

UNREPRESENTED CRISIS PLAN GUIDANCE

Public Defense Service Commission
Office of Public Defense Services

Public Defense Services Commission
Unrepresented Crisis Plan Guidance

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Contact

Public Defense Service Commission

Office of Public Defense Services

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Objective

Oregonians accused of a crime are entitled, under the Sixth and Fourteenth Amendments of the United States Constitution, and Article I, section 11, of the Oregon Constitution, to have a qualified attorney provided at government expense whenever the person is facing the potential loss of liberty and is unable to afford an attorney. Under current Oregon statutes, every financially eligible accused person in a criminal case is entitled to appointed counsel. Or. Rev. Stat. §§ 135.040, 135.045, 135.050, 135.055 (2021), Or. Rev. Stat. §§ 161.346(6)(d), 426.100, 426.307 (2021) (civil commitment proceedings). The current unrepresented persons crisis represents a threat to the constitutional and statutory rights of Oregonians and must be resolved.

This guidance document is intended to provide guidance for the judicial district coordinated public safety unrepresented defendant crisis plans (crisis plans), including guidance on how to prioritize the resolution of the cases of unrepresented persons who are in custody, and then the cases of unrepresented persons who are out of custody.

Authority

Oregon State Legislature, Senate Bill 337-C (2023), Sections 104-108, Relating to public defense; and declaring an emergency. Appendix – SB 337-C (2023).

Chief Justice Order (CJO) 23-024. Appendix – CJO 23-024.

Data Source

[Oregon Judicial Department Unrepresented Individuals Dashboard](#)

Scope

The scope of this guidance includes recommendations on the development and content of crisis plans. This document serves only as recommendations to presiding judges, as PDSC does not have the authority to direct courts, judges, or their work.

This guidance is applicable to the presiding judge (PJ) of each judicial district who is directed by CJO 23-024 to develop and implement a coordinated public safety unrepresented defendant crisis plan under SB 337-C Section 104(1)(a). It also applies to the crisis teams directed to assist in the development of these plans in judicial districts with a total population of over 100,000 under SB 337-C Section 104(2) and judicial districts with 20 or more unrepresented persons under CJO 23-024.

This document does not include direction to stakeholders outside of the applicable audience, nor does it include instructions to presiding judges on the convening or creation of the crisis teams. This direction comes from CJO 23-024.

Definitions

- **Unrepresented Person:** Also called unrepresented defendant/unrepresented case. An unrepresented person is a person who has been charged with a crime or who faces other potential or actual deprivations of liberty and qualifies for court appointed counsel for whom there is no available PDSC contracted attorney. For the purposes of this guidance and the crisis plans, the unrepresented person definition is narrowed to **only those individuals facing criminal charges at the circuit court level or civil commitments**. PDSC remains committed to providing representations for all eligible unrepresented individuals, but this guidance will focus on these case types only.
- **Person vs. Cases:** Frequently, a person qualifying for a public defender may have more than one open legal matter, i.e., case. For example, a person may be charged multiple criminal cases in one county, multiple criminal cases in multiple counties, or both in criminal and juvenile courts. Oregon's public defense contracts are for representation in a single judicial jurisdiction. Therefore, a person who is charged with multiple legal matters in multiple jurisdictions may have a public defender on one or more cases and remain unrepresented on one or more cases. PDSC tracks both the number of unrepresented people and unrepresented cases.
- **Maximum Attorney Caseload (MAC):** MAC is the maximum attorney caseload that OPDS has contracted for an attorney to accept appointment on during the contract period. MAC is the maximum number of cases an attorney should not exceed over the course of one year and varies according to the types and seriousness of various cases. If an attorney carries a mixed caseload including cases from more than one category, the caseload standards should be applied proportionally. Additional case weight is given to some cases in recognition of the greater attorney workload required for certain cases compared to an average case, such as out-of-jurisdiction cases and cases with extraordinary circumstances. Weighted MAC for a case is assigned to an attorney at the time of appointment. However, only partial credit is given if the attorney withdraws from the case within the first 89 days of representation. An attorney could accept either new case filings or cases from the unrepresented list using contracted MAC. Appendix – 2022-2023 Contract; 2023-25 Contracts with draft exhibits, Exhibit B
- **Caseload model vs. workload model:** Oregon's criminal public defense contracts are for a caseload. A caseload means the number of new cases that an attorney is appointed to during the contract period. A caseload model fails to account for the active cases that a lawyer was appointed to prior to the beginning of the contract cycle. A workload model means the number of open cases that an attorney has at a point in time. A workload model more closely aligns the contracted capacity with the attorney's ethical capacity. The legislature has directed the office of public defense services to move to workload model contracts in future contract cycles. However, our current forecasting and budget projections only allow for a caseload model during the 2023-25 biennium.
- **Capacity, ethical standards:** Both MAC capacity and ethical standards must be considered when appointing additional cases to a public defender. A lawyer has ethical capacity to accept

appointment on a public defense case when they have sufficient time to interview and counsel clients, interview client close in time to appointment, seek pretrial release, provide vertical representation (continuous representation by the same attorney from arraignment through case disposition), conduct investigations, request and review discovery, conduct legal research, prepare for pretrial, trial, and sentencing hearings. Due to PDSC's caseload model, some lawyers may find themselves at ethical capacity due to ongoing open cases from the last contract cycle prior to reaching their contracted MAC capacity. In 2006 the Oregon State Bar issued an ethics opinion 2007-178 applying RPC 1.7 to public defense workloads and held that pursuant to RPC 1.7 lawyers representing indigent clients must refuse to accept a workload that prevents them from meeting their ethical obligation to each client. Appendix – Oregon State Bar Ethics Opinion 2007-178 (2007).

- **Qualified Public Defense Provider:** A public defense provider is a licensed attorney who has submitted an Attorney Qualification application packet to the PDSC and been approved to handle a particular type of case. Appendix – PDSC Attorney Qualification Standards. The state of Oregon subcontracts with lawyers to provide public defense services either through contracts or through hourly rate agreements. The vast majority of our public defenders are contracted providers, they have contracts with the state to fulfill their contracted MAC for the contract period. A minority of public defender have hourly agreements with the state. They agree to take cases on an ad hoc basis for a set hourly rate.
- **Permissive Withdrawal:** ORPC 1.16(b) governs the permissive withdrawal from representation. It allows withdrawal for any reason if it can be accomplished without “material adverse effect” on the client. When faced with a defendant’s request for substitute appointed counsel, trial courts have an obligation to consider the motion, but they also have discretion to decide whether to grant or deny the motion. The exercise of that discretion requires a balancing of a defendant’s right to effective counsel and the need for an orderly and efficient judicial process. Appendix – Memo on Attorney Withdrawal.

Background

The Constitutions of the United States and Oregon and Oregon statutes require the appointment of competent and effective counsel for those who have been charged with a crime or face other potential or actual deprivations of their liberty interests and cannot afford counsel. The Public Defense Services Commission (PDSC) and Office of Public Defense Services (OPDS) are responsible for maintaining Oregon’s public defense system and ensuring the availability of qualified, competent counsel for all those so entitled.

Even in the best conditions, there are, on any given day, a handful of persons entitled to court-appointed counsel in Oregon who do not currently have counsel appointed. Attorneys who provide defense services routinely have ethical conflicts that prevent them from accepting appointments, and the processes for bringing persons before the court lead to built-in, but relatively small, delays in the system. Typically, a person entitled to counsel is without appointed counsel for, at worst, only a few days as PDSC staff work with the courts and providers to locate counsel qualified and willing to take on representation.

Over the last two years, however, Oregon’s public defense services capacity has experienced challenges in keeping pace with evolving representation needs of indigent persons accused of crimes (legal and non-legal). This has resulted in increases in the number of persons who do not have the court-appointed

counsel to which they are entitled and/or the average number of days in which that circumstance continues. At its core, the unrepresented persons' crisis is a supply and demand problem, Oregon currently does not have the supply of qualified attorneys to meet the demand of cases filed.

Best Practices for Courts

Mitigating Harm. The unrepresented person is already harmed by not being provided an attorney at his or her initial appearance. Courts should give substantial consideration to matters impacting procedural and substantive due process in order to mitigate the potential for further harm while the unrepresented person awaits the appointment of an attorney. Some practices that might be considered include:

- Releasing individuals from custody when an attorney is unavailable
- Dismissal without prejudice for individuals without counsel after a certain number of days
- Developing policy and/or guidelines related to 60-day, speedy trial issues
- Developing policy or standing order that excludes from trial any evidence developed while the client was in custody and unrepresented (*i.e.*, jail informants, or jail calls, or letters)
- Developing a policy that excludes any statements made on the record by and unrepresented person/defendant
- Developing a policy that gives unrepresented persons double credit for all time spent in custody without an attorney

Court Procedures. Before creating a crisis plan, PDSC recommends that all courts ensure they are following best practices when it comes to unrepresented persons. Courts should establish initial appearance procedures for a detained person, these procedures should determine their eligibility for court-appointed counsel, and the process by which counsel is assigned. If counsel is not available, ensure each jurisdiction is following OJD's business process for "Unrepresented Parties/Attorney Appointment and Data Tracking". Appendix. Standardizing and following these steps ensure that unrepresented people are being appropriately tracked and that the data is correct.

Prioritize Appointments. Beyond these basic steps, there are best practices in the act of assigning counsel. PDSC recommends that jurisdictions facing an unrepresented crisis prioritize case assignments. Prioritization needs to happen on three levels: Custody status, crime seriousness, and length of time unrepresented. While "first on-first off" is a good place to start, additional factors need to be considered in thinking about how to approach the list in a fair manner. The seriousness of the alleged crime should be balanced against the amount of time in-custody and the amount of time unrepresented. The priority should always be minimizing time in custody without representation. Then crime seriousness should be considered, followed by length of time unrepresented. This means that an in-custody misdemeanor should be assigned counsel before an out of custody felony, and an out-of-custody felony should be assigned counsel before an out-of-custody misdemeanor. Other factors that place restrictions on a person's liberties, such as ankle monitors and no-contact orders, should also be factored in for those on pre-trial release. A civil commitment should receive in-custody level priority as it poses the same, if not greater, threat to an individuals' liberty.

Recommended crime seriousness for cases to be addressed in accordance with rank

- Civil Commitment/Mental Health
- Felony Crimes (Class A, B, C)
 - Person
 - Murder/Manslaughter
 - Crimes against children
 - Domestic Violence
 - Other vulnerable victims
 - All other violent crimes
 - Weapon
 - Firearms crimes
 - Knives and edged weapons
 - Other weapons
 - Property
 - Invasion of personal property and homes
 - Commercial property
 - Public property
 - Drug
 - Commercial and super substantial quantities
 - Delivery
 - Other drug crimes
 - Public Order
 - Other
- Misdemeanor (Class A, B, C)
 - Person
 - Crimes against children
 - Domestic Violence
 - Other person crimes
 - Weapon
 - Firearms
 - Other weapons
 - Property
 - Personal
 - Commercial
 - Public
 - Drug
 - Public Order
 - Other

Consideration may be given to other factors when deciding how to prioritize cases. For example, accused persons who have successfully removed counsel more than once, especially if they have been adequately warned by the court at the withdrawal hearing, may be de-prioritized based on the circumstances and the availability of qualified counsel. There are other circumstances when a person, who may not be unrepresented but eligible for court-appointed counsel (i.e., pre-arraignment or warrant status), where the court may prioritize the appointment of an attorney for the purposes of resource and judicial efficiencies.

Finally, it is important to appoint appropriate counsel to cases. Courts should preserve felony qualified attorney MAC for felony cases. Courts can and should follow the procedures to place individuals on OJD's unrepresented list for misdemeanor cases rather than assign a felony qualified attorney if that likely means that attorney wouldn't be available for a felony case in the future. The current PDSC contract requires the public defense contractor to prioritize court appointments for the most serious case types for which it has contracted, qualified attorneys. Of course, misdemeanor qualified attorneys should be appointed to misdemeanor cases, and felony qualified attorneys can be assigned to lesser cases when a jurisdiction is not facing an unrepresented crisis.

Every jurisdiction's situation will be unique and good judgment should be used in applying any prioritization plan.

Guidance on Crisis Plan Development

Objective

Develop and implement a coordinated public safety unrepresented defendant crisis plan (crisis plan). The crisis plan must first prioritize the resolution of cases with unrepresented defendants who are in custody, and then prioritize out-of-custody unrepresented defendants.

In judicial districts with a population of over 100,000 people, or with 20 or more unrepresented persons, the PJ must convene a crisis team to assist in the development and implementation of the district's plan.

Plans must be submitted to the Criminal Justice Commission (CJC) no later than September 1, 2023.

Authority

Oregon State Legislature, Senate Bill 337-C (2023), Sections 104-108, Relating to public defense; and declaring an emergency.

Section 104 authorizes the Chief Justice to enter orders related to resolving the unrepresented defendant crisis and authorizes presiding judges to enter standing orders related to resolution of the unrepresented defendant crisis. See, CJO 23-024. The presiding judges' orders must be consistent with the crisis plan developed by the presiding judges and consistent with any orders entered by the Chief Justice under this section.

Scope

When creating a crisis plan, it is important to keep in mind scope. Scope defines the areas covered by the plan. The scope should only cover what is needed by its intended user (the judicial district). Limiting the scope is important to avoid the plan being too long or complicated.

The scope is limited by the authority of those involved. Presiding judges have additional authority through potential standing orders under section 104, but there are still going to be matters that are out of scope of the crisis plans. It is important to keep authority in mind when creating the plans and offering recommendations or alternatives when an option is outside of the courts' authority. While a recommendation may not be within the authority of the court it may still be valuable to include if it can provide aid to other authorities in creating solutions to the public defense crisis.

Some examples of things out of scope include:

Contracts. PDSC’s contracts with their providers cannot be reopened or amended through this crisis plan process, though a recommendation of a specific amendment could be made for PDSC to consider.

Decriminalization. These plans cannot change existing law or direct DAs charging decisions; however, presiding judges may enter standing orders related to resolving the unrepresented defendant crisis that are consistent with any orders of the Chief Justice has issued.

Funding. Plans cannot dedicate/spend unallocated funds, either through the courts or through a stakeholder agency/organization. However, plans can make recommendations for spending which could be brought back to the Legislature for consideration.

Resources

Resources play a crucial role in shaping crisis plans. Limited resources, such as budgetary constraints, staffing, or time limitations, can restrict the range of possibilities and choices available during the planning process. It is important to keep the resources of both PDSC and local public safety stakeholders in mind when creating the crisis plans. This should not limit an individual jurisdiction’s consideration of potential interventions or alternative sources of funding.

The Legislature set aside a \$5 million special purpose appropriation (SPA) statewide for expenses related to the unrepresented defendants/persons crisis. These resources could be used to support parts of the crisis plans, but it would have to be authorized by the Legislature, which won’t meet until February 2024. Accessing these funds will require clear communication of the need, and how those funds would resolve an issue, with consideration for equitable distribution. Which is why it is important these plans are well documented.

There is no opportunity to seek additional SPA funding for public defense services until February 2024, available April 2024. However, there is \$1.5 million in Court Mandated Expenses earmarked for the unrepresented defendant/persons crisis and to continue enhanced hourly pay for attorneys under the Temporary Hourly Increase Program. All other funding allocations in the budget are primarily for contracted services.

Creating SMART Goals

SMART goals are an effective framework for setting objectives that are specific, measurable, achievable, relevant, and time bound. To create SMART goals, follow these steps. First, make your goals **s**pecific by defining precisely what you want to achieve. Next, ensure your goals are **m**easurable, meaning you can track progress and determine success. Third, set goals that are **a**chievable, considering your resources, skills, and limitations. Fourth, make your goals relevant to your overall objectives and aligned with your values. Lastly, establish a **t**imeframe for your goals, providing a deadline or timeline for completion. By following the SMART criteria, you can create goals that are clear, attainable, and well-defined, increasing your chances of success.

Guidance on Crisis Plan Content

PDSC, along with OJD, identified four main levers that could reduce the unrepresented persons population.

- **Reduce filing:** Addresses the filing/indictment of cases. Reducing filings lowers the number of cases entering the court, thereby reducing the need for public defenders. These interventions focus on ways to reduce filings or move cases out of the criminal court system.
- **Increase dispositions:** Increasing the number of cases that close or decreasing the time cases are in the court system will reduce the time burden on public defenders. Closing cases faster frees up public defender time for other cases and increases their ethical capacity. These interventions include system efficiencies, and ways to resolve cases sooner.
- **Increase number of attorneys:** More public defense attorneys equal more capacity. These interventions focus on ways to bring in new attorneys and retain the attorneys already in the system.
- **Increase attorney capacity:** Addresses the prioritization and number of cases an attorney can be appointed to within PDSC's current contracts. These interventions focus on ways to increase capacity through prioritizing the assignment of cases to use contracted attorney MAC most efficiently, as well as ways to reclaim attorney time so they can increase workload capacity.

The following guidance is PDSC's recommendations on interventions that fall under these four levers and the goals, benefits, and potential downside of those interventions. Presiding judges and crisis teams can select from among these options or create their own options for their jurisdictions. Not all interventions are applicable to every jurisdiction, likewise, not every intervention will work the same in each jurisdiction. PDSC has staff available to provide additional information.

I. Reduce filings

Reduce filing: Addresses the filing/indictment of cases. Reducing filings lowers the number of cases entering the court, thereby reducing the need for public defenders. These interventions focus on ways to reduce filings or move cases out of the criminal court system.

Interventions So Far

- Pre-charge diversion programs have been considered in some counties and instituted in some municipal or justice courts.
- Counties may have considered filing triage policies, but no formal policies have been adopted.
- Measure 110 has greatly reduced the number of drug related filings.
- Restorative Justice Programs have diverted some cases out of the criminal justice system.

Potential Interventions

Misdemeanors Treated as Violations

Intervention: Create a policy for increasing the use of ORS 161.566 and 161.568, misdemeanors treated as violations.

Goal: Reduce the number of cases that require the appointment of defense attorneys by treating misdemeanor cases as violations.

Who Could Benefit: The court system benefits from reduced criminal case loads, allowing the use of public defense resources on the most severe cases and reducing those spent on less severe cases.

Timeframe: The intervention could be implemented immediately but would likely benefit from some time to create a uniform policy within the jurisdiction.

Does Policy Exist: There is no known policy for implementation of these statutes in this manner.

Stakeholders Required: The statutes allow either the DA or the Court to choose to reduce a misdemeanor to a violation. One or preferably both of those groups would be required to implement this intervention.

Background: [ORS 161.566](#), [ORS 161.568](#)

Best Practice: None known.

Guardrails: None currently

Potential Negative Impact: A choice to prosecute as a violation effectively denies a defendant an appointed attorney which could limit their ability to assert their lack of guilt and could result in default judgments being entered against innocent people. Additionally, money judgements could be entered against people who do not have the ability to pay with long-term negative impacts to their financial stability and credit history.

Prioritize Charging Decisions

Intervention: Create a system to prioritize charging decisions based on available defense attorney resources.

Goal: Reduce the number of criminal cases flowing into the court system, thus reducing the demand on public defense resources.

Who Could Benefit: Courts, public defense providers, and clients benefit from lower caseloads/workloads. Additionally, courts benefit from lower operating costs

Timeframe: Policies could be implemented immediately upon completion.

Does Policy Exist: It is unknown whether any policies exist within any DAs offices at the current time, however district attorneys have been known to implement similar decisions in response to a drop in prosecutorial resources.

Stakeholders Required: Only the District Attorney’s Office is needed to adopt this intervention; however, local law enforcement support would likely be helpful.

Background: Reducing filing is one of the four levers identified by the courts to reduce the unrepresented crisis. Reducing filings reduces the demand for public defense resources. In order for reductions in filings to be equitable and comply with due process and equal protection rules strict adherence to a policy is required.

Best Practices: Article 1 Section 15 of the Oregon Constitution sets out foundational principles of criminal justice which could be used to guide charging decisions, however no best practices are known.

Guardrails: The district attorneys would need to provide their own assurances that the cases they opt to not file or to dismiss under this policy would not have a noticeable impact on community safety.

Potential Negative Impact: There is a potential impact to public safety from cases not being filed. More research would be needed to determine if charging practices have an impact on crime rates. This intervention could be combined with other interventions to reduce the impact on public safety.

Community Driven Alternatives

Intervention: Implement community driven alternatives to the standard criminal court process, including pre-charge diversion programs, circuit court community courts, restorative justice programs, and police officer led interventions.

Goal: Reduce the number of low-level offenses (i.e., misdemeanor, lesser felony) that are processed through the criminal court system while maintaining or increasing community safety. Fewer cases in the system means less need for public defenders.

Who Could Benefit: Communities benefit from increased safety and increased involvement in the process of justice. Public defense clients benefit from increased access to ‘wrap around services’ and a lower likelihood of future arrests. Courts benefit from lower case counts and increased time to handle more serious cases.

Timeframe: Several months to initiate the process. Time is needed to gather resources, secure community involvement, and set up the actual process.

Does Policy Exist: No policy exists at the state level, however there are numerous examples of successful community court models around the state. There may be policy examples in other states which have faced similar issues.

Stakeholders Required: Courts, DA, local law enforcement, community services. OPDS or defense attorney involvement would be helpful but is not required if there is no threat of jail time for participants in the court.

Background: Community courts have existed around the country since the early 1990’s with the aim of addressing low level crimes outside of the criminal justice system by addressing the systematic contributors of criminal behavior, such as homelessness, mental health, and drug addiction. Various Oregon courts have established community court programs with varying success. The Eugene Municipal Court for example reports that their participants were 28% less likely to be arrested in a one-year period than a control group. Appendix- Community Court, Eugene, Or. The courts operate by offering a centralized local for services and encouraging participation in those services as an alternative to the criminal process. Community Court can be either pre or post criminal charge, however the pre-charge model will result in the biggest reduction in use of defense resources.

Best Practices: The Center for Court Innovation has published a guide to starting and maintaining a community court. Appendix-What is a Community Court.

Guardrails: There would need to be checks put in place to assure that a community court is following best practices, that participants understand the rules of the program and their options in it, and that there were consequences for additional criminal behavior while in the program or for termination from the program.

Potential Negative Impact: A poorly handled community court can decrease the community's faith in the judicial system.

Treatment Court

Intervention: Increase Treatment Court case resolutions on existing cases.

Goal: Treatment Courts have been shown to drastically reduce recidivism in their participants (whether they successfully complete the program or not). Lower recidivism rates mean fewer overall cases moving through the criminal justice system.

Who Could Benefit: All participants in the system benefit from increasing the success of treatment courts. Participants benefit through access to treatment and recovery addiction services. Courts and system participants benefit from decreased caseloads and decreased recidivism rates, and the community benefits from lower crime and addiction rates.

Timeframe: The timeframe will vary drastically depending on whether the jurisdiction has an active treatment court program that can be expanded or is starting from scratch. Active programs can be expanded over a very short timeframe with buy in from stakeholders however starting a program from the ground up will take significantly longer.

Does Policy Exist: OJD has policies for treatment courts.

Stakeholders Required: Successful treatment courts require participation by all areas of the criminal justice system: OJD, courts, DAs, defense providers, Parole and Probation, local treatment agencies, local support services.

Background: Treatment courts have existed for about thirty years and have demonstrated great success in providing services to people whose criminality is driven by substance use disorders or mental health issues. Available statistics show that these courts are overwhelmingly successful at reducing rearrests of defendants who participate in them.

Best Practices: AllRise (formerly The National Academy of Drug Court Practitioners) has published best practices for treatment courts. Those standards were adopted by the Oregon Criminal Justice Commission and adapted into Oregon Specialty Court Standards. Appendix.

Guardrails: There are guardrails built into the best practice standards to assure that all stakeholders interests are being followed. The inclusion of so many different stakeholders in the multijurisdictional team assure that the program operates within the best practice standards.

Potential Negative Impacts: Treatment courts require an increased time commitment from stakeholders, especially the court.

Nonpreferred Interventions

- Delayed filings of accusatory instruments will not reduce the number of public defense resources needed in a county, only delay the need for them. Additionally, this makes it difficult to accurately track and forecast the need for defense attorneys in a jurisdiction.
- Shifting cases to municipal and justice courts, while it relieves the burden on defense resources in the circuit court, will only increase the need for defense providers in the municipal courts. Those courts do not contract through PDSC for defense attorneys but will inevitably draw from the same pool of available attorneys.

II. Increase dispositions

Increase dispositions: Increasing the number of cases that close without a trial or decreasing the time cases are in the court system will reduce the time burden on public defenders. Closing cases faster frees up public defender time for additional cases by increasing their ethical capacity. These interventions include system efficiencies, and other ways to resolve cases faster.

Interventions So Far

- Early Resolution Dockets, like the ones in Washington, Multnomah, and Marion Counties, have resolved numerous cases relatively quickly.
- The Chief Justice adopted new amendments to the Uniform Trial Court Rules directed at increasing system efficiencies within the courts, including removing deadlines for plea negotiations, pre-trial omnibus hearings, and increased remote options.
- While it is possible that individual participants in the criminal justice system have made efforts at increasing disposition of cases, such as individual deputy district attorneys or defense attorneys attempting to settle cases, no other system wide approaches are known.

Potential Interventions

Assignment Staff

Intervention: PDSC would hire staff or contract to handle assignment of cases to the defense providers in the county. Those staff members could be located within the courthouse or elsewhere but would be independent from local providers and court staff.

Goal: To ensure that the highest priority cases are being assigned first so that the unrepresented cases are distributed in the most equitable way possible according to PDSC and OJD guidelines. If successful, this could be expanded beyond the unrepresented cases to all cases that qualify for appointed counsel.

Who could benefit: Defendants waiting to be assigned counsel. Courts or defense providers will be able to reallocate resources currently designated to this task.

Timeframe: Positions authority would need to be approved by the legislature, then state guidelines for hiring would need to be followed, which include a minimum amount of time for the job to be posted, interview procedures, etc. Once hired, the new employee would need time to be trained on local practices before beginning to assign cases.

Does Policy Exist: Local jurisdictions have their own assignment policies and procedures, but there are no policies which allow a PDSC staff person to assign cases.

Stakeholders required: PDSC, Defense Providers, OJD, courts, The Legislature

Background: There are different practices for the case assignment and/or appointment or court-appointed counsel in the judicial districts in Oregon. In jurisdictions which support several defense providers, it can become chaotic and confusing to ensure that cases are being assigned appropriately in accordance with local agreements and OJD/PDSC priorities.

Best Practices: Best practices for specific case assignments do not exist at a state level and are more appropriately addressed at a local level so they account for local resources. PDSC and OJD have considered a list of priorities for assignment of cases that meet certain qualifications (such as possibly unfit defendants, murder cases, etc.).

Guidelines for successful public defense systems dictate that specific case assignments to attorneys should be independent of the judiciary. Appendix- ABA Ten Principles of a Public Defense Delivery System, Principle 1.

Guardrails: The position's independence from the judiciary and from local providers helps to assure that cases are distributed equitably between local providers according to locally agreed upon practices and the priority list established by the Presiding Judge.

Potential Negative Impact: This will require both OPDS funding and a supervision structure to support that employee with OPDS when those funds could potentially be used elsewhere.

This would absorb a task that is currently being performed by someone or some group within each jurisdiction. That group might have issue with the task being taken over by the State and it may result in loss of funding to the current provider of this service.

Meaningful First Appearance

Intervention: Provide defense providers access to the defendants sufficiently in advance of the arraignment such that a meaningful conversation about the charged offenses and release arguments can occur in advance of the first appearance.

Goal: To allow attorneys to adequately prepare for first appearances so that they can make informed arguments about release from custody at first appearances, hopefully reducing the need for subsequent release hearings, and ultimately to decrease the time to disposition of the cases.

Who could benefit: The courts, the jail, public defense providers, crime victims, and the defendants.

Timeframe: As quickly as the stakeholders could come to an agreement on the execution of this plan.

Does Policy Exist: Per contract, public defense contractor shall provide representation at all initial appearances, and when practicable, shall meet with client prior to the initial appearance to review available discovery. Section 7.1.2.2. However, local policies and arraignment procedures often limit attorney's abilities to meet with clients before arraignments with sufficient time and discovery to provide meaningful representation.

Stakeholders required: Local jails, courts, defense providers, district attorney's offices, pretrial release authorities.

Background: Meaningful First Appearances have been implemented in a number of jurisdictions across the country and have consistently concluded they reduce jail populations, speed up the disposition of cases, as well as increasing defendant's engagement in the process and improve case outcomes.

Appendix- Multi-site Evaluation of the Presence of Counsel at Defendant's First Appearances in Court. In places where this has been implemented, the data has shown a small increase in sheriff or corrections deputies in the short term; but ultimately a cost savings across the board, reducing jail populations without requiring additional court time. Appendix- NLADA Access to Counsel at First Appearance Policy Brief.

Best Practices: Standards and best practices should be established for representation of clients at first appearance. Additionally, statutes are in place that direct a court's considerations in release determinations. [ORS 135.245](#)

Guardrails: Policies would need to be adopted that gave defense providers access to discovery, even if only a basic probable cause affidavit, with enough time to review that information and meet with the defendant prior to arraignment. Ideally, providers would be given enough time to conduct some basic release planning, such as contacting possible housing options or third-party supervisors.

Potential Negative Impact: None known.

Global Resolution

Intervention: Global appointment of attorneys and resolution for clients or unrepresented persons who have pending matters in more than one jurisdiction.

Goal: To increase dispositions of cases through global resolutions for clients who have cases in multiple jurisdictions by appointing an attorney to all case matters and allowing for remote appearances in a jurisdiction where the client or unrepresented person is not being detained.

Who could benefit: The defendants, the courts, the district attorneys, department of corrections would also save money and time on transporting sentenced defendants to multiple jurisdictions.

Timeframe: As soon as practicable.

Does Policy Exist: Various statutes and policies govern settlement negotiations on criminal cases. [UTCR 4.040](#) authorizes parties to agree that a defendant in custody may appear by remote means at a proceeding to resolve multiple cases, when the appearance is required in a court not located in the county in which the defendant is in custody (effective August 1, 2023).

Stakeholders required: The courts, defense providers, district attorneys, sheriffs, DOC, local jails

Background: It is common for defendants to have charges in multiple jurisdictions around the state. Frequently global resolutions resolve all these matters at once which results in significant cost and time savings for the courts and court-appointed counsel.

Best Practices: Courts should allow remote appearances and acceptance of pleas when they can as well as working with counsel that may not be local to the jurisdiction.

Guardrails: It is important that PDSC guidelines for the Attorney Qualification Certification be followed to ensure that the attorney taking the case out of county is qualified to work that case. Additionally, it might be worthwhile to have consultation with local counsel on local practices. Court involvement may be required to assure that attorneys in separate jurisdictions are aware of and working on cases in other jurisdictions or that in custody defendants are available for remote hearings.

Potential Negative Impact: When a contracted public defender provides services outside of their county, they receive 1.5 times the normal case weight for handling out of county case, so this does tend to use up contract MAC quickly. Appendix-2023-25 Contracts with Draft Exhibits, Exhibit B. This is balanced by the fact that local counsel does not have to handle the case.

Additional Support Staffing

Intervention: Fund paraprofessionals, case managers, discovery management and litigation support.

Goal: Identify gaps in the defense counsel process where time is lost due to lack of personnel or process management. Provide defense counsel support personnel so that attorney time can be more efficiently expended on tasks which require an attorney rather than administrative tasks.

Who could benefit: Clients, public defense providers, court system, PDSC, the public

Timeframe: The timeframe will vary depending on what gaps are identified. If the issue can be resolved by reassigning work, the results could be near immediate. If the gaps are greater and would require additional personnel, a funding request may need to be made to the legislature.

Does Policy Exist: Policies around processes may exist that would help identify gaps.

Stakeholders required: PDSC, defense providers, the legislature

Background: Attorneys frequently spend significant amounts of time on administrative tasks in processing their cases rather than on working towards a resolution. Funding additional staff to handle the administrative tasks would allow attorneys to devote more time towards moving the case towards a disposition.

Best Practices: Local defense counsel would need to be consulted as to what support staff would most benefit them for the conditions they are working in.

Guardrails:

Potential Negative Impact: Reassigning work can result in other work not getting done. This would be a prioritization exercise and it would be important to monitor for unintended negative results.

Early Disposition Programs

Intervention: Early Disposition Programs

Goal: To reduce the number of unrepresented persons, reduce jail populations, produce better outcomes for clients.

Who could benefit: Corrections, District Attorney, Courts, defendants, and defense providers.

Timeframe: October 2023

Does Policy Exist: ORS 135.941; Public Defense Services Commission's Guidelines For Participation of Public Defense Attorneys in Early Disposition Programs

Stakeholders required: Defense providers, District Attorney, courts, corrections

Background: Early disposition programs are authorized by statute and have been implemented in several jurisdictions with varying degrees of success.

Best Practices: PDSC guidelines for early disposition programs ensure that clients who participate in the programs make knowing, intelligent, voluntary decisions with the advice of experienced counsel who has had access to discovery and a plea offer in advance of the hearing. Appendix- Early Disposition Program Guidelines.

Guardrails: Public defense providers participating in early disposition programs shall provide competent counsel, with sufficient capacity to ensure defense counsel has an opportunity for meaningful private communication and review of the discovery and plea offer with their client prior to the court appearance. There should be opportunity to setover the resolution date if more information or time is needed and no penalty for declining the plea offer.

Potential Negative Impact: Limited resources

Chief Justice Advisory Committee (CJAC) Case Processing Subcommittee

Intervention: CJAC's continued work with the Uniform Trial Court Rules (UTCR) Committee

Goal: To improve efficiencies in Oregon's criminal justice system.

Who could benefit: Clients, public defense providers, courts and criminal justice system partners

Timeframe: Annual Fall Meeting 2023

Does Policy Exist: The UTCR are statewide rules that apply in each of Oregon's 36 circuit courts

Stakeholders required: OCDLA, ODAA, OJD, CJAC, UTCR Committee, public defense providers

Background: OCDLA presented a series of proposals to the UTCR Committee in the fall of 2022 directed at improving efficiencies in the criminal justice system. CJAC and the UTCR Committee worked collaboratively to review and consider the proposed rule changes, modifications, or adoption of new rules to improve system efficiencies. New UTCR 4.040 and amended UTCR 4.010 and UTCR 7.010 will take effect on August 1, 2023. Several proposals were not recommended for approval; other proposals were withdrawn by OCDLA during the interim work period. Appendix-; UTCR Outcomes & Next Steps, Uniform Trial Court Rules & Committee.

Best Practices: Adopting uniform statewide rules would make practicing across multiple jurisdictions less onerous, and assist courts, prosecutors, and defense attorneys in efficient management of cases

Guardrails: The UTCR Committee meets twice a year; the annual fall meeting is the only time the Committee accepts proposals for changes to the UTCR.

Potential Negative Impact: If there are delays in implementation continued inefficiencies are exacerbating the public defense shortage crisis, the backlog of cases, and unrepresented persons entitled to court-appointed counsel.

Nonpreferred Interventions

Any actions that increase court appearance, especially if the client is required or they are in person, are generally unhelpful as they take up additional attorney time and are the most resource heavy.

III. Increase number of attorneys

Interventions So Far

- **Add Positions Above Forecasted Need (June 2022):** In June 2022, OPDS used \$6.9 million in emergency funds to add 31.5 MAC to targeted jurisdictions in Multnomah, Washington, Marion, and Lane Counties.
- **New Attorney Incentive Program (October 2022 – March 2023):** An incentive payment of \$20,000 was awarded to new attorneys contracting for 1.0 FTE prior to December 31, 2022, and a second \$20,000 payment authorized for new attorney hires prior to March 31, 2023.
- **Retention Incentive Payment Program:** Payments totaling \$15,000 per 1.0 FTE employee, with 12% dispersed each month between February and May 2023 and the final 50% dispersed in June 2023. Increased capacity and increased number attorneys.
- **OSB Comity program to reduce barriers for recruiting lateral hires from out of state (Fall 2022 – present):** New Comity program created a procedure for lawyers with at least two years of active practice in another state to apply for admission to the Oregon Bar without taking a bar exam. This has lessened bureaucratic process and opened the path to admission to attorneys from all 54 U.S. jurisdictions, rather than the previous 40 under reciprocity.
- **Increased Hourly Rate Program:** PDSC approved raising the hourly attorney rate from \$105 to a tiered rate ranging from \$125-\$200/hr for any case on the OJD Unrepresented Person List. Investigator rates were raised on these cases to \$75/hr to be competitive with federal hourly rates. Beginning July 1, 2023, attorney rates were collapsed into three tiers from \$164-\$200/hr, investigator rates remain \$75/hour on these cases.
- **Civil Attorney Program:** Civil bar attorneys are associated with and supervised by qualified public defense providers in trial level criminal prosecutions involving complex cases and cases with novel legal issues, where the civil lawyer primarily provides legal research and motion writing support and may be asked to argue legal issues in court.

Forthcoming Programs

State employee trial-level appointed counsel

Intervention: This pilot program will provide OPDS employees to serve as trial-level appointed counsel. The pilots will focus in two geographic regions of the state to respond to the unrepresented defendant/persons crisis. The priority of the state attorneys and staff are those unrepresented defendants in-custody followed by those unrepresented defendants out-of-custody.

Goal: Reduce the number of unrepresented individuals by directly increasing the number of attorneys available, these attorneys will be in addition to the forecasted/contracted MAC in a jurisdiction.

Who could benefit: These attorneys will only be available for jurisdictions within the pilot regions. Those regions are: 'Western' covering Multnomah, Washington, and Clackamas, and 'Southern' covering Jackson, Douglas, and Klamath. Within those counties the court system will benefit from a reduced number of cases on the unrepresented list and the people on the list will benefit from having an assigned attorney.

Timeframe: The agency has position authority for the Western team beginning in October 2023, and the Southern team beginning in December 2023. However, factoring in onboarding time, attorney likely be able to begin taking cases in November and January respectively.

Does Policy Exist: PDSC is currently creating the policy and working on starting up these offices. More information will be forthcoming as these offices are established, including how to assign PDSC trial attorneys.

Stakeholders required: PDSC, courts

Background: The Legislature approved funding for these pilots in SB 337-C (2023). These pilots will run through July 2025. The Legislature will evaluate the long-term need for the pilot program positions to provide routine trial-level work after resolving the unrepresented defendant/persons crisis.

Guardrails: The details of these offices are still being established, while additional attorneys will be available soon in these regions, PDSC does not yet have full details of exactly when these attorneys will be available to take cases. Case assignment guidelines will help assure distribution of cases among state employees and contract defense providers.

Potential Negative Impact: The pool of attorneys for hire is limited. While attorneys may be hired from outside the state or from the federal system, these will be open recruitments so attorneys could come from the pool of contract attorneys. There is the potential that hiring a state attorney could cause attrition in a provider contract.

Stipends for law students working in public defense

Intervention: OPDS expects to receive a one-time external grant to fund summer stipends for students working in public defender offices.

Goal: Incentivize students to enter public defense by making previously unpaid internships financially viable. Will increase attorney capacity by freeing up attorney time, and potentially increasing MAC with Certified Law Students who can take misdemeanor cases under supervision.

Who could benefit: Trained law students can provide support to the offices where they work and are better equipped to take on caseloads after graduation. This funding will also offset money some providers are paying law students out of their contract funds.

Timeframe: Funds are expected to be dispersed for summer 2023, to be used by the end of September 2023.

Does Policy Exist: PDSC is currently finalizing the policy around fund disbursement.

Stakeholders required: PDSC, public defense providers, law schools

Guardrails: Providers will be required to document that funds were spent on students or else refund funds

Potential Interventions

Create new/continue relationships with hourly attorneys

Intervention: Assist and accommodate new practitioners to jurisdictions.

Goal: Overcome barriers to attorneys practicing in new or additional jurisdictions. This includes both creating resources or guides on local practice as well as allowing for more flexibility in hearing scheduling and remote appearance.

Who could benefit: Attorneys would be able to practice across various jurisdictions more easily. This would allow smaller jurisdictions with a smaller or more limited experience defense bar to have access to more attorneys statewide. This would also make global resolutions for clients with cases across various counties easier.

Timeframe: Many changes could be made quickly, such as appearance requirements and developing jurisdictional guides. Changes to dockets or attorney assignments could take longer to implement.

Does Policy Exist: No.

Stakeholders required: Courts, District Attorney

Background: OPDS has consistently heard from practitioners that they have difficulty practicing in surrounding counties due to conflicting docket schedules, rigid practices, and trouble navigating different local practices. This has led to some counties' attorney shortages being exacerbated by difficulty attracting attorneys from other parts of the state to take cases. The increased hourly rate for unrepresented persons has attracted new and returning attorneys to state public defense.

Best Practices: None

Guardrails: There would need to be a process for updating the guidance when policies changed

Potential Negative Impact: Limited fiscal resources

Regional Contracts

Intervention: Create Willamette Valley and Eastern Oregon regional trial teams to compliment the state employee trial attorney offices in Western and Southern Oregon by offering contracts to create regional offices to offer conflict/back up representation across unaddressed areas of the state:

Central/Willamette Valley and Eastern Oregon.

Goal: Reduce the number of unrepresented individuals by directly increasing the number of attorneys available, these attorneys will be in addition to the forecasted/contracted MAC in a jurisdiction.

Who could benefit: These attorneys would be available for specific regions. Those regions are Marion, Yamhill, Polk, Benton, Linn, and 'Eastern' covering Malheur, Baker, Union, Grant/Harney

Timeframe: The agency would open a RFQ for submissions for contracts to begin as soon as October 1.

Does Policy Exist: These would follow PDSC contracting guidelines

Stakeholders required: PDSC, courts

Background: The Legislature approved funding for state attorney pilots in two regions in the State, however there is need for additional conflict coverage in remaining areas.

Guardrails:

Potential Negative Impact: This contract would not have the additional draw of state employee benefits and the pool of attorneys for hire is limited. Even if attorneys are contracting from outside the state or from the federal system, these will be open bids for contracts. There is the potential that creating more regional practices would cause attrition from other providers.

Civil attorneys

Intervention: The Supervised Civil Attorney Program will move into phase 2, funding civil bar attorneys to provide legal representation in court-appointed misdemeanor cases under supervision.

Goal: Train civil attorneys in public defense to allow them to gain experience and interest in continued work in public defense (even at a small level). This will also increase the capacity of existing public defenders by taking on misdemeanor cases.

Who could benefit: Jurisdictions with attorney shortages, civil attorneys seeking criminal and trial experience

Timeframe: 2023-2025

Does Policy Exist: No

Stakeholders required: Civil bar, Defense bar, PDSC

Background: This program was created based on early interest from civil bar attorneys to help with the attorney shortage for court appointed cases. The first phase – assistance with legal writing and research – was implemented in March of 2023. Phase 2 will recruit public defense providers to supervise civil

attorneys willing to take on misdemeanor cases under supervision until they can qualify under PDSC standards for misdemeanor representation. Both the supervisor and civil attorney will be paid hourly.

Best Practices: Civil attorneys must sign attorney agreements with PDSC and comply with Oregon Rules of Professional Conduct and PDSC attorney performance standards and guidelines. Supervising attorneys must develop an official agreement with the civil bar attorney regarding the nature and scope of the work and submit any necessary court support service requests to PDSC.

Guardrails: Supervising attorneys are responsible for obtaining PDSC authorization before exceeding \$10K soft cap for each case involving a civil attorney. Once there is an official agreement between attorneys, the attorney of record will file a Notice of Representation, including the associate counsel, with the appropriate court.

Potential Negative Impact: The amount of time required to train and supervise civil attorneys may not offset the amount of work the civil attorneys are able to take on.

Nonpreferred Interventions

- **Increase hourly rate above most recent Commission approved rates.** Increasing the hourly rate would cause the PDSC to exceed its budget appropriation, and the PDSC would run out of available funds to pay attorneys before the end of the biennium. Further, an increase in the hourly rate to non-MAC attorneys would result in attorneys leaving MAC contracts to take advantage of the higher non-MAC hourly rate. This would cause further instability to our public defense delivery system.
- **Relax attorney qualification requirements.** Pursuant to ORS 151.216, the PDSC has adopted qualification standards for court-appointed counsel. These standards are to ensure the provision of competent, constitutionally adequate legal representation to each client. Outside of the Supervised Civil Attorney Program, appointing unsupervised attorneys without the experience laid out by the PDSC exposes each case to future post-conviction relief for inadequate assistant of counsel and would degrade the mission of PDSC to provide competent and effective counsel.

IV. Increase Attorney Capacity

Increase attorney capacity: Addresses the number of cases an attorney can be appointed to within the caseload standards and terms of PDSC's current contracts. These interventions focus on ways to increase capacity through prioritizing the assignment of cases to efficiently use attorney capacity, as well as ways to reclaim attorney time so they can increase capacity.

Interventions So Far

- Implemented tiered contracting rate to incentivize public defenders to represent clients on the most serious case types.
- Funded training, supervision, and investigation at Oregon's 10 public defender offices that handle trial-level criminal cases allowing attorneys to qualify up faster and increasing efficiencies.
- PDSC has added a 15% variance to provider contracts in recognition that some attorneys may be able to ethically accept cases above the caseload guidelines. Allowing a contract attorney to exceed the contract MAC by 15% each month is to allow some flexibility in capacity due to regional differences and an individual attorney's experience and resources.
- PDSC contracted with public defense contractors to require pro-rata monthly caseload numbers to achieve more uniform case assignments during the contract period. It is intended to protect attorneys from systemic pressures to accept appointment in a high number of cases early in the contract period. Section 10.3.3 of 2022-2023 Criminal Contract.

Potential Interventions

System efficiencies/UTCR changes

Intervention: Recommend adoption of the OCDLA sponsored UTCR changes and other efficiencies (see attached memos) and implement other efficiencies. These include allowing email/remote appearances at mass dockets, enforceable discovery deadlines, mandatory settlement conferences, and streamline release hearings.

Goal: Adopt local practices that help maximize the most efficient use of defense counsel time. For example:

- Reduce time spent at mass dockets by defense counsel. These mass dockets can usually be handled by just one district attorney, but each defense attorney must appear with their client, resulting in many defense attorneys waiting around sometimes hours for an extremely short conversation with the judge. This could be addressed by either allowing counsel to appear by phone, request set overs ahead of the hearing by email, or assigning specific times for counsel to appear.
- Enforceable discovery deadlines. A lot of time and effort is expended in preparing for trials that ultimately get postponed when the district attorney discovers new evidence at the last minute. This could be remedied by enforceable discovery deadlines or an evidentiary colloquy with the district attorney on the record at the pretrial hearing.
- Require plea offers early in the case, especially for misdemeanors. Many misdemeanor and probation violation cases end up dragging out needlessly long because the defense counsel does not know what the prosecutor is seeking in the case. Many misdemeanors could resolve at the first appearance if the attorney had an offer to present to the client.

- Mandatory Settlement Conferences for cases heading to trial. Many cases end up going to trial, which takes up a lot of resources from both the defense bar but also the prosecutors and the judiciary. Mandatory settlement conferences where there are parties on both sides present that are familiar with the case and have the authority to resolve it are a relatively limited expenditure of resources that could prevent a much more resource intensive resolution (i.e., trial).
- Other- There may be other places to make more efficient uses of our resources that may be discovered in conversation with practitioners in local jurisdictions, this is only a partial list of examples.

Goal: Increase access to justice and reduce inefficiencies in the criminal justice system, decreasing the time it takes to close a case, thereby increasing capacity in the public defense system to better serve current and prospective clients.

Who could benefit: Clients, criminal justice system

Timeframe: Fall 2024

Does Policy Exist: UTCR Rules and Supplementary Local Rules (SLR)

Stakeholders required: Criminal justice system partners, OCDLA, OJD, the UTCR Committee, legislators; public defense providers, District Attorney

Background: The OCDLA Public Defense Reform Task Force identified several procedural challenges that lead to inefficient use of attorney and court time. The Task Force proposed rules and rule changes to increase court efficiencies, increase disposition times and reduce or mitigate attorney time. The Task Force proposed rule changes to reduce multiple court appearance and streamline “check-in” or status hearings, to increase the effectiveness of judicial settlement conferences, to allow email requests to request a continuance of a hearing or status conference, and to allow for remote appearances.

Best Practices:

Guardrails: Prioritizing proposed rules, amendments, or modifications

Potential Negative Impact:

Pre-Arrest Representation

Intervention: A pre-arrest unit (two attorneys and one investigator) or dedicated pre-arrest legal representation to meet with unrepresented persons in jail, work up release plan, advise detained person of charges, process, and transition to assigned counsel within 72 hours, if possible.

Goal: Provide meaningful pre-arrest legal representation to arrested and detained persons to remove barriers to release and achieve better case outcomes

Who could benefit: Unrepresented persons, criminal justice system

Timeframe: The agency could implement October 1, with the execution of contracts, assuming available resources to implement program or dedicate existing resources.

Does Policy Exist: Per contract, public defense contractor shall provide representation at all initial appearances, and when practicable, shall meet with client prior to the initial appearance to review available discovery. Appendix- 2023-25 Contracts with Draft Exhibits, Section 7.1.2.2.

Stakeholders required: Corrections, District Attorney, courts, and public defense providers

Background: Without meaningful pre-arrest representation, clients are held in custody longer, which research has shown to have negative impacts throughout the life of a case, including higher rates of conviction and post-sentencing incarceration. But, more relevant to the unrepresented persons crisis, is that meaningful pre-arrest representation could reduce the number of unrepresented persons sitting in jail without counsel, allowing the agency to better focus resources on the truly unrepresented and reduce stakeholder/public pressure regarding the number of unrepresented persons in custody.

Best Practices: Providing timely access to legal representation could improve release and case outcomes for public defender clients.

Guardrails: Program is limited to persons booked on felony charges (including probation violations) and misdemeanor domestic violence or more serious misdemeanor offenses; homicide and more serious felony offenses are excluded since they are often more complex and rarely result in pretrial release. Limitations on scope of legal representation due to Oregon Rules of Professional Conduct (i.e., conflicts and competent representation).

Potential Negative Impact: Resource limitations; measurement of outcomes will require data collection overtime.

Prioritize Attorney MAC

Intervention: Prioritize case appointments/assignments so that attorney MAC is being utilized at the highest qualified case type

Goal: Public defense providers should be encouraged to work collaboratively with PDSC and the courts to provide competent and effective representation of clients while prioritizing the assignment of cases to available attorneys available for the most serious cases, taking into consideration the jurisdiction's need for qualified attorneys and the open and active caseload of each attorney.

Who could benefit: Clients, defense providers, criminal justice partners (OJD)

Timeframe: Prioritizing of cases will require time to analyze case trends within a jurisdiction, but once priorities are established the plan can be implemented immediately.

Does Policy Exist: The current contract requires the public defense contractor to prioritize court appointments for the most serious case types for which it has qualified attorneys. Appendix- 2023-25 Contracts with Draft Exhibits, Section 3.5.1. PDSC may adjust the MAC in the contract to meet the changing needs of the jurisdiction. The caseload model is a contracting model between PDSC and contractors predicated upon the number of appointments per contract cycle. A case that counsels are currently obligated to report is considered open (appointment through disposition). A contractor may close a case when a final judgment has been entered into the court register, a judge has signed an order removing the attorney from the case, or a bench warrant for client's failure to appear has been active for 180 days. Appendix- 2023-25 Contracts with Draft Exhibits, Section 7.1.2.5.

Stakeholders required: Public defense providers, courts, PDSC, and state criminal justice partners

Background: In 2021, PDSC implemented a contract model that included caseload standards based, in part, on the national caseload standards. With the adoption of caseload standards, the agency's ability to cover projected caseloads became contingent on the number of public defenders it can contract with and what qualification level those attorneys possessed, and the percentage of their maximum contracted caseloads they can ethically handle based on the complexity of the cases they are assigned. As Oregon does not have sufficient public defenders to cover the number of criminal cases filed, an attorney's case assignments will need to be prioritized to assure that the most serious cases have access to attorneys.

Best Practices: Defense counsel should not carry a workload, by reason of its excessive size or complexity, which interferes with providing quality representation, or has a significant potential to the breach of professional obligations. Appendix- ABA Criminal Justice Standards, 4-1.8(a), Oregon Rules of Professional Conduct 1.7.

Public defense contractors shall accept reappointment to a previous client when a case is reactivated following service of a bench warrant pursuant to PDSC Contract Section 7.1.2.5.

Guardrails: Defense providers should implement regular reviews of the workload of individual attorneys, as well as the workload of the entire office to assure that complete and ethical

representation of each client assigned. If workloads do not allow attorneys to provide that level of representation, then attorneys need freedom to adjust their workloads or decline additional cases. Additionally, PDSC will need to be able to monitor caseloads to assure that contractors are complying with the contractual requirements to prioritize appointments for the most serious case type. Any policy will need to have provisions that prevent a court from overreaching into the attorney client relationship.

Potential Negative Impact: There is a concern that allowing the court too much authority into case assignments will let the court micromanage an attorney's caseload without access to all the information needed to properly evaluate the workload of each attorney.

If attorneys are prioritizing accepting representation on higher-level cases that necessarily means that lower-level cases will need to wait longer for an attorney who can accept appointment in their case. An attorney who accepts only high-level cases may become more susceptible to burnout. Major felony cases are often more factually and emotionally intense, both factors which contribute to burnout amongst attorneys.

Training and Supervision

Intervention: Expand training, supervision, and in house investigation beyond non-profit public defender offices to better support private law firms and public defenders practicing as part of consortia

Goal: Invest in training and supervision for attorneys and in-house investigators for private law firms and public defenders practicing as part of consortia to adequately resource public defenders who are advocating for individuals on increasingly complex cases. Many national organizations provide high quality training for public defenders. Oregon should provide the opportunity for public defenders to also seek training opportunities with national trainers including scholarships.

Who could benefit: Clients, public defense providers, criminal justice system partners

Timeframe: October 1, 2023

Does Policy Exist: Legislative budget directive for OPDS to create a training program for independent contractors (SB 337)

Stakeholders required: PDSC, OPDS, public defense providers, Legislature

Background: Fully funding supervision, training, and investigation will increase attorney capacity in immediate and near-terms in several ways. In private law firms, where these services are already being provided, offices will be able to increase salaries to retain current attorneys and staff and recruit additional attorney and staff, growing capacity. The ability to bring on new, less-experienced attorneys to handle lower-level cases under supervision will free up current attorneys' capacity to take on more serious cases, increasing capacity in the higher-level caseloads. Similarly, providing sufficient supervision and training capacity to make productive use of certified law students (CLSs) and build capacity to assist civil bar attorneys with criminal defense basics.

Best Practices: National standards provide that Defense counsel should be provided with and required to attend continuing legal education. Appendix- ABA Ten Principles of a Public Defense Delivery System, Principle 9.

Guardrails: Establish policies and standards for funding training and supervision for public defense providers.

Potential Negative Impact: Limited fiscal resources; difficult to measure outcomes

Social Workers

Intervention: Local Public Safety Coordinating Committees (LPSCC) recommend including social workers for public defenders in justice reinvestment grants

Goal: To support public defense providers in meeting the legal and social support needs of clients by understanding and advocating on the immediate legal issues of the case or for holistic defense.

Who could benefit: Clients, public defense providers, criminal justice system

Timeframe: 2023-2025

Does Policy Exist: No

Stakeholders required: PDSC, public defense providers, LPSCC

Background: Social workers are embedded within the public defense structure to build and initiate community-based treatment plans for criminal defendants. Defense-based social workers have assisted in reducing recidivism and allowing the best use of limited system

Best Practices: Center for Holistic Defense

Potential Negative Impact: Limited fiscal resources

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