

ANALYSIS

Item 4: Criminal Justice Commission Unrepresented Defendant/Persons Crisis Plans

Analyst: John Terpening and John Borden

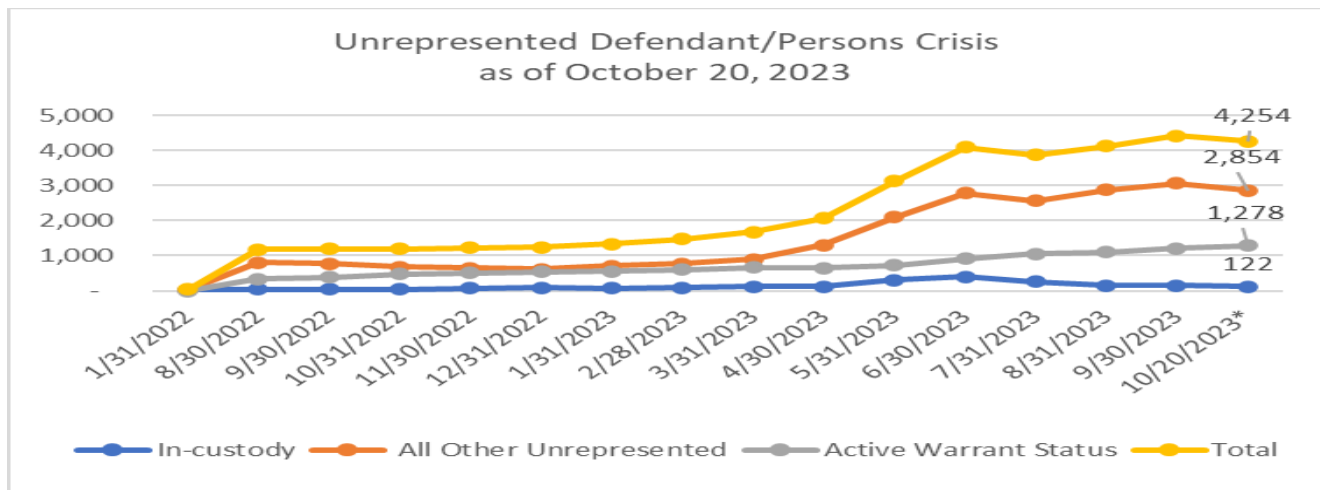
Request: Acknowledge receipt of a report on Judicial district coordinated public safety unrepresented defendant/persons crisis plans.

Analysis: The following is the analysis of the Criminal Justice Commission (CJC) report on Judicial district coordinated public safety unrepresented defendant/persons crisis plans.

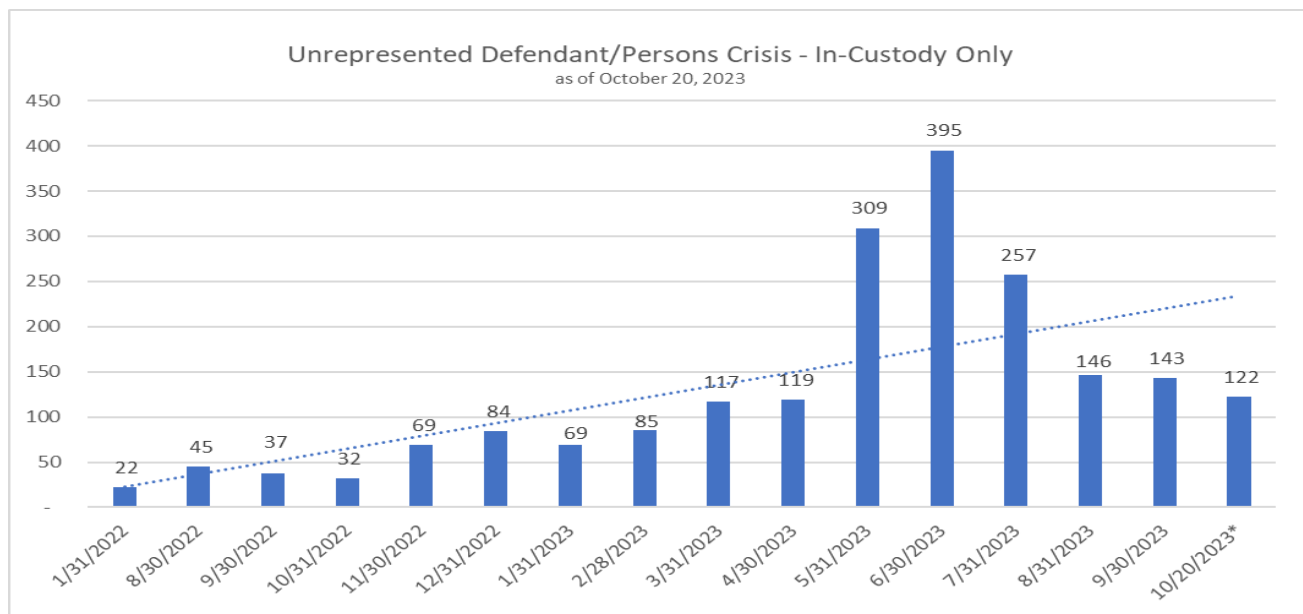
Current State of the Crisis (October 2023)

As a preface to the CJC report, the Legislative Fiscal Office (LFO) is providing an update on the status of the crisis, as of October 20, 2023. At present, there are a total of 4,254 unrepresented defendant/persons on the Judicial Department's Unrepresented Individuals dashboard. This includes: 122 defendants in-custody, 2,385 defendants out-of-custody, 261 defendants out-of-custody on probation violation, 1,278 defendants on active warrant status, four Department of Corrections defendants on post-disposition, and 204 non-criminal persons lacking representation for other cases like civil commitments, juvenile delinquency, juvenile dependency, habeas corpus petition, post-conviction relief, and adoption. The offense class faced by most unrepresented defendant is either a Class C felony or misdemeanor charge(s). On average, in-custody defendants are unrepresented for approximately 19 days. The crisis is currently most acute in Multnomah, Jackson, Clackamas, Washington, Linn, Marion, Douglas, Benton, Clatsop, and Lincoln Counties.

In summary, the unrepresented defendant/persons crisis has recently stabilized but is far from abating with the public defense system remaining precariously perched between a demand for services and the supply of public defenders. The following graph show the crisis from January 2022 through October 20, 2023, in terms of the overall crisis. The May and June 2023 spike in unrepresented defendants/persons was predominately attributable to contract providers reaching their contractual caseload maximum and providers being either unable, or unwilling, or not permitted, to take on additional cases.



The following graph show the crisis for in-custody defendants.



Of note is that the recent federal court ruling on August 17, 2023 (*Betschart v. Garrett*, No. 3:23-cv-01097-CL), which ordered that eligible defendants in Washington County jail in a criminal case without a public defender being provided within 10 days of arraignment must be released from custody. Another federal court ruling related to the crisis is expected to be issued. The impact of this decision is reflected in the current number of in-custody unrepresented defendants.

All 27 judicial districts are working to limit the number of days that a defendant is in custody and unrepresented, according to the Judicial Department. It is important to note that some individuals with new cases who appear on the unrepresented persons list might have judicial holds preventing their release. These holds could include alleged violation of a prior release agreement, other pending cases (where a lawyer has been appointed), or a jail sentence from a conviction in a different case.

Legislative Direction to Develop Crisis Plans

SB 337 (2023) made statutory changes and General Fund investments to reform and stabilize the state's public defense system, which included provisions related to addressing the unrepresented defendant/persons crisis. The measure directed each presiding judge of a judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan for persons accused of a crime and entitled to a state-appointed attorney. Presiding judges of judicial districts with a population over 100,000 were directed to convene a crisis team comprised of at least the presiding judge, district attorney(s), and the Executive Director of the Public Defense Services Commission (PDSC) or the director's designee, to coordinate the development and implementation of a public safety unrepresented defendant crisis plan.

PDSC was directed to promulgate and disseminate guidance related to the development of crisis plans by no later than August 15, 2023, and develop a training plan for public defense providers specific to the unrepresented defendant crisis, in consultation and cooperation with public defense provider associations and organizations, by no later than September 1, 2023 (*see Joint Interim Committee on Ways and Means Item #4 for September 2023*).

Chief Justice Order

SB 337 provided that the Chief Justice of the Oregon Supreme Court may issue orders related to resolving the unrepresented defendant crisis. On July 7, 2023, the Chief Justice issued an order (CJO 23-024) that expanded the requirements of SB 337 as follows:

- Directed the use of a statewide crisis plan template;
- Required the use of available data;
- Directed that public defense providers be invited to participate; and
- Expanded the requirement for the convening of local crisis teams to include any judicial district with populations below 100,000 but having 20 or more unrepresented defendant/persons, as of July 7, 2023 (i.e., Benton, Clatsop, Coos/Curry, Klamath, and Lincoln counties).

SB 337 also included a provision that presiding judges may enter standing orders related to resolving the unrepresented defendant crisis consistent with the orders of the Chief Justice. To-date, only the 20th (Washington County), Sixth (Umatilla and Morrow Counties), and 24th (Grant/Harney) Judicial Districts have issued presiding judge orders with both related to prioritizing the appointment of defense attorneys for in-custody defendants.

Judicial District Crisis Plans

Each of the 27 judicial districts submitted a crisis plan with the comprehensive report totaling over 900 pages in length, including an overview by the Judicial Department. These plans are of exceptionally high quality and represent a significant effort on the part of both judicial districts/circuit courts and the Office of the State Court Administrator. The plans were crafted around four “levers” that could address or impact the crisis:

1. Reduce filings - meaning reducing the number of criminal cases filed in Oregon circuit courts or diverting cases from criminal courts, meaning fewer public defenders are required to cover fewer overall cases;
2. Increase dispositions - meaning increasing the speed with which cases are closed in Oregon circuit courts, thereby reducing the time public defenders are spending on cases, allowing attorneys to increase ethical capacity and promoting system efficiencies;
3. Adding attorneys - meaning increasing the number of public defense attorneys available to take cases in Oregon circuit courts, focusing on ways to recruit new attorneys to public defense work and to retain attorneys already in the public defense system; and
4. Adding attorney capacity - meaning increasing the capacity of individual public defense attorneys by way of prioritizing appointed cases and developing interventions to increase attorneys’ ability to use contracted Maximum Attorney Capacity (MAC) efficiently.

CJC Crisis Plan Review and Findings

Crisis plans were submitted to CJC by September 1, 2023. Per SB 337, CJC was directed to conduct a review of each judicial district’s crisis plan and report to the Legislature by no later than October 1, 2023. CJC provided timely reporting to the Legislature on October 1, 2023.

CJC’s report is an exceptionally well-done summary and is a perfect complement to the individual crisis plans. The report identifies eight themes garnered from the crisis plans:

1. Retention of existing public defenders in Oregon is paramount.
2. Concerns exist regarding the status of public defense consortia following the passage of SB 337, and these concerns could impact efforts to retain the current public defense workforce.

3. Recruitment strategies must be strengthened and refined to attract new attorneys to public defense.
4. Continued work is needed to improve information and data coordination and communication between state and local agencies.
5. Movement toward an open workload model is necessary and short-term allowances should be made for attorneys to exceed existing MAC, but only with careful oversight.
6. Courts and local public safety systems should continue to seek out and implement efficiencies wherever possible.
7. OPDS [i.e., PDSC] should continue to work toward improved responsiveness and customer service (*LFO would note that PDSC's "customers" are defendants and persons deemed financially eligible for services and are not contract service providers*).
8. Additional effort should be made to find opportunities to reduce filings and increase case dispositions.

While the themes identify that some commonalities exist across crisis plans, CJC notes that there is no single plan that could be applied statewide to resolve the crisis. Instead, the crisis, and therefore crisis planning, is judicial district/circuit court specific. The report provided no conclusions related to the potential efficacy of the crisis plans nor did the report discuss whether any of the crisis plans have been implemented to-date. Additional information that was not required by SB 337, but important to addressing the issues, would be to have a delineation of what entity is considered primarily, and in some cases secondarily, or tertiarily, responsible for implementing which recommended approach.

CJC's report does answer affirmatively three important questions: (1) Were local public safety entities able to work effectively together to develop crisis plans? (2) Are the crisis reports well considered and thorough? and (3) Are the conclusions of the crisis plans valid and executable?

Systemic Themes

The *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, that was prepared by the Judicial Department, and under the section entitled *Data-Informed Decision Making*, identifies data limitations that were raised in crisis team meetings. Some of the key observations, related specifically to PDSC, are:

1. Inability to account for whether attorneys were available for the entire year;
2. Inability to predict attorney capacity;
3. Lack of consideration for total open caseload (the number of cases that attorneys are working from previous contract cycles, in addition to the current contract cycle);
4. Lack of time-to-disposition data tracking;
5. Attorney qualification levels do not directly map to case types; and
6. Undefined attorney's ethical capacity versus contracted capacity.

To this list could be added a review(s) of the quality of representation, confirming the verification of indigency, which is a predicate for publicly funded services and ensuring financial accountability. There appears to be no current PDSC plan to begin to address these issues.

Chief Justice Recommendations to PDSC

On August 23, 2023, the Chief Justice, an ex officio non-voting member of the Public Defense Services Commission, formally offered recommendations to the Commission to help alleviate the crisis. The

recommendations were derived from the preliminary crisis planning efforts and were advanced as consideration to the Commission's 2023-25 contract process. The Chief Justice's letter to the Commission states: "...many of the crisis teams have identified provisions of the current OPDS contracts that appear to create barriers to appointing qualified and willing attorneys for the individuals who are entitled to an attorney."

In September, the Commission's adopted 2023-25 provider contracts, however, the contracts, with one exception, did not include any of the Chief Justice's recommendations and the Commission has yet-to-adopt any of the Chief Justice's recommended administrative changes. The one exception is that the contracts now do require that an attorney withdraw from cases that are on bench warrant status when the warrant is 180 days or older. Prior contracts had this provision as being permissive and left to the discretion of contract providers. The Chief Justice recommended requiring attorneys to withdraw at 60 days. Also, the Commission did add ten additional MAC above the 2023-25 adopted budget and funded within the legislatively adopted budget.

Alignment with Legislative Investments

The crisis plans do not fully account for the key 2023 legislative investments in the public defense system nor other tangentially related legislative investments, such as statewide expansion of the Pretrial Release Program in the Judicial Department. Other examples of such investments include: increased provider compensation, hiring and retention incentive bonuses, fully funding forecasted caseloads, funding for a state employees pilot program to address the unrepresented defendant/persons crisis, hourly pay increases for attorneys, investigators, and interpreters, statewide training, funding for public defenders for an expedited case resolution program in Multnomah County Circuit Court, continued funding for a Financial and Case Management System and other administrative-related investments.

Implementation

Section 104(2) of SB 337 states that "The presiding judge of a judicial district with a total population of over 100,000 shall immediately convene a crisis team to assist in the development of the plan ***and to coordinate the implementation of the plan*** [emphasis added]." Now that the crisis plans have been prepared and reviewed by CJC, the question becomes whether the plans are being implemented?

The answer to this question is complicated by the fact that crisis plans were not structured around implementation nor were crisis plans limited in scope to "interventions" that fall under the statutory purview of the members of the crisis teams, as some interventions would require statutory changes or additional legislative funding. Furthermore, statewide efforts remain largely uncoordinated by a single entity, with the notable exception of the leadership being exercised by the Chief Justice of the Oregon Supreme Court. Based on these factors, the implementation of crisis plans is currently indeterminate.

Understanding which crisis team interventions have been implemented, and been effective, will be essential in determining future courses of action for not only the local crisis teams, but the Legislature. The 2024 and 2025 legislatures would benefit from a follow-up reporting from the Judicial Department, PDSC, and District Attorneys on how the implementation of the crisis plans is proceeding, what modification to the plans have been made, and the impact the plans are having on resolving the crisis. Initial reporting will occur in the Joint Committee on Ways and Means - Public Safety Subcommittee during November legislative days.

Of note is that SB 337 modified the makeup of the current Public Defense Service Commission (or newly formed Oregon Public Defense Commission) to include appointments or recommendations from each

branch of government, effective on January 1, 2024. The reconstitution of the commission's membership may impact temporarily the commission's ability to respond to the crisis, as the new commission assumes responsibility for the agency.

Crisis Contingency Reserve Funding

The 2023 legislature provided contingency funding for public defense in the form of a special purpose appropriation (SPA) of \$6.2 million for a general contingency and a \$5 million special purpose appropriation specific to the unrepresented defendant/persons crisis. Of the \$5 million SPA, \$1.4 million is set aside for a Central Willamette Valley Regional Pilot program comprised of state employees with the remainder of \$3.6 million serving as a general contingency.

Summary Conclusion

The Judicial Department *Summary of Circuit Court Unrepresented Defendant Crisis Plans* report states: "...it would take at least an **additional seventeen full-time attorneys an entire year** to address the current number of unrepresented defendants in Oregon today based on the PDSC contract model," as of August 31, 2023. This is approximately 2.5% of an estimated 688.89 in current adult and juvenile contracted attorney capability for each fiscal year of the 2023-25 biennium.

The aforementioned figures do not account for the additional capacity provided by: (a) hourly-paid attorneys; (b) five state employee attorneys and staff for a Western Oregon pilot program (October 1, 2023); (c) three state employee attorneys and staff for a Southern Oregon pilot program (December 1, 2023); and (d) the potential for three state employee attorneys and staff for a Central Willamette Valley pilot program (effective March 1, 2024).

The impact of the significant amount of General Fund resources and actions identified in the judicial district coordinated public safety unrepresented defendant/persons crisis plans on the unrepresented crisis will take time to be fully realized.

Recommendation: The Legislative Fiscal Office recommends that the Joint Interim Committee on Ways and Means acknowledge receipt of the report.

Request: Report on Unrepresented Persons Crisis Team Plans by the Criminal Justice Commission.

Recommendation: Acknowledge receipt of the report.

Discussion: In addition to extensive structural changes to the public defense system in Oregon, Senate Bill 337 (2023) required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated unrepresented defendant crisis plan and to submit their plans to the Criminal Justice Commission (CJC) by September 1, 2023, and directed CJC to issue a report on these plans by October 1, 2023.

All judicial districts submitted their plans on time. CJC staff reviewed the plans and analyzed them to compile key themes and takeaways that may guide future strategies to address the crisis on both the state and local level. The report provides essential background information to contextualize the findings, and thoroughly presents the responses received.

CJC identified the following points of agreement among the plans submitted:

- Retention of existing public defenders is essential;
- New or expanded recruitment strategies are needed to bring more new attorneys into public defense work;
- The need for better coordination of information and data sharing among stakeholders;
- The Public Defense Services Commission should continue working towards adopting an open workload model in which defense attorneys may take on additional cases beyond their caseload cap, with appropriate review and supervision of these requests;
- Local systems should collaborate with each other to ensure efficiencies and reduce competition for attorneys;
- The Office of Public Defense Services should continue to work to improve responsiveness and timeliness of payment to providers;
- There may be additional efficiencies to be gained through reducing filings and increasing case dispositions.

Though the report focuses, as required, on the crisis caused by lack of qualified defense counsel, it is noteworthy that many districts reported difficulties finding attorneys in general. This suggests that while increased compensation and workload management are part of the solution to the public defense crisis, there will continue to be competition for qualified attorneys at all levels and between the public and private sectors.



October 9, 2023

Senator Elizabeth Steiner, Co-Chair
Representative Tawna Sanchez, Co-Chair
Interim Joint Committee on Ways and Means
900 Court Street NE
H-178 State Capitol
Salem, OR 97301

Kenneth Sanchagrin
Executive Director

COMMISSIONERS:
Paul Solomon, Chair
Jeff Auxier
Jessica Beach
Rob Bovett
Tim Freeman
Carl Macpherson
Lisa Norton
Sen. Floyd Prozanski*
Rep. Rick Lewis*
*Non-Voting

Nature of the Request

The Oregon Criminal Justice Commission (CJC) respectfully asks you to accept this Letter of Request to submit a report regarding the Oregon Public Defense Unrepresented Persons Crisis Team Plans (Crisis Teams Report), to the Joint Interim Committee on Ways and Means, in advance of November 2023 Legislative Days.

This report was drafted pursuant to Section 106 of Senate Bill (SB) 337 (2023 Regular Session), which required the CJC to conduct a review of each judicial district's coordinated public safety unrepresented defendant crisis plan and to return CJC findings upon review of those plans.

The CJC was required to submit its Crisis Teams Report to the Joint Interim Committee on Ways and Means in the manner provided in ORS 192.245, no later than October 1, 2023.

Agency Action

Pursuant to Section 106 of SB 337, the CJC submitted a full copy of the Crisis Teams Report to the Joint Interim Committee on Ways and Means and the Interim Committees on House and Senate Judiciary, and a copy of the Executive Summary to the Oregon Legislative Assembly, on September 30, 2023.

Action Requested

The agency is requesting acknowledgement of the submission of the Crisis Teams Report required by Section 106 of SB 337.



Oregon

Tina Kotek, Governor

Criminal Justice Commission

885 Summer St. NE
Salem, OR 97301
503-378-4830

Legislation Affected

SB 337 (2023 Regular Session)

Thank you for your consideration.

Sincerely,

Kenneth Sanchagrin

Executive Director, Criminal Justice Commission

cc: Amanda Beitel, Legislative Fiscal Officer
Kate Nass, Chief Financial Officer
Lisa Fox, CFO Policy and Budget Analyst
John Terpening, LFO Principal Legislative Analyst

Kenneth Sanchagrin
Executive Director

COMMISSIONERS:
Paul Solomon, Chair
Jeff Auxier
Jessica Beach
Rob Bovett
Tim Freeman
Carl Macpherson
Lisa Norton
Sen. Floyd Prozanski*
Rep. Rick Lewis*
*Non-Voting

Senate Bill 337 (2023) Report

Review of Oregon's Public Defense Unrepresented Persons Crisis Team Plans

Executive Summary

September 30, 2023



Oregon Criminal Justice Commission

Ken Sanchagrin, Executive Director

Executive Summary

The State of Oregon is experiencing an ongoing public defense crisis, in which persons charged with crimes or otherwise loss of liberty, do not have access to the qualified defense attorneys necessary to represent them in pending cases. In recognition of this crisis, the Oregon Legislature enacted Senate Bill (SB) 337 during the 2023 Regular Legislative Session, which ushered in numerous structural changes to Oregon's public defense system designed to address both the immediate crisis and to provide future system stability. Sections 103 to 108 of SB 337 required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated public safety unrepresented defendant crisis plan, to be submitted to the Oregon Criminal Justice Commission (CJC) by September 1, 2023. SB 337 further required the CJC to issue a report by October 1, 2023, that describes the information conveyed in the crisis plans.

As required by SB 337, the CJC received coordinated public safety unrepresented crisis plans from all 27 Oregon judicial districts by September 1. Upon receipt, CJC staff reviewed the crisis plans, with analysts independently reviewing the content of each plan while coding the substantive information contained therein so that common themes within the plans could be identified. Based on this analysis, this report was generated and submitted to the Oregon Legislature by October 1, 2023, as required by SB 337. The following themes and key takeaways were identified in the report.

Retention of existing public defenders in Oregon is paramount. Unequivocally, the crisis plans emphasize that Oregon *must* retain its current public defense workforce and address fair compensation of these attorneys. These are the attorneys in the best position to immediately make an impact on the unrepresented person crisis, as they are either already highly qualified or in a position to gain expertise and qualifications to take on more serious case types.

Concerns exist regarding the status of public defense consortia following the passage of SB 337, and these concerns could impact efforts to retain the current public defense workforce. A number of judicial districts cited concerns about the impacts of SB 337 in their local communities and relayed examples of how these reforms could lead to the loss of consortia attorneys within their districts, thus exacerbating the current unrepresented defendant crisis.

Recruitment strategies must be strengthened and refined to attract new attorneys to public defense. Oregon must attract new attorneys to public defense and improve working conditions and pay so that new and experienced attorneys remain in the profession. Enhanced recruitment work, such as creating law school-to-public defense pipelines, loan forgiveness opportunities, and clinics in underserved parts of the state, would benefit Oregon's public defense system in the long term. In addition, promising retention programs, such as the incentive payments piloted by OPDS, should ideally be continued if evidence demonstrates their effectiveness.

Continued work is needed to improve information and data coordination and communication between state and local agencies. Building on the efforts made by the Office

of the State Court Administrator and OPDS during the development of the crisis plans, these state agencies should continue to work toward improved collaboration and communication in both data tracking and role definition, to ensure that accurate and timely information is readily available to local circuit courts, public defense providers, and other system partners. Access to timely, detailed data is key to addressing the crisis.

Movement toward an open workload model is necessary and short-term allowances should be made for attorneys to exceed existing MAC, but only with careful oversight. As urged by many judicial districts, the Public Defense Services Commission should continue working towards adopting an open workload model. In the short term, attorneys who believe they are capable of greater ethical capacity beyond their current MAC should have the opportunity to take on caseloads in excess of limits for increased pay. Great caution, however, should be exercised to avoid the ethical quandary identified in the abandoned fee-per-case model.

Courts and local public safety systems should continue to seek out and implement efficiencies wherever possible. Local systems, led by their presiding judges, should continue the widespread collaboration and innovation that has already engendered the identification and/or implementation of wide-ranging system efficiencies. Judicial districts and their crisis teams should also challenge themselves to learn from the good work of other jurisdictions, as seeking out more attorneys, alone, will not yield immediate results.

OPDS should continue to work toward improved responsivity and customer service. OPDS should continue its efforts to improve responsivity to providers, particularly in the areas of payment processing times and expediency of decision-making. The agency may benefit from either new financial management equipment and/or more accounts payable staffing to increase the swiftness with which invoices and other accounting issues are resolved.

Additional effort should be made find opportunities to reduce filings and increase case dispositions. Both state and local actors may benefit from revisiting additional strategies to reduce filings and increase expediency in achieving dispositions. Some plans included practical interventions that would lead to more system offramps, such as more funding for specialty courts and diversion programs, while other plans spotlighted creative recommendations that would benefit from greater stakeholder examination, such as reducing barriers to treating some offenses as violations and providing statutory guidance on when dismissing cases in furtherance of justice may be appropriate.

A copy of the report may be obtained by contacting the Oregon Criminal Justice Commission at (503) 378-4830 or cjc.grants@cjc.oregon.gov. The full report may also be accessed online at: <https://www.oregon.gov/cjc>.

Senate Bill 337 (2023) Report

Review of Oregon's Public Defense Unrepresented Persons Crisis Team Plans

September 30, 2023



Oregon Criminal Justice Commission

Ken Sanchagrin, Executive Director

Executive Summary

The State of Oregon is experiencing an ongoing public defense crisis, in which persons charged with crimes or otherwise loss of liberty, do not have access to the qualified defense attorneys necessary to represent them in pending cases. In recognition of this crisis, the Oregon Legislature enacted Senate Bill (SB) 337 during the 2023 Regular Legislative Session, which ushered in numerous structural changes to Oregon's public defense system designed to address both the immediate crisis and to provide future system stability. Sections 103 to 108 of SB 337 required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated public safety unrepresented defendant crisis plan, to be submitted to the Oregon Criminal Justice Commission (CJC) by September 1, 2023. SB 337 further required the CJC to issue a report by October 1, 2023, that describes the information conveyed in the crisis plans.

As required by SB 337, the CJC received coordinated public safety unrepresented crisis plans from all 27 Oregon judicial districts by September 1. Upon receipt, CJC staff reviewed the crisis plans, with analysts independently reviewing the content of each plan while coding the substantive information contained therein so that common themes within the plans could be identified. Based on this analysis, this report was generated and submitted to the Oregon Legislature by October 1, 2023, as required by SB 337. The following themes and key takeaways were identified in the report.

Retention of existing public defenders in Oregon is paramount. Unequivocally, the crisis plans emphasize that Oregon *must* retain its current public defense workforce and address fair compensation of these attorneys. These are the attorneys in the best position to immediately make an impact on the unrepresented person crisis, as they are either already highly qualified or in a position to gain expertise and qualifications to take on more serious case types.

Concerns exist regarding the status of public defense consortia following the passage of SB 337, and these concerns could impact efforts to retain the current public defense workforce. A number of judicial districts cited concerns about the impacts of SB 337 in their local communities and relayed examples of how these reforms could lead to the loss of consortia attorneys within their districts, thus exacerbating the current unrepresented defendant crisis.

Recruitment strategies must be strengthened and refined to attract new attorneys to public defense. Oregon must attract new attorneys to public defense and improve working conditions and pay so that new and experienced attorneys remain in the profession. Enhanced recruitment work, such as creating law school-to-public defense pipelines, loan forgiveness opportunities, and clinics in underserved parts of the state, would benefit Oregon's public defense system in the long term. In addition, promising retention programs, such as the incentive payments piloted by OPDS, should ideally be continued if evidence demonstrates their effectiveness.

Continued work is needed to improve information and data coordination and communication between state and local agencies. Building on the efforts made by the Office

of the State Court Administrator and OPDS during the development of the crisis plans, these state agencies should continue to work toward improved collaboration and communication in both data tracking and role definition, to ensure that accurate and timely information is readily available to local circuit courts, public defense providers, and other system partners. Access to timely, detailed data is key to addressing the crisis.

Movement toward an open workload model is necessary and short-term allowances should be made for attorneys to exceed existing MAC, but only with careful oversight. As urged by many judicial districts, the Public Defense Services Commission should continue working towards adopting an open workload model. In the short term, attorneys who believe they are capable of greater ethical capacity beyond their current MAC should have the opportunity to take on caseloads in excess of limits for increased pay. Great caution, however, should be exercised to avoid the ethical quandary identified in the abandoned fee-per-case model.

Courts and local public safety systems should continue to seek out and implement efficiencies wherever possible. Local systems, led by their presiding judges, should continue the widespread collaboration and innovation that has already engendered the identification and/or implementation of wide-ranging system efficiencies. Judicial districts and their crisis teams should also challenge themselves to learn from the good work of other jurisdictions, as seeking out more attorneys, alone, will not yield immediate results.

OPDS should continue to work toward improved responsivity and customer service. OPDS should continue its efforts to improve responsivity to providers, particularly in the areas of payment processing times and expediency of decision-making. The agency may benefit from either new financial management equipment and/or more accounts payable staffing to increase the swiftness with which invoices and other accounting issues are resolved.

Additional effort should be made find opportunities to reduce filings and increase case dispositions. Both state and local actors may benefit from revisiting additional strategies to reduce filings and increase expediency in achieving dispositions. Some plans included practical interventions that would lead to more system offramps, such as more funding for specialty courts and diversion programs, while other plans spotlighted creative recommendations that would benefit from greater stakeholder examination, such as reducing barriers to treating some offenses as violations and providing statutory guidance on when dismissing cases in furtherance of justice may be appropriate.

A copy of the report may be obtained by contacting the Oregon Criminal Justice Commission at (503) 378-4830 or cjc.grants@cjc.oregon.gov. The full report may also be accessed online at: <https://www.oregon.gov/cjc>.

Table of Contents

Authors and Contributors.....	7.
Acknowledgments	7
1. Introduction	8
2. Background	8
2.1 Public Defense Crisis.....	8
2.2 How Public Defense Operates in Oregon	9
2.3 Contract Model Changes	10
2.4 Maximum Attorney Caseload Model.....	10
3. Scope of the Public Defense Crisis	12
4. Factors Contributing to the Unrepresented Persons Crisis	16
4.1 Lack of Attorneys	16
4.2 Lack of Experienced Public Defense Attorneys.....	17
4.3 Conflict Cases	17
4.4 Concerns with Public Defense Reforms	18
4.5 Other Factors	18
5. Addressing the Public Defense Crisis: SB 337 Crisis Plans.....	19
5.1 Crisis Plan Development.....	19
5.2 The Four Levers	20
5.3 Analysis of Crisis Plans.....	20
5.4 Number of Attorneys	22
<i>More Attorneys</i>	<i>22</i>
<i>Attorney Recruitment and Retention</i>	<i>23</i>
<i>Increasing Public Defense Attorney Compensation</i>	<i>24</i>
<i>Increasing Shared System Respect of Public Defense Attorneys</i>	<i>25</i>
5.5 Attorney Capacity	25
<i>Expanding Caseloads/Exceeding MAC</i>	<i>26</i>
<i>Prioritizing Unrepresented Cases</i>	<i>27</i>
<i>Improving Data Tracking, Sharing, and Transparency</i>	<i>27</i>
<i>Removal of Appointed Counsel from Warrant-Status Cases.....</i>	<i>28</i>
<i>Local/Regional Conflicts Coordinators</i>	<i>28</i>
<i>Increase Provider Supports.....</i>	<i>29</i>

	<i>Establish Duty Attorneys</i>	29
	<i>Presiding Judge Oversight of Attorney Appointments</i>	29
5.6	Filings	29
	<i>Diversion and Specialty Court Programs</i>	30
	<i>Treating Misdemeanors as Violations</i>	31
	<i>Addressing Probation Violations Differently</i>	32
	<i>Other Filing Reductions</i>	32
5.7	Dispositions	32
	<i>Judicial Settlement Conferences</i>	33
	<i>Global Resolution / Settlement Dockets</i>	34
	<i>Specialty Dockets</i>	34
5.8	Other Considerations	34
	<i>Remote Appearances</i>	35
	<i>Flexible Docketing/Scheduling</i>	35
	<i>Court Timelines</i>	36
5.8.2	Court Protocols, Practices, and Procedures	36
	<i>Plea Processes</i>	37
	<i>Discovery Improvements</i>	38
	<i>Status Hearings</i>	38
	<i>Conflict Case Management</i>	39
	<i>Jail Access Improvements</i>	39
	<i>Collaboration and Communication</i>	40
5.8.3	Public Defense Model and Contracting Reforms	41
	<i>Open Caseload Model</i>	41
	<i>PDSC Contracting Changes</i>	41
	<i>Concerns About SB 337’s Impacts on Consortia</i>	42
5.8.4	OPDS Service Delivery	42
	<i>Customer Service Improvements</i>	42
	<i>Payment Processing Issues</i>	42
	<i>Expedited Decision-Making</i>	42
	<i>Audits</i>	43
5.9	Other Considerations	44

<i>Judicial Infrastructure</i>	44
<i>Statutory Improvements</i>	44
<i>Court-Appointed Counsel Eligibility</i>	45
6. Discussion	45
6.1 Theme: Retention of existing public defense attorneys is paramount	45
6.2 Theme: Concerns exist about changes to consortia contracting	45
6.3 Theme: Strengthen and refine recruitment of new attorneys	46
6.4 Theme: Continue to improve information and data coordination and communication between state and local agencies	47
6.5 Theme: Conflict cases represent a small, yet important focal point in addressing the unrepresented persons crisis	47
6.6 Theme: Move to open workload model and allow attorneys to exceed existing MAC, but only with careful oversight	48
6.5 Theme: Continue to increase court and system efficiencies wherever possible	48
6.6 Theme: OPDS customer service responsivity	50
6.7 Theme: Seeking additional opportunities in reducing filings and increasing dispositions	50

List of Tables

Table 4.1. Unrepresented Cases and Share of Conflict Cases by County	17
Table 5.3. Share of Levers and Considerations Included in Judicial District Crisis Plans.....	21
Table 5.4. Specific Interventions Proposed by Judicial Districts Related to Increasing the Number of Defense Attorneys.....	23
Table 5.5. Specific Interventions Proposed by Judicial Districts Rel.to Attorney Capacity....	26
Table 5.6. Specific Interventions Proposed by Judicial Districts Rel. to Decreasing Case Filings.....	30
Table 5.7. Specific Interventions Proposed by Judicial Districts Rel. to Case Dispositions	33
Table 5.8.1. Detail on Flexible Docketing/Scheduling Approaches Identified in Crisis Plans	35
Table 5.8.2.1. Detail on Court Protocol/Procedure Changes Identified in Crisis Plans.....	37
Table 5.8.2.2. Detail on Other Areas or Approaches Identified in Crisis Plans.....	39
Table 5.8.3. Detail on Public Defense Model Reforms Included in Crisis Plans.....	41
Table 5.8.4. Detail on OPDS Service Delivery Highlighted in Crisis Plans.....	43

List of Figures

Figure 3.1. Unrepresented Individuals and Unrepresented Cases.....	13
Figure 3.2. Number of Unrepresented Individuals by County.....	14
Figure 3.3. Unrepresented Individuals by Custody Status.....	15
Figure 3.4. Unrepresented Individuals by Offense Group or Case Type.....	15

Authors

Ken Sanchagrin, J.D., Ph.D. – Executive Director, Oregon Criminal Justice Commission
Bridget Budbill, J.D. – Senior Policy Analyst, Oregon Criminal Justice Commission

Contributors

Kelly Officer – Research Director, Oregon Criminal Justice Commission
Emma Dunn – Research Analyst, Oregon Criminal Justice Commission

Acknowledgments

The Oregon Criminal Justice Commission thanks the Oregon Judicial Department's Office of the State Court Administrator, the Office of Public Defense Services, the Oregon Criminal Defense Lawyers Association, the Public Defenders of Oregon, the Oregon Defense Consortia Association, and the members of the 27 judicial district crisis teams, for sharing their collective expertise.

1. Introduction

The State of Oregon is in the midst of an ongoing public defense crisis, in which persons charged with crimes or otherwise loss of liberty, do not have access to the qualified defense attorneys necessary to represent them in pending cases. In recognition of this crisis, the Oregon Legislature enacted Senate Bill (SB) 337 during the 2023 Regular Legislative Session.¹ SB 337 ushered in numerous structural changes to Oregon's public defense system designed to address the immediate crisis and to provide future stability.

One of the approaches taken by the Legislature to address the crisis in the short term is found in sections 103 to 108 of SB 337. In relevant part, SB 337 §104 required the presiding judge of each of Oregon's 27 judicial districts to develop a coordinated public safety unrepresented defendant crisis plan, to be submitted to the Oregon Criminal Justice Commission (CJC) by September 1, 2023. SB 337 further required the CJC to issue a report by October 1, 2023, that describes the information conveyed in the crisis plans.

2. Background

2.1 Public Defense Crisis

In Oregon, persons charged with a crime or otherwise facing loss of liberty, such as during civil commitment or Psychiatric Security Review Board proceedings, are entitled to have a qualified attorney appointed, and paid for, by the state, if the person is unable to afford to hire one.² Since 2021, parts of Oregon have experienced public defense representation shortfalls, meaning there are not enough qualified attorneys available to represent persons accused of crimes.³ During the last two years, the crisis has only grown, both in size and scope, now extending to almost two-thirds of Oregon's judicial districts.⁴ This deficit is ongoing at the time of this report and presents myriad system challenges, particularly the delay of the constitutional and statutory rights afforded to persons accused of crimes, some of whom are presently confined in Oregon jails.

¹ SB 337 (2023 Regular Legislative Session),

<https://olis.oregonlegislature.gov/liz/2023R1/Measures/Overview/SB337>.

² US Const, Amend VI; US Const, Amend XIV; Or Const, Art I, § 11; ORS 135.040 (right to court-appointed counsel in Oregon); ORS 135.045 (court appointment of counsel); ORS 135.050 (eligibility for court-appointed counsel); ORS 135.055 (compensation and expenses of appointed counsel); ORS 161.346(6)(d) (Psychiatric Security Review Board hearings); ORS 426.100(3) (advice of court in civil commitment hearings); ORS 426.307 (court hearings in civil commitment proceedings).

³ See generally Office of Public Defense Services, *Unrepresented Persons*,

<https://www.oregon.gov/opds/general/Pages/Unrepresented.aspx>; Legislative Fiscal Office Analysis, Joint Emergency Board, December 9, 2022 (2021-2022 Interim), *Item 3: Public Defense Services Commission Unrepresented Defendant-Persons Crisis*,

<https://olis.oregonlegislature.gov/liz/2021I1/Downloads/CommitteeMeetingDocument/257530>.

⁴ Oregon has 27 judicial districts, 21 of which have jurisdiction serving areas that correspond with the boundaries of the county in which the circuit court is seated. Five judicial districts have jurisdiction serving two counties, and one judicial district has jurisdiction serving five counties. See Oregon Judicial Department, *Find a Court*, <https://www.courts.oregon.gov/courts/Pages/default.aspx>.

Further, crime victims are also impacted, as the state is unable to proceed with their cases unless and until an attorney is appointed to represent the person or persons accused of criminal conduct.

2.2 How Public Defense Operates in Oregon

The Public Defense Services Commission (PDSC) is a board of commissioners responsible for establishing and maintaining Oregon’s public defense system while ensuring public defense services are “consistent with the Oregon Constitution, the United States Constitution[,] and Oregon and national standards of justice.”⁵ The PDSC works in tandem with the Office of Public Defense Services (OPDS), the administrative agency that carries out the management functions required to operate public defense services in circuit courts and appellate courts in this state.

Oregon’s trial-level public defenders are presently private contractors rather than county or state employees.⁶ The private contractor model can take several forms. First, public defense work can be provided through employment at one of the state’s nonprofit public defense offices, which operate primarily in more populous judicial districts along the I-5 corridor. Examples of nonprofit public defense offices include Multnomah Defenders Inc., Metropolitan Public Defender, Inc., Public Defender Services of Lane County, the Public Defender of Marion County, and Southwest Oregon Public Defender Services, among others.

Second, attorneys can contract through consortia agreements where a group of lawyers is issued a contract for work shared amongst them. Consortia operate statewide, such as the Portland Defense Consortium in Portland, Los Abogados, LLC, in Jackson County, the 22nd Circuit Defenders, in Crook and Jefferson counties, and Linn Defenders, in Linn County, among others.

Third, OPDS contracts directly with individual attorneys taking on public defense cases. Finally, a small number of attorneys take case work through hourly-rate agreements. All funds to pay for the variety of contracts required to provide public defense flow through OPDS. The PDSC approves these public defense contracts and corresponding management policies and contracts for public defense services with qualified public defense practitioners.

To qualify to contract for public defense work in Oregon, a licensed attorney must submit a qualifications packet to OPDS for approval.⁷ Additionally, while providing public defense is often discussed in terms of *attorney* capacity, other experts and service providers are also required to provide competent representation to clients, such as legal support staff, language interpreters, case investigators, expert witnesses, and mitigators, among others.

⁵ ORS 151.216(1)(a) (describing the duties of the PDSC).

⁶ Among the systemic changes enacted in SB 337 is the creation of regional trial-level public defense offices, through which public defense attorneys will be state employees for the first time. *See* SB 337 §3(4).

⁷ Public Defense Services Commission and Office of Public Defense Services, *Unrepresented Crisis Plan Guidance*, Appendix at 5, PDSC Attorney Qualifications Standards (July 14, 2023), <https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf>.

2.3 Contract Model Changes

The compensation model for public defense work has undergone several large-scale systemic changes in the last few years. Prior to 2021, attorneys contracting with OPDS for public defense work were paid a flat fee-per-case. In 2019, the Sixth Amendment Center released a report examining Oregon’s public defense system.⁸ The report found that Oregon’s flat fee-per-case model put attorneys in an ethical bind between maintaining a reasonable caseload that allows time for competent representation of their clients and taking on higher caseloads to earn better wages. Based on this finding, the Sixth Amendment Center advocated for the end of the fee-per-case model in Oregon and a transition to an hourly rate model and/or a model that relies more directly on hiring governmental attorneys to handle trial-level cases. In 2021, PDSC voted to shutter the fee-per-case model and shifted the public defense contracts to a full-time equivalent (FTE) model, where public defense providers contract for a maximum annual caseload.

Public defense contracts were further modified in 2022 to create attorney compensation tiering by qualification levels, with the highest level of compensation being afforded to murder- and felony-qualified attorneys, as those cases require the highest levels of experience and professional effort to handle. This tiering means that public defense attorneys carrying murder and felony-heavy caseloads are compensated more than attorneys carrying misdemeanor caseloads. Another facet of the 2022 contracting model was the move from the FTE model to the “Maximum Attorney Caseload” model, which focused on a more individualized approach to attorney caseloads based on case types and attorney qualifications.

2.4 Maximum Attorney Caseload Model

Maximum attorney caseload (MAC) is the maximum number of new cases a given attorney may work on over the course of the contract period under their contract with the PDSC. Cases are weighted by the severity of case type. The severity of cases an attorney carries affects the maximum number of cases an attorney is able to accept. An attorney qualified to carry murder cases will likely have a lower MAC than an attorney qualified to carry exclusively misdemeanor cases, as the former requires more attorney time and expertise than the latter. For example, if an attorney is qualified to take murder cases, that attorney may take no more than six murder cases, annually, if that is the only type of case taken. If an attorney is taking only misdemeanor cases, that attorney may take no more than 300 cases annually. Importantly, the MAC model creates a hard cap, as attorneys may not exceed the number of cases stated in their contracted yearly MAC, unless granted special dispensation to do so by OPDS.

As most attorneys have varied caseloads consisting of different case types, their MAC is divided proportionally in the PDSC contract. For some cases, weight is given, in addition to regular MAC calculations, to recognize the increased work required to manage a given case, such as

⁸ Sixth Amendment Center, *The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services* (January 2019), https://sixthamendment.org/6AC/6AC_Oregon_report_2019.pdf.

cases out of the attorney's regular practice jurisdictions and cases with other extraordinary conditions. This weighted MAC is assigned to an attorney when the attorney is appointed to a given case. Should an attorney withdraw from a case prior to the 90-day mark of representation, only partial credit is given towards the attorney's annual MAC calculation.

While the MAC model presents a standardized approach to ensuring adequate time is afforded to representing defendants on an attorney's caseload, the abilities of certain attorneys may fall outside of the standardized MAC caseload limits. This variation is often discussed in terms of an attorney's ethical capacity, which is an independent evaluation of the totality-of-circumstances of what an individual attorney may competently handle based on the nature of the case at hand (the level of severity of the charges, the client's condition, etc.), in light of the attorney's total caseload and overall qualifications and experience.⁹

For instance, PDSC guidance notes that some attorneys may reach their ethical capacity prior to MAC capacity due to ongoing case work from the previous contracting cycle. Alternatively, the ethical capacity of a novice attorney may fall below the standardized MAC limit and grow over time as they gain experience in the field. Finally, some attorneys may be able to take cases above the MAC and still provide ethical representation. In this final example, OPDS has a process for reviewing requests to exceed MAC on a case-by-case basis.¹⁰

The determination of whether and when an attorney should be permitted to exceed MAC is best understood within the Oregon Rules of Professional Conduct (ORPC), binding ethics rules that all attorneys in Oregon must follow as a condition of maintaining licensure.¹¹ Violating the ORPC may lead to an attorney's law license being suspended, or, in very serious cases, an attorney's disbarment (losing one's license to practice law). ORPC 1.1 concerns an attorney's abilities and preparedness when representing a client, requiring that an attorney "shall provide competent representation to a client," which requires the attorney to possess "the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation."¹² ORPC 1.7(a) concerns conflicts of interest for an attorney's current clients and, in relevant part, provides that a conflict of interest occurs when, "the representation of one client will be directly adverse to another client," or "there is significant risk that the representation of one or more

⁹ OPDS lists ethical caseload considerations as the following: "sufficient time to interview and counsel clients, interview client close in time to appointment, seek pretrial release, provide vertical representation (continuous representation by the same attorney from arraignment through case disposition), conduct investigations, request and review discovery, conduct legal research, prepare for pretrial, trial, and sentencing hearings." Public Defense Services Commission and Office of Public Defense Services, *Unrepresented Crisis Plan Guidance*, 4-5 (July 14, 2023), <https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf>.

¹⁰ Currently, contracted attorneys may apply to take cases in excess of their contracted-for MAC, upon approval from OPDS. Attorneys must submit the following form to be considered: <https://oropdefense1.workflowcloud.com/forms/feb93532-673c-4416-8b52-21a7fbe5b192>.

¹¹ Oregon State Bar Association, *The Oregon Rules of Professional Conduct* (2022), https://www.osbar.org/_docs/rulesregs/orpc.pdf.

¹² *Id.* at 3.

clients will be materially limited by the lawyer’s responsibilities to another client[.]”¹³ When public defense providers raise concerns about taking on more cases than they may ethically handle (beyond their ethical capacity), these concerns are tethered to whether the additional cases will “be directly adverse” to current clients or “materially limited” by “responsibilities to another client” should an attorney not have adequate time and resources to competently address the specifics of each client’s legal problems.¹⁴

Notwithstanding a conflict of interest contemplated in ORPC 1.7(a), ORPC 1.7(b) allows an attorney to represent clients, in relevant part, when the attorney “reasonably believes” that the attorney “will be able to provide competent and diligent representation to each affected client” and “each affected client gives informed consent, confirmed in writing.”¹⁵ Other ORPC standards may also be implicated when an attorney exceeds ethical capacity.

3. Scope of the Public Defense Crisis

The change in contracting processes by the PDSC in 2021 corresponded with the beginning of the unrepresented crisis in Oregon. As discussed above, it was at this time that the PDSC shifted from fixed rate contracts paid per case to a full-time equivalent model, before further refining the contracting model by employing the MAC approach in 2022. At the same time, the continuing negative impacts of the COVID-19 pandemic on court processes and insufficiently resourced public defenders leaving the practice area, combined with the case model shifts, led to an increasingly serious insufficient representation crisis.¹⁶

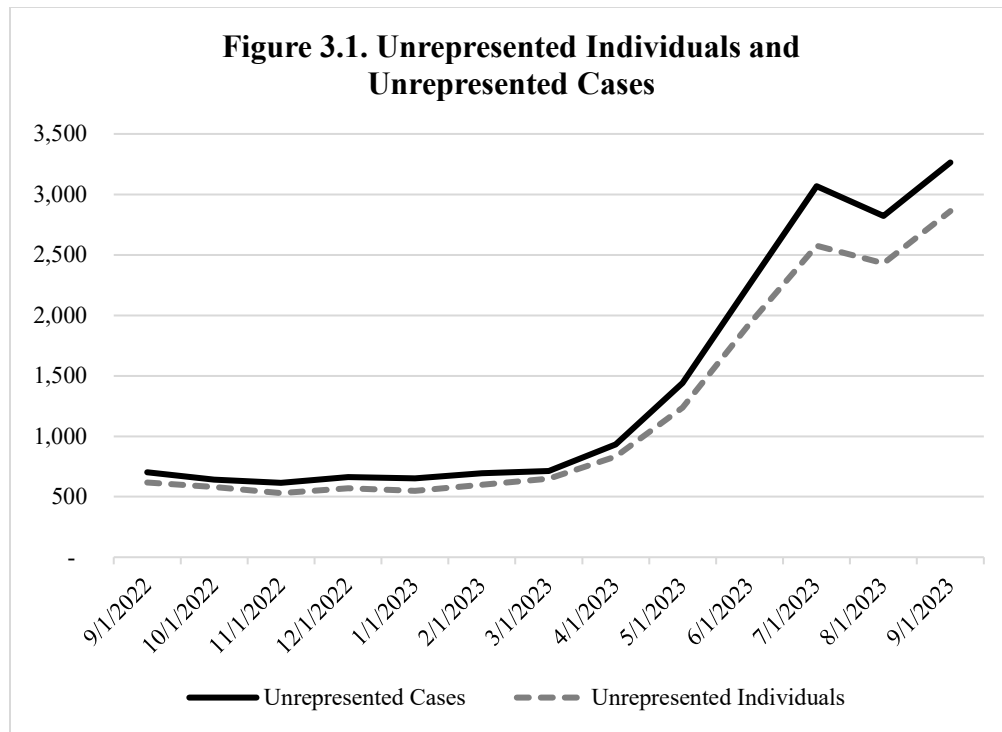
In March 2023, many public defense contractors began reaching MAC for the fiscal year. Consequently, the number of unrepresented cases began an upward climb each month until July 2023, when contracts were extended through September 2023. OPDS began requiring that public defense attorney contractors were not to exceed 1/12 of their annual MAC in monthly contract case appointments. For a 1.0 FTE, that resulted in a limit of 25 weighted cases per month, not allowing for monthly fluctuations in case filings. The point of the monthly MAC limit is to avoid the front-loading of contract appointments that occurred in fiscal year 2023.

¹³ *Id.* at 6.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Oregon Public Defense Services Commission, *Reference Document - 82nd Legislative Assembly, Joint Ways and Means Subcommittee on Public Safety*, 36 (2023) (“There is a high attorney attrition rate that is a leading cause for defendants being unrepresented.”); Aimee Green, *Oregon is losing public defenders. How much money will bring them back?*, The Oregonian (February 22, 2023) <https://www.oregonlive.com/news/2023/02/oregon-is-losing-public-defenders-how-much-money-will-bring-them-back.html> (explaining that, “[u]ncompetitive pay, high caseloads and representing many clients with enormous needs has led many public defenders to leave for other jobs”); Allison Frost, *Head of Oregon Office of Public Defense Services on progress toward solving the attorney crisis*, Oregon Public Broadcasting (August 22, 2023), <https://www.opb.org/article/2023/08/22/head-of-oregon-office-of-public-defense-services-on-progress-toward-solving-the-attorney-crisis/> (in an interview with OPDS Executive Director Jessica Kampfe, Kampfe stated that Oregon “saw public defenders leaving the practice because they were under-resourced”).



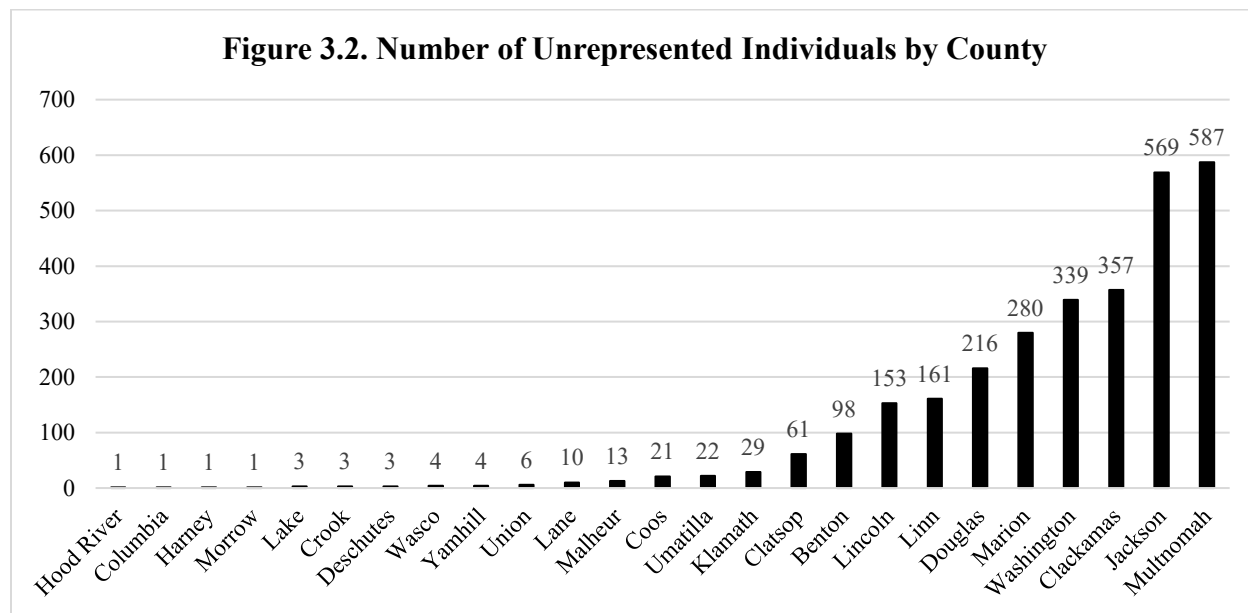
As shown in Figure 3.1, which relies on data from data dashboards maintained by the Oregon Judicial Department (OJD), over the past twelve months, the number of unrepresented individuals, as well as the number of cases without a court-appointed attorney, shifted from a relatively steady state into a period of exponential growth.

Between September of 2022 and March of 2023, there was an average of 585 unrepresented individuals, accounting for an average of 669 cases. By June of 2023, however, the number of unrepresented individuals had grown by 198 percent compared to March 2023. By September 2023, the number of unrepresented individuals had increased by an additional 48 percent compared to June, leading to the current total of 2,862 unrepresented individuals accounting for 3,264 cases without a court-appointed attorney.

The statewide unrepresented individual and case totals point to an entire system in crisis. It is important to note, however, that while the statewide numbers are very concerning, there is significant geographic variation in the distribution of unrepresented individuals across the state. In some of Oregon's counties, there are few, if any, defendants without representation, while in others, several hundred defendants find themselves without court-appointed counsel.

Figure 3.2, below, presents the number of unrepresented individuals as of September 15, 2023, by county, for those jurisdictions that have at least one unrepresented defendant. Twenty-five of Oregon's 36 counties have at least one unrepresented defendant.

Further, among those counties with at least one unrepresented defendant, there is a clear demarcation visible in Figure 3.2, as nearly two-thirds of the counties reported fewer than 30 unrepresented defendants. The remaining counties, alternatively, report higher numbers of unrepresented defendants, with Jackson County and Multnomah County experiencing the most acute problems, as both jurisdictions reported over 550 unrepresented individuals within their local system as of September 15, 2023.



One particular concern in this crisis is the share of unrepresented defendants who are in custody. Given that a case cannot proceed without representation for a defendant, those individuals who are in custody cannot advance their cases and therefore are much more likely to remain in custody while waiting for a court-appointed attorney to become available. For these individuals, the lack of an attorney represents not only a denial of their constitutional right to representation but also may represent an infringement on essential liberty interests, given that they have yet to be convicted of a crime.

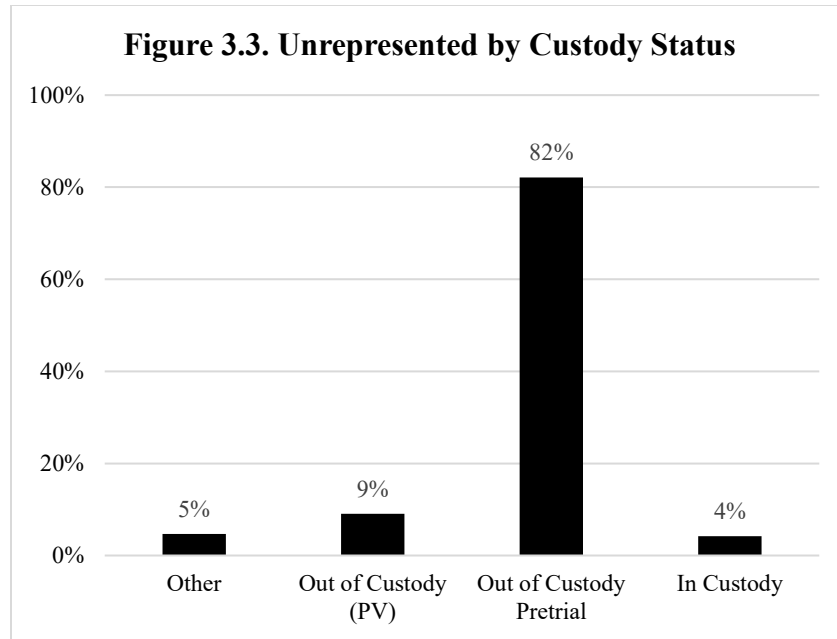
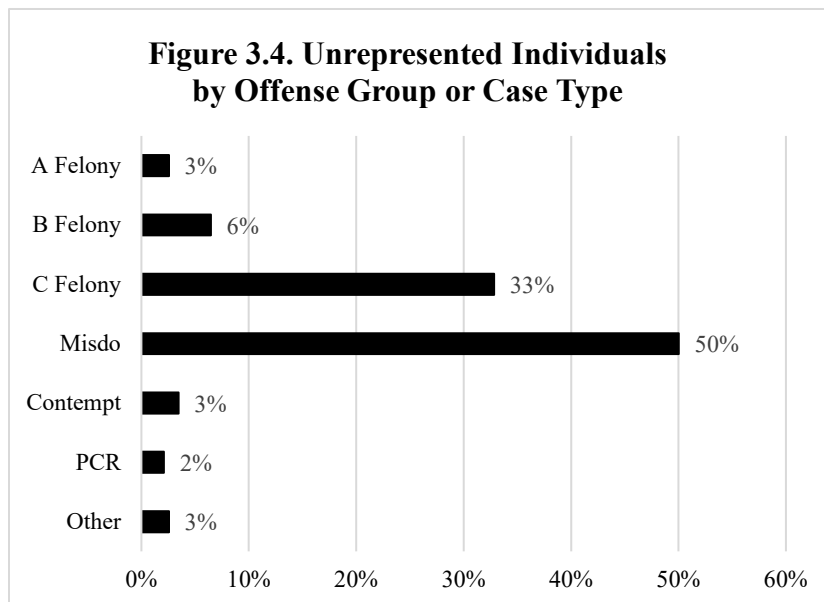


Figure 3.3, above, displays the breakdown of unrepresented individuals by custody status as of September 15, 2023. A little over four percent, or 139 defendants, are being held in custody without representation.¹⁷ Nearly 90 percent of unrepresented defendants are currently out of custody, with the vast majority of those waiting at the pretrial stage of their case. The remaining five percent, constituting the “other” category, consists of individuals with a post-conviction status and non-criminal cases.



After in-custody status, another concern is related to the types of cases impacted by the unrepresented crisis. Figure 3.4, left, displays the share of unrepresented individuals broken down by offense group or case type as of September 15, 2023. By far, the largest share of individuals without a defense attorney are those charged with misdemeanors, as this group makes up just over 50 percent of all unrepresented

¹⁷ Moreover, on August 17, 2023, Federal District Judge Michael McShane ordered that all defendants held in the Washington County jail without court-appointed lawyers must be released within 10 days of their initial court appearance. At the time, this order applied to the 36 defendants lodged in the jail and will apply in the future to any similarly situated defendant. *See Betschart v. Garrett*, No 3:23-cv-01097-CL (D Or Aug 17, 2023).

cases. The proportion of unrepresented misdemeanors may be influenced by court prioritization of more serious charges with limited attorney appointments. The second largest group of unrepresented defendants are those charged with Class C felonies, constituting one-third of all cases. Together, Class C felony defendants, as well as those charged with misdemeanors, make up the vast majority of all individuals who lack court-appointed attorneys, accounting for over 80 percent of the total population. The remainder of the unrepresented defendants is spread across A felonies and B felonies, which account for three and six percent, respectively, as well as individuals lacking representation in cases related to contempt, post-conviction relief, and “other” types of cases, which includes civil commitment, habeas corpus cases, guardianship, termination of parental rights, adoption, violations, and other procedural matters.

4. Factors Contributing to the Unrepresented Persons Crisis

As discussed previously, this representation crisis in Oregon coincided with the shift in contracting models employed by the PDSC in response to the Sixth Amendment Center report. Other factors have also contributed to the unrepresented persons crisis, in addition to this administrative change. Furthermore, as demonstrated in the 27 crisis plans, each jurisdiction has arrived at, and is experiencing, the crisis differently. The crisis plans provide important insight into the local factors underlying the complexity of this statewide problem. In the paragraphs that follow, some common themes are discussed.

4.1 Lack of Attorneys

It is clear from the crisis plans that staffing is a serious problem across Oregon. Many crisis plans identified a lack of qualified attorneys as a chief concern in their district. Specific issues ranged from difficulties in hiring, leading to multiple long-term vacancies within public defender offices, to retention issues whereby the departure of experienced attorneys exceeded the influx of new public defenders. It was also interesting to note the precarious position many jurisdictions find themselves in with regards to staffing. In one district, for example, the sudden departure of one defense attorney from its local consortium brought the district into crisis mode, as previously manageable unrepresented defendant numbers spiked from less than five to over 60 almost overnight with the loss of just one experienced attorney. Similarly, another jurisdiction cited the staffing difficulties associated whenever local defense attorneys go on various types of leave.

It is also notable that staffing concerns are not just limited to the defense bar in many jurisdictions. Many crisis plans, particularly in rural areas of the state, cited a lack of access to attorneys in general across their jurisdictions. Further, several jurisdictions discussed staffing concerns and vacancies within local prosecutors’ offices as also playing an important role in the crisis. For example, the district attorney in one judicial district is currently working to improve discovery access and protocols within their jurisdiction. These efforts, however, are limited by the lack of available staff to work on these reforms, which impacts both the office of the local district attorney, as well as the speed and effectiveness of these reforms for the local public defense community.

4.2 Lack of Experienced Public Defense Attorneys

The staffing concerns and challenges described above also impact the caseloads and types of cases public defense attorneys can take across many jurisdictions. Over the past several years, there has reportedly been a significant departure of experienced public defenders from the public defense system in Oregon. Even when departed individuals are replaced, the new attorneys are often only qualified to take misdemeanor cases and/or low-level felonies. Several judicial districts cited this challenge as being especially acute in their local areas and as contributing to the unrepresented persons crisis.

4.3 Conflict Cases

The localized impact of conflict cases was also apparent in many crisis plans. “Conflict cases” are those cases that present a conflict of interest to some or all local providers in a given county or judicial district, which arise when the public defender is already representing another defendant on a given case or the public defender has an adverse interest to the defendant based on a prior representation. As shown in Table 4.1, below, the statewide share of cases without a defense attorney that are attributable to conflicts of interest is just over seven percent. There is, however, wide variation in the share of unrepresented conflict cases by county. In eight counties, accounting for nearly one-third of jurisdictions with unrepresented defendants, the share of unrepresented cases attributable to conflict is over 75 percent.

Table 4.1. Unrepresented Cases and Share of Conflict Cases by County

Court	Cases	Conflict Cases	Pct Conflict	Court	Cases	Conflict Cases	Pct Conflict
Benton*	136	--	--	Lane	11	11	100%
Clackamas	370	0	0%	Lincoln	166	15	9%
Clatsop	62	3	5%	Linn	182	0	0%
Columbia	1	1	100%	Malheur	17	1	6%
Coos	33	33	100%	Marion	305	20	7%
Crook	4	3	75%	Morrow	1	0	0%
Deschutes	3	1	33%	Multnomah	601	20	3%
Douglas	257	10	4%	Umatilla	26	0	0%
Harney	1	1	100%	Union	7	3	43%
Hood River	1	1	100%	Wasco	5	5	100%
Jackson	679	0	0%	Washington	380	106	28%
Klamath	32	0	0%	Yamhill	5	5	100%
Lake	3	0	0%	Statewide	3,288	239	7%

*No conflict case data was received for Benton County.

The counties with a large share of conflict cases vary from rural jurisdictions with lower attorney capacity, such as Wasco, Harney, and Hood River Counties, to jurisdictions with a larger defense provider base, such as Lane County. On the other end of the spectrum, just over one-third of counties report a conflict case rate below five percent. Based on this data, as well as on the discussion presented in many of the crisis plans, conflict cases are the driver of the crisis in many

jurisdictions, while in others, they play little to no role. Importantly, this demonstrates the need for targeted interventions in some jurisdictions to address this specific issue. It may also help judicial districts to keep conflict cases in mind when considering whether to allow attorneys to withdraw from existing cases, as more withdrawals may increase the number of conflicts.

4.4 Concerns with Public Defense Reforms

Another theme that emerged from several of the crisis plans is a concern over and/or skepticism of the system reforms contained in SB 337. Two examples, one of which was provided by JD 16 (Douglas) and another by JD 18 (Clatsop), provide an illustration of this issue:

“[Douglas County has] one firm with attorneys that handle both criminal and juvenile dependency matters. A partner in the firm has indicated that they do not intend to hire more attorneys for criminal work because she understands that OPDS will no longer be contracting with law firms after the next contract cycle, and she is not willing to invest in hiring and training if her contract will be ending.”¹⁸

“OPDS should continue to contract with local private bar members and consortiums for indigent representation, particularly in rural areas of the state. Moving to public defender offices and an hourly only model as currently planned will significantly reduce the availability of experienced and qualified attorneys in Clatsop County and other rural areas. Announcement of the planned change for the next contract cycle has already had a negative impact on recruitment of new attorneys.”¹⁹

Similarly, several crisis plans called for caution as Oregon moves to reform its public defense system by expressing concerns about one-size-fits-all statewide policy solutions and the potential unexpected impacts on local jurisdictions, particularly those in rural and frontier areas. Of particular significance are concerns regarding the changes to the public defense service delivery model as applied to existing consortia, discussed further below.

4.5 Other Factors

Finally, myriad other factors contributing to the unrepresented defendant crisis were cited within the crisis plans. These included changes in the law resulting in increased workloads for local

¹⁸ Oregon Judicial Department Office of the State Court Administrator, *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, Appendix B.1-124, *Judicial District 16 – Douglas County*, https://www.courts.oregon.gov/Documents/OSCA%20report_Unrepresented%20Crisis%20Plan_PUBLISHED.pdf.

¹⁹ *Id.* at B.1-143.

justice systems, including the cases of *Ramos v. Louisiana*²⁰ and *Watkins v. Ackley*,²¹ which have increased the number of post-conviction relief cases and will likely lead to numerous new trials for previously convicted defendants, as well as other statutory changes and increases in “plain error” returns from the Oregon Court of Appeals to local courts.²²

5. Addressing the Public Defense Crisis: SB 337 Crisis Plans

5.1 Crisis Plan Development

The Office of the State Court Administrator (OSCA) assisted the 27 Oregon judicial districts in their implementation of the requirements of SB 337 §§103-108. First, on July 7, 2023, the Chief Justice of the Oregon Supreme Court released Chief Justice Order (CJO) 23-024, which launched the crisis planning work, required a consistent framework for the crisis plans, and required every judicial district to craft a crisis plan regardless of present crisis status.²³

While Section 104 of SB 337 required judicial districts with a total population of over 100,000 to convene a crisis team, the CJO expanded that requirement for crisis teams to all judicial districts with more than 20 unrepresented defendants as of the date of the order, which included an additional five judicial districts.

The crisis teams convened by the presiding judges under SB 337 and CJO 23-024 were required to include at least the presiding judge, district attorneys, and the OPDS executive or designee in the jurisdiction. Ten days following the release of CJO 23-024, OSCA provided circuit courts with additional guidance, including a facilitator’s guide and a template designed to streamline plan development and build consistency in the topics addressed.

In addition to an online data dashboard developed by OJD in collaboration with OPDS in August 2022, OSCA created local data packets for each judicial district to help crisis teams understand the nature of the unrepresented persons crisis locally. In addition to materials, OSCA also provided staff support and crisis plan feedback to all 27 judicial districts. OPDS also provided staff support to the crisis plan teams and drafted crisis planning guidance, discussed below, to help judicial districts conceptualize recommendations and interventions to local crisis drivers.

²⁰ *Ramos v. Louisiana*, 590 US __, 140 S Ct 1390 (2020) (U.S. Supreme Court holding that the Sixth Amendment requires guilty verdicts be unanimous in criminal trials).

²¹ *Watkins v. Ackley*, __ Or __, __, 523 P3d 86 (2022) (Oregon Supreme Court retroactively applying jury unanimity rule in state post-conviction proceedings).

²² *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* at B.1-12 (explaining that an uptick in plain error returns from the Oregon Court of Appeals has led to “increases in the number of criminal cases on remand” and requiring additional appointed counsel). *See generally* ORAP 5.45(4)(b) (plain error requirements).

²³ Order Requiring Development and Implementation of Coordinated Public Safety Unrepresented Defendant Crisis Plans in Each Judicial District, Oregon Chief Justice Order 23-024, July 7, 2023 <https://cdm17027.contentdm.oclc.org/digital/collection/p17027coll10/id/3217/rec/11>.

5.2 The Four Levers

In preparation for judicial districts to begin their crisis planning, OPDS drafted, and PDSC adopted, guidance to help courts in addressing the public defense crisis.²⁴ OPDS and OSCA worked together to align the guidance with the OSCA materials developed to help judicial districts develop their crisis plans. A key piece of the guidance and planning materials was the introduction of four approaches, called “levers,” that were identified as categories for recommendations and interventions that may increase public defense representation capacity or decrease strain on existing public defense resources in Oregon. The four levers include:

- (1) **Reducing filings**, meaning reducing the number of criminal cases filed in Oregon circuit courts or diverting cases from criminal courts, meaning fewer public defenders are required to cover fewer overall cases;
- (2) **Increasing dispositions**, meaning increasing the speed with which cases are closed in Oregon circuit courts, thereby reducing the time public defenders are spending on cases, allowing attorneys to increase ethical capacity and promoting system efficiencies;
- (3) **Adding attorneys**, meaning increasing the number of public defense attorneys available to take cases in Oregon circuit courts, focusing on ways to recruit new attorneys to public defense work and to retain attorneys already in the public defense system; and
- (4) **Adding attorney capacity**, meaning increasing the capacity of individual public defense attorneys by way of prioritizing appointed cases and developing interventions to increase attorneys’ ability to use contracted MAC efficiently.

5.3 Analysis of Crisis Plans

As required by SB 337, the CJC received coordinated public safety unrepresented crisis plans from all 27 Oregon judicial districts by September 1. Upon receipt, CJC staff began to review the crisis plans, with analysts independently reviewing the content of each plan while coding the substantive information contained therein so that common themes within the plans could be identified. Further, by employing a coding procedure, the CJC may identify and communicate commonalities within the plans in tabular formats for quick reference for lawmakers, policymakers, interested stakeholders, and members of the public.

Each judicial district’s plan included, in relevant part, sections discussing the status of the unrepresented persons crisis locally, actions already taken to remedy the problem or protect

²⁴ Public Defense Services Commission and Office of Public Defense Services, *Unrepresented Crisis Plan Guidance*, 9-10 (July 14, 2023), <https://www.oregon.gov/opds/SiteAssets/Lists/General%20Accordions/AllItems/Plan%20Guidance%207.14.2023.pdf>.

against it, and recommendations or interventions proposed to further reduce or eliminate the number of unrepresented persons without appointed counsel.

In assessing the actions taken and proposals raised to remedy the crisis, the CJC divided its review into two streams: (1) actions or proposals that fit into the “Four Levers” created by the OPDS/PDSC guidance, and (2) other considerations raised, when the actions or proposals fell adjacent to or outside of those four categories. The CJC’s high-level categorization of these items is displayed in Table 5.3, below, which also reports the total number of plans identifying a given intervention or consideration.

**Table 5.3. Share of Levers and Considerations
Included in Judicial District Crisis Plans**

Plan Considerations	Total	Pct.
<i>Four Levers</i>		
Filings	20	74.1%
Dispositions	16	59.3%
Number of Attorneys	25	92.6%
Attorney Capacity	21	77.8%
<i>Other Considerations</i>		
Conflict Coordination	5	18.5%
Collaboration & Communication	22	81.5%
Flex Scheduling/Docketing	21	77.8%
Court Policies & Procedures	22	81.5%
Jail Access	7	25.9%
PD Contracting Reform	12	44.4%
OPDS Service Delivery	6	22.2%
Other Considerations	4	14.8%

As shown in Table 5.3, above, a majority of the crisis plans focused on the four levers. Generally, the lever that was cited the least was the disposition lever, although it was still included in nearly 60 percent of the crisis plans. Interventions related to filings and attorney capacity were included in approximately three-quarters of the crisis plans.

By far the most commonly cited intervention, however, the need for more qualified public defense attorneys. Indeed, only two jurisdictions did not cite a need for additional attorneys within their local areas. In addition to the four levers, the crisis plans also identified a litany of other considerations or factors relevant within local jurisdictions as a means for addressing the unrepresented crisis.

The two most common approaches cited within the plans focused on collaboration and communication and revisions to court policies and procedures. The next most common area identified was with scheduling and docketing, which focused on reducing the logistical burdens associated with litigation, with a keen focus on promoting greater efficiencies.

The other identified considerations fell well below the items listed above, as the next most common consideration was reform tied to the current PDSC contracting system, which was included in nearly half of the crisis plans. Finally, around one-fifth of plans identified a few other notable considerations, including the impacts of conflict cases and the need for conflict case coordination, changes in jail access for public defense attorneys, and suggestions for changes in service delivery at OPDS. The subsections that follow contain additional detail on specific recommendations related to the top-level categories in Table 5.3, above. In each subsection, this detail includes a listing of the judicial districts including specific items from their crisis plans.

It is important to note that the manner in which judicial districts worked within the OSCA template varied across plans, with some plans providing significantly more detail than others. Thus, when interpreting the tables in the following sections, the absence of a tally for a given intervention or consideration does not necessarily indicate an absence of that intervention or consideration within a given district. Rather, the tables should simply be interpreted as a record of which districts viewed a given intervention or issue as central to their plan for addressing the unrepresented defendant crisis at this given time. Additionally, it is also important to note that the following tables are divided into two groups: (1) those plans authored by jurisdictions required to formally convene crisis teams by SB 337 and CJO 23-024, and (2) those jurisdictions not required to convene crisis teams.

5.4 Number of Attorneys

More Attorneys

By far the most common intervention suggested was for the Oregon criminal legal system to address the number of attorneys available to take public defense work; over 90 percent of the judicial districts raised this issue in at least one way in their crisis plans. As shown in Table 5.4, on the following page, the ways in which this was suggested varied widely and included recommendations ranging from bolstering opportunities for law students to become exposed to public defense work in law schools to allowing existing Oregon-licensed attorneys to become qualified to take on higher-level case types more swiftly.

The most oft-repeated need was straightforward: *Oregon needs more public defense attorneys*. Increasing the number of attorneys available to take on public defense work in Oregon was presented as a key need to curtail the unrepresented persons crisis by 18 judicial districts, which accounts for two-thirds of all jurisdictions.

Table 5.4. Specific Interventions Proposed by Judicial Districts Related to Increasing the Number of Defense Attorneys

Judicial District	Hire More Attorneys	Pay	Recruitment & Retention	Loan Forgiveness	Training & Mentoring	System Respect	Judicial Outreach
JD 1 – Jackson	X	X	X	X			
JD 2 – Lane	X		X		X		
JD 3 – Marion	X	X			X		
JD 4 – Multnomah	X	X	X		X		
JD 5 – Clackamas	X						
JD 11 – Deschutes	X	X		X			
JD 16 – Douglas	X						X
JD 20 – Washington	X	X	X		X	X	X
JD 23 – Linn	X	X	X				X
JD 25 – Yamhill	X						X
JD 6 – Umatilla							
JD 7 – Gorge†							X
JD 8 – Baker							X
JD 9 – Malheur	X						X
JD 10 – Union/Wall	X						
JD 12 – Polk					X		
JD 13 – Klamath	X	X	X		X		
JD 14 – Josephine	X	X	X				
JD 15 – Coos/Curry	X		X				
JD 17 – Lincoln	X	X	X				
JD 18 – Clatsop		X		X	X		X
JD 19 – Columbia							X
JD 21 – Benton	X						
JD 22 – Jeff/Crook	X		X	X	X		
JD 24 – Grant/Harn							
JD 26 – Lake			X				
JD 27 – Tillamook		X	X	X	X		
Total	18	11	12	5	9	1	9

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Attorney Recruitment and Retention

Second to hiring more attorneys was the need to improve recruitment and/or retention strategies. As a general matter, 12 of 27 judicial districts, or about half, discussed the importance of increasing the number of new lawyers who seek out public defense work and helping the attorneys who enter public defense work to stick it out. Recruitment discussions included ideas such as the aggressive promotion of public defense work within law schools, expanding the

range of locations at which public defense jobs are posted,²⁵ creating law school-to-public defense work pipelines in Oregon’s law schools by way of establishing public defense clinics in areas of state outside of the three counties with law schools (Multnomah, Marion, and Lane), and offering Oregon law students opportunities to learn solo practitioner skills. Other suggestions included incentives like supplemental income and housing stipends to encourage new attorneys to seek out public defense work, particularly in rural areas, where recruiting and retaining all lawyers is increasingly difficult.

Relatedly, some jurisdictions focused on other areas that could boost recruitment and/or retention. Loan forgiveness²⁶ and tuition reimbursement programs were suggested by five judicial districts, or about 18 percent of the plans, while the need for a variety of training programs, such as Continuing Legal Education opportunities,²⁷ mentoring opportunities for new lawyers,²⁸ and chances for non-criminal attorneys to gain knowledge of the criminal system to enable them to take cases, were discussed as a need by one-third of judicial districts. Judges in nine districts also reported performing recruitment outreach to their local bar associations to seek out attorneys willing to take on casework to assist in reducing the unrepresented case count.

When the share of judicial districts advocating for increased recruitment/retention generally are combined with those providing specific feedback on means for achieving those outcomes through loan forgiveness, mentoring, and other specific areas, it becomes clear that this intervention was one of the most commonly cited areas necessary to improve the current crisis, as 22 of 25 judicial districts flagged at least one of these items.

Increasing Public Defense Attorney Compensation

Beyond bringing more individuals into the profession, a specific focus on improving compensation for public defense attorneys was a key point made by 11 judicial districts, or around 40 percent of the plans. In some crisis plans, pay equity with other system partners—particularly prosecutors—was the central discussion point. In others, representing both urban and rural areas across the state, the current cost of living and housing crises were the central discussion point, as high costs of living were seen as a barrier to attracting new attorneys both into the profession broadly and into many local jurisdictions more specifically. Further, cost of

²⁵ OPDS has created a “Careers” webpage on its agency website that allows any public defense provider in the state to post job vacancies in a centralized place for public defense job seekers to find aggregated public defense job postings. It also provides a place for attorneys seeking public defense work to submit an interest card to connect with public defense job opportunities. See <https://www.oregon.gov/opds/general/pages/jobs.aspx>.

²⁶ During the 2023 Regular Legislative Session, Senate Bill 413 was introduced, which, among other things, proposed establishment of a Public Defense Services Student Loan Repayment Assistance Program through the Oregon State Bar to assist eligible public defense attorneys with outstanding student loans. The bill did not advance.

²⁷ JD 20 (Washington) organized a public defense crisis CLE to inform local public defense attorneys as to the unrepresented persons problem and to generate discussion of solutions. *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-156.

²⁸ JD 22 (Jefferson/Crook) has developed a “mentor model” wherein less experienced attorneys team up with more senior attorneys to gain trial skills, allowing them to eventually qualify for increasingly complex case-type assignments. *Id.* at B.1-165-66.

living issues also pose barriers to retention, as many defense attorneys are forced to leave their public defense jobs to make ends meet.

Concern regarding compensation is not going unheeded in Oregon, as some efforts are being made in this area. For example, the PDSC approved an incentive payment approach, wherein any newly contracted attorney who was working at full MAC would receive a \$20,000 one-time payment upon joining the public defense community and another \$20,000 if that attorney was still taking cases three months later.²⁹ This approach was coupled with retention incentive payments of \$15,000, pro-rated by MAC. Additionally, during the 2023 Regular Legislative Session, contract rates were increased by 8.8 percent, and additional incentive payment funds have been allocated to the PDSC by the Legislature.³⁰ OPDS reports seeing overall improvement in recruitment rates, although slowly, and retention rates have increased following reports of public defense attorneys leaving the practice over the past several years.

Increasing Shared System Respect of Public Defense Attorneys

Finally, while only formally identified in a single crisis plan, a common refrain from public defense providers of all types is the need to improve understanding of and respect for the role of public defense providers in judicial districts. Consequently, this has led to the belief that public defense work is not valued as keenly as other public safety roles and is often cited as a key contributor to attorney burnout, exacerbating existing barriers to effective recruitment and retention rates. Improvements in this area, which may not require any formal investments, could potentially yield swift and significant improvements in public defense attorney retention efforts.

5.5 Attorney Capacity

The second most commonly discussed lever was attorney capacity, which focuses on ways to make the most of the time and energy of the existing public defense attorneys in Oregon. Increasing or protecting the capacity of public defense attorneys was identified as an area for intervention by almost 78 percent of the crisis plans, which accounts for 21 of the 27 judicial districts. Of the four levers employed by the crisis plans, the range of recommendations and interventions to improve attorney capacity was broadest. Table 5.5, on the following page, provides a more detailed breakdown of the specific proposals by judicial district.

²⁹ These payment incentives were pro-rated based on the amount of MAC a newly contracted attorney was working, e.g., a new attorney working .5 MAC was eligible for a one-time \$10,000 payment and an additional \$10,000 incentive payment three months later.

³⁰ Office of Public Defense Services Public Defense Providers Information, *Public Defense Contract Terms – Contracts & Extensions FAQ*, <https://www.oregon.gov/opds/provider/pages/contract-terms.aspx> (explaining that, “[i]n 2023, Oregon’s legislature allocated \$9.9 million as one-time incentive compensation for the retention of both recently hired contract providers as well as experienced contract providers”).

Table 5.5. Specific Interventions Proposed by Judicial Districts Related to Attorney Capacity

Judicial District	Prioritize Appointment	Local/Region Coordination	Warrants & Withdrawal	Duty Attorneys	PJ Oversight	Appt Process Changes	Expand/ Exceed MAC	Data Tracking	PD Provider Supports	Unrep Person Case Review
JD 1 – Jackson	X		X	X			X	X	X	
JD 2 – Lane	X	X	X				X			
JD 3 – Marion	X	X	X	X	X		X		X	
JD 4 – Multnomah	X						X	X	X	X
JD 5 – Clackamas										
JD 11 – Deschutes	X	X	X							
JD 16 – Douglas			X					X		
JD 20 – Washington	X	X					X	X		
JD 23 – Linn			X				X			
JD 25 – Yamhill	X		X					X		
JD 6 – Umatilla										
JD 7 – Gorge†							X	X		
JD 8 – Baker								X		
JD 9 – Malheur	X						X	X		
JD 10 – Union/Wall	X						X			
JD 12 – Polk	X					X	X	X		
JD 13 – Klamath	X	X		X			X			
JD 14 – Josephine	X		X	X			X			
JD 15 – Coos/Curry	X		X				X	X	X	
JD 17 – Lincoln	X						X	X		
JD 18 – Clatsop	X		X				X	X	X	
JD 19 – Columbia								X		
JD 21 – Benton										
JD 22 – Jeff/Crook							X			
JD 24 – Grant/Harn								X		
JD 26 – Lake			X				X			
JD 27 – Tillamook										
Total	15	5	11	4	1	1	17	14	5	1

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Expanding Caseloads/Exceeding MAC

The most common discussion point within the attorney capacity lever contemplated expanding existing caseloads or finding methods of exceeding existing MAC, as 63 percent of the crisis plans made a proposal of this kind. Plans explained this recommendation by conveying that, in many cases, local attorneys felt that their contracted-for MAC was lower than their ethical capacity, meaning that at least some public defense attorneys believe themselves capable of

taking on heavier caseloads than their existing MAC allows.³¹ A process exists for public defense attorneys to request the ability to exceed their contracted MAC on a case-by-case basis from OPDS.³²

It is worth noting, however, that any push towards increasing caseloads, particularly when doing so is accompanied by increasing pay, runs the risk of reinstituting the fee-per-case framework that the 2019 Sixth Amendment Center report concluded puts attorneys in a constitutionally dubious position by forcing them to choose between manageable caseloads and higher pay.³³

Prioritizing Unrepresented Cases

More than 50 percent of crisis plans, representing 15 of 27 judicial districts, discussed prioritizing cases on the unrepresented persons list so that available attorney MAC would be exercised on cases in greatest need of representation. How prioritization would take place varied by judicial district but was commonly based on factors including whether the unrepresented person was in custody, how long the charges filed had been pending, and the severity of the charges levied.³⁴

Improving Data Tracking, Sharing, and Transparency

More than 50 percent of judicial districts also discussed the importance of improving data tracking and sharing amongst state and local agencies involved in the unrepresented persons crisis. Data tracking issues largely focused on improving the means of tracking and efficiently sharing the status of unrepresented cases and available attorney MAC between state and local systems and carefully tracking attorney MAC locally to ensure that courts were informed in a

³¹ For example, the crisis plan issued by JD 17 (Lincoln) conveyed that a majority of defense attorneys in this judicial district felt that MAC was lower than their true ethical capacity, noting that, “[o]nly one attorney expressed the current MAC was also their ethical capacity. All other attorneys expressed, based on their skill and experience, they could ethically manage larger caseloads[.]” However, it was also expressed that attorneys felt “no financial incentive” to do so because they are “not appropriately compensated based on their level of experience and expertise.” *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* n 12 at B.1-131.

³² *See* n 10.

³³ Other sources have discussed this issue. *See* Malia N. Brink, Stephen F. Hanlon, Cynthia G. Lee, and Nicholas M. Pace, *National Public Defense Workload Study*, xv, 55 (2023)

https://www.rand.org/content/dam/rand/pubs/research_reports/RR2500/RR2559-1/RAND_RRA2559-1.pdf (describing, in light of outdated caseload standards, how public defense attorneys with excessive caseloads “are forced to triage cases, choosing which cases to focus attention on while allowing others to be resolved without appropriate diligence” and leading to a justice system that denies “all people who rely on it – victims, witnesses, defendants, and their families and communities – efficient, equal, and accurate justice” and “[e]xcessive workloads create conflicts for lawyers in violation of their ethical obligations”).

³⁴ JD 23 (Linn) also prioritized civil commitment cases. *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-168.

timely manner of which available public defense providers could be appointed to cases in need of counsel.³⁵

Removal of Appointed Counsel from Warrant-Status Cases

Another commonly identified intervention in the attorney capacity area was a recommendation to remove appointed counsel from cases where the defendant is in “warrant status,” meaning that the person has an active warrant out for their arrest but has not appeared in court as required. This status leaves appointed attorneys with contracted-for MAC taken up by these appointed cases but without assurance that these cases will be resolved any time soon.³⁶ Eleven plans flagged this issue, indicating that the removal of appointed attorneys from warrant-status cases could free up available attorney MAC, thus making more existing attorney MAC available for appointment to unrepresented cases.

The crisis plans with this recommendation nearly all identified a locally appropriate time period for determining when an attorney should be shifted away from a warrant status case, although it is notable that there was substantial variation in this time period between jurisdictions (ranging from 30-90 days). Notably, while discussions of warrant status cases were common in crisis plans, there is disagreement over whether removing attorneys from appointed cases in warrant status will result in increased attorney MAC, based on existing PDSC contract provisions. As such, it would be prudent to further explore the impacts of warrant status case removals.³⁷

Local/Regional Conflicts Coordinators

Nearly a fifth of judicial districts recommended the creation of local or regional appointment coordinator positions for unrepresented cases. The purpose of these coordinators would be to serve as local hubs for efficiently managing appointment of attorneys with available MAC to

³⁵ A recent letter from the Oregon District Attorneys Association (ODAA) to the Joint Committee on Ways and Means Public Safety Subcommittee and Oregon public safety leaders, to which CJC was copied, also relayed interest in data amongst system partners. ODAA noted that making information such as local attorney capacity available to circuit courts, public defense providers, and prosecutors “would allow [j]udges to appoint attorneys more efficiently and expeditiously.” Dan Primus, *Letter to Joint Committee on Ways and Means Public Safety Subcommittee Co-Chairs Janeen Sollman and Paul Evans*, 2, transmitted via email (September 29, 2023).

³⁶ Oregon Judicial Department data shows that approximately 70 percent of individuals on warrant status return to court within 60 days; likewise, individuals who have not returned to court within 60 days are much less likely to do so imminently. *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* n 12 at 8.

³⁷ OPDS disagrees with the suggestion that having local judges remove attorneys from warrant status cases after 30, 60, or 90 days will result in increased available MAC. Rather, OPDS is concerned that removing attorneys who are familiar with the client and the case from the cases in warrant status will use up more attorney MAC in subsequent proceedings with the appointments of new attorneys to wholly unfamiliar cases. OPDS has suggested some safeguards to put in place for jurisdictions that elect to proceed with removing attorneys in warrant status cases after a certain time threshold. See Office of Public Defense Services, Crisis Team Update, Attachment 5a, *PDSC Summary of and Response to Unrepresented Defendant Crisis Plans*, 72 (September 19, 2023) <https://www.oregon.gov/opds/commission/Lists/Meetings%20Schedule/Attachments/223/PDSC%20Agenda%20&%20Meeting%20Materials%2009%2021%202023Amended.pdf> (materials circulated for September 21, 2023, PDSC meeting).

prioritized unrepresented cases, thereby relieving the duty of sourcing attorneys from courts at arraignment.

Increase Provider Supports

Nearly one fifth of jurisdictions included recommendations to increase defense provider supports in their local areas by funding administrative positions to assist public defenders in managing caseloads and social workers or case managers to help meet client needs. A related provider support recommendation was to streamline the ways OPDS pays for interpreters to allow language translation work to be coordinated more efficiently and to give attorneys and appointed clients more time to collaborate on representation.

Establish Duty Attorneys

Four judicial districts recommended establishing duty attorneys to work on a salaried basis without a contracted-for caseload to free up MAC for other attorneys. Currently, attorneys of this type are most commonly found working arraignment dockets where they provide limited representation in a manner that does not establish a lawyer-client relationship. Two plans, submitted by JD 1 (Jackson) and JD 3 (Marion), specifically mentioned this type of approach, while others propose utilizing duty attorneys for specialty courts.

Presiding Judge Oversight of Attorney Appointments

Another recommended action receiving a singular mention included having a presiding judge generally exercise oversight of public defense provider appointments and periodically reviewing the circumstances of in-custody cases to assess whether opportunities existed for early resolution or other means for expediting case processing. Another singular mention concerned changing appointment processes for certain case types. In this instance, JD 12 (Polk) described pursuing changes in the appointment process for Jessica's Law cases³⁸ to better manage local attorney MAC for cases requiring heightened qualifications.

5.6 Filings

Three-quarters of all Oregon judicial districts (20 of 27, total) made recommendations related to decreasing the number of criminal case filings in Oregon circuit courts or diverting cases out of criminal courts. Table 5.6, on the following page, provides a breakdown, by judicial district, of more specific interventions proposed in the crisis plans.

³⁸ Jessica's Law applies when a person is charged with a first-degree sex offense where the alleged victim is under 12-years-old and carries a 25-year mandatory minimum prison sentence. *See* ORS 137.700(2)(b)(D-G).

Table 5.6. Specific Interventions Proposed by Judicial Districts Related to Decreasing Case Filings

Judicial District	Treat Misd as Violations	Policies to Avoid PV's	Diversion Programs	Specialty Courts	Data Sharing	FTA Policy Changes	Filing Reductions
JD 1 – Jackson	X		X				
JD 2 – Lane			X				
JD 3 – Marion			X	X			
JD 4 - Multnomah			X	X			
JD 5 – Clackamas	X	X					
JD 11 – Deschutes							
JD 16 – Douglas							
JD 20 – Washington							
JD 23 – Linn		X	X				
JD 25 – Yamhill							
JD 6 – Umatilla							
JD 7 – Gorge†							
JD 8 – Baker						X	
JD 9 – Malheur							X
JD 10 – Union/Wall							
JD 12 – Polk							
JD 13 – Klamath	X		X				
JD 14 – Josephine							
JD 15 – Coos/Curry	X						
JD 17 – Lincoln	X	X	X				
JD 18 – Clatsop	X	X			X		
JD 19 – Columbia							
JD 21 – Benton							
JD 22 – Jeff/Crook		X					
JD 24 – Grant/Harn							
JD 26 – Lake						X	
JD 27 – Tillamook							
Total	6	5	7	2	1	2	1

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Diversion and Specialty Court Programs

The most common recommended action in this category was diversion programs, although suggestions of this type were only found in approximately one-quarter of the crisis plans. Diversion programs seek to avoid criminal justice system intervention as much as possible and can include programs such as law enforcement assisted diversion programs that seek to connect individuals with unmet needs to services rather than entering the justice system. Three judicial districts described employing specialty court programs as means to provide opportunities for

participants to avoid conviction.³⁹ The use of specialty courts as an intervention, however, would likely benefit from additional discussion and consideration given that success through specialty court supervision is frequently non-linear, which means that not all participants will avoid prosecution. Further, it takes significant time to successfully complete specialty court programs, meaning attorney resource savings would not be realized immediately. Establishing duty attorneys, as discussed above, may help in supporting courts with this recommendation.

Treating Misdemeanors as Violations

Treating certain misdemeanors as violations was recommended by six judicial districts, representing nearly a quarter of jurisdictions. Charging lower-level, nonviolent conduct as a violation, which is legally distinct as noncriminal conduct, most often obviates the necessity of appointing public defense providers, thereby likely saving public defense resources as well as myriad other system resources.

However, caselaw suggests that for this intervention to be *most* effective in conserving court-appointed attorney resources, jurisdictions looking to pursue it should consider charging conduct as violations as often as possible from the *start* of proceedings (which was commonly suggested in plans, at arraignment), rather than seek to have misdemeanors reduced to violations after misdemeanor charges have been filed. As filing of the misdemeanor charge triggers due process protections, even upon reduction to a violation, proceedings may require inquiry as to whether the violation offense nevertheless retains “too many penal characteristics to not be characterized as ‘criminal prosecutions.’”⁴⁰ Charging conduct as violations from the outset may reduce the likelihood of having to engage in this analysis, saving both defense and prosecuting attorney resources.

Additionally, while reducing charges from crimes to violations has the potential to greatly reduce criminal filings, it should also be noted that this is reliant on prosecutors employing their discretion to do so when the circumstances of the cases at hand are deemed appropriate. Therefore, absent something like a written policy explaining which cases should be treated as violations, it may be more difficult to predict the potential impact of these recommendations.

³⁹ Only courts that described use of specialty court programs as an intervention in their local public defense crisis response plans are counted herein; Oregon’s judicial districts have many specialty courts not counted in this report, as they were not included as a component of the unrepresented persons crisis plan.

⁴⁰ *State v. Whitten*, 278 Or App 627, 632, 379 P3d 707 (2016) (quoting *State v. Fuller*, 354 Or 295, 297, 311 P3d 861 (2013)); *Brown v. Multnomah County Dist. Ct.*, 280 Or 95, 100-09, 570 P2d 52 (1977) (laying out a five-factor test to assess whether an “ostensibly civil penalty” is nonetheless a criminal prosecution for the purposes of constitutional protections, the five factors being: (1) type of offense; (2) penalty; (3) collateral consequences; (4) punitive significance; and (5) arrest and detention).

Addressing Probation Violations Differently

Five judicial districts recommended policies that would address certain probation infractions differently to avoid citing an individual with a probation violation, which requires court appearances and public defense appointment resources.⁴¹ JD 23 (Linn), for instance, proposed that their local parole/probation department explore increasing its use of local sanctions for minor infractions in lieu of filing a show cause petition. Similarly, JD 18 (Clatsop) proposed an intervention whereby the prosecuting attorney would send a warning letter to probationers, giving them an opportunity to get back into compliance before filing a show cause order.

Other Filing Reductions

Similar to the proposals related to probation violations, other filing-reduction responses included discussion of increasing the use of show-cause hearings rather than charging individuals for Failure to Appear or Contempt offenses. In addition, some crisis plans advocated for increased opportunities for data-sharing amongst system stakeholders to inform prosecutor charging decisions with an eye toward reducing filings, overall. Finally, one plan noted a general temporary reduction in filings as a means of reducing the immediacy of the crisis in their local jurisdiction, though any resources saved will necessarily have to respond once regular filings resume.

5.7 Dispositions

Nearly 60 percent of all crisis plans included approaches designed to increase the speed with which case adjudications are reached. These case disposition interventions may increase attorneys' ethical capacity, and potentially save MAC, by reducing the time public defenders spend on individual cases. Table 5.7, on the following page, provides a breakdown, by judicial district, of specific interventions proposed by judicial districts related to case dispositions.

⁴¹ ORS 135.553 governs the use of citations for probation violations.

Table 5.7. Specific Interventions Proposed by Judicial Districts Related to Case Dispositions

Judicial District	Settlement Conferences	Early Resolution	Global Resolution	Specialty Dockets
JD 1 – Jackson	X	X		
JD 2 – Lane				
JD 3 – Marion	X	X	X	X
JD 4 – Multnomah	X	X		
JD 5 – Clackamas				
JD 11 – Deschutes	X			
JD 16 – Douglas		X		
JD 20 – Washington		X	X	X
JD 23 – Linn		X	X	
JD 25 – Yamhill				
JD 6 – Umatilla				
JD 7 – Gorge†	X			
JD 8 – Baker				
JD 9 – Malheur			X	
JD 10 – Union/Wall	X	X	X	
JD 12 – Polk		X		
JD 13 – Klamath	X	X	X	X
JD 14 – Josephine				
JD 15 – Coos/Curry	X			
JD 17 – Lincoln	X	X		X
JD 18 – Clatsop	X			
JD 19 – Columbia				
JD 21 – Benton				
JD 22 – Jeff/Crook	X			
JD 24 – Grant/Harn				
JD 26 – Lake				
JD 27 – Tillamook				
Total	11	10	6	4

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Judicial Settlement Conferences

To reach case dispositions more efficiently, 11 crisis plans, accounting for 40 percent of judicial districts, indicated that they would use judicial settlement conferences to resolve cases before trial, thus aiming to decrease attorney workload and save public defense resources.

For example, JD 1 (Jackson) indicated that they are currently employing settlement conferences with a focus on resolving cases with the most serious charges, as resolutions in those cases would potentially reduce the need for lengthy trials. Ten judicial districts, recommended employing an early resolution or disposition program, in which persons without criminal histories accused of nonperson offenses may be eligible for community-based interventions sanctions rather than prison time.⁴²

⁴² See ORS 135.941 (establishing early disposition programs) and ORS 135.942 (describing program purposes).

Global Resolution / Settlement Dockets

Global resolution or settlement dockets were also identified as a means for increasing case dispositions, as this approach was included in 6 crisis plans. This approach is aimed at addressing an accused individual's total case count during a single appearance or fewer appearances. For instance, JD 13 (Klamath) recommended the use of "global settlement days," where, one day per month, a judge will be made available all morning to resolve cases. A deputy district attorney will also be assigned to the global settlement docket and would be required to make plea offers on all scheduled cases. After the parties negotiate, the defendants would have the opportunity to submit their plea to the judge and resolve their case or cases.

Specialty Dockets

Similarly, four judicial districts described using specialty dockets to increase disposition efficiencies. JD 3 (Marion), for example, proposed expanding their specialty courts and diversion programs, which include a veteran's court, adult drug court, mental health court, juvenile drug court, and their intensive supervision program for nonviolent property and drug offenders. These programs, per the plan, will create additional offramps from system involvement and provide opportunities to address the underlying causes of crime while also leading to early dispositions, therefore potentially saving public defense attorney capacity.

5.8 Other Considerations

The crisis plans also contemplated interventions that fell outside of the four levers described above. In this section, these other considerations will be divided into five subsections, including actions taken or recommendations related to flexible docketing and scheduling, court rules and protocols, public defense contracting reforms, OPDS service delivery, and a catchall "other" category containing recommendations that did not necessarily fit into the other identified categories. Table 5.8.1, below, provides a breakdown, by judicial district, of more specific flexible docketing and scheduling interventions proposed in the crisis plans.

5.8.1 Flexible Docketing and Scheduling

Allowing for some degree of flexible docketing and scheduling opportunities was a popular approach or intervention identified in the crisis plans, as it was mentioned in 21 of 27 plans, accounting for over 81 percent of all judicial districts. Specific approaches related to increasing flexibility are shown in Table 5.8.1.

Table 5.8.1.

**Detail on Flexible Docketing and
Scheduling Approaches
Identified in Crisis Plans**

Judicial District	Remote Appearance	Flex Scheduling	Court Timelines
JD 1 – Jackson	X		X
JD 2 – Lane	X	X	X
JD 3 – Marion	X	X	X
JD 4 – Multnomah	X		
JD 5 – Clackamas			
JD 11 – Deschutes	X	X	X
JD 16 – Douglas	X	X	
JD 20 – Washington			
JD 23 – Linn	X	X	X
JD 25 – Yamhill	X		
JD 6 – Umatilla			
JD 7 – Gorge†	X	X	X
JD 8 – Baker			
JD 9 – Malheur	X	X	X
JD 10 – Union/Wall		X	X
JD 12 – Polk			X
JD 13 – Klamath	X	X	X
JD 14 – Josephine	X		
JD 15 – Coos/Curry	X		X
JD 17 – Lincoln	X	X	X
JD 18 – Clatsop	X	X	X
JD 19 – Columbia	X		
JD 21 – Benton			
JD 22 – Jeff/Crook	X		
JD 24 – Grant/Harn			
JD 26 – Lake	X		
JD 27 – Tillamook	X		X
Total	19	11	14

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Remote Appearances

The most commonly cited approach in this category was the use of remote appearances, although the extent to which a remote option is utilized in a given district varies. In JD 1 (Jackson), for example, remote appearances are allowed when they align with court protocols, while JD 2 (Lane) grants requests to appear remotely when other parties' substantive rights are not impacted. Similarly, JD 7 (Gorge counties) routinely permits attorneys to appear in non-evidentiary criminal proceedings remotely. JD 11 (Deschutes) offered that they have, maintained remote proceedings as a means of promoting efficiency and allowing public defenders to work on other matters while waiting for their cases to be called. Finally, JD 9 (Malheur) allows attorneys to file a short form (no motion needed) to appear remotely at hearings where a remote option is offered.

Flexible Docketing/Scheduling

Eleven crisis plans identified current or proposed practices designed to increase scheduling flexibility or efficiency. JD 23 (Linn), for example, allows parties to remove cases from the calendar if they do not believe an appearance is necessary for moving the case forward. In JD 7 (Gorge

counties), given the large geographic nature of the district, which covers five counties, dockets are staggered so that attorneys are not put in a position to appear in two places at the same time. JD 7 also routinely allows docketing changes to accommodate attorney availability. In JD 9 (Malheur), the criminal motion docket is set up using time slots, and all of the cases or matters relevant to a specific attorney or firm will be included in a single slot, thus avoiding the common

issues with ‘cattle call’ status hearings, where attorneys are forced to sit through others’ cases.⁴³ Finally, in JD 10 (Union/Wallowa), the court uses an “unavailable date” program,

“where participating attorneys submit, and keep current, their unavailable dates to the court. [The court] manage[s] this within our two-county district. In return, the attorneys are assured that when we are scheduling outside of court, their unavailable dates will be considered, so long as we are not barred by statutory limitations. If a hearing is scheduled on a date the attorney had listed in their unavailable dates with docketing staff and it is not barred by statutory time limitations, the court will reset without a motion to continue.”⁴⁴

Court Timelines

Finally, 14 crisis plans identified changes in court timelines or schedules. For instance, JD 11 (Deschutes) has already, “[e]xtended the length of time between arraignment/initial appearance and entry of plea to provide time for attorneys to meet with their clients and gather information in an effort to reduce unnecessary hearings.”⁴⁵ In JD 9 (Malheur), alternatively, the court has worked with the District Attorney’s (DA) Office and arranged that when a plea offer is to be given, the DA will submit the plea details to the defense at least one week prior to the scheduled hearing where a defendant would potentially enter a plea.

5.8.2 Court Protocols, Practices, and Procedures

Perhaps the most jurisdiction-specific recommendations were actions and interventions grouped together as modifications to local court protocols, practices, and procedures intended to increase system efficiencies. In all, 22 crisis plans, accounting for over 81 percent of all judicial districts, described at least one change to local court protocols that are either already in effect or are planned to be implemented in response to the unrepresented defendant crisis. As shown in Table 5.8.2.1 (following page), the CJC grouped these efforts into nine categories.

⁴³ *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-131.

⁴⁴ *Id.* at B.1-82-83.

⁴⁵ *Id.* at B.1-86.

Table 5.8.2.1. Detail on Court Protocol/Procedure Changes Identified in Crisis Plans									
Judicial District	Allow Pleas Until Trial	Omnibus Hearings	No Contest Pleas	Discovery	Status Hearings	Modify PJO or SLRs	Reduce # of Hearings	Revise Show Cause Filings	Trial Practice Changes
JD 1 – Jackson	X								
JD 2 – Lane	X	X		X			X		
JD 3 – Marion	X	X		X					X
JD 4 – Multnomah		X		X					X
JD 5 – Clackamas	X								
JD 11 – Deschutes	X								
JD 16 – Douglas				X					
JD 20 – Washington					X				
JD 23 – Linn									
JD 25 – Yamhill	X			X	X				
JD 6 – Umatilla									
JD 7 – Gorge†	X								
JD 8 – Baker								X	
JD 9 – Malheur	X	X		X		X			X
JD 10 – Union/Wall	X								
JD 12 – Polk							X		X
JD 13 – Klamath									
JD 14 – Josephine	X	X							
JD 15 – Coos/Curry	X	X	X		X				X
JD 17 – Lincoln	X	X		X	X		X		
JD 18 – Clatsop	X			X	X	X			X
JD 19 – Columbia	X	X							
JD 21 – Benton									
JD 22 – Jeff/Crook	X								X
JD 24 – Grant/Harn									
JD 26 – Lake								X	
JD 27 – Tillamook									X
Total	15	8	1	8	5	2	3	2	8

†Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Plea Processes

The most commonly discussed court practice in the plans was the plea-bargaining process, specifically whether pleas were allowed up until the date of trial (or, in some instances, very close to the day of trial), as this item was included in 15 crisis plans, which represents just over half of the judicial districts. While plea bargaining was a commonly identified area, however, there was substantial variation in the approaches taken within the districts. In JD 2 (Lane), for instance, the practice of allowing plea agreements and negotiations up until the day of trial was

already an established practice. Similarly, this practice is in place in JD 3 (Marion), JD 7 (Gorge counties), JD 14 (Josephine), and JD 11 (Deschutes), among others.

In other districts, however, this item is more nuanced. In JD 9 (Malheur), for example, plea negotiations are allowed until the Friday before trial, and the trial call or trial status hearing was moved to the earlier part of the day on Fridays so that all parties will have sufficient notice regarding which cases are proceeding to trial the following week. JD 15 (Coos/Curry), proposed modifying their practice related to guilty pleas. In this instance, the district has already modified the local plea practice by accepting no contest pleas on misdemeanors and low-level felony charges. In the past, formal guilty pleas were the only option in these cases. The change, therefore, provides an additional option to defendants that may result in the resolution of more cases via plea.

Discovery Improvements

Improvements in discovery practice were discussed in eight crisis plans, although the changes or reforms related to discovery varied across judicial districts. In JD 2 (Lane), for example, the crisis team proposed establishing a workgroup to discuss, collaborate, and resolve issues related to discovery. Included in the JD 2 plan was the observation that “the proliferation of digital evidence (in the form of law enforcement body camera videos and surveillance videos in commercial and private properties) and coordination challenges between law enforcement agencies has led to frustrating discovery delays” impacting all system players within the district.⁴⁶

Recommendations ranged from implementing an electronic discovery process to establishing local deadlines for production of discovery. In JD 3 (Marion), an intervention related to discovery was included, calling for more efficiency in discovery management systems, adjustments to internal workflows for discovery, and the financing of systems that are better integrated across system partners. In JD 4 (Multnomah), current practice mandates discovery deadlines for misdemeanor cases, and their case management conferences for Measure 11 cases seek to address and facilitate the discovery process between the parties. In JD 15 (Coos/Curry), the Coos County DA is willing to implement an e-discovery procedure should resources allow.

Status Hearings

Holding regular status hearings for unrepresented defendants was identified in five crisis plans. In both JD 25 (Yamhill) and JD 15 (Coos/Curry), for instance, status hearings for unrepresented defendants are held weekly and there is coordination with OPDS in advance of the hearings. JD 17 (Lincoln), similarly, holds status hearings with the aim to reduce the likelihood of an out-of-custody unrepresented defendant failing to appear. Less common suggestions included modifying local judicial orders or supplementary rules to increase efficiencies, reducing the number of hearings required to address issues, and revising show-cause filing practices.

⁴⁶ *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-15.

Table 5.8.2.2. Detail on Other Areas or Approaches Identified in Crisis Plans

Judicial District	Conflict Management	Jail Access	Collaboration
JD 1 – Jackson			X
JD 2 – Lane	X		X
JD 3 – Marion			X
JD 4 – Multnomah		X	X
JD 5 – Clackamas			X
JD 11 – Deschutes	X		X
JD 16 – Douglas			
JD 20 – Washington		X	X
JD 23 – Linn			X
JD 25 – Yamhill			X
JD 6 – Umatilla			X
JD 7 – Gorge†			X
JD 8 – Baker	X		X
JD 9 – Malheur		X	X
JD 10 – Union/Wall			X
JD 12 – Polk			X
JD 13 – Klamath			X
JD 14 – Josephine			X
JD 15 – Coos/Curry	X	X	X
JD 17 – Lincoln		X	X
JD 18 – Clatsop		X	
JD 19 – Columbia			X
JD 21 – Benton			
JD 22 – Jeff/Crook		X	X
JD 24 – Grant/Harn			X
JD 26 – Lake			
JD 27 – Tillamook	X		
Total	5	7	22

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Conflict Case Management

Many crisis plans also identified the need for conflict case management, improvements to jail access, and the importance of collaboration and coordination in their plans. Table 5.8.2.2, left, provides a breakdown, by judicial district, of more specific interventions proposed in the crisis plans.

First, five plans cited issues or interventions related to conflict coordination within their districts. JD 2 (Lane), for example, recommended the creation of a conflict resolution team comprised of the presiding judge, a representative from Public Defender Services of Lane County, and a representative from the Lane County Defense Consortium. This team will meet to discuss, prioritize, and resolve conflicts by identifying and reaching out to attorneys identified by the team as capable of handling these types of cases.

Both JD 11 (Deschutes) and JD 15 (Coos/Curry), alternatively, proposed creating a regional conflict resolution team, which could be used to identify additional attorney capacity within a given region to help link out-of-county attorneys with cases that have conflicts within a neighboring county. Similarly, JD 27 (Tillamook) proposed employing a

regional conflict coordinator who could perform tasks like those proposed for regional conflict teams.

Jail Access Improvements

One quarter of crisis plans, representing seven judicial districts, described a variety of ways in which local jurisdictions will or are already working with jail staff to improve defense attorney

access to clients and unrepresented persons in local correctional facilities. Discussions included improving remote access to clients and unrepresented persons by way of investments in video conferencing equipment and iPads for facilities that either lack it entirely or need more.

Other discussions included means by which persons in custody may receive documents and addressing ways to ensure that messages from attorneys are received by their clients in custody. Means to confidentially share electronic discovery was another issue raised. Physical space limitations were also noted, such as a lack of sufficient visitation space or a lack of confidential space available for clients to consult with attorneys. Addressing limited visitation hours, including both in-person visitation and remote opportunities, was also noted in several plans.

As examples, JD 9 (Malheur) noted that the jail has “only two visitation rooms available, it is not clear whether persons in custody always receive messages to call their attorneys, and the jail is not able to hand-deliver documents – they must be mailed.”⁴⁷ JD 9’s crisis plan noted that the presiding judge and jail lieutenant will set up time to discuss barriers as well as set up training of jail deputies regarding any proposed solutions.

JD 17 (Lincoln) has already begun pursuing solutions to allowing persons in custody to confidentially review discovery by remote means (on iPads, currently) to better client access, and overall, supporting practices that will keep cases moving more expeditiously.⁴⁸ The Lincoln County Sheriff’s Office and the presiding judge have met and identified resources to kickstart this intervention. Likewise, JD 18 (Clatsop) has similarly begun collaboration with the Clatsop County Sheriff’s Office to improve communication between attorneys and their in-custody clients, and the crisis plan reports that “[t]he jail is moving forward on both interim and long-term solutions that will make attorney visits more efficient.”⁴⁹

Collaboration and Communication

Finally, a majority of plans, accounting for over 80 percent of judicial districts, cited local collaboration and communication as essential for managing the crisis. Some districts cited their local communication and problem-solving approaches as a best practice. Others, like JD 14 (Josephine), lauded the regular communication that occurs between their defense providers and the courts, which allows these system partners to manage attorney capacity and to know when local providers are approaching limits in MAC. Similarly, JD 18 (Clatsop) specified that the court was in daily communication with their local consortium attorney and OPDS as the court seeks to monitor both attorney MAC and ethical capacity. Other jurisdictions, such as JD 19 (Columbia), identified communication as one of their interventions. In this instance, JD 19’s crisis plan noted that increased communication between local consortia and the court was necessary to indicate why certain cases cannot be accepted by local practitioners.

⁴⁷ *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-76.

⁴⁸ *Id.* at B.1-134-35.

⁴⁹ *Id.* at B.1-142.

5.8.3 Public Defense Model and Contracting Reforms

Table 5.8.3. Detail on Public Defense Model Reforms Included in Crisis Plans

Judicial District	Open Caseload Model	Contracting Changes	SB 337 Concerns
JD 1 – Jackson			
JD 2 – Lane			
JD 3 – Marion	X	X	
JD 4 – Multnomah			X
JD 5 – Clackamas			X
JD 11 – Deschutes		X	X
JD 16 – Douglas		X	X
JD 20 – Washington	X	X	X
JD 23 – Linn			
JD 25 – Yamhill			
JD 6 – Umatilla			
JD 7 – Gorge†	X	X	X
JD 8 – Baker			
JD 9 – Malheur	X	X	
JD 10 – Union/Wall			X
JD 12 – Polk		X	
JD 13 – Klamath		X	
JD 14 – Josephine	X	X	X
JD 15 – Coos/Curry	X	X	
JD 17 – Lincoln	X	X	
JD 18 – Clatsop		X	X
JD 19 – Columbia			
JD 21 – Benton			
JD 22 – Jeff/Crook			X
JD 24 – Grant/Harn			
JD 26 – Lake			
JD 27 – Tillamook			X
Total	7	12	12

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

Open Caseload Model

Seven judicial districts expressed a desire for Oregon to move to an open caseload model, which the PDSC is pursuing.

JD 3 (Marion), uniquely, submitted several ideas ranging from instituting a rolling workload model based on attorney experience and qualifications to employing a public defense unit funding model designed to supply all necessary staff, investigators, overhead costs, benefits, liability insurance, software and equipment, and technology supports to local providers.

PDSC Contracting Changes

Twelve plans identified potential contracting changes that PDSC could adopt. Similar to many other plans in this area, JD 12 (Polk), for instance, suggested that PDSC should permit higher contractual MAC for more experienced attorneys who have ethical capacity. JD 12 also proposed that PDSC should amend future contracts to allow attorneys to be removed from cases where the attorney has had no contact with a client without that case being counted against the attorney's MAC. JD 13 (Klamath) proposed that PDSC should include line-item additions to contracts allowing attorneys to provide docket specific services without using full MAC.

Concerns About SB 337's Impacts on Consortia

Finally, as briefly touched on previously, many judicial districts expressed reservations about the impacts of SB 337. Many of these concerns centered on the potential unintended impacts of changes to the consortia contracting model, particularly in rural areas where the consortia model is the primary means of providing defense services in their area. In JD 16 (Douglas), one local consortia provider has stopped hiring new attorneys due to concerns with SB 337. Similarly, in JD 18 (Clatsop), JD 7 (Gorge counties), and JD 14 (Josephine), among others, there are serious concerns that changes to the consortia model will lead to reduced availability of experienced public defenders. In all, 12 judicial districts (nearly half) expressed reservations.

5.8.4 OPDS Service Delivery

Customer Service Improvements

Five plans identified OPDS customer service operations as a challenge within the unrepresented persons crisis, as noted in Table 5.8.3 (following page). For instance, JD 12 (Polk) recommended simplifying the OPDS process for attorneys requesting the ability to take additional cases above contracted MAC (launched by submitting an online form for OPDS review). JD 15 (Coos/Curry) identified several areas for improvement in the communication between OPDS and the county and local provider, such as providing a single point of contact to allow for timelier decisions.

Payment Processing Issues

Similarly, six plans referenced payment system improvements at OPDS as an intervention that would improve local outcomes.⁵⁰ JD 3 (Marion), for example, recommended that OPDS streamline the payment of interpreters. JD 12 (Polk) requested that PDSC prioritize funding requests for expert witnesses and other supports for defendants who are in custody. JD 12 also recommended that OPDS increase staffing to ensure that delays in funding requests improve.

Expedited Decision-Making

With regards to decision making, JD 15 (Coos/Curry) recommended that OPDS expedite decisions on requests for experts and other case specific needs to reduce case delays experienced locally. The district also recommended that OPDS streamline contracting processes. Two other plans made similar suggestions regarding more expedient decisions from ODPS.

⁵⁰ Relevant to resolving this issue is some context about OPDS' existing payment processing system, which is reportedly outdated and cumbersome to operate. The agency has ongoing exploration efforts targeting a new financial and case management system. See Office of Public Defense Services, *PDSC Financial and Case Management System, Business Case Version 3.0* (August 15, 2022), <https://www.oregon.gov/opds/general/SiteAssets/Pages/FCMS/FCMS%20Business%20Case.pdf>; see also Office of Public Defense Services, *Financial Case Management System Project*, <https://www.oregon.gov/opds/general/Pages/FCMS.aspx>.

Audits

Finally, JD 3 (Marion) and JD 12 (Polk) recommended audits for OPDS; JD 3 recommended an audit to be performed by the Secretary of State to ensure transparency related to expenditure of funds and to build external trust, and JD 12 recommended OPDS conduct periodic internal audits to examine root causes of payment processing delays.

Table 5.8.4. Detail on OPDS Service Delivery Highlighted in Crisis Plans

Judicial District	Customer Service	Payments	Decision Making	OPDS Audit
JD 1 – Jackson		X		
JD 2 – Lane				
JD 3 – Marion	X	X		X
JD 4 – Multnomah				
JD 5 – Clackamas				
JD 11 – Deschutes				
JD 16 – Douglas				
JD 20 – Washington				
JD 23 – Linn				
JD 25 – Yamhill				
JD 6 – Umatilla				
JD 7 – Gorge†				
JD 8 – Baker				
JD 9 – Malheur				
JD 10 – Union/Wall	X	X	X	
JD 12 – Polk	X	X	X	X
JD 13 – Klamath				
JD 14 – Josephine	X	X		
JD 15 – Coos/Curry	X	X	X	
JD 17 – Lincoln				
JD 18 – Clatsop				
JD 19 – Columbia				
JD 21 – Benton				
JD 22 – Jeff/Crook				
JD 24 – Grant/Harn				
JD 26 – Lake				
JD 27 – Tillamook				
Total	5	6	4	2

† Judicial District 7 Includes Hood River, Sherman, Wasco, Gilliam, and Wheeler Counties

5.9 Other Considerations

Finally, there were several suggestions and interventions contained in crisis plans that did not fit into the categories covered above.

Judicial Infrastructure

In the JD 9 (Malheur) crisis plan, for example, the overall lack of judicial and courthouse resources was identified as an impediment to handling its current caseload. Specifically, JD 9 identified building a new courthouse and adding a new circuit court judge position as a long-term solution to its case processing needs. JD 9's existing courthouse has only one courtroom, meaning that only one of its two judges may hold court in that location at a given time, and there is no jury assembly room, also limiting the district's case processing capacity. Additionally, because there are only two judges in JD 9, each judge is responsible for 722 cases, on average, as of the date of the crisis plan submission. This case-per-judge average leaves JD 9's judges with an average case-to-judge ratio that is 100 cases *higher* than the next-highest judicial district, JD 5 (Clackamas). JD 9's plan suggests that supporting greater judicial infrastructure would foster greater case disposition efficiencies.⁵¹

Statutory Improvements

JD 2 (Lane) offered two statutory amendment proposals that would provide greater flexibility and clarity to existing laws. First, the JD 2 crisis plan suggests that the Legislature should consider removing time barriers to alternate dispositions, such as those found in ORS 161.566(1) (misdemeanors treated as violations) and ORS 161.570(2) (offenses, such as non-person Class C felonies, treated as misdemeanors). For example, ORS 161.566 contemplates treating any misdemeanor as a Class A violation upon election by the prosecuting attorney. However, the prosecuting attorney must make this election "orally at the time of the first appearance of the defendant or in writing filed on or before the time scheduled for the first appearance of the defendant."⁵² If no election is made "within the time allowed, the case *shall* proceed as a misdemeanor,"⁵³ and the opportunity to reduce the offense to a violation is lost.

JD 2 also recommended the Legislature consider providing additional clarity on when courts may dismiss a criminal case in furtherance of justice, per ORS 135.755. Pursuant to this statute, a circuit court, either sua sponte or upon motion by the prosecuting attorney, may order proceedings dismissed in "furtherance of justice."⁵⁴ JD 2 notes that further Legislative guidance

⁵¹ While not listed recommendations to resolve the unrepresented persons crisis, two other crisis plans noted the impact that insufficient judicial capacity has had on resolving criminal cases more expediently. JD 5 (Clackamas) noted that, based on population, their district should have at least 14 judges (JD 5 presently has 11 judges). *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-59. JD 10 (Union/Wallowa) noted that they have only one judge eligible to handle all criminal cases in a two-judge district. *Id.* at B.1-81.

⁵² ORS 161.566(1).

⁵³ *Id.* (emphasis added).

⁵⁴ ORS 135.77 (dismissal on motion of court or district attorney).

on appropriate factors to consider would clarify whether this statute may be employed to dismiss proceedings due to the “absence of an available attorney.”⁵⁵

Court-Appointed Counsel Eligibility

Lastly, JD 3 (Marion) suggested stricter review processes⁵⁶ for determining which individuals accused of crimes should qualify for public defenders to avoid devoting limited resources for defendants who may exceed some eligibility criterion.⁵⁷

6. Discussion

When viewed as a census of local efforts to stem the unrepresented person’s crisis, plan themes can be organized into takeaways to inform continued progress. What follows are summary discussions of key themes observed within the 27 crisis plans.

6.1 Theme: Retention of existing public defense attorneys is paramount

Unequivocally, the crisis plans emphasize that Oregon *must* retain its current public defense workforce and address fair compensation of these attorneys. These are the attorneys in the best position to immediately make an impact on the unrepresented person crisis, as they are either already highly qualified or in a position to continue increasing expertise and qualifications to take on more serious case types. There are indications that incentive pay bumps have already shown effectiveness in retaining attorneys, as well.

6.2 Theme: Concerns exist about changes to consortia contracting

A significant issue raised by multiple judicial districts is concern over future system changes (spurred by SB 337) that may make consortia more difficult to operate. Consortia members, in follow-up conversations, noted the lesser-recognized duties consortia administrators serve, namely as de facto coordinators for the local defense bar in many rural and frontier areas in Oregon. With SB 337’s move towards individual contracts for all current consortia attorneys, confusion and concern exists within courts and consortia defense providers about how this

⁵⁵ JD 2 also referenced New York Criminal Procedure Law Section 210.40 as a potential source for generating discussion regarding factors that aim to balance “the rights of defendants, victims, and community safety.” See New York Criminal Procedure Law Section 210.40 (motion to dismiss indictment; in furtherance of justice), <https://www.nysenate.gov/legislation/laws/CPL/210.40>.

⁵⁶ ODAA also highlighted consideration of “[l]egislative or judicial review” of the court-appointed counsel eligibility threshold, explaining that doing so could “potentially result in a higher threshold the ensures indigent defense services reach those truly in need.” Primus letter, *supra* note 34 at 1-2.

⁵⁷ Eligibility for court-appointed counsel in Oregon is governed by a clutch of statutes and policies, including ORS 135.050 (eligibility for court-appointed counsel), ORS 151.485 (financial eligibility), and standards established as part of the duties of the PDSC pursuant to its statutory charge in ORS 151.216(1)(j)(A). Applicants must, among other things, apply for appointed counsel to the circuit court in which the proceedings requiring appointed counsel have arisen. See generally “Court Appointed Attorney,” Oregon Judicial Department Forms Center, <https://www.courts.oregon.gov/forms/pages/court-appointed-attorney.aspx>.

coordination will take place in the future and with other disincentives consortia members encounter that may drive them to stop taking public defense work.

JD 7 (Gorge counties), as an example, explained that, “[i]t is already a challenge to entice criminal practitioners to take jobs or cases in this geographical area,” and, accordingly, “[a]ny limitations that create uncertainty for potential candidates are a barrier to increasing capacity.”⁵⁸ JD 14 (Josephine) likewise expressed concern regarding SB 337’s changes regarding consortia contracts plainly: “[e]xperienced criminal defense attorneys are already leaving or considering other legal career path opportunities * * * [and] [t]he 14th Judicial District stands to lose many public defenders if consortiums are eliminated.”⁵⁹

While SB 337 does not, strictly speaking, prohibit consortia from operating, it does change the way in which contracts would be managed – individual attorneys could contract with OPDS on an individual basis and then could opt to pool resources to create their own consortia, but concerns, as noted above, still exist regarding prohibitions on outside retained work, caseload caps, and uncompensated coordination work that consortia contract administrators currently provide, among other things.

Additionally, about one in five judicial districts expressed concern of any statewide policy changes that do not adequately consider how those changes may impact certain districts, particularly those located in less urban areas. The districts for whom this is a concern are overwhelmingly rural or frontier communities, who often express unique challenges that may only be present within a single, or just a few, jurisdictions.

6.3 Theme: Strengthen and refine recruitment of new attorneys

Oregon does not have enough attorneys qualified to do the work, and it loses attorneys in public defense frequently enough that this burnout erodes the potential to expand the provider pool of experienced attorneys the state badly needs. As such, Oregon should continue to build upon existing efforts to recruit new attorneys to the practice. This strategy, of course, takes a longer timeline to realize results for at least two reasons: (1) the very nature of targeting students assumes lag time before they graduate and pass the Oregon bar; (2) barred new attorneys must still develop the skills over time to take on higher cases without burning out and leaving public defense for more lucrative and/or less stressful work.

Part of recruitment is improving compensation – pay increases have reportedly assisted with retention, based on OPDS’ incentive payments. Public defense attorneys relayed anecdotes about new public defenders seeking out second jobs to meet cost-of-living needs. Good work is underway in garnering more interest from law students, but a key distinction between public defense nonprofits and law firms that do on-campus recruiting is that firms can promise students jobs with pay a year or so in advance. Public defense offices cannot presently do that. Building law school pipelines into public defense practice, which could ideally include some degree of

⁵⁸ *Summary of Circuit Court Unrepresented Defendant Crisis Plans*, *supra* note 12 at B.1-66-67.

⁵⁹ *Id.* at B.1-114.

future employment certainty, would help students commit to public defense practice earlier and make the entry of new lawyers into public defense more predictable.

6.4 Theme: Continue to improve information and data coordination and communication between state and local agencies

Within this theme are two key conclusions: (1) addressing the unrepresented crisis would be aided by better data tracking and transparency; and (2) conflict coordination is key to keeping more judicial districts from descending into full-fledged, multi-pronged unrepresented person crises.

First, the need for data that can be shared at the local level between system partners in the trenches, as well as between state entities and local partners, was raised across the board. OJD and OPDS are, indeed, engaged in ongoing data improvement work, and the level of data-driven engagement by OJD and OPDS during the crafting of the crisis plans represents an excellent foundation for future analysis. As an example, OJD and OSCA provided each judicial district with detailed local data sets in preparation for development of crisis plans so that each team could consider the crisis drivers, locally, and respond with tailored solutions. However, improvements in overall data sharing and coordination between state agencies and local judicial districts was raised by 14 crisis plans, representing about half of the judicial districts in the state.

To respond to these local data needs, the agencies would ideally continue efforts to identify commonly sought-after data, prioritize capturing most impactful data, resolve what process changes are required to capture them, develop a timeline for achieving improvements, and share with public defense attorneys and local stakeholders a plan for making this information more easily obtainable in real-time.

More globally, improvements in information and data coordination will also increase the understanding of current and future public defense needs, an example of which is the new committee being run by the Oregon Department of Administrative Services (DAS) to forecast case counts. Additionally, increased transparency in the methods employed to translate case counts into caseloads – whether that be via MAC or any other means – is critical to engaging all partners in crisis resolution. Put differently, all stakeholders need to understand how Oregon determines caseload needs now and in the future. Improving stakeholder understanding and overall transparency in this area would also lead to increased trust in these processes.

6.5 Theme: Conflict cases represent a small, yet important focal point in addressing the unrepresented persons crisis

Statewide, conflict cases account for a relatively small number of cases involving unrepresented defendants. As of the drafting of this report, there were 239 “conflict” cases, representing seven percent of the total unrepresented cases in the state. Despite these small numbers, the potential impact of conflict cases cannot be understated. In one-quarter of the state’s judicial districts, conflicts cases are the sole driver of the unrepresented crisis. In these areas, conflict coordination is essential, whether that be within each jurisdiction individually or via regional coordinators that can help shift resources between counties when and where they are needed

quickly. Thus, there needs to be recognition of the outsized influence conflict cases can play in certain jurisdictions when crafting local solutions as well as an understanding that targeted interventions in some jurisdictions may be required to address this specific issue.

6.6 Theme: Move to open workload model and allow attorneys to exceed existing MAC, but only with careful oversight

A common refrain in crisis plans was dissatisfaction with the current MAC approach to contracting. PDSC and ODPS, also dissatisfied with the limitations of MAC, is making progress towards adopting an open workload contracting model in the future. Unlike previous contracting models, OPDS will soon do so with caseload forecasting assistance performed by DAS, per system modifications through SB 337.

Significantly, many plans recommended increasing attorney caseloads, either by way of OPDS assigning more cases to attorneys or by allowing attorneys to exceed their contracted-for caseload when ethically appropriate. While the contracting model, specifically, will be modified as PDSC continues to steer its contracting model towards an open workload approach, it bears emphasis that assigning attorneys higher caseloads, without other system conditions changing in step, may trigger more problems than it solves.

First, high caseloads, particularly without commensurate compensation, is the most commonly stated reason that attorneys leave public defense. Assigning higher caseloads may push more of Oregon's public defense attorneys out of this line of work, further exacerbating the dearth of attorneys with this skillset.

Second, while undoubtedly some attorneys are capable of competently managing more cases than their contracted-for MAC, allowing attorneys to take hourly rate cases in excess of their contracted-for MAC has the potential to bring Oregon back to the ethical conundrum it was looking to solve in changing the contract model a few years ago: pitting a public defender's ethical obligation to only take so many cases as one may competently represent against the potential to increase take-home pay in a line of legal work serially underpaid. Any move toward increasing caseloads, therefore, should be done carefully and with appropriate oversight.

6.5 Theme: Continue to increase court and system efficiencies wherever possible

Many crisis plans embraced innovation in detailing the efforts local systems have already gone to, or are working towards, in supporting increased court efficiency and flexibility whenever possible. These efforts are readily reflected in progress made in adopting, in whole or in part, components of the Oregon Criminal Defense Lawyers Association's (OCDLA) recommended Uniform Trial Court Rules, in addition to those adopted in CJO 23-020, such as liberally

allowing for remote appearances and shifting dockets around to make most efficient use of attorney time.⁶⁰

A smaller but significant subset of plans are tackling discovery timelines, processes, and technological improvements that aim to streamline a complicated process and better use limited attorney time (of both prosecutors and defense attorneys). Given the complexity and expense of discovery system upgrades, and potential benefits of more statewide consistency (particularly during a crisis in which defense attorneys are increasingly being asked to work outside of their home jurisdictions), stakeholders and the Legislature may benefit from considering statewide uniformity and perhaps system upgrade funding opportunities. Any statewide changes would be wise to consider the impacts that changes in discovery production timelines, processes, and technology systems will have on the stakeholders producing and receiving discovery and support those needs, too.

A substantial number of judicial districts described consideration or adoption of other OCDLA recommendations, among other local practice modifications. The degree to which many of the plans followed recommendations, or the ways in which their own local practice modifications change court functions, day-to-day, however, was often difficult to parse precisely through the crisis plans alone. Ideally, if a longer timeline were available, CJC would seek to visit representatives from judicial districts to gain a working knowledge of new and changing on-the-ground practices. Doing so would allow CJC to explain the benefits of those increased efficiencies in the greatest detail possible across all jurisdictions.

Likewise, while a quarter of plans substantively addressed issues wherein public defenders have limited access to clients in jails, it is likely that these same challenges exist in other jurisdictions even if not described in the plans. Therefore, judicial districts that had not previously considered jail access as an opportunity for system efficiency may benefit from considering what colleagues in other districts are doing to increase attorney access to in-custody clients.

Overall, given that the use of the court and system efficiencies were not universal in the crisis plans, it would be beneficial for judicial districts and other system partners to look at the crisis plans of their neighbors and colleagues to determine whether additional progress can be made at home. The crisis plans, across the board, all contain pragmatic ideas and valuable analysis and could spur other jurisdictions and system partners to adopt approaches being used in other similar districts. This would allow for the greater proliferation of the unique ideas found in the plans while also allowing individual jurisdictions to retain their autonomy and fit additional system reforms into their preexisting local processes and approaches.

⁶⁰ OCDLA submitted Uniform Trial Court Rules (UTCR) proposals in September 2022. Of the UTCR proposals submitted by OCDLA, Chief Justice Flynn adopted modified versions of UTCR 4.010 (allowing earlier resolution of pretrial motions) and UTCR 7.010(2) (removing plea agreements and negotiations from activities required to be completed by certain deadlines) via CJO 23-020 (effective August 1, 2023). *See* Uniform Trial Court Rules (2023), https://www.courts.oregon.gov/rules/UTCR/2023_UTCR.pdf.

6.6 Theme: OPDS customer service responsivity

Complaints that OPDS has customer service challenges, and, in particular, that it does not process payments quickly enough, has been an ongoing critique since before the unrepresented persons crisis exploded. OPDS is aware of these critiques and is continually striving for faster processing times. The agency notes that it has only four accounts payable staff working exclusively in-person to process approximately 100 invoices, daily, and the agency has seen an increase in hourly-rate payment submissions since the unrepresented persons crisis began.⁶¹

To the extent that processing payments continues to be an issue in the future, with legislative approval, the agency should explore possibly hiring more accounts payable staff to aid in processing invoices and other financial tasks faster, perhaps on a limited duration basis initially, and/or regarding an improved financial management system.

6.7 Theme: Seeking additional opportunities in reducing filings and increasing dispositions

As a general observation, a majority of the crisis plans addressed the insufficient number of attorneys and attorney capacity, which, in some cases, was linked to also support increasing disposition efficiency. As it will take time to increase the number of qualified attorneys available in Oregon, it may be worthwhile for local jurisdictions, or the Legislature, to further examine creative ways in which to decrease filings and increase dispositions.

Ready examples of this might include allocating more funding to specialty courts (particularly while also considering pairing them with duty attorney suggestions from a number of the crisis plans) and other diversionary programs, particularly behavioral health programs, as a few plans also emphasized the impacts that insufficient behavioral health services have on the criminal justice system.

The Legislature may also consider exploring JD 2's suggestions about statutory modifications that would increase opportunities for criminal charges to be reduced to violations in certain circumstances and provide clarity for when judges may dismiss cases in furtherance of justice.

⁶¹ *PDSC Summary of and Response to Unrepresented Defendant Crisis Plans*, *supra* note 28 at 72.