entered the COVID-19 pandemic. During FY2018 and FY2019, approximately 42,500 court-appointed eligible misdemeanor cases were filed annually. In 2020, the number of misdemeanor cases fell by nearly 20 percent, which was followed by an additional 14 percent reduction in 2021, as filings of cases eligible for public defense representation fell to just above 30,000. Misdemeanor case filings then began to rebound slightly between FY2022 and FY2024, and they are predicted to continue to rise by 16.8 percent in FY2025 and another 19.5 percent in FY2026. Similarly, filings of felony cases eligible for court-appointed counsel fell by 11 percent at the beginning of the pandemic and have fluctuated slightly during the past several years. However, sustained growth in felony case filings

<sup>7</sup> Public Defense Caseload Forecast, October 2024 Detail Tables. Link: <https://www.oregon.gov/das/oea/Documents/OPDS-Forecast-October-2024.xls>



eligible for public defense representation is predicted going forward including year-over-year increases of seven, three, and four percent over FY2025, FY2026, and FY2027, respectively.



When put into a biennial context, these trends are concerning given the current situation. Figure 5 reports the predicted biennial totals for adult felony and misdemeanor court-appointed eligible cases.<sup>8</sup> Felony cases eligible for court-appointed attorneys are predicted to grow by nearly 8.5 percent in the 2025-2027 biennium and an additional 3.4 percent in the 2027-2029 biennium. The growth in misdemeanor cases eligible for court appointed attorneys is predicted to grow more aggressively, first by 34.4 percent between 2023-2025 and 2025-2027 and then by an additional 8.7 percent in the 2027-2029 biennium.

Given current and future predicted increases in case filings, it is essential that the public defense system continue to grow and evolve to meet the needs of Oregonians who are accused of committing crimes. This growth can happen in several ways, including through the addition of new public defenders into the system, increasing retention of existing and new public defenders in the system, increasing capacity within the current workforce through contracting adjustments, increases in efficiency, the strategic use of the OPDC Trial Division, and by deepening partnerships with system actors and working with them to craft and implement programs and processes designed to mitigate the numbers of unrepresented individuals.

### 2.3. County-by-County Analysis

To adequately understand the challenges in ensuring defense representation, it is necessary to examine data at the local level. As previously discussed, one important level of disaggregation is achieved by examining Multnomah and Washington counties compared to the rest of the state, as the current upward trends in those two jurisdictions contribute disproportionately to the overall statewide pattern of unrepresented individuals. Indeed, when those two large jurisdictions are removed from the analysis, the remaining statewide data shows a downward trend in unrepresented persons. However, additional disaggregation is necessary, particularly in the remaining counties that report large numbers of unrepresented individuals: Coos, Douglas, Jackson, and Marion. Further,

<sup>8</sup> *Id.*

not only do the data patterns differ by county, but the challenges as well as the interventions that could help alleviate them differ as well.

### 2.3.1. Coos County

**Table 1. Unrepresented Individuals Year Over Year Change (Coos)<sup>9</sup>**

Category	5/14/2024	5/15/2025
Out-of-Custody	23	100
In-Custody	6	5
Probation Vio	1	5
Non-Criminal	1	4
<b>Total</b>	<b>31</b>	<b>114</b>

As shown in Table 1, as of 15 May 2025, Coos County reported 100 out-of-custody and 5 in-custody unrepresented individuals. The county has a single provider, the nonprofit Southwestern Oregon Public Defender Services, Inc. (SWOPDS), which is contracted for 7.84 FTE. During the current 2023-2025 contract cycle,

SWOPDS lost four attorneys representing 3.25 FTE, all of whom departed the nonprofit in July 2024. These departed attorneys were replaced by one 0.5 FTE misdemeanor attorney and three new attorneys working toward licensure via the Supervised Practice Portfolio Examination (SPPE) program.<sup>10</sup> While this largely replaced the departed FTE, it is important to note that SPPE attorneys typically cannot handle a full caseload as they pursue their bar license. Finally, to provide additional capacity within Coos County, the OPDC Central Valley Trial Division has stationed one of its attorneys locally.

The status of the unrepresented crisis within Coos County is temporally related to the changes in capacity described above. As shown in Figure 6, following the departure of the three SWOPDS attorneys in July 2024, the number of unrepresented out-of-custody defendants grew by almost seventy-five percent, peaking in early October 2024 at 132 and then again in mid-November 2024 at 130 individuals in need of an attorney. Since November 2024, however, the number of out-of-custody individuals has fallen by nearly a quarter. This drop coincides with the arrival of the OPDC Central Valley Trial Division attorney that same month, as well as the onboarding of the new SPPE attorneys at SWOPS.

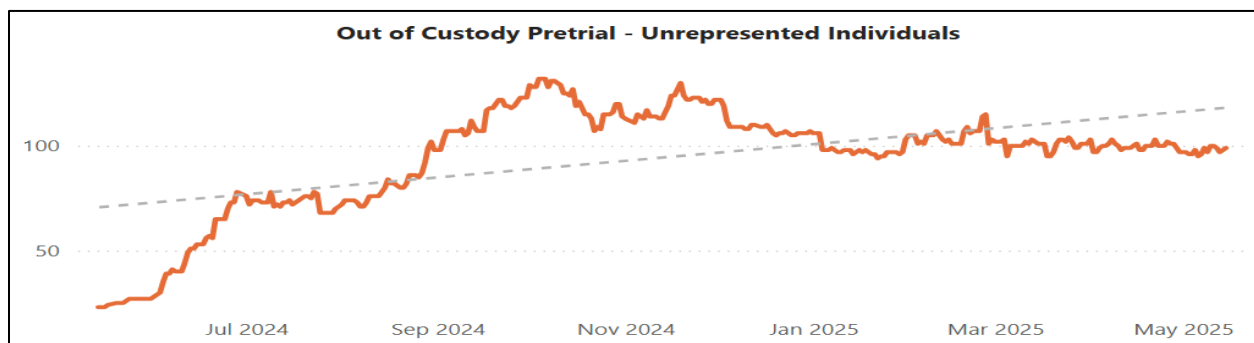


Figure 6. Coos County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>11</sup>

<sup>9</sup> See *supra* note 2.

<sup>10</sup> The 0.5 FTE misdemeanor attorney ceased employment at SWOPDS in May 2025.

<sup>11</sup> See *supra* note 2.

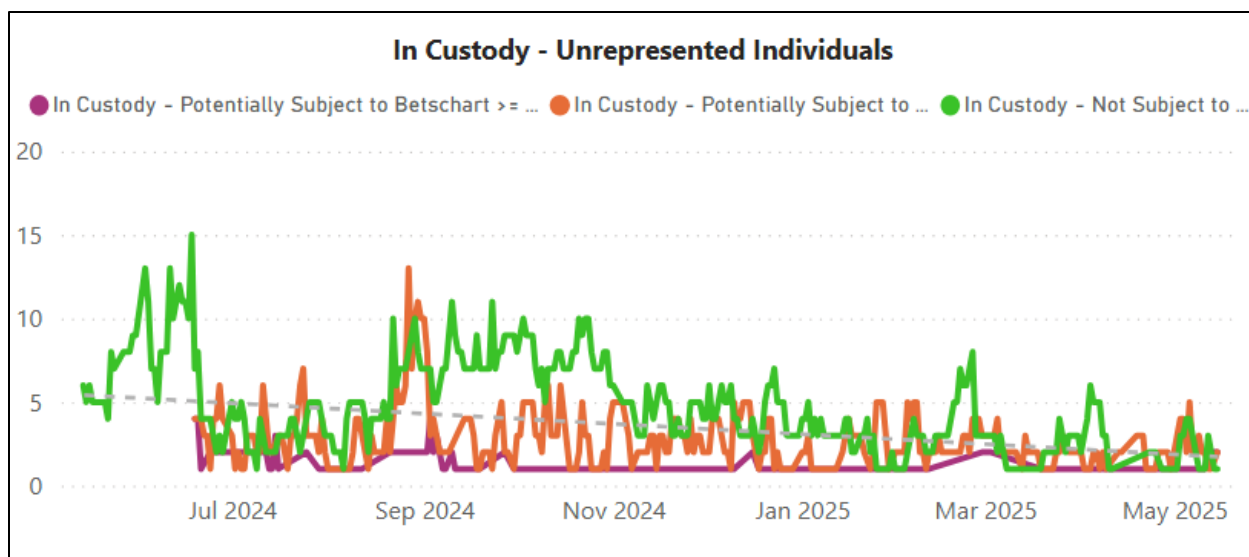
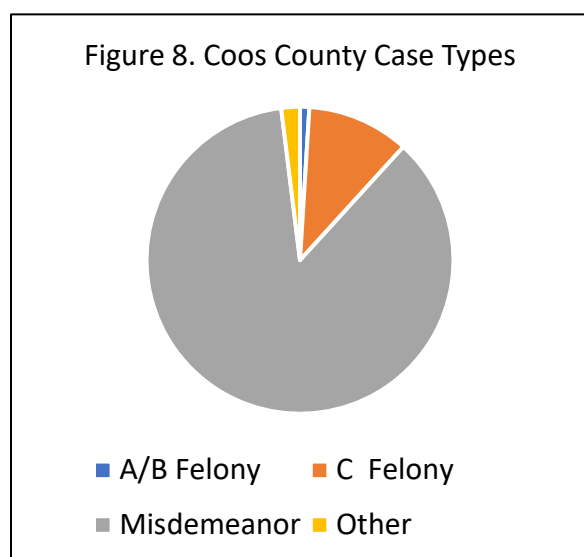


Figure 7. Coos County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>12</sup>

Figure 7 displays the twelve-month trend for in-custody unrepresented individuals. In all, the number of in-custody unrepresented individuals is small and has remained below 10 for much of the year. Similar to the out-of-custody trends, there was a spike in the fall of 2024 which began to be corrected around November when the OPDC trial team attorney arrived in the county and SWOPS hired new attorneys to replace those who had departed.



In Coos County, misdemeanors are the primary source of unrepresented defendants, whether in- or out-of-custody. As shown in Figure 8,<sup>13</sup> over eighty-five percent of unrepresented individuals are charged with misdemeanors. Data on the Unrepresented Cases – Most Serious Offense Dashboard,<sup>14</sup> maintained by the Oregon Judicial Department, shows that the most common charge for this population is misdemeanor DUII (44), which is the most serious charge in over a third of all cases. The remaining cases are primarily class A misdemeanors, although no single charge is found in more than five cases. These class A misdemeanor charges

include assault in the fourth degree (3), criminal driving while suspended/revoked (1), criminal trespass in the first degree (3), felon in possession of a restricted weapon (4), and giving false information to a peace officer (2), among others. For felonies, as of the drafting

<sup>12</sup> See *supra* note 2.

<sup>13</sup> Oregon Circuit Courts Unrepresented Individuals Summary Dashboard. Link: [Microsoft Power BI](#)

<sup>14</sup> Oregon Judicial Department Unrepresented Cases – Most Serious Offense Dashboard. Link: [Microsoft Power BI](#)

of this memorandum, there was one class B felony, aggravated theft in the first degree, and the remaining felony charges were all categorized as class C, including assaulting a public safety officer (1), burglary in the second degree (2), felon in possession of a firearm (1), and identity theft (1), among others. The recent positive movement in Coos County comes amidst an increase in misdemeanor filings. According to the Oregon Circuit Courts Cases Filed Dashboard,<sup>15</sup> misdemeanor case filings rose 4.2 percent between 2023 and 2024 (after rising 19.6 percent between 2022 and 2023).

### 2.3.2. Douglas County

**Table 2. Unrepresented Individuals Year Over Year Change (Douglas)<sup>16</sup>**

Category	5/14/2024	5/15/2025
Out-of-Custody	208	249
In-Custody	17	8
Probation Vio	3	6
Non-Criminal	2	3
<b>Total</b>	<b>230</b>	<b>266</b>

As of 15 May 2025, Douglas County reported 249 out-of-custody and 8 in-custody unrepresented individuals. The county has 12.05 in contracted FTE, split between one non-profit provider, Umpqua Valley Public Defender, one consortia, and a few private firms. In addition, two attorneys from the OPDC Trial Division are currently representing

defendants in Douglas County as well. It is important to note that tracking the number of unrepresented individuals in Douglas County can be difficult, as the court assigns all defendants to the unrepresented list at arraignment. Individuals remain on the list until an attorney is appointed. The movement of defendants onto and off of the list therefore, is greater than in other counties. There can also be a lag in determining the true impact of case assignments on the list.

As shown in Figure 8, progress in Douglas County has been mixed. There have been significant reductions in the out-of-custody pretrial population since a peak in late September 2024, when the number of unrepresented out-of-custody defendants numbered 340. This overall downward trend, however, masks the fact that progress has largely stalled in 2025, as recent increases in unrepresented numbers have wiped out most of the gains made since the beginning of the year. Specifically, at the beginning of 2025, there were 263 unrepresented out-of-custody individuals. Despite falling to 208 by late March, this figure has crept back up to 249 as of 15 May 2025.

<sup>15</sup> Oregon Circuit Courts Cases Filed Dashboard. Link: [Microsoft Power BI](#)

<sup>16</sup> See *supra* note 2.

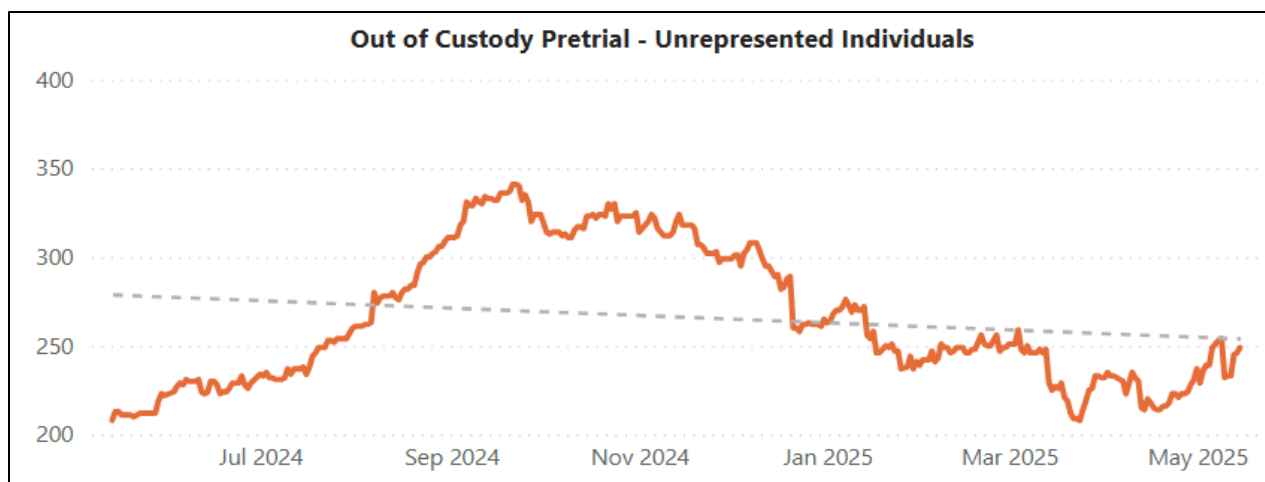


Figure 8. Douglas County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>17</sup>

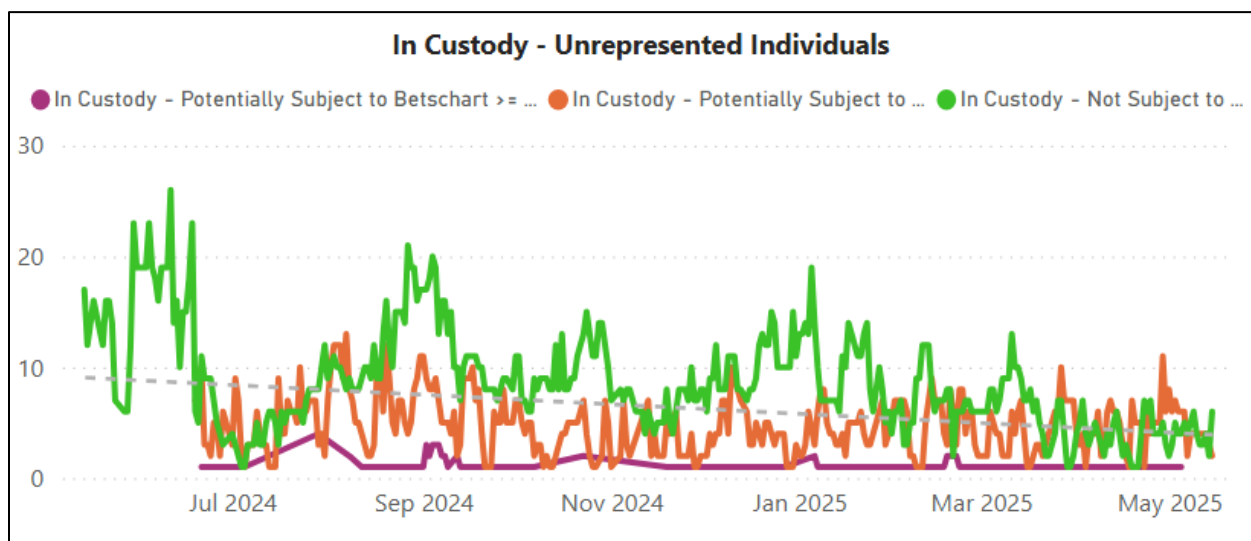
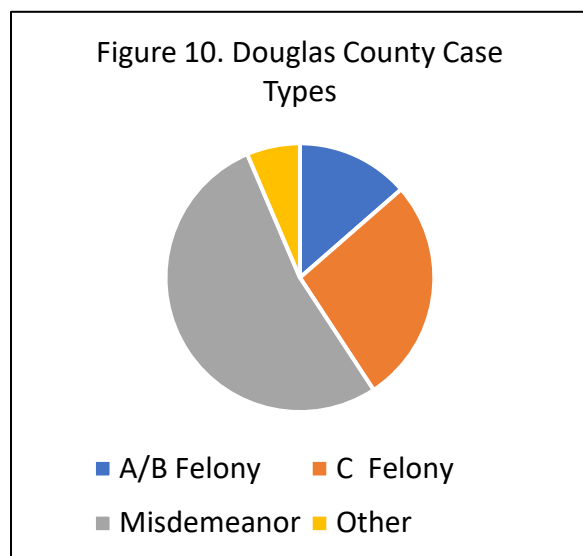


Figure 9. Douglas County In-Custody Individuals (14 May 2024 to 15 May 2025)<sup>18</sup>

Figure 9 displays the twelve-month trends for in-custody individuals in need of an attorney within Douglas County. Overall, there has been a downward trend in this population and, as is seen in other jurisdictions, the fluctuations found in Figure 9 tend to follow the same timing and patterns as those reported for out-of-custody unrepresented individuals.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*



As shown in figure 10,<sup>19</sup> most unrepresented cases are misdemeanors, although unlike Coos County, that share is only around 50 percent. Felonies make up just over 44 percent of cases, although the vast majority of those cases are C felonies. Data on the Unrepresented Cases – Most Serious Offense Dashboard<sup>20</sup> shows that the most common charge for this population is misdemeanor DUII, which stands at 34 cases. The remaining cases are primarily class A misdemeanors, including criminal driving while suspended/revoked (21), assault in the fourth degree (9), failure to report as a sex offender (6), and criminal mischief in the second degree

(6). For felonies, unauthorized use of a vehicle (12) and burglary in the first degree (11) are the two most common charges.

### 2.3.3. Jackson County

**Table 3. Unrepresented Individuals Year Over Year Change (Jackson)<sup>21</sup>**

Category	5/14/2024	5/15/2025
Out-of-Custody	721	576
In-Custody	18	17
Probation Vio	89	52
Non-Criminal	17	23
<b>Total</b>	<b>845</b>	<b>668</b>

As shown in Table 3, Jackson County reported 576 out-of-custody and 17 in-custody unrepresented individuals as of 15 May 2025.<sup>22</sup> On that date there were also 52 unrepresented individuals with probation violations and 23 with non-criminal matters. The county has 25.88 in contracted FTE, split between one non-profit provider, Southern Oregon

Public Defender (11.5 FTE), the consortia Los Abogados (11.88 FTE) and Rogue Valley Defenders (2.0 FTE), and a half-time solo contractor. In addition, OPDC operates its Southern Trial Division office in Jackson County, which currently employs 6 attorneys and has 250 open cases with 150 clients in Jackson County, as well as 450 closed cases for 270 clients.

Since 14 May 2024, Jackson County has seen a downward trend in out-of-custody unrepresented individuals. As shown in Figure 11, at the start of this time period, there

<sup>19</sup> See *supra* note 13.

<sup>20</sup> See *supra* note 14.

<sup>21</sup> See *supra* note 2.

<sup>22</sup> Jackson County also has a handful of unrepresented juvenile cases (as of 30 April 2025, there were 24 unrepresented juveniles). OPDC contracts for 11 FTE for juvenile representation. Jackson Juvenile Consortium recently applied and was approved for an additional 1.0 FTE attorney. After this attorney starts on 1 July 2025, OPDC estimates that the juvenile unrepresented issue will be resolved.

were 721 unrepresented out-of-custody individuals. By 15 May 2025, that number had fallen to 576, a reduction of over 20 percent. Figure 11 displays the trends for in-custody individuals in need of public defense representation for Jackson County. Overall, the numbers are trending modestly downward. As is seen in most counties, however, there is significant fluctuation over time.

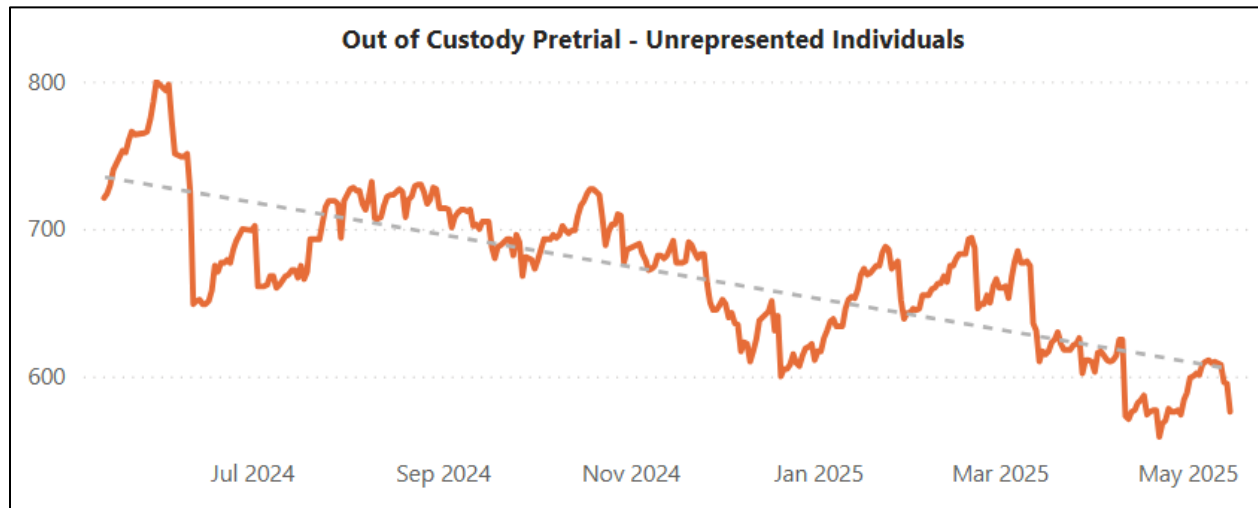


Figure 11. Jackson County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>23</sup>

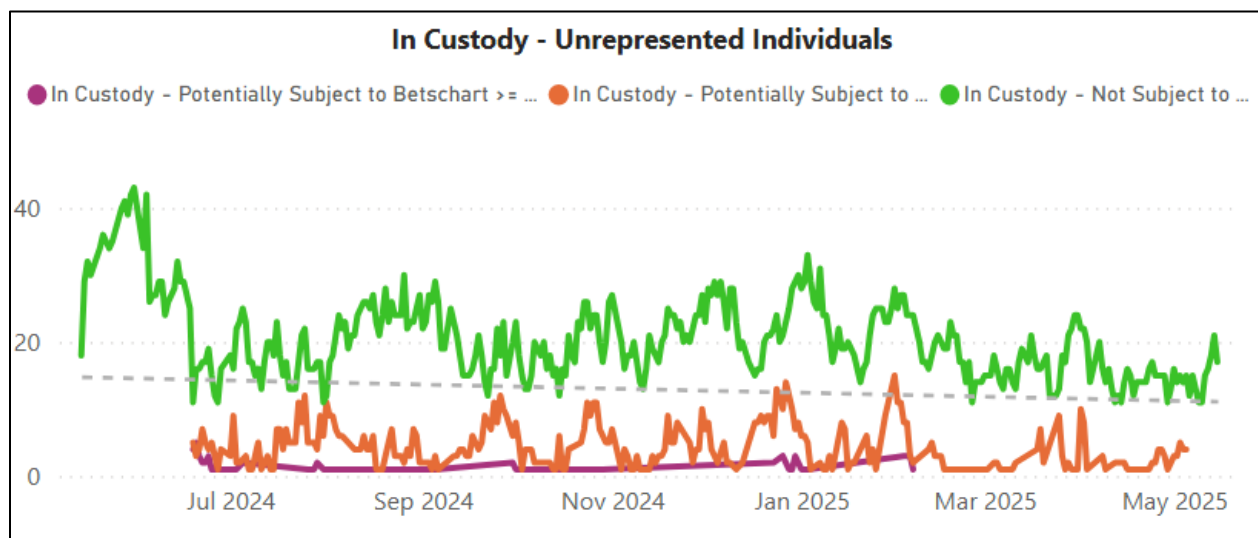
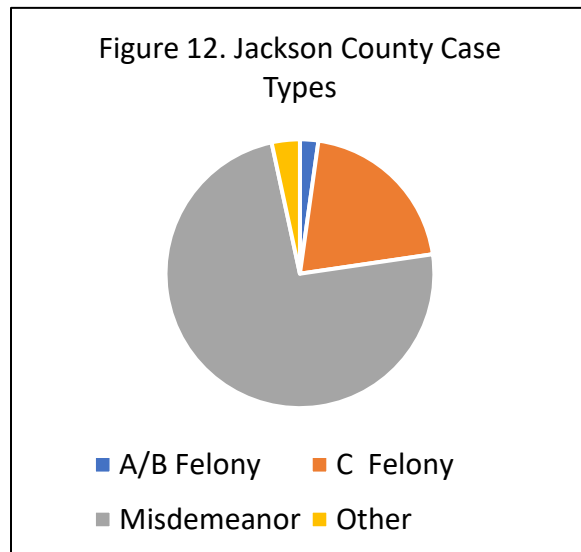


Figure 11. Jackson County In-Custody Individuals (14 May 2024 to 15 May 2025)<sup>24</sup>

<sup>23</sup> See *supra* note 2.

<sup>24</sup> *Id.*





Consistent with the other counties in southern Oregon, the vast majority of cases on the unrepresented list in Jackson County are misdemeanors. As shown in Figure 12,<sup>25</sup> nearly three-quarters of cases are misdemeanors and approximately 22 percent are felonies (the vast majority of which are C felonies). Data on the Unrepresented Cases – Most Serious Offense Dashboard shows that the most common charge for this population again is misdemeanor DUII, which stands at 256, representing nearly one-third of all unrepresented cases. The remaining cases are primarily class A misdemeanors, including

assault in the fourth degree (40), criminal driving while suspended/revoked (25), resisting arrest (17), failure to perform the duties of a driver (property damage) (13), and reckless driving (12). For felonies, theft in the third degree (20), fleeing or attempting to elude a police officer (11), strangulation (11), and unauthorized use of a vehicle (10) are the most common charge types.

It is notable that the recent reductions in the number of unrepresented individuals in Jackson County have occurred despite increases in misdemeanor cases within the jurisdiction. According to the Oregon Circuit Courts Cases Filed Dashboard<sup>26</sup> between 2023 and 2024, misdemeanor case filings rose 45.7 percent. According to the Office of Economic Analysis October 2024 Forecast,<sup>27</sup> this upward trend will continue into 2025, 2026, and beyond. Felony case filings have been down, falling by 8.3 percent between 2023 and 2024. The Office of Economic Analysis in its October 2024 Forecast, however, predicts an upward trend in felonies over the next several years.

#### 2.3.4. Marion County

**Table 4. Unrepresented Individuals Year Over Year Change (Marion)<sup>28</sup>**

Category	5/14/2024	5/15/2025
Out-of-Custody	471	454
In-Custody	20	9
Probation Vio	98	119
Non-Criminal	10	7
<b>Total</b>	<b>599</b>	<b>589</b>

As shown in Table 4, as of 15 May 2025, Marion County reported 454 out-of-custody and 9 in-custody unrepresented individuals. There were also 119 out-of-custody probation violation cases and 7 non-criminal cases. The county has 45.36 in contracted FTE, the majority of which is

<sup>25</sup> See *supra* note 13.

<sup>26</sup> See *supra* note 14.

<sup>27</sup> See *supra* note 7.

<sup>28</sup> See *supra* note 2.



split between the consortium Marion County Association of Defenders and the non-profit Public Defenders of Marion County. Additionally, there is one private firm as well as the OPDC Central Valley Regional Trial Office. The Central Valley Regional Trial Office employs seven attorneys and currently reports 245 open cases for 177 clients in the county, and 122 closed cases for 95 clients.

Over the past year, progress in Marion County has been mixed, although there have been indicators of progress in the last few months. As shown in Table 4, year-over-year, there has only been a 3.6 percent reduction in out-of-custody unrepresented individuals. As shown in Figure 11, however, since the most recent peak at 631 unrepresented individuals in early March 2025, this recent progress can be seen more clearly.

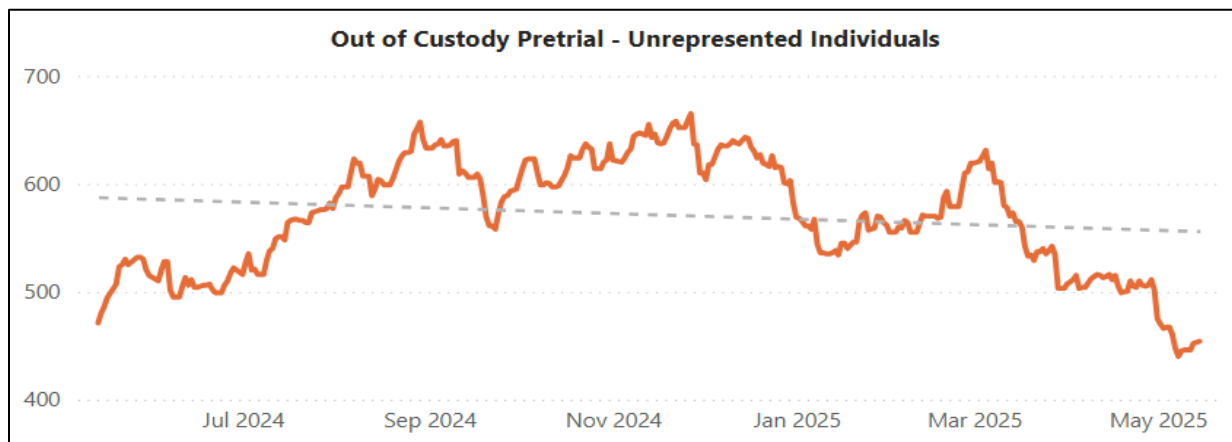


Figure 11. Marion County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>29</sup>

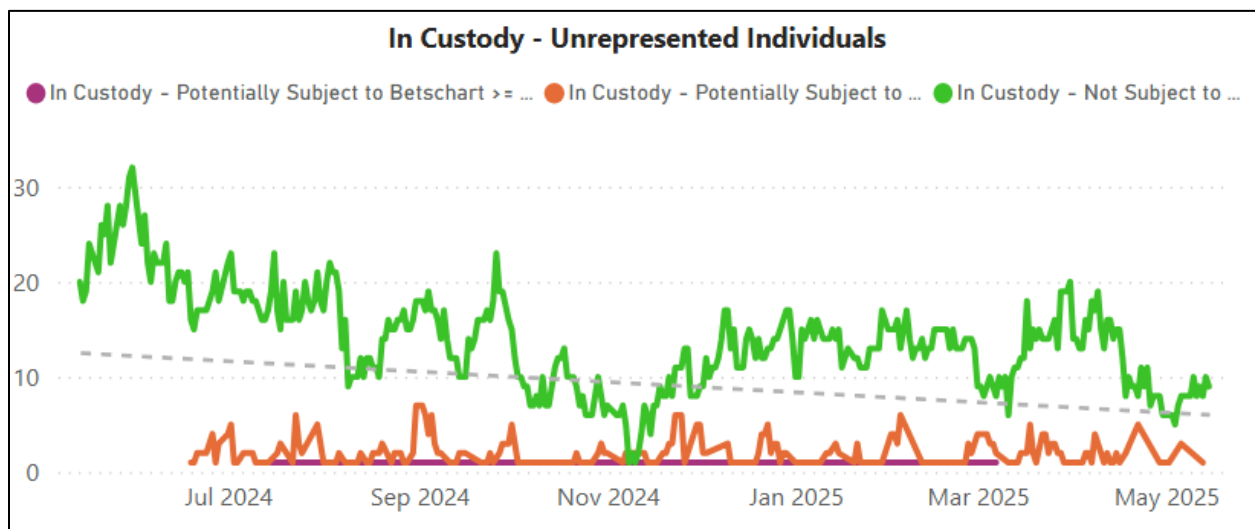
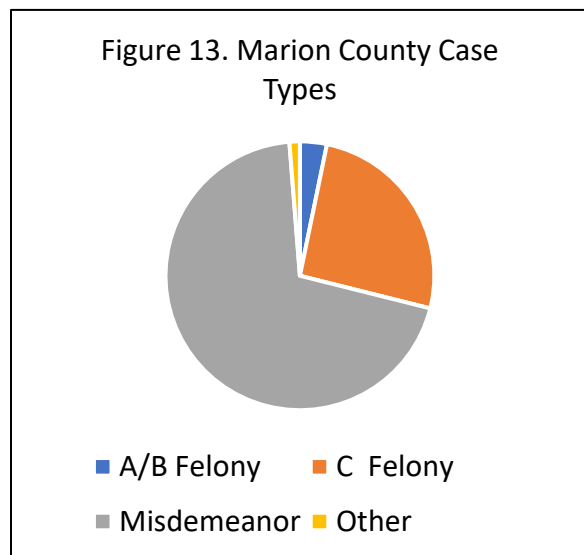


Figure 12. Marion County In-Custody Individuals (14 May 2024 to 15 May 2025)<sup>30</sup>

<sup>29</sup> *Id.*

<sup>30</sup> *Id.*

Figure 12 shows the trends in unrepresented individuals who are being held in-custody in Marion County. Year-over-year, the number of in-custody individuals in need of an attorney has been cut in half, although, as seen elsewhere, there is significant fluctuation over time. Despite this fluctuation, the overall trend is downward, which is positive news for the county.



As shown in Figure 13,<sup>31</sup> continuing the pattern seen elsewhere, the majority of cases on the unrepresented list in Marion County are misdemeanors. Specifically, nearly 70 percent of cases are misdemeanors and just under 29 percent are felonies (the vast majority of which are C felonies). Data on the Unrepresented Cases – Most Serious Offense Dashboard<sup>32</sup> shows that the most common charge for this population again is misdemeanor DUII, which stands at 93. Unlike the previous counties, however, DUII charges do not dominate. Following close behind are several other A misdemeanors, including second degree theft (89), criminal driving while suspended/revoked

(40), and failure to perform the duties of a driver (property damage) (38), as well as several C felonies, including fleeing or attempting to elude a police officer (29), first degree theft (26), and unauthorized use of a vehicle (24).

Similar to other jurisdictions, Marion County has experienced an increase in misdemeanor case filings. According to the Oregon Circuit Courts Cases Filed Dashboard<sup>33</sup> between 2023 and 2024, misdemeanor case filings rose 20.4 percent. Furthermore, according to the Office of Economic Analysis October 2024 Forecast,<sup>34</sup> this upward trend will continue into 2025, 2026, and beyond. Felony case filings, alternatively, have been down, falling by 5.5 percent between 2023 and 2024. The Office of Economic Analysis in its October 2024 Forecast, however, predicts an upward trend in felonies over the next several years.

<sup>31</sup> See *supra* note 13.

<sup>32</sup> See *supra* note 14.

<sup>33</sup> See *supra* note 15.

<sup>34</sup> See *supra* note 7.

### 2.3.5. Multnomah County

**Table 5. Unrepresented Individuals Year Over Year Change (Multnomah)<sup>35</sup>**

Category	5/14/2024	5/15/2025
Out-of-Custody	433	1,257
In-Custody	39	52
Probation Vio	4	8
Non-Criminal	1	1
<b>Total</b>	<b>477</b>	<b>1,318</b>

As shown in Table 5, Multnomah County reported 1,257 out-of-custody and 52 in-custody unrepresented individuals as of 15 May 2025. There were also 8 out-of-custody probation violation cases and 1 non-criminal case. The county has 96.15 in contracted FTE, the majority of which is split between two non-profit providers,

Metropolitan Public Defender and Multnomah Defenders Inc., and the Portland Defense Consortium. In addition, OPDC operates its Northwest Regional Trial Division office in Multnomah County, which employs seven attorneys and currently reports 153 open cases for 78 clients in the county, along with 142 closed cases for 54 clients.

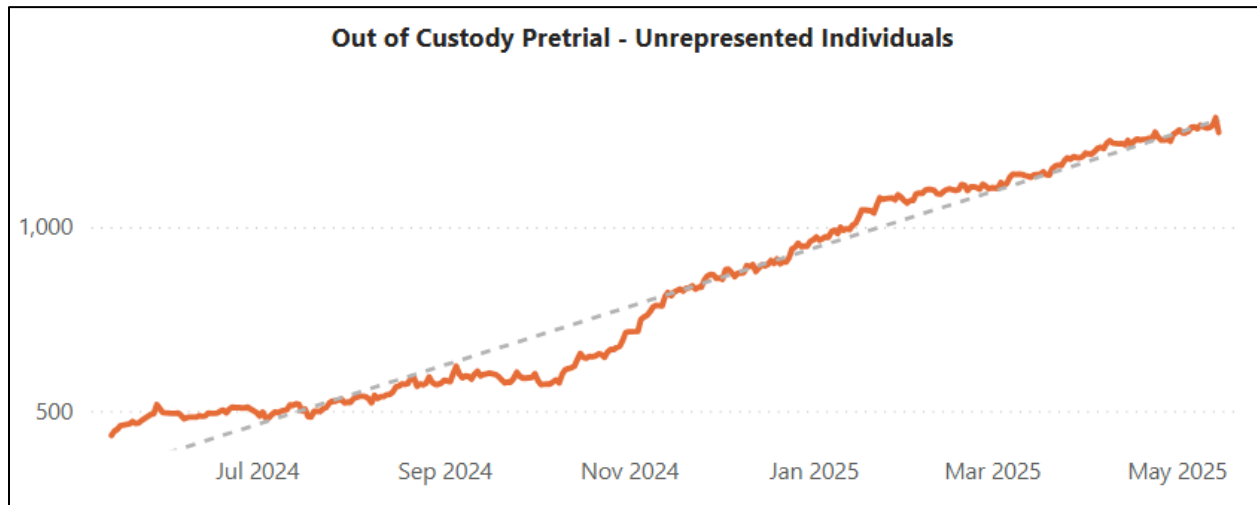


Figure 14. Multnomah County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>36</sup>

Over the past year, Multnomah County has experienced substantial growth in its out-of-custody unrepresented population. As shown in Table 5, year-over-year, the number of out-of-custody individuals in need of an attorney increased by 190 percent. As shown in Figure 14, this growth has been steady throughout the year other than a slight flattening for a short period in late 2024.

Figure 15 displays data for in-custody defendants. Data for this group are more complex, as the year-over-year comparison shows a small amount of growth in that population. An

<sup>35</sup> See *supra* note 2.

<sup>36</sup> *Id.*

examination of the whole panel, however, shows an upward trajectory through the middle of the time period before a general decline over the last several months. Indeed, since the most recent out-of-custody peak of 84 in late February of this year, the number of defendants in this category has been trending downward.

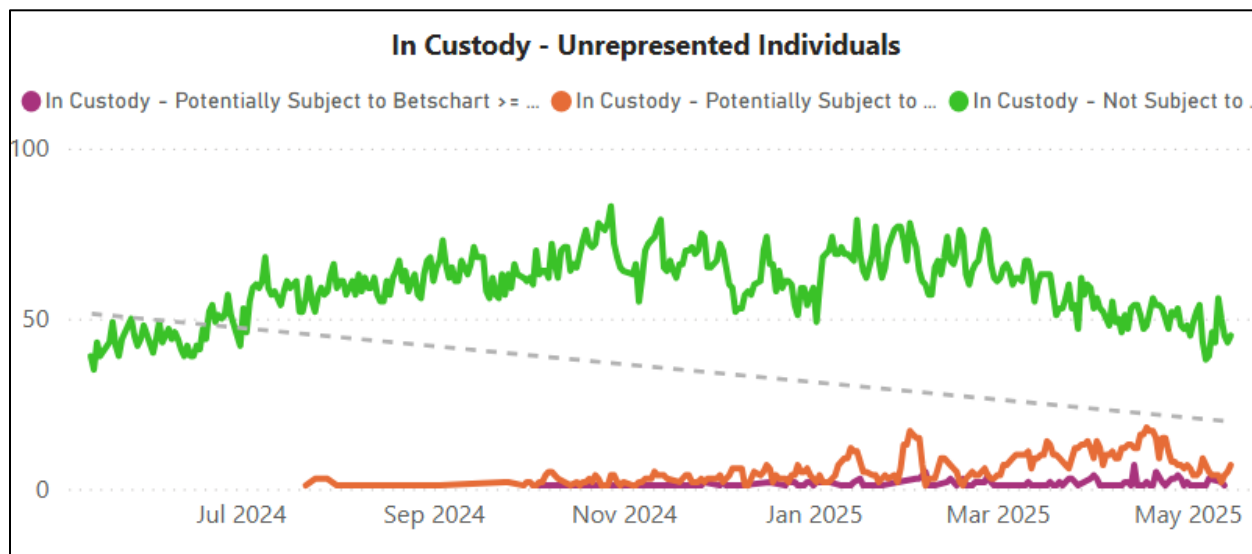
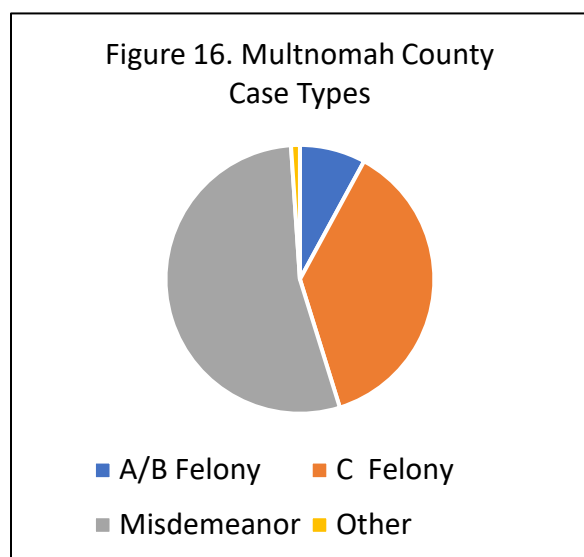


Figure 15. Multnomah County In-Custody Individuals (14 May 2024 to 15 May 2025)<sup>37</sup>



As shown in figure 16,<sup>38</sup> the majority of cases on the unrepresented list in Multnomah County are misdemeanors, although the share is smaller compared to some of the other counties discussed previously. Specifically, a little over 50 percent of cases in Multnomah County are misdemeanors and approximately 37 percent are C felonies. However, data on the Unrepresented Cases – Most Serious Offense Dashboard<sup>39</sup> shows a different pattern compared to the other counties included in this section. The most common charge in Multnomah County is unauthorized use of a vehicle (187), a C felony, although the charge represents a relatively small share of the

overall problem (just over 12 percent of the total). The next most common charges are two A misdemeanors, second degree theft (121) and DUII (86), a C misdemeanor, third degree theft (78), and the class C felony, felon in possession of a firearm (69).

<sup>37</sup> *Id.*

<sup>38</sup> See *supra* note 13.

<sup>39</sup> See *supra* note 14.

Similar to other jurisdictions, Multnomah County has experienced an increase in misdemeanor case filings. According to the Oregon Circuit Courts Cases Filed Dashboard<sup>40</sup> from 2022 to 2023, misdemeanor case filings rose by almost 70 percent, before rising an additional 32 percent from 2023 to 2024. According to the Office of Economic Analysis October 2024 Forecast,<sup>41</sup> this upward trend will continue into 2025, 2026, and beyond. Felony case filings, alternatively, fell between 2023 and 2024 by just over 7 percent after experiencing a slight increase over the previous two years. The Office of Economic Analysis in its October 2024 Forecast predicts an upward trend in felony filings over the next several years.

### 2.3.6. Washington County

**Table 6. Unrepresented Individuals Year Over Year Change (Washington)<sup>42</sup>**

Category	5/14/2024	5/15/2025
Out-of-Custody	236	661
In-Custody	11	19
Probation Vio	28	17
Non-Criminal	12	2
<b>Total</b>	<b>287</b>	<b>699</b>

As shown in Table 6, Washington County reported 661 out-of-custody and 19 in-custody unrepresented individuals as of 15 May 2025. There were also 17 out-of-custody probation violation cases and 2 non-criminal cases. The county has 55.98 in contracted FTE and the largest provider is the non-profit Metropolitan

Public Defender. Unlike Multnomah County, Washington County gets a substantial share of its FTE from consortia, including Ridehalgh & Associates, the Oregon Defense Attorney Consortium, KN Defense Corp., Hillsboro Law Group LLC, and Cornerstone Law Group, among others. In addition, OPDC's Northwest Regional Trial Division office also takes cases in Washington County and currently reports 161 open cases for 80 clients in the county, along with 112 closed cases for 57 clients.

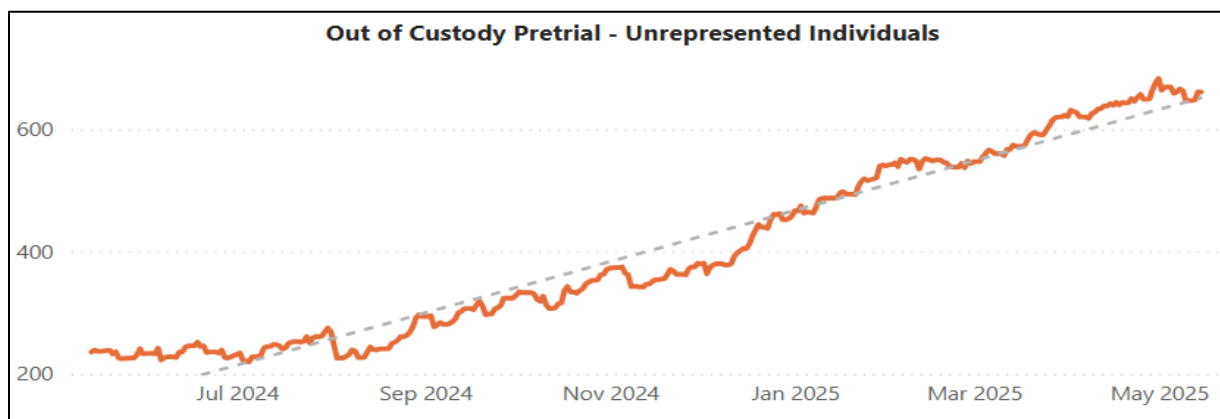


Figure 17. Washington County Out-of-Custody Individuals (14 May 2024 to 15 May 2025)<sup>43</sup>

<sup>40</sup> See *supra* note 15.

<sup>41</sup> See *supra* note 7.

<sup>42</sup> See *supra* note 2.

<sup>43</sup> *Id.*

Similar to Multnomah County, Washington County has experienced substantial growth in its out-of-custody unrepresented population over the past twelve months. As shown in Table 6, year-over-year, the number of out-of-custody individuals in need of an attorney increased by 180 percent. Figure 17 shows that this growth has been steady throughout the year. As shown in Figure 18, data for in-custody defendants are more complex, as the year-over-year comparison shows a slight upward trend in that population with substantial fluctuation over the course of the panel. Compared to the out-of-custody population, however, the in-custody numbers are relatively small.

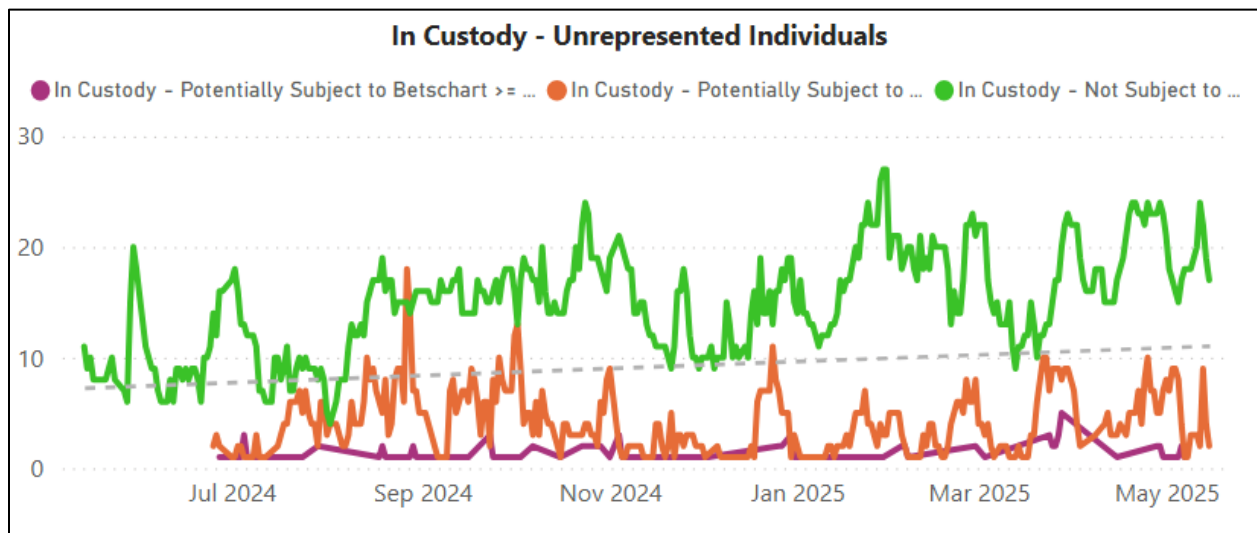
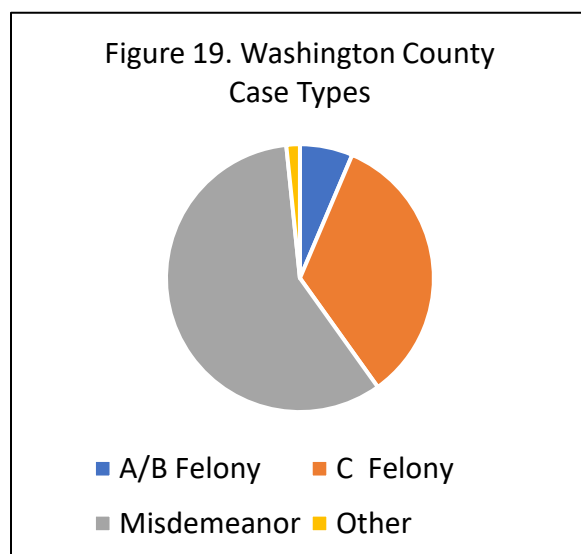


Figure 18. Washington County In-Custody Individuals (14 May 2024 to 15 May 2025)<sup>44</sup>



The similarities between Multnomah and Washington counties continue in the examination of the types of cases on the unrepresented list. As shown in Figure 19,<sup>45</sup> most cases on the unrepresented list in Washington County are misdemeanors, accounting for over 58 percent of the total. A third of the cases are for C felonies. Data on the Unrepresented Cases – Most Serious Offense Dashboard<sup>46</sup> shows a pattern that is more similar to the other, non-Multnomah counties discussed in this section. The most common charge in Washington County is DUI (212), which accounts for over a quarter of all cases on the unrepresented list. The next most

<sup>44</sup> *Id.*

<sup>45</sup> See *supra* note 13.

<sup>46</sup> See *supra* note 14.

common charges are class C felony theft in the first degree (48), two A misdemeanors, second degree theft (44) and criminal driving while suspended or revoked (28), and three more C felonies, identity theft (23), unlawful use of a weapon (23) and unauthorized use of a vehicle (20).

Similar to other jurisdictions, Washington County has experienced an increase in misdemeanor case filings. According to the Oregon Circuit Courts Cases Filed Dashboard,<sup>47</sup> from 2022 to 2023, misdemeanor case filings rose by a modest 2.1 percent, before rising by over 27 percent between 2023 and 2024. According to the Office of Economic Analysis October 2024 Forecast,<sup>48</sup> this upward trend will continue going forward. Felony case filings also increased between 2023 and 2024 by over 11 percent. The Office of Economic Analysis in its October 2024 Forecast predicts a continuation of this upward trend over the next several years.

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<sup>47</sup> See *supra* note 15.

<sup>48</sup> See *supra* note 7.

### 3. OPDC Short-term Interventions for Increasing Public Defense Capacity

It is essential that capacity be increased within the public defense community to meet existing caseload needs, address the backlog in cases that have accumulated over the past several years, and maintain the capacity needed to manage increased case filings in the future. Increases in capacity require either the addition of new attorneys into the system, the crafting of policies and contractual terms designed to expand the capacity of existing attorneys, or both. Interventions in this section are designed to address both needs, although on different timelines.

#### 3.1. *Intervention One: Address Bureaucratic Rules and Barriers to Exceeding Maximum Attorney Caseload (MAC) Caps.*

##### 3.1.1. Existing MAC Structure

<b>Table 7. 2023-2025 Maximum Attorney Caseloads and Case Weights</b>		
<b>Case Type</b>	<b>Annual MAC</b>	<b>Case Weight</b>
<i>Adult Criminal</i>		
Murder	6	50
Jessica's Law	6	50
BM 11 Case	45	6.7
Major Felony	138	2.2
Minor Felony	165	1.8
Misdemeanor	300	1
Probation Vio	825	0.36
Civil Commit	230	1.3
<i>Juvenile</i>		
Murder	6	50
Delinquency	132	2.3
Dependency	69	4.3
Probation Vio	825	0.36

Currently, OPDC contract providers work under the Maximum Attorney Caseload (MAC) workload model, which sets a maximum caseload expectation for full-time public defenders. Table 7 displays current maximum caseloads, which are tied to a baseline of 300 misdemeanor cases taken on an annual basis. All other caseloads are weighted against this baseline, both at the adult and juvenile levels. Using the MAC as a guide, attorneys must divide their total annual MAC across twelve months (this does not apply to murder or Jessica's Law cases, as they cannot be divided like other case types). This equates to, for example, 25 misdemeanors, 13.75

minor felonies, or 3.75 Ballot Measure 11 cases per month. In practice, tracking MAC can be difficult, as many attorneys take cases of varying types at different case weights at any given time. Tracking MAC can also be difficult because cases do not enter the system in a predictable manner. At times, for example, there can be a dearth of serious cases, particularly in smaller counties, leading to underutilization of MAC. At other times, numerous cases can enter into the system when current providers are already near the top of their MAC capacity.



To account for the flexibility needed month to month under the MAC workload model, OPDC builds a 15 percent annual and monthly variance into its contracts. Under those terms, contractors can carry a caseload that is 15 percent above or below MAC limits. Despite this flexibility, OPDC discourages carrying caseloads at the 115 percent or 85 percent level for long periods of time and contractually, providers are required to work with OPDC staff if they maintain excessively high or low caseloads for more than three consecutive months. The aim of these discussions would be to bring the contractor back toward 100 percent MAC utilization. Thus, while consideration of variance in caseloads is built into provider contracts, MAC is still treated like a ceiling as the contracts state that no provider is expected to exceed those case limits. Finally, under the current approach providers are not compensated for work taken above the MAC ceiling.

While a degree of MAC flexibility is presently available, the current contractual approach has several significant drawbacks. First, as touched on previously, there is tension between contractual terms within provider agreements that lead to a lack of clarity for providers as to whether they are encouraged or even allowed to exceed current MAC standards. This confusion is further exacerbated by guidance on OPDC's website.<sup>49</sup> Second, the flexibility currently provided is only realized by OPDC after a provider begins to take cases over MAC, which makes forecasting the impact of higher caseloads on the unrepresented crisis difficult. Third, OPDC does not currently have the data or means to ensure that contractors are able to provide high quality representation services when they exceed MAC. Finally, contractors do not currently get paid for cases taken over MAC, which is a disincentive to taking additional cases under the contract. Rather, current practice pushes providers toward participation in OPDC hourly programs, which leads to cases being assigned at a significantly higher cost to the state compared to those taken pursuant to provider contracts.

### **3.1.2. Changes to OPDC Contracting Structure for 2025-2027 Contracting Period**

In the 2025-2027 contracting period, OPDC intends to broaden its policy and contract terms to facilitate the appointment and compensation of sufficiently experienced attorneys with ethical capacity to take cases above current MAC limits, up to 115 percent, on a voluntary basis. To operationalize this approach, OPDC will utilize the following process:

1. OPDC staff will identify a qualified pool of providers who meet the following criteria: (a) at least four years of public defense experience; (b) felony qualified; (c) adult caseload; (d) provider must currently be or have been at 100 percent MAC or greater during the 2023-2025 contract cycle;

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<sup>49</sup> In the FAQ section of OPDC's website, for example, in referencing the MAC limits reproduced in Table 1 of this report: "Below are the *maximum* number of cases a 1.0 FTE attorney may be assigned annually if they are assigned only one case type. For mixed caseloads, attorneys should use the case weights to add up to a maximum of 300 weighted cases per 1.0 FTE per year" (emphasis in the original). Link: [Oregon Public Defense Commission : Public Defense Contract Terms : Public Defense Providers Information : State of Oregon](#)

- (e) no outstanding bar complaints; (f) priority will be given to attorneys working in crisis counties; and (g) the provider must acknowledge that data will be collected to ensure that quality representation is maintained across their entire annual caseload. Providers may also self-identify as qualifying under these criteria and would be subject to verification by OPDC staff.
2. Attorneys meeting the criteria in step one will be asked to specify the extent to which they intend to take advantage of the increased MAC flexibility. Specifically, they will be asked to estimate how far above current MAC levels the attorney is willing to work, consistent with their ethical capacity (e.g., 105 percent, 110 percent, 115 percent).
  3. Using the proposals in step 2, OPDC staff will examine the predicted collective capacity in each judicial district or county and compare the predicted capacity to the forecasted need in that area. OPDC staff will also ensure that the proposals fall within the agency's budget. If proposed capacity exceeds local need or exceeds OPDC budget allocations, proposed MAC overages will be reduced on a pro-rated basis as necessary. If proposed capacity is insufficient to meet local needs, OPDC will have a greater degree of understanding about the gap in that local area that will need to be addressed by other means (e.g., OPDC Trial Division, hourly providers).
  4. Contracts will be issued based on the analysis conducted in step 3 by OPDC staff. Compensation will be pro-rated based on the final MAC percentage identified by OPDC in step 3 (e.g., a provider contracting to work at 115 percent MAC will be compensated at a rate that is 15 percent above their standard 1.0 FTE compensation).
  5. OPDC staff will collect and analyze data to ensure that the services being provided by individual attorneys are of a consistent quality, particularly when comparing attorneys' caseloads under MAC limits to their caseloads after going over MAC.

The framework provided above is designed to address the issues previously discussed concerning the existing MAC structure. First, it resolves the current tension regarding the degree to which the agency permits and/or encourages providers to go over MAC. For those providers that meet the requirements above, the message moving forward is clear: *OPDC both permits and encourages experienced attorneys to exceed MAC so long as it is consistent with their ethical duty to provide professionally adequate representation to their clients.* Second, the new approach is more proactive than current practice, as the use of pre-contractual MAC proposals will allow OPDC staff to ensure that provider contracts

within each jurisdiction are right sized to meet local needs (or get as close to meeting local needs as possible). Collecting this data at the beginning of the contract period will allow OPDC to better identify gaps and estimate the extent to which additional capacity, whether through additional FTE, the OPDC Trial Division, or hourly attorneys, will be needed to meet the demand for public defense services. Third, OPDC will collect and analyze data to ensure that the services being provided by an individual are of a consistent quality, particularly when comparing their caseload under MAC limits to their caseload after going over MAC. Finally, providers will be paid for their work under their primary contract, which will allow OPDC to better forecast budgetary needs and obligations while ensuring that providers be compensated for the services they provide.

To forecast the potential impact of this new contractual approach, OPDC analysts examined data for the current contract cycle to identify how many attorneys would be eligible to participate in this program. This data is reported in Table 8. It is important to note that these figures should be taken as preliminary, as some of the requirements described in step one above were examined by proxy (e.g., using an individual attorney’s bar number to identify how many attorneys satisfy the “four years of experience” requirement). It is also important to note that OPDC does not necessarily expect that all the attorneys identified through this effort will be willing and/or able to take additional cases above MAC. Any conversion of the numbers below to a MAC equivalent must be viewed as a maximum possible impact that is unlikely to come to fruition. Finally, OPDC will have to ensure that these efforts fit into its 2025-2027 budget.

**Table 8. Preliminary Forecast  
of Attorneys Eligible to Take 115 Percent of MAC**

<b>County</b>	<b>Attorney Qualification Level<sup>1</sup></b>			<b>Total</b>
	<b>Attorney 2</b>	<b>Attorney 3</b>	<b>Attorney 4</b>	
Coos	0	0	2	<b>2</b>
Douglas	0	2	1	<b>3</b>
Jackson	0	4	7	<b>11</b>
Marion	0	5	3	<b>8</b>
Multnomah	4	3	20	<b>27</b>
Washington	8	5	5	<b>18</b>
Non-Crisis Counties	14	43	50	<b>107</b>
<b>Total</b>	<b>26</b>	<b>62</b>	<b>88</b>	<b>176</b>

<sup>1</sup>Attorneys can be qualified to accept public defense cases at one of four levels based on experience. Level 1 attorneys are only qualified to accept appointment to misdemeanor cases, contempt cases, and misdemeanor probation violation proceedings; Level 2 attorneys can accept appointment of lesser felony cases and felony probation violations; Level 3 attorneys can accept appointment to serious felony cases; Level 4 attorneys can accept appointment to murder cases.

As shown in Table 8, preliminary analysis identified 176 attorneys who meet the qualifying criteria discussed above. Almost 40 percent of the identified attorneys are contractors in the six counties with the highest number of unrepresented individuals, with the greatest

numbers in Multnomah and Washington Counties.

**3.2. *Intervention Two: Expand the collection and analysis of data regarding representation being provided to clients consistent with ABA Public Defense Principle Four: Data Collection and Transparency.***

The American Bar Association, in its Ten Principles of a Public Defense Delivery System, outlines data collection expectations within Principle Four. It states that data should be regularly collected and reviewed, while protecting client confidentiality, related to caseloads and workloads (e.g., number and types of cases assigned), major case events (e.g., initial appearance outcomes, number of motions filed), the use of investigators and other support services, case outcomes, monetary expenditures, and demographic data on public defenders as well as their clients.

Through the collection and analysis of data, OPDC will be able to achieve two important ends. First, as touched on in the section above, it is essential that OPDC have data to assess whether adequate representation is being provided to clients by attorneys, regardless of whether representation is being provided while under MAC limits or over those limits. In recent years, so much focus has been on caseloads and the numbers of unrepresented individuals, which has ignored the analysis and reporting of data demonstrating the quality of public defense services being provided to Oregonians.

Second, data can also help policymakers identify efficiency improvements that could result in additional capacity within the public defense system. Given the geography of the state, for instance, collecting data on travel times for defense attorneys could lead to reforms in policy or practice that could result in the reduction of driving time for defense attorneys, which would free up valuable time for other client matters. Similarly, if the cumulative time spent in court waiting for a case to be called is measured, it could help policymakers identify targets for system improvements designed to ensure that defense attorney time is spent in the most efficient way possible. Finally, systematic data concerning the changing nature of public defense—such as increases in the amount of time spent reviewing discovery due to the emergence of body-worn cameras and the ubiquity of doorbell cameras and other forms of CCTV—could inform discussions in policymaking circles as to the impact of these changing technologies.

Historically, OPDC has struggled to collect data concerning public defense representation and the data it does collect has proven difficult to integrate with other sources due to siloing between internal and external systems. Currently, the agency is soliciting proposals for a financial and case management system (FCMS), which will provide a single point of data collection for many, if not all of the datapoints listed above. This new data collection system, however, will not be available during the 2025-2027 contract cycle, so it will be necessary to rely on other preexisting data sources or contractor submitted data. The OPDC is committed to working with partner agencies who possess alternative data

sources, such as the Oregon Judicial Department, to determine whether the datapoints identified above could be obtained through other systems until FCMS is operational.

### **3.3. *Intervention Three: Implement contract and policy adjustments approved by the OPDC Commission in April 2025.***

On 16 April 2025, the OPDC approved several contractual and policy adjustments which, when taken together, should result in additional MAC capacity among public defense providers. The adopted contract and policy changes are as follows:<sup>50</sup>

1. *Partial Weighting for Early Case Withdrawal.* This policy reduces MAC credit on a pro-rated basis when an attorney withdraws from a case prior to its completion. For instance, an attorney who withdraws from a criminal misdemeanor case within five days of appointment does not receive any MAC credit. That credit grows to 50 percent if the withdrawal happens between 6 and 15 days of appointment and 75 percent if the withdrawal happens between 16 and 45 days. Attorneys receive 100 percent credit, finally, if they spend over 45 days working on the case.<sup>51</sup>

OPDC analysis suggests that this policy change could result in additional capacity statewide equal to 19.10 MAC, with the greatest impact on cases involving Measure 11 offenses and minor felonies.

2. *Partial Weighting for Second and Subsequent Attorney Policy.* This policy reduces MAC credit when a case that was initiated by one lawyer in an organization is passed to another lawyer in that same firm. This is based on the premise that much of the work completed by the initial attorney can save the subsequent attorney time when the case is transferred. Under the policy, when a case is transferred within the same firm, the second attorney receives 50% of the base MAC credit for the case.

Given that the policy mandates a reduction, it should result in additional capacity. The extent to which this change will impact MAC, however, could not be estimated by OPDC due to data limitations concerning consortia providers.

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<sup>50</sup> During the April 2025 OPDC meeting, two additional policies were adopted, one related to co-counsel requirements and processes and the other concerned vacancy funding. The co-counsel policy was created to document current OPDC process and practice and its impact on MAC is unclear. The vacancy funding policy is unrelated to MAC. For additional information on these policies, please see the Agenda for the April 2025 OPDC meeting: [Oregon Public Defense Commission : Meeting Agendas & Schedule : The Commission : State of Oregon](#).

<sup>51</sup> Different timelines apply for criminal felonies other than murder, and murder. Standards can be accessed via OPDC Policy 404.200.04.006.

3. *Contract Compliance Policy.* This policy is designed to ensure that the number of case assignments in a month for each attorney are within 15 percent of the attorney's prorated MAC. This effectively sets a floor<sup>52</sup> at 85 percent MAC for each attorney. Should an attorney not maintain 85 percent MAC productivity, the policy outlines the interventions OPDC can take, which include a 90-day performance expectation plan, reducing total contract funds in a stepwise fashion in 1 percent increments (up to 5 percent maximum), reducing contracted FTE, reducing a provider's qualifications, requiring additional mentoring/oversight, and, in the most extreme cases, termination of the provider contract.

OPDC analysts estimate that 21.54 MAC in additional capacity could be gained if all providers currently providing services below 85 percent MAC were raised to that minimum level. It is important to note, however, that the contract compliance policy does not apply to attorneys if they have reached their ethical case maximum and have filed appropriate paperwork with OPDC, so the estimate must be viewed as a ceiling.

4. *Reduced Caseload Program for First-Year Attorneys.* This policy provides first-year attorneys with the opportunity to work a reduced caseload for one year by setting MAC expectations at a caseload equivalent of 200 misdemeanors for program participants. After one year, the attorney will be expected to function under the standard MAC requirements like all other attorneys. Eligibility will be determined by OPDC following a request to participate in the program submitted by the first-year attorney's contract administrator.

While some first-year attorneys currently work caseloads below MAC due to ethical reasons, this policy is expected to lead to an overall reduction of MAC capacity of 10.05 MAC.

In sum, the contract changes described above could result in an additional capacity of 30.59 MAC. This estimate should be taken with a degree of caution, however, as it represents the maximum effect of these policy changes. It is likely that the overall realization of additional MAC will be lower.

### **3.4. *Intervention Four: Adjust non-profit provider contracts to allow public defender offices to hire cohorts of new attorneys.***

Maintaining a robust and stable public defense workforce has been difficult in recent

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<sup>52</sup> OPDC Policy 404.200.04.005 states: "OPDC may not decrease a Contractor's attorney FTE, the financial value attached to the contract, or any other form of compensation if the Contractor has temporarily shut off case assignments for ethical reasons."

years, both in Oregon and nationwide. Two factors have played a central role in this challenge: an insufficient pool of new attorneys interested in pursuing careers in public defense, and retention issues once a new attorney joins the public defense workforce. Due to these issues, competition for qualified, interested candidates is fierce.

One solution that can impact the defense attorney shortage in Oregon is the use of cohort hiring within non-profit public defense providers. The cohort hiring process, which is designed to align temporally with bar passage and licensing, allows non-profit providers to focus training and mentoring efficiently and benefits from economies of scale compared to hiring attorneys on an ad hoc, one by one basis. Under this process, new attorneys who have taken the bar exam in July begin their employment in August, while they wait for bar passage notification and anticipate obtaining their license to practice in October. During the gap between hiring and licensure, training focuses on foundational areas of practice and developing courtroom skills that are not necessarily taught in all law schools. The new hires also build comradery and community during this time, developing a support structure that can maintain young attorneys as they progress through their early careers and beyond. Although systematic statewide data is lacking, anecdotal evidence suggests that this process has already lead to higher rates of retention. To illustrate, one Oregon non-profit public defense provider reports a 71 percent retention rate for lawyers who participate in their cohort program, a rate that is much higher than retention of lateral hires brought into the organization one by one outside of the cohort approach.

Beyond retention benefits, a structured cohort model also provides greater stability and certainty for hiring organizations, newly minted attorneys, and the system as a whole. In law school, the best talent is identified and tracked into different employment opportunities quickly, sometimes as early as the spring and summer of students' first year. Within public defense, the identification of promising candidates occurs during the fall of students' second year—approximately two years before newly minted lawyers would begin practicing in public defense—when summer interns are interviewed and offered summer positions. Formal offers of employment are then made following additional interviews at the beginning of the student's third year. It is essential that non-profit public defense providers be given the contractual tools necessary to forecast future needs and make employment offers approximately a year in advance. If this is not possible, then Oregon recruiters will continue to be at a disadvantage when looking for the best public defense candidates, especially when recruiting out of state (which grows the Oregon legal community and is something that is sorely needed both inside and outside public defense).

Furthermore, through providing greater contract flexibility to non-profit providers, it will be possible to further increase the number of public defenders providing services within the state. Presently, while OPDC contracts are structured in a way that does not prohibit the cohort hiring approach, the contracts also are not constructed to facilitate or directly support it either. One Oregon non-profit estimates that if it was provided with more flexible contracting terms for the hiring of soon-to-be law school graduates, their organization



could have extended employment offers to between four and eight additional candidates during the most recent contracting cycle.

**3.5. *Intervention Five: Continue to develop and support Public Defense Law Clinics at Oregon’s three law schools.***

<b>Table 9. Projected Impact of Oregon Public Defense Law Clinics (as of 15 April 2025)</b>			
<b>Program</b>	<b>Students</b>	<b>Cases</b>	
		<b>To Date</b>	<b>Projected<sup>1</sup></b>
Lewis & Clark/MPD	11	209	265
Willamette/PDMC	16	79	121
U Oregon/LCPD	16	78	90
U Oregon/MDI	7	38	88
<b>Total</b>	<b>50</b>	<b>404</b>	<b>564</b>

<sup>1</sup> Projected cases include cases-to-date, as well as cases from the remainder of the Spring 2025 Semester and the Summer 2025 Term.

In 2024 via [House Bill 5204 § 35](#), the Oregon Legislature allocated funding to OPDC to establish four public defense law clinics through partnerships with Oregon’s three law schools. The intent behind the creation of these clinics was to focus on improving recruitment, retention, and capacity in

counties with high numbers of unrepresented individuals through the creation of new pipelines directly from Oregon’s law schools into the public defense community. Specifically, the following partnerships were created: (1) a partnership between [Lewis & Clark Law School and Multnomah Public Defender](#); (2) a partnership between [Willamette University School of Law and the Public Defender of Marion County](#); (3) a partnership between the University of Oregon School of Law and Public Defender Services of Lane County; and (4) a partnership between the University of Oregon School of Law and Multnomah Defenders Inc. As shown in Table 9, as of 15 April 2025, 50 students in the four clinics had provided representation on over 400 cases and are projected to handle over 560 cases in total by the end of summer 2025.

It is important to note that the cases assigned to the law students do not necessarily represent additional capacity. Rather, under the prevailing program models, cases are assigned to a supervising attorney at one of the partner non-profits and the students manage those cases under the supervision of the non-profit attorney. Work performed in the initial months of the clinic is very closely supervised. Over time, students gradually gain more independence and by the end of the first semester, most third year students handle appearances on their own. This program, therefore, should be viewed less as an opportunity for additional public defense capacity and more as an investment in future workforce development, as students who transition into public defense will be more prepared for a career in public defense compared to non-program participants. As such, the success of this program should be measured in the number of clinic participants who obtain employment within the Oregon public defense system after their participation in the clinics. Early anecdotal evidence suggests that this is indeed the case, but more systematic tracking of future employment for student participants will be required.



### **3.6. *Intervention Six: Collaborate with system partners to expand the use of Special Resolution Dockets.***

Over the past several years, local courts have crafted various special dockets designed to resolve cases quickly and efficiently with the goal of reducing the number of folks who are in need of an attorney. These dockets often have different names, focus on different types of defendants and crimes, and vary as to how frequently they operate (or, indeed, whether they are ongoing efforts or designed to be one-time interventions). For instance, Multnomah County runs a weekly early case resolution (ECR) docket, which is supported by a 1.0 FTE consortia member of the Portland Defense Consortium. Washington County, alternatively, has a five day per week ECR, which is supported by 3.6 FTE split between Metropolitan Public Defender and the Oregon Defense Attorney Consortium. Additionally, Washington County has also employed temporary early case resolution dockets to help address the backlog of public defense cases (e.g., the various “Wingspan” efforts in 2023). In Jackson County, a new early disposition docket was recently created, targeting low level misdemeanors by providing incentivizing plea offers of lower jail time or violation treatment at an individual’s first appearance.

There currently is no centralized tracking system for the various special dockets that exist across the state. This lack of tracking extends to both the existence of these dockets across jurisdictions and the outcomes of the cases within them. Anecdotally, however, special dockets do appear to have a positive impact. The “Wingspan III” docket in Washington County, for example, was able to close 100 criminal cases within a six-week period, with a 70 percent case resolution rate.<sup>53</sup> Similarly, an effort initiated by OPDC in Coos County in late May of 2025 resulted in the removal of 12 individuals from the unrepresented list in that county. While that number may seem relatively small, it represented approximately 10 percent of the unrepresented cases in that jurisdiction.

While promising, special resolution dockets can also pose unique challenges that have limited their effectiveness in some areas. First, in some counties, the FTE devoted to these dockets is insufficient to meet the need and greater throughput could be achieved if more resources were available. Another capacity related issue is the impact these dockets can have on MAC. Third, in some counties, tension between system partners and/or unwillingness to engage by one or more essential partners has stymied efforts to initiate special dockets.

During the 2025-2027 contract cycle, OPDC is committed to maximizing the use and effectiveness of special dockets as far as practicable across the state. One approach OPDC plans to take is to utilize the OPDC Trial Division whenever and wherever possible, because the unique characteristics of the Trial Division can address many of the

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<sup>53</sup> Alma McCarty, “Washington Co. district attorney reveals results of program aimed to address criminal defense attorney shortage,” 8 April 2023 ([Results of program to address criminal defense attorney shortage | kgw.com](https://www.kgw.com/story/news/crime/2023/04/08/washington-co-district-attorney-reveals-results-of-program-aimed-to-address-criminal-defense-attorney-shortage/7008574002/)).

drawbacks discussed previously. First, the trial team can fill gaps in counties where capacity for ECR's is limited while also taking the lead in other counties where capacity does not exist. Second, as described in greater detail in the following section, the open workload model employed by the OPDC Trial Division does not suffer from the same challenges as the MAC model when it comes to special resolution dockets. Indeed, for the OPDC Trial Team, if cases in special resolution dockets resolve quickly, that merely frees up additional capacity that can be devoted elsewhere.

The utilization of the Trial Division to staff special resolution dockets is already having a positive effect on the unrepresented crisis. As touched on previously, in late May of 2025, the Trial Division and local providers were able to take 12 individuals off the unrepresented list in a single day in Coos County, nine of which were resolved on the same day. There are plans for another Coos County docket in late June and the goal will be to resolve 29 cases at that time. Similarly, in Jackson County, the Trial Division staffs arraignments one day per week and during that hearing works with the district attorney to identify cases that can be transferred immediately to the court's Early Disposition Program Docket the following week. Just this week, 22 cases were transferred to the Early Disposition Program Docket and since the beginning of April, the Trial Division has disposed of approximately seven cases per week in this manner.

Finally, in addition to the special dockets that are already underway, in one jurisdiction OPDC is working with system partners to pilot a special docket focused on the rapid resolution of cases involving out-of-custody unrepresented clients charged with class C felonies who have been consistently attending their court appearances and have no additional pending charges during their period on the unrepresented list. The pilot hopes to resolve 100 cases during its initial phase and could become a standing docket if the pilot is successful. In another jurisdiction, the groundwork is being laid for the quick resolution of diversion eligible cases, cases where diversions have been revoked, and a docket for probation violations.

OPDC will also continue to support the use of special resolution dockets through its providers as well and will provide additional capacity where budget allows to ensure these efforts provide maximum results. Finally, OPDC is also committed to working with system partners in jurisdictions where trepidation exists, as OPDC is in a unique position to provide technical expertise based on its work in many other jurisdictions of varying size.

**3.7. *Intervention Seven: Continue utilizing the flexibility of the OPDC Trial Division to help mitigate the crisis in counties with high numbers of unrepresented individuals. Advocate for the continued, thoughtful expansion of the OPRC Trial Division.***

The OPDC Trial Division is a key resource the state can leverage in addressing the number of unrepresented Oregonians. Originally created in Senate Bill 337 (2023) and

supplemented with additional attorneys via House Bill 5204 (2024) and Senate Bill 5701 (2024), the Trial Division currently employs 20 attorneys and 24 support staff, ranging from legal secretaries, case managers, and investigators to paralegals. These staff are spread across three offices located in Portland, Salem, and Medford. The Portland Office, where the Northwest Region Trial Division was opened in December 2023 serves the three counties in the Portland metropolitan area, Clackamas, Multnomah, and Washington. The second office was opened in February 2024 in Medford, housing the Southern Regional Trial Division which primarily serves clients in Jackson, Douglas, and Klamath counties. Finally, the Central Regional Trial Division (CRTD) opened in Salem in April of 2024. The CRTD primarily serves Marion County (accounting for approximately 70 percent of its cases), but it also has stationed an attorney in Coos County, has another attorney regularly assigned to cases in Douglas County, and has responded to needs in other counties in the recent past, as it did in Deschutes County starting in July 2024.

### 3.7.1. OPDC Trial Division Workload and Productivity

The OPDC Trial Division follows an open workload model, where future capacity is projected on having 2,080 case weight hours of open cases at any given time. Case weights are based on the National Public Defense Workload Study (NPDWS).<sup>54</sup> When cases are closed, the open case weights are recalculated, and new cases are added. There is no limit on how many cases Trial Division attorneys can resolve within a year. To forecast workload, when that attorney is assigned a case, it is estimated that the lawyer will devote a certain, standard number of hours to that case according to the NPDWS—for example, 35 hours in the case of a low-level felony. Once the case is resolved, however, only the actual hours worked are counted toward the 2,080 total, which means that when cases are resolved in less time than presumed by the NPDWS, additional capacity is freed up and more work can be assigned to that attorney. This allows most Trial Division attorneys to work above 100 percent MAC. A good illustration of this benefit is the Trial Division’s work on special resolution dockets, because when cases can be resolved quickly, it results in additional capacity.

**Table 10. OPDC Trial Division  
Workload Statistics as of 28 May 2025**

<b>Trial Division Office</b>	<b>#Attys<sup>1</sup></b>	<b>Avg Open Case Weight<sup>2</sup></b>	<b>MAC Equiv<sup>1</sup></b>	<b>Open Cases<sup>1</sup></b>
Central Valley	7	1,798.17	112.62%	354
NW Regional	7	2,163.14	83.14%	322
Southern Regional	6	2,023.57	113.71%	292

<sup>1</sup> Source: [Oregon Public Defense Commission : Data & Reporting : General Information and Resources : State of Oregon](#)

<sup>2</sup> Source: Internal OPDC Dashboards

<sup>54</sup> Pace, Nicolas M., Malia N. Brink, Cynthia G. Lee, Stephen F. Hanlon. 2023. National Public Defense Workload Study. [RAND RRA2559-1.pdf](#)

The open workload expectations employed by the Trial Division correlate closely with the measurement of MAC, which indicates that the OPDC Trial Division is working at a very high level of MAC utilization. Overall, as of 28 May 2025, the Trial Division is working at the equivalent of 101.89 percent MAC. Table 10 provides a breakdown of basic workload statistics by office. Even the NW Regional Trial Office, which reports lower MAC equivalence than their colleagues in Salem and Medford, is working at a level commensurate with that of other local providers in the Portland Metropolitan area.

### **3.7.2. OPDC Trial Division Impact on the Crisis**

While the OPDC Trial Division is based in Jackson, Multnomah, and Marion counties, its attorneys currently take cases in all six crisis jurisdictions and beyond. As of 28 May 2025, Trial Division attorneys reported the following number of open cases in each of the six crisis counties: Coos (35), Douglas (41), Jackson (247), Marion (246), Multnomah (161), and Washington (163). Beyond the crisis jurisdictions, the division also has open cases in Clackamas, Columbia, Deschutes, Klamath, Lake, Lane, Lincoln, Polk, and Yamhill counties.

Case assignment protocols vary by regional office, primarily due to court schedules, practices, and other local nuances. All of the Trial Division regional offices prioritize *Betschart*<sup>55</sup> and other in-custody cases where the defendant lacks an attorney. In Jackson County, for example, on the Southern Regional Trial Division's weekly arraignment day, all in-custody cases are automatically assigned to that team unless there is a conflict. The Northwest Regional Trial Division office, alternatively, works with the OPDC unrepresented team to take in-custody cases that are potentially subject to *Betschart*, with a secondary focus on in-custody clients with serious charges and/or who have been on the unrepresented list for lengthy periods of time.

Further, as discussed in the previous section, the OPDC Trial Division is also taking a leading role in the creation and staffing of special resolution dockets within crisis counties. Taken together, therefore, the Trial Division's primary focus centers on resolving the unrepresented crisis and addressing gaps in crisis counties when conflicts arise as well as by taking cases that are particularly complex due to clients' mental health needs, language barriers, and other factors.

Any future investments in the OPDC Trial Division will have a direct impact on the unrepresented crisis through the addition of capacity that has the flexibility to address service gaps as they arise. Because of the effectiveness of these teams, OPDC looks forward to partnering with the Governor to continue advocating for the thoughtful

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<sup>55</sup> In brief, *Betschart v. Washington County Circuit Court Judges* affirmed a preliminary injunction requiring the appointment of an attorney within seven days of an in-custody defendant's initial appearance. Failure to do so within the required timeline would result in the defendant's release from custody subject to reasonable release conditions imposed by the court.

expansion of the OPDC Trial Division, with a focus on growing the overall pool of public defenders in the state through aggressive recruitment of out-of-state attorneys and local Oregon attorneys not currently working in public defense.

### 3.8. Implementation

#### 3.8.1. Timeline

Three of the interventions described in the previous section (3.1, 3.3. and 3.4) cannot be implemented without changes to the current contract structure employed by OPDC. Due to OPDC’s move into the Executive Branch of state government, a substantial overhaul of the agency’s contracts has already been underway for some time. While these preparatory steps have been taken, however, with the contract changes proposed in this memorandum, additional contract template work will have to occur, particularly with regards to the expanded flexibility to exceed MAC as well as the flexibility needed to better facilitate non-profit firm’s cohort hiring programs. Contract development for the 2025-2027 biennium has also been impacted by budget uncertainty, as budget approval timelines were moved toward the end of the 2025 Legislative Session due to the recent change in leadership at the agency.

Based on these factors, as well as on the need to have meaningful engagement with providers given the overhaul to their traditional contracts, the OPDC Commission approved extending current 2023-2025 contracts until 30 September 2025. Due to the need to fully transition into a new template that complies with the Oregon Public Contracting Code, this extension cannot incorporate new substantive changes. This means, importantly, that the interventions described in this document cannot be fully implemented at the provider level until 1 October 2025. This rollout timeline is reflected in Figure 20. Further, because data collection approaches will at least partially rely on contractual requirements for providers, the implementation of those standards will also only be fully realized in October as well. Finally, intervention 3.4, which seeks to provide non-profits with additional flexibility in cohort hiring will likely not pay dividends until the fall of 2026. Crucially, however, the inclusion of this new flexibility in the contracts will allow non-profit providers to enter the fall 2025 recruiting season with the certainty it lacked previously which should lead to larger classes of new attorneys joining the Oregon public defense system (so long as budget limitations allow for growth).

	2025						2026					
	Q3			Q4			Q1			Q2		
	Jul	Aug	Sep	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun
3.1 MAC Flexibility	2023/2025 Extension			2025/2027 Contracts with New Terms								
3.2 Data Analysis	Provider Prep & Engagement			Data Collection and Analysis via Internal Dashboards								
3.3 Contract Adjustments	2023/2025 Extension			2025/2027 Contracts with New Terms								
3.4 Cohort Attorneys				Cohort 1								
3.5 Law School Clinics	Prep	2025-2026 Academic Year										Summer
3.6 Special Res Dockets	Ongoing with Focus on Expansion											

Figure 20. Implementation Timeline for OPDC Crisis Interventions

As shown in Figure 20, the intervention that can have the greatest, most immediate impact is the use and expansion of special resolution dockets. Recent developments in this area were covered in greater detail in Section 3.6, but it bears repeating that progress is already being made, both through the initiation of new resolution dockets and programs in Jackson and Coos counties as well as the ongoing negotiations in other crisis counties to develop dockets designed to reduce the unrepresented case backlog. This progress, however, could be expanded further into jurisdictions where conversations around special dockets either have not taken place or there is skepticism about special dockets based on previous, less than successful attempts. Finally, there is also an opportunity to build upon pre-existing infrastructure by contracting for additional special docket FTE as well as deploying the OPDC Trial Division in areas where this approach is currently underutilized.

### 3.8.2. Expected Impacts

The interventions described in this memorandum are targeted toward the needs of the six counties with the highest number of unrepresented individuals. The impacts of these approaches, however, are unlikely to be felt equally across all jurisdictions. Table 11 presents a graphical display of the expected impacts of the various interventions discussed above. Counties with the greatest possible return on investment are green, while smaller impacts are yellow. When impacts are believed to be minimal, no color is used.

**Table 11. Expected Impacts of OPDC Interventions on Unrepresented Crisis Counties**

Intervention	Coos	Douglas	Jackson	Marion	Multnomah	Washington
3.1. Contracted MAC Flexibility	Yellow	Yellow	Green	Green	Green	Green
3.2. Data Analysis	Green	Green	Green	Green	Green	Green
3.3. Contract Adjustments	Yellow	Green	Yellow	Green	Green	Green
3.4. Non-Profit Cohort Hiring	White	White	Yellow	Green	Green	Green
3.5. Public Defense Law Clinics	Yellow	Yellow	Yellow	Green	Green	Green
3.6. Special Resolution Dockets	Green	White	Green	Yellow	Green	Green
3.7. OPDC Trial Team	Yellow	Green	Green	Green	Green	Green

**Coos County.** As discussed in greater detail in Section 2.3.1, significant changes in the trends in the unrepresented crisis in Coos County are closely related to changes in provider capacity within the area. Increasing and maintaining provider capacity, therefore, is the clearest method within the control of OPDC for impacting the crisis. Current MAC

utilization in Coos County among active attorneys<sup>56</sup> stands at 111.5 percent. An important nuance within Coos County, however, is the fact that a decent share of its current attorney capacity at SWOPDS is pursuing licensure via the Supervised Practice Portfolio Examination (SPPE) program. This is impactful because cases cannot be directly assigned to attorneys with provisional licenses, so it is difficult to track the impact of those SPPE attorneys. To improve tracking, OPDC is developing policies related to SPPE attorneys during their training period.

As for the interventions outlined in this memorandum, the approach that is likely to be the most impactful is continuing to utilize special resolution dockets, as initial returns on this nascent effort appear to be very positive. Second, improved data tracking, particularly for SPPE lawyers, will be beneficial in the county. Other adjustments, such as additional MAC flexibility and the ability to hire cohorts of law students, will likely be less impactful, although they could provide essential, if small, gains in local capacity that could help the county maintain its local system while the OPDC Trial Division works to reduce the unrepresented backlog via special dockets.

**Douglas County.** The crisis in Douglas County is traceable to several factors. First, turnover within the local non-profit has impacted capacity within the county. Over the life of the 2023-2025 contract cycle, the county's MAC utilization stands at 80.72 percent.<sup>57</sup> When only active attorneys are included, MAC utilization is a bit higher at 81.7 percent. It is likely, therefore, that contract adjustments related to stricter adherence to the 15 percent variance could be beneficial. Relatedly, if all of the estimated three attorneys who are eligible choose to exceed MAC by 15 percent, it would be the equivalent of adding 0.45 MAC to the current local capacity. Second, the case assignment process utilized within the county could be more efficient. Conversations with local decision-makers and stakeholders would be advisable to explore whether there is openness to adjusting current practice. Third, OPDC should also explore whether a special docket could be piloted in the jurisdiction so that a subset of cases could be resolved quickly. As of this time, efforts to establish a special docket have been unsuccessful. Finally, the OPDC Trial Division must maintain and could look to expand its presence in the area to supplement local providers.

**Jackson County.** The crisis in Jackson County can be addressed by maximizing provider capacity in the area, by both encouraging providers to utilize unrealized capacity and by providing additional flexibility within the MAC framework. The addition of capacity through raising MAC limits could lead to the equivalent of 1.65 additional MAC in the county if

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<sup>56</sup> MAC utilization by county is reported on OPDC's publicly accessible dashboard ([Oregon Public Defense Commission : Data & Reporting : General Information and Resources : State of Oregon](#)). Data presented on this dashboard, however, includes all of the individuals who have worked for a provider, even those who departed at some point during the contract cycle. Thus, while the dashboard presents data on the overall MAC utilization for a county during the entirety of the two-year contract period, it does not report current capacity or utilization. The figure reported here, however, is a measure of current capacity and utilization, as it includes only currently active attorneys.

<sup>57</sup> OPDC Dashboard



providers take full advantage of the program. Another key component to addressing the crisis is the continued utilization of the OPDC Trial Division, given its ability to provide extra capacity and because of the role it currently plays in the county's early resolution dockets. The county could also benefit from growth in the Trial Division, as additional team members would contribute to overall capacity and could be utilized to further enhance the preexisting work that has gone into its special resolution dockets.

**Marion County.** The crisis in Marion County is largely attributable to capacity utilization and data reporting issues. While there is local disagreement as to the MAC calculations used by OPDC, the Commission's current number indicate that the utilization rate in the county among active providers is 75.6 percent. Stricter contract terms and a closer working relationship between the providers and OPDC would be beneficial, as any improvements in capacity gained in this area could greatly benefit the local system. Further, additional capacity gained via MAC flexibility would also grow the system, as preliminary data indicates that 8 attorneys could be eligible for this program. Finally, OPDC intends to reach out to system partners in Marion County to discuss early resolution dockets with a focus on staffing those efforts with OPDC Trial Division attorneys. When combined with additional capacity, these dockets could help make important gains in reducing the backlog within the county.

**Multnomah County.** Multnomah County could also greatly benefit from increased capacity, both by raising the MAC utilization rate within the county as well as by increased capacity via MAC flexibility and greater stability in cohort hiring within the non-profit providers. The current MAC utilization rate among active attorneys in Multnomah is 89.9 percent, but even at that level the gap between current utilization and full capacity equates to a little over 11 MAC. Further, preliminary data indicates that 27 attorneys would be eligible to take cases over current MAC limits as well, which could add a significant amount of capacity within the county. Additional capacity should also be realized by the other contract changes discussed in section 3.3—given the size of the provider community in Multnomah County, it could see some of the highest returns to changes in subsequent attorney weighting and changes to withdrawal MAC calculations, among others. Finally, as in other counties, expanding the use of special resolution dockets could be a key safety valve for the backlog, as cases currently on the unrepresented list could be resolved quickly and in batches.

**Washington County.** Efforts to reduce the growth in unrepresented individuals as well as the backlog in Washington County largely come down to increasing capacity within the jurisdiction. Currently, active attorney providers in Washington County are working at 101 percent of MAC, so the introduction of flexibility into that jurisdiction to exceed MAC further would likely be the most beneficial. Preliminary estimates indicate that 18 attorneys would qualify for this program, which could represent a maximum of 2.7 additional MAC equivalent capacity if fully enrolled. Further, any expansion of capacity through larger incoming non-profit cohorts would directly benefit the system. Second, and similar to Multnomah County, the size of the provider community likely means that other



contract changes in section 3.3 will likely have a significant positive impact on the crisis. Finally, consistent with other counties, the continued use and expansion of special resolution dockets would be beneficial. Current reports from the county indicate that with additional provider capacity, more work could be done in this area that could further reduce the number of unrepresented individuals.

#### **4. Long-term Strategies for Stabilizing the Public Defense System**

The growth in the number of unrepresented individuals has been years in the making and as discussed previously, will take time to resolve, both because of the size of the backlog as well as the predicted upward trend in case filings. Previous work by OPDC, the Oregon Judicial Department, and the Oregon Criminal Justice Commission identified four levers within the criminal justice system that could impact current challenges: (i) increasing the number of attorneys in the Oregon public defense system; (ii) increasing attorney capacity; (iii) reducing the number of case filings; and (iv) reducing the time it takes to resolve a case. These four levers will also be key in maintaining a well-functioning public safety system once current challenges are resolved.

OPDC has a degree of influence over the first two levers and all of the interventions contained in this memorandum are designed to have a positive impact in those areas. Beyond these short-term interventions, however, there are additional, longer-term actions that OPDC could take in the future that could impact the number of attorneys in Oregon and their capacity. First, OPDC should take a leadership role and help convene and facilitate discussions with system partners to develop strategies to address systemic issues contributing to the unrepresented crisis. This should include discussions about system efficiencies, such as resolving issues with docket scheduling, greater and more flexible jail access, continued expansion of special resolution dockets, and increased collaboration on case assignment processes, among others. Even things as simple as reducing attorneys' time in transit or waiting in court can pay dividends both in increased capacity and a better work-life balance, which would have positive impacts on recruitment and retention. OPDC has less influence over the remaining two levers—case filings and case resolution timelines—but it is committed to working with system partners, policy makers, legislators, and others, to come up with creative solutions in those areas as well. It is only through collaboration and the crafting of systems-based solutions that the State of Oregon can truly meet its obligations to provide high quality public defense for Oregonians in need of those services.