

Unrepresented Crisis Plans

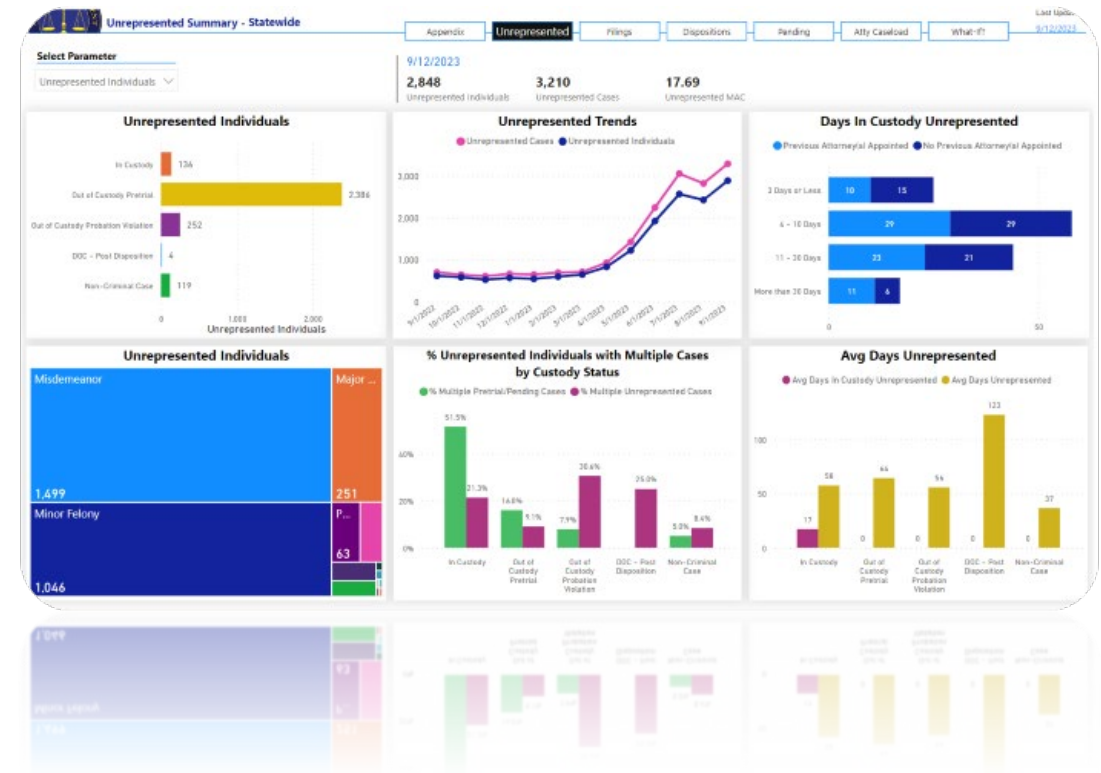
CHIEF JUSTICE ORDER 23-024, ENROLLED SENATE BILL 337 (2023)

Oregon Judicial Department



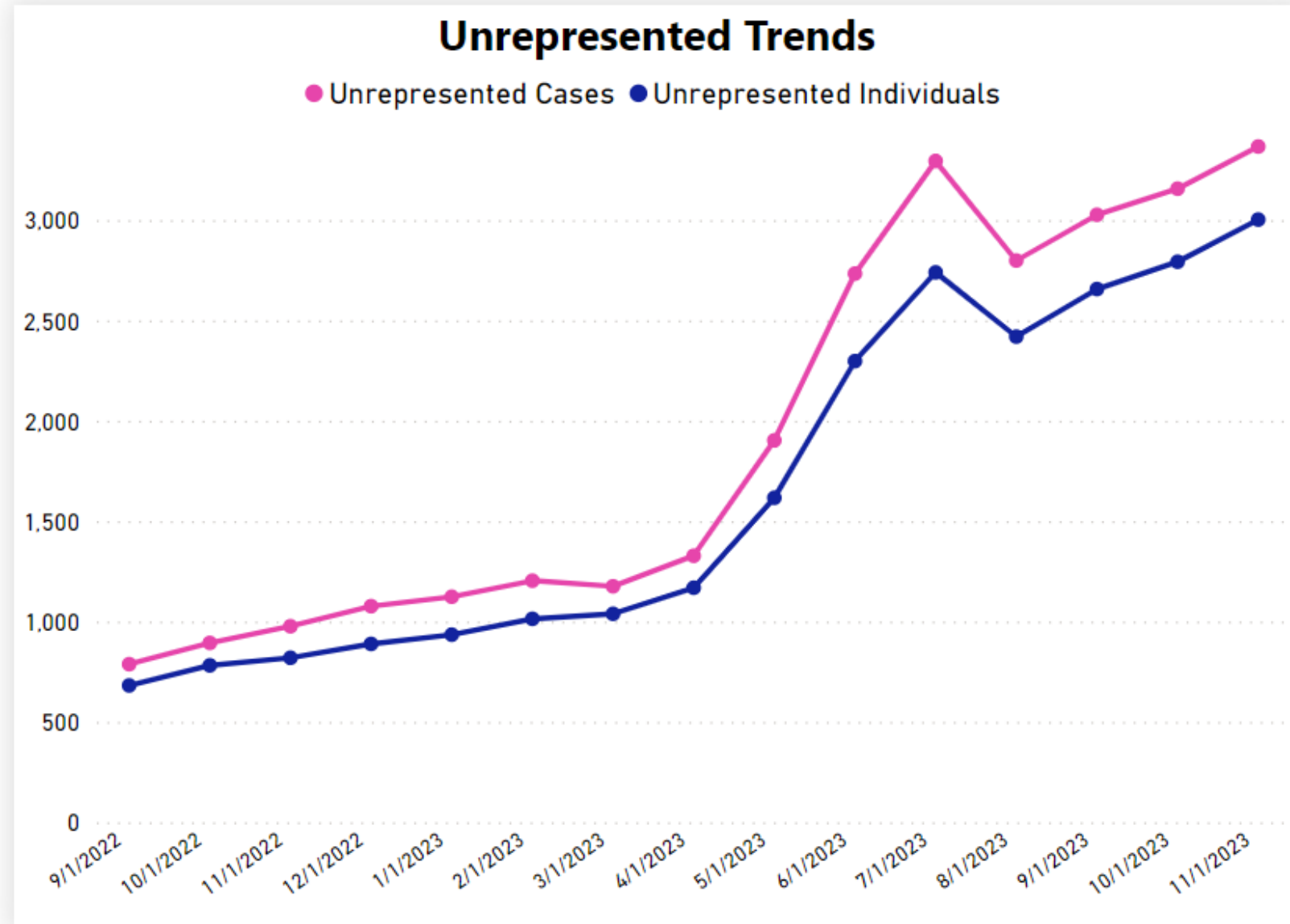
REQUESTED PRESENTATION TOPICS

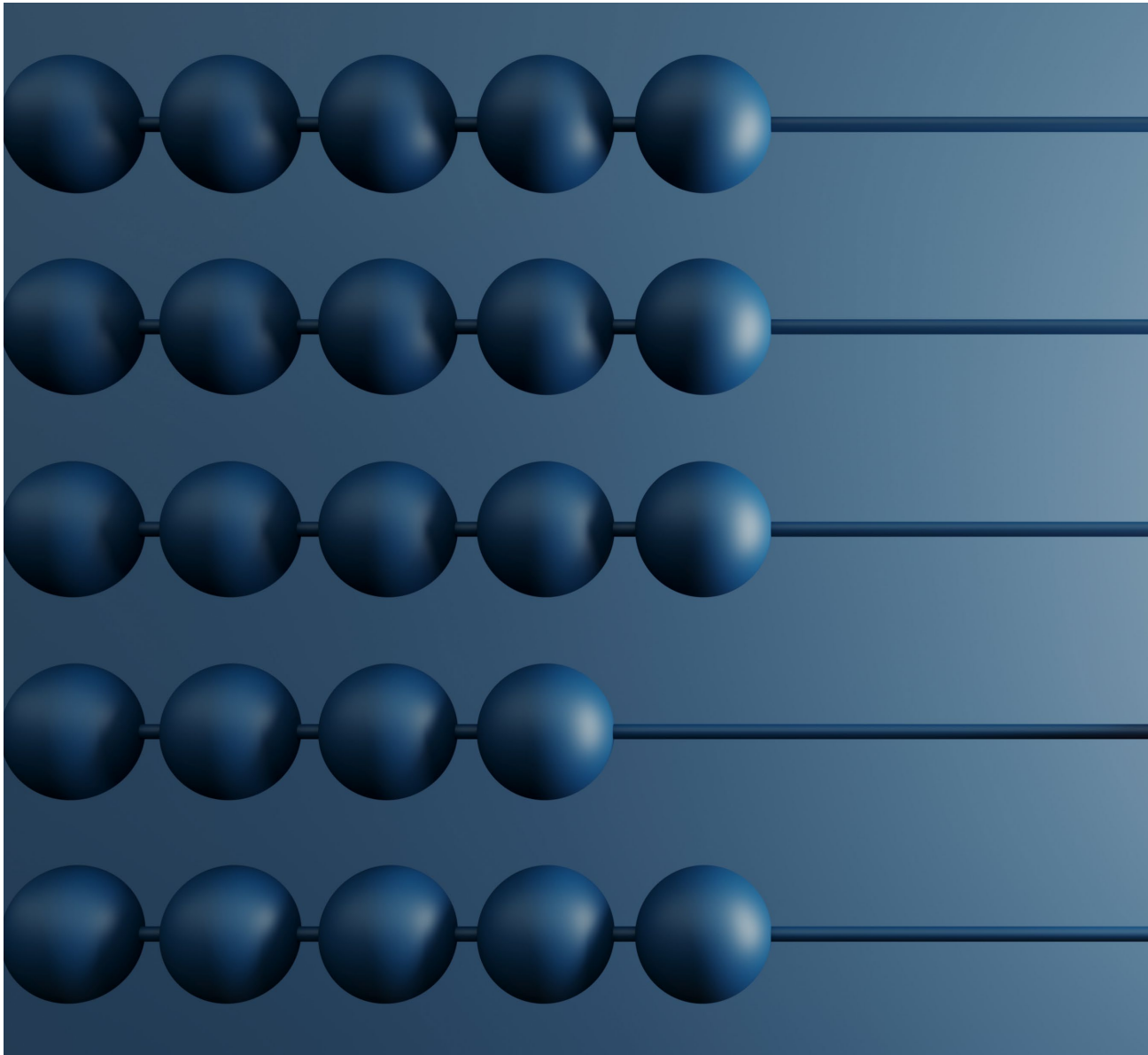
- Appraisal of the current status of crisis
- Examination of Crisis Plans: Four Levers
 - Comments about crisis plans
 - Status of the implementation of crisis plans
- Actions taken apart from the crisis plans
- Expected outcomes from crisis plans



CURRENT STATUS

- The crisis escalated in April through June as contract attorneys reached their caseload limits for the year.
- In July 2023, OPDS set monthly limits on the number of cases attorneys could accept per month.
- Filings fluctuate from month to month, leaving many individuals without an attorney when there are upticks in monthly filings.





CRISIS PLANS: FOUR LEVERS COMMON THEMES

COMMENTS AND OBSERVATIONS

LEVER I – ADD ATTORNEYS

Crisis Plan Recommendations

- Regional OPDS Offices to take conflict cases
- Attorney Recruitment
 - Improve Compensation
 - Fellowships; law school partnerships; mentorships

LEVER I – ADD ATTORNEYS – CURRENT STATUS

- Courts are working with local contract providers and encouraging OPDS to add new lawyers when they are identified.
- Some jurisdictions report that new attorney capacity has helped; others report fewer attorneys – and an increase in number of unrepresented individuals - since the start of the new contract cycle.
- Several courts indicate that they are still waiting on a decision regarding whether additional newly identified attorneys can be added to contracts.

LEVER 2 – ATTORNEY CAPACITY

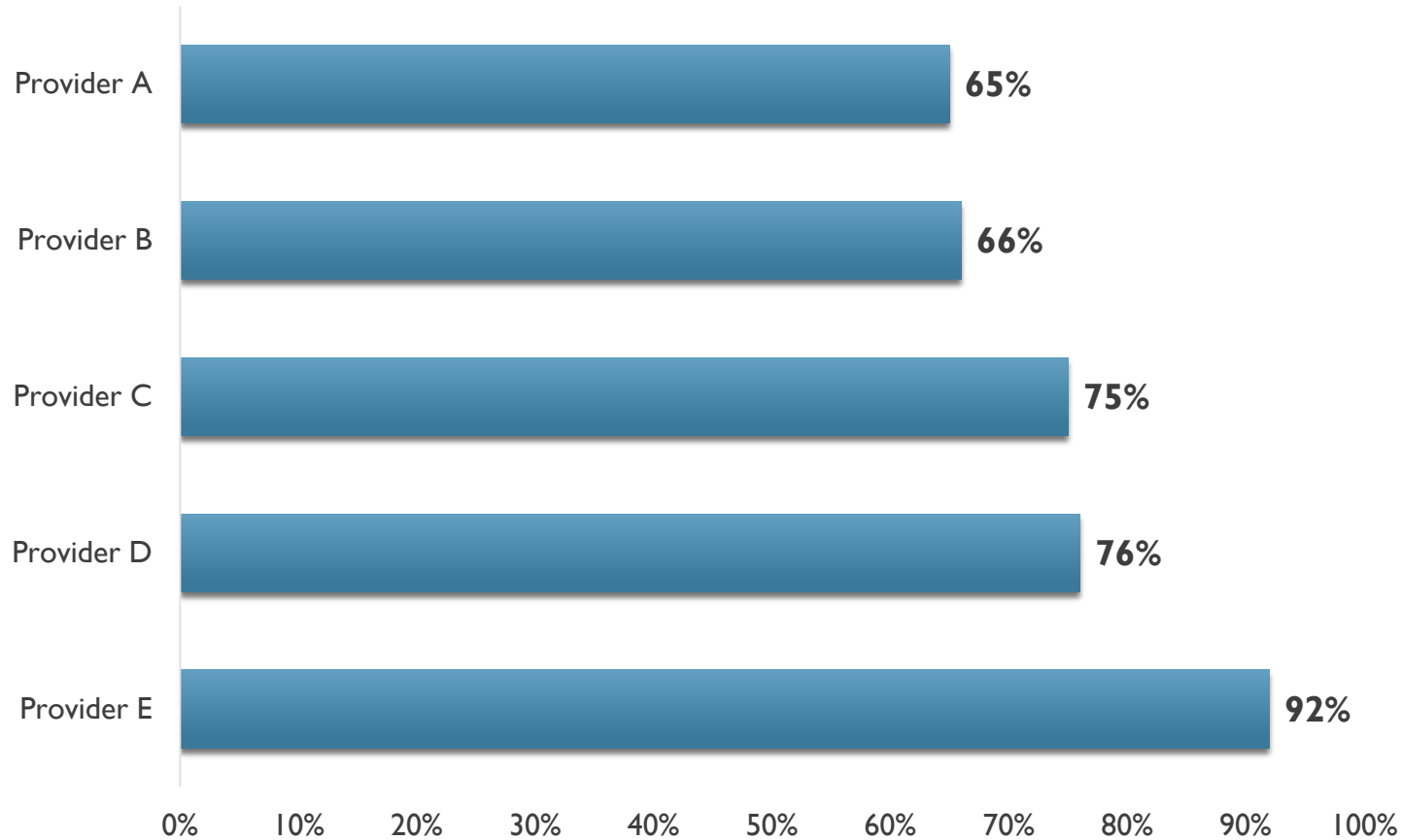
Crisis Plan Recommendations

- Contract changes
 - Ensure that contracts provide clear caseload expectations with enforcement mechanisms
 - Shift to open caseload or workload model
- Streamline administrative processes and remove barriers to adding attorney capacity
- Allocate capacity to address most significant needs and reduce unrepresented population

% MAC Taken by Providers Varies Widely

July 1, 2022- June 30, 2023

Contract Examples



**CONTRACTS
DO NOT OFFER
PREDICTABILITY
REGARDING
THE NUMBER
OF CASES THAT
WILL BE TAKEN
BY CONTRACT
PROVIDERS**

**MAC – Maximum Attorney Caseload
(annual caseload)**

MEASURING ATTORNEY CAPACITY – SYSTEM LIMITATIONS



No automated way to see attorney availability for the entire contract period



No automated way to identify or predict actual capacity of individual attorneys or contract entities



Total open caseload per attorney vs. annual contracted caseload



No time to disposition standards or comprehensive tracking

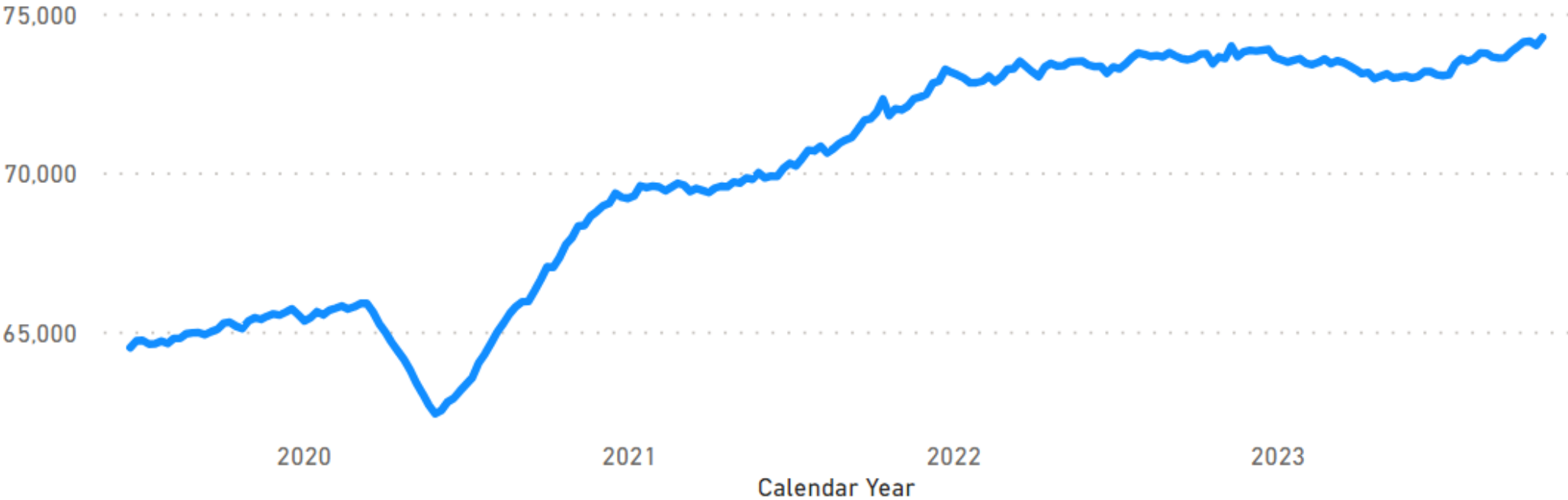
AREAS FOR FURTHER PROCESS IMPROVEMENT

- The process of identifying available attorneys still requires significant court, provider, and OPDS resources.
- Early identification of available attorneys when there are conflicts would reduce delays in cases that are often serious and complex.
- Contractors continue to decline cases due to slow payment (one attorney asked to be removed from a case indicating that they had not been paid in four months).
- Monthly case caps are intended to prevent attorneys from taking the entire annual caseload during the first eight to ten months of the year, but they create an obstacle when filings fluctuate significantly from month to month.
- Without dedicated funding and stakeholder support for representation in early disposition programs, courts struggle to secure attorney resources (one court relies on a highly qualified volunteer attorney).
- Courts often do not receive notice that attorneys are at their monthly limit and learn about it after the appointment causing withdrawals and further delay.

ALLOCATE CAPACITY TO REDUCE UNREPRESENTED POPULATION

Stayed/Inactive Pending Caseload Trends - Active Warrants

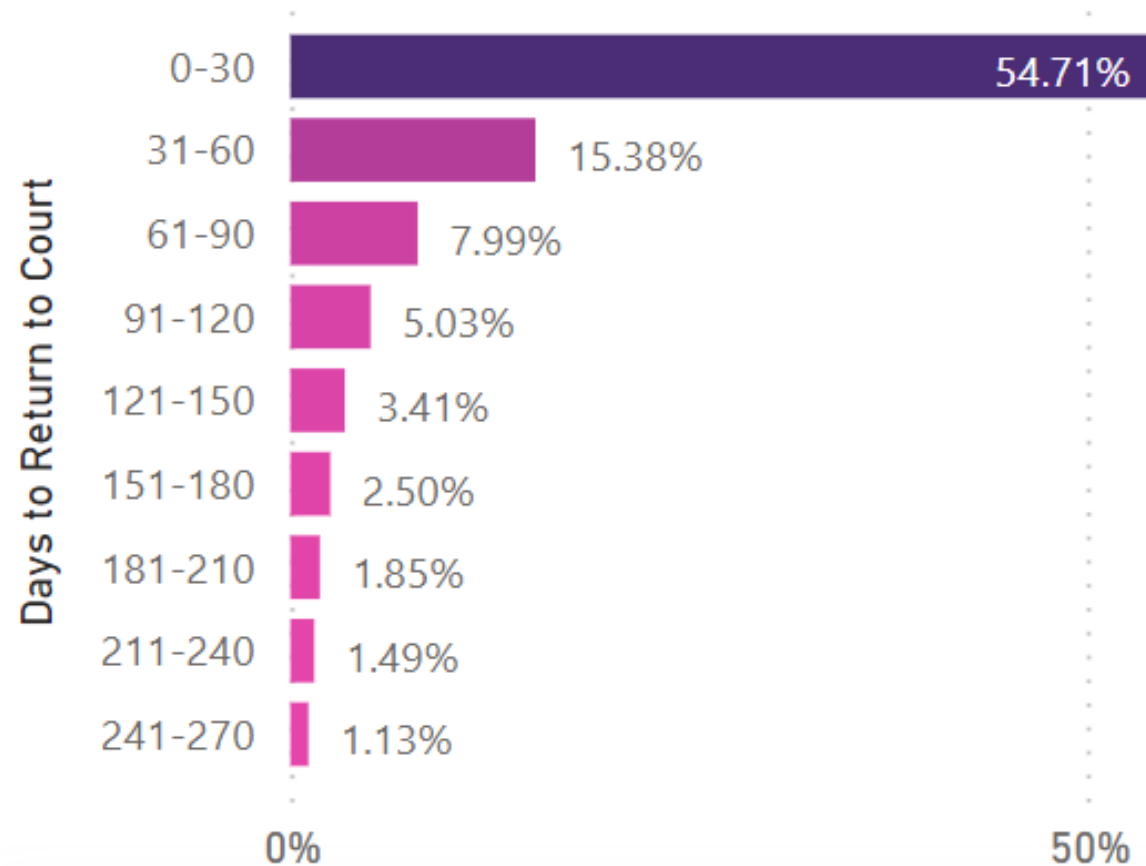
Felony & Misdemeanor Combined



WARRANT RETURNS

70% of individuals
on warrant status
returns to court
within 60 days

Warrants Issued 2018 - 2022 on Public Defense Cases - Days to Return to Court



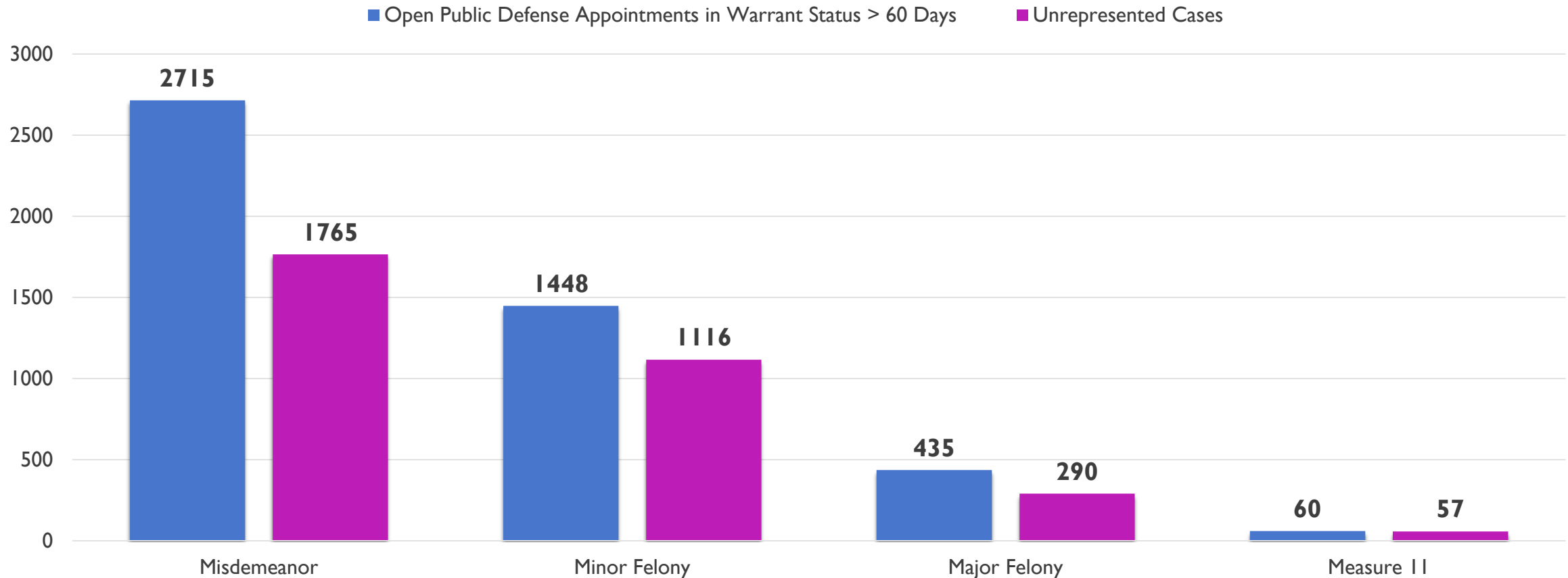
WARRANT PROPOSAL

Attorney capacity could be reallocated from cases that are inactive due to individuals in warrant status to clients that need immediate representation.

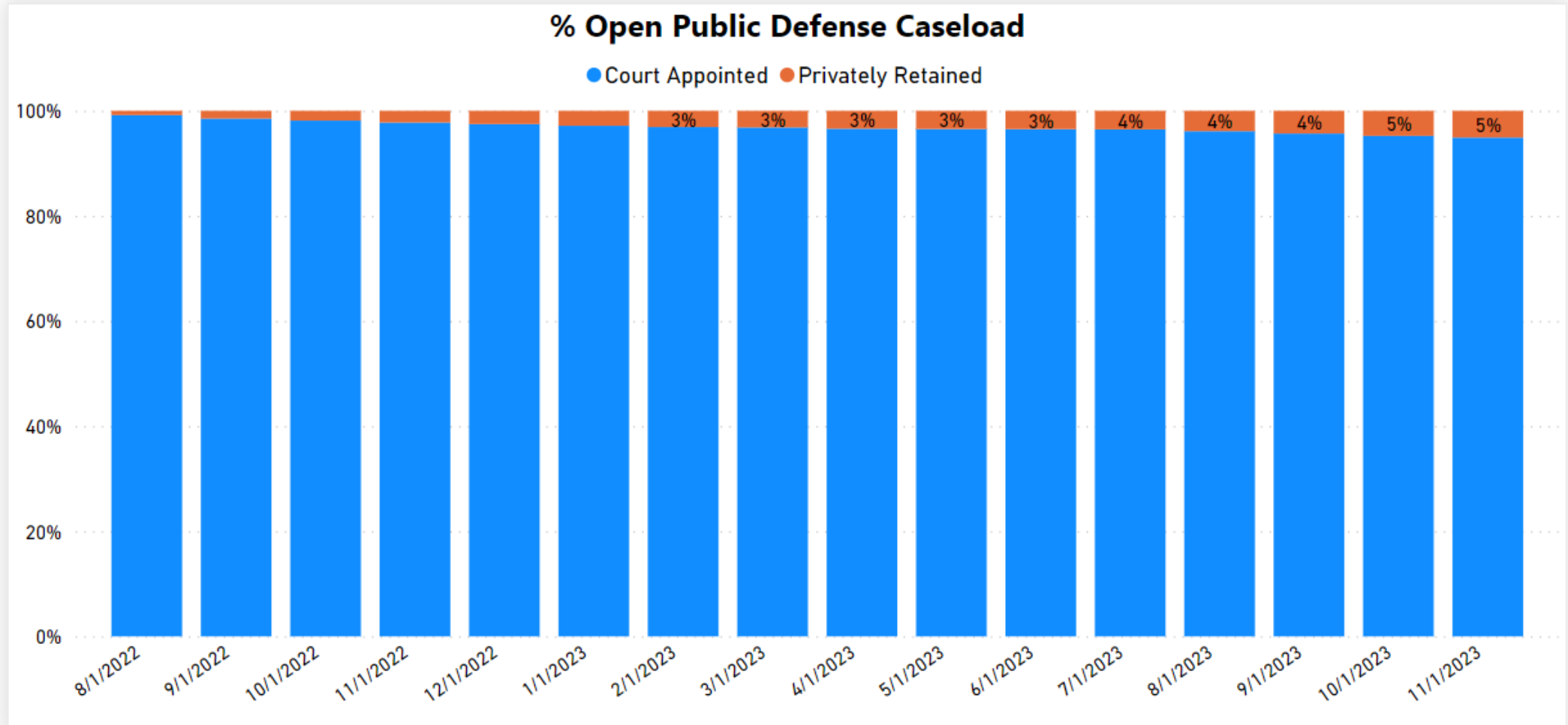
- PDSC contract terms do not currently align with this approach
- Requiring attorneys to withdraw from cases that have been in warrant status for more than 60 days would create “new” capacity
- This will not solve the problem in all jurisdictions
 - Upticks in new case filings absorb “new” capacity
 - In some jurisdictions, the attorney qualifications won’t be a perfect match with the capacity gained from removing attorneys from warrant cases

DATA SPOTLIGHT - WARRANTS

Public Defense Cases in Warrant Status and Unrepresented Cases November 1, 2023

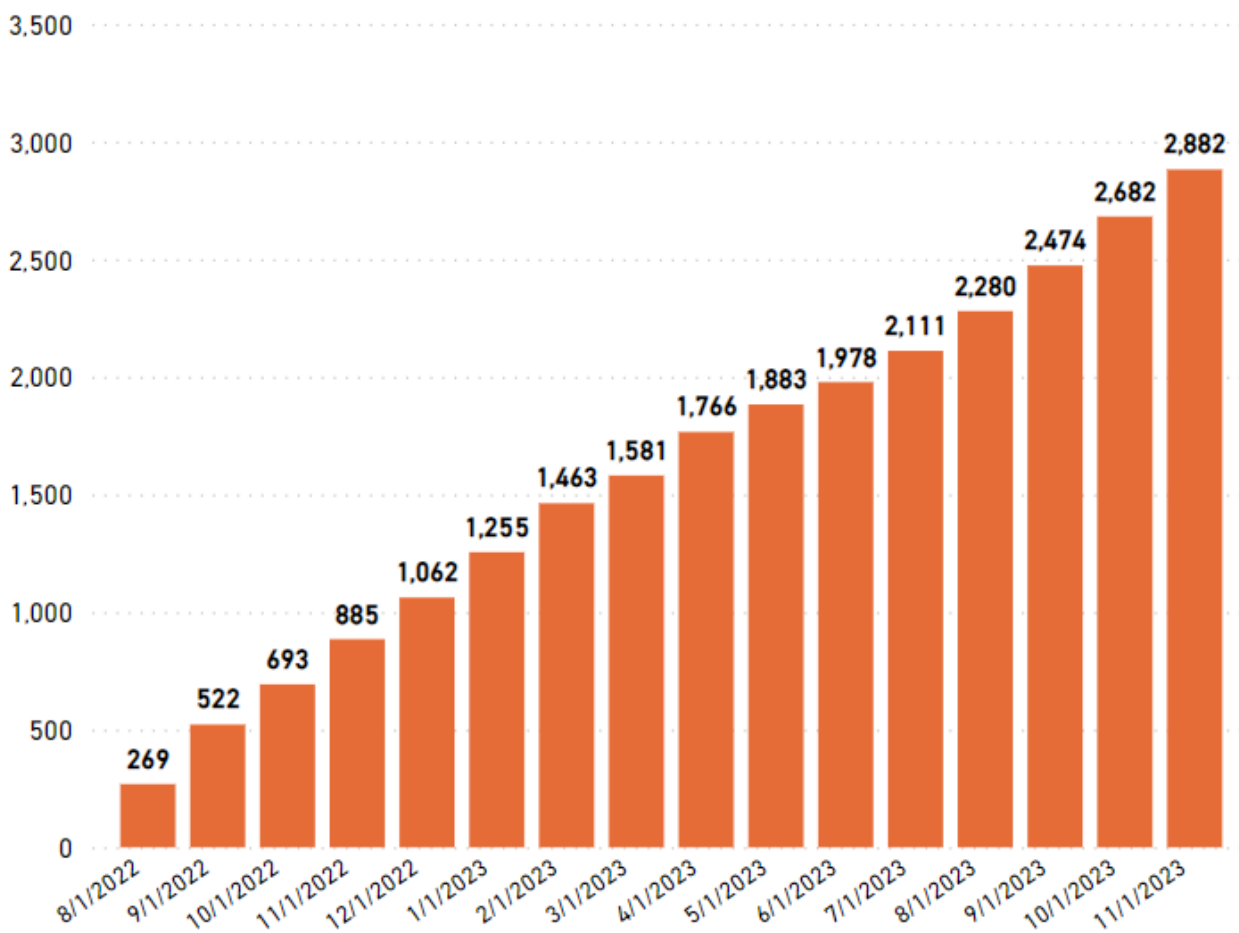


PUBLIC DEFENSE PROVIDERS TAKING MORE PRIVATELY RETAINED CASES

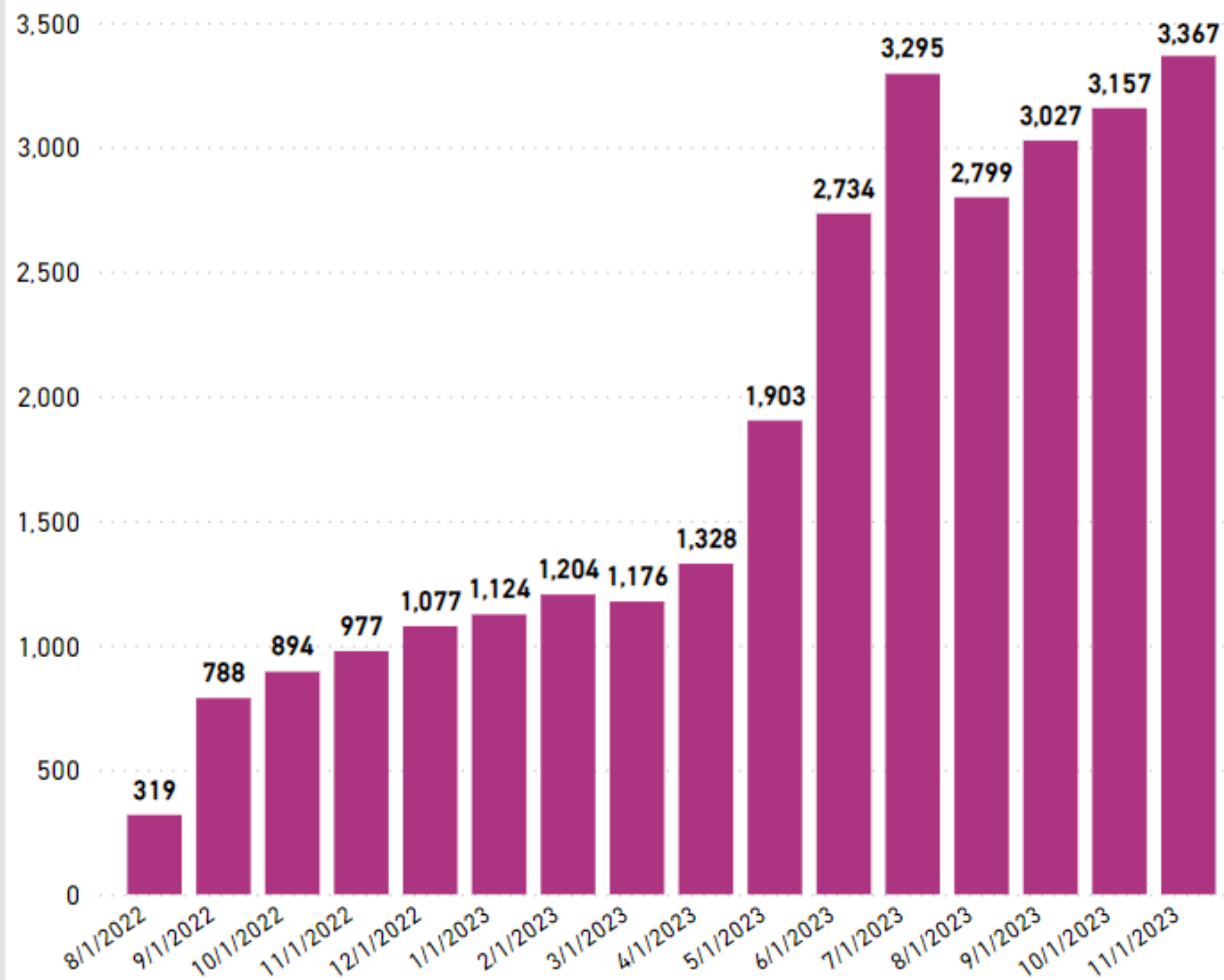


5% IS SIGNIFICANT

**Open Privately Retained Cases
Taken by Public Defense Providers**



Unrepresented Cases

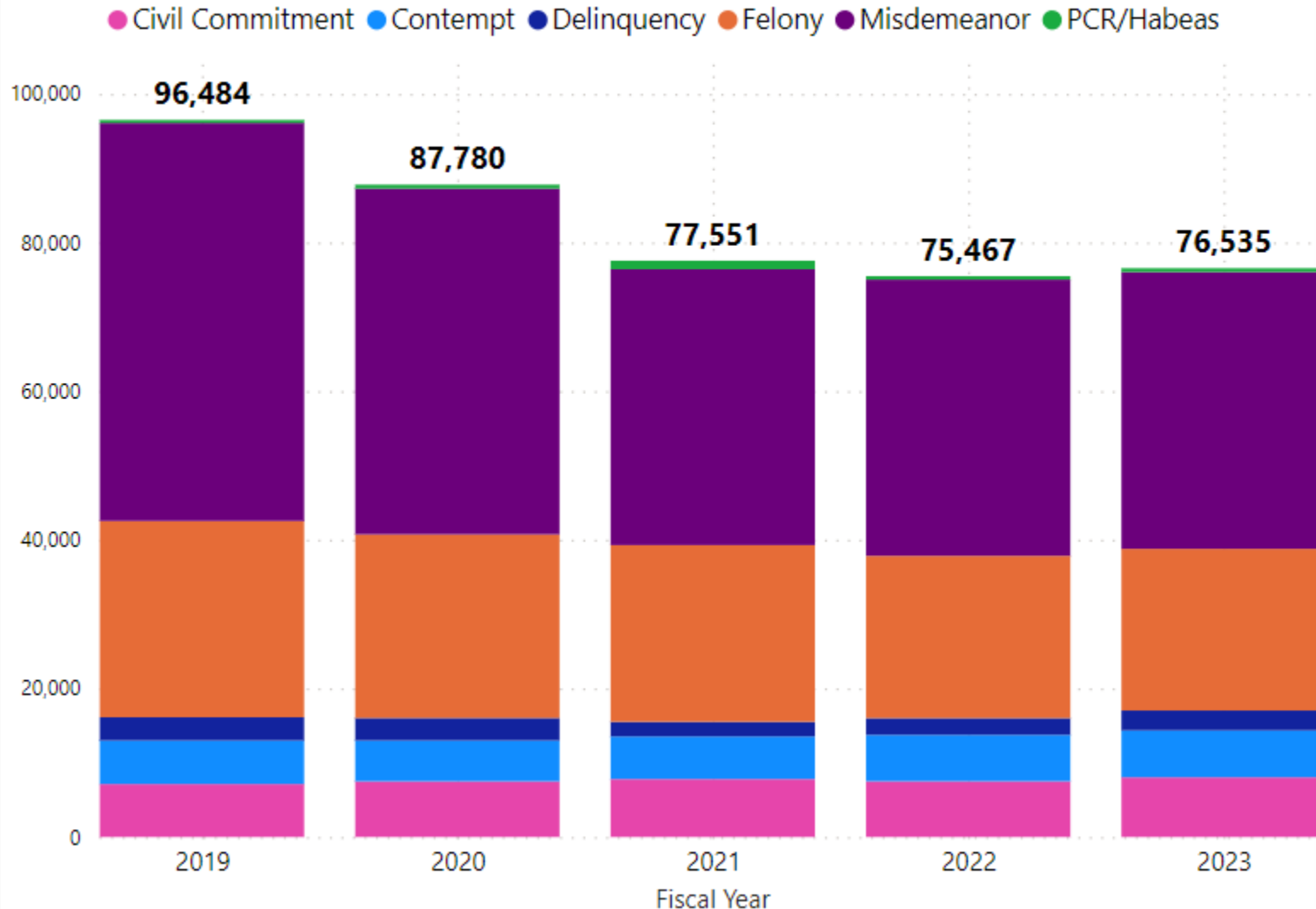


LEVER 3 — DECREASE FILINGS

Crisis Plan Recommendations

- DA discretion to
 - reduce number of filings when appropriate
 - file low-level misdemeanors as violations
- Other types of pre-filing diversions

Cases Filed

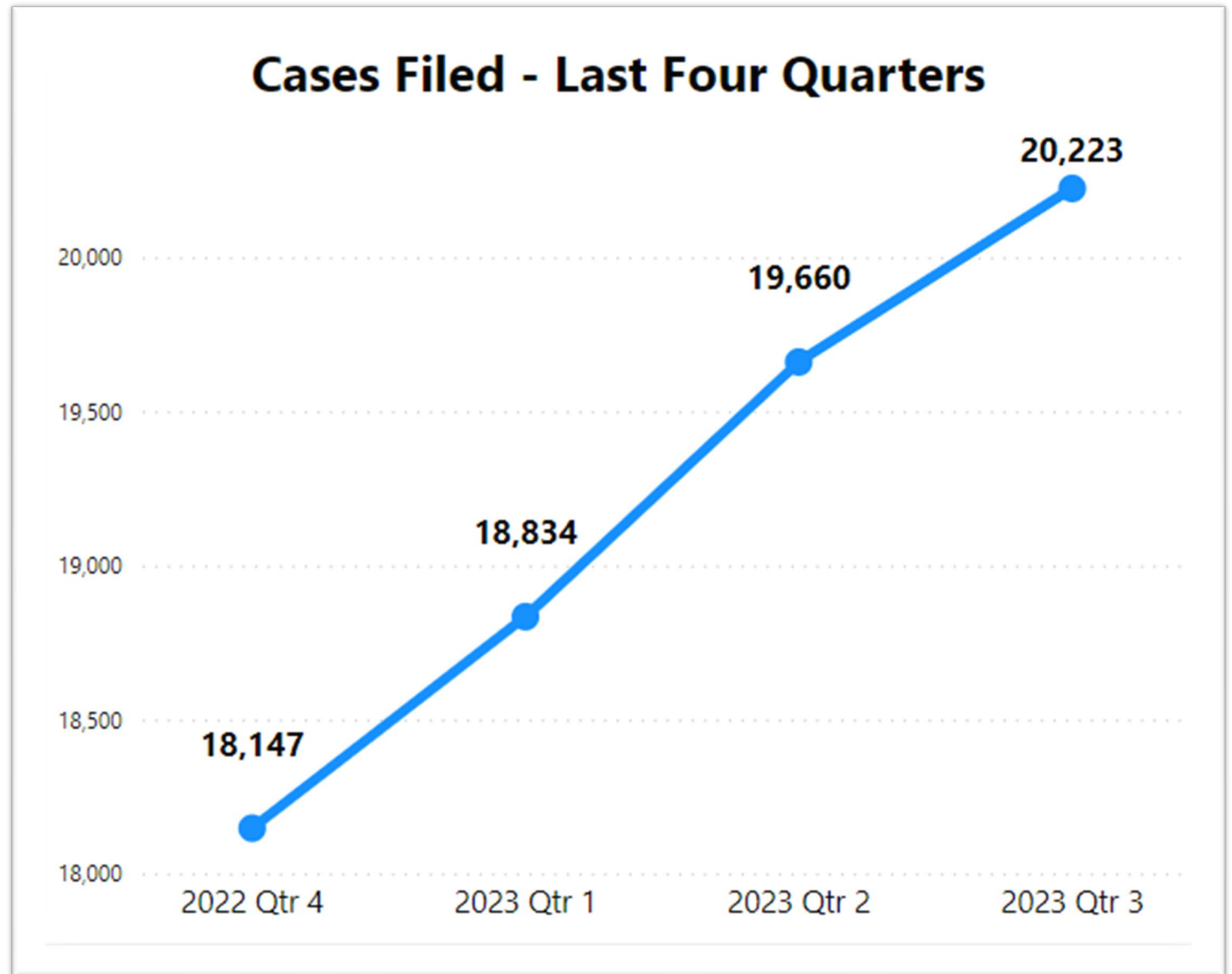


CASE FILINGS
REMAIN FAR
BELOW 2019
LEVELS

BUT THEY ARE ON THE RISE

In the last four quarters,
filings have increased **11.4%**

- Misdemeanors **+18.4%**
- Felonies **+5.3%**



LEVER 4 – INCREASE DISPOSITIONS

Crisis Plan Recommendations

- Remote appearance options
- Settlement conferences
- Better attorney access to clients
- Early Resolution and Specialty Court Dockets

ACTIONS TAKEN

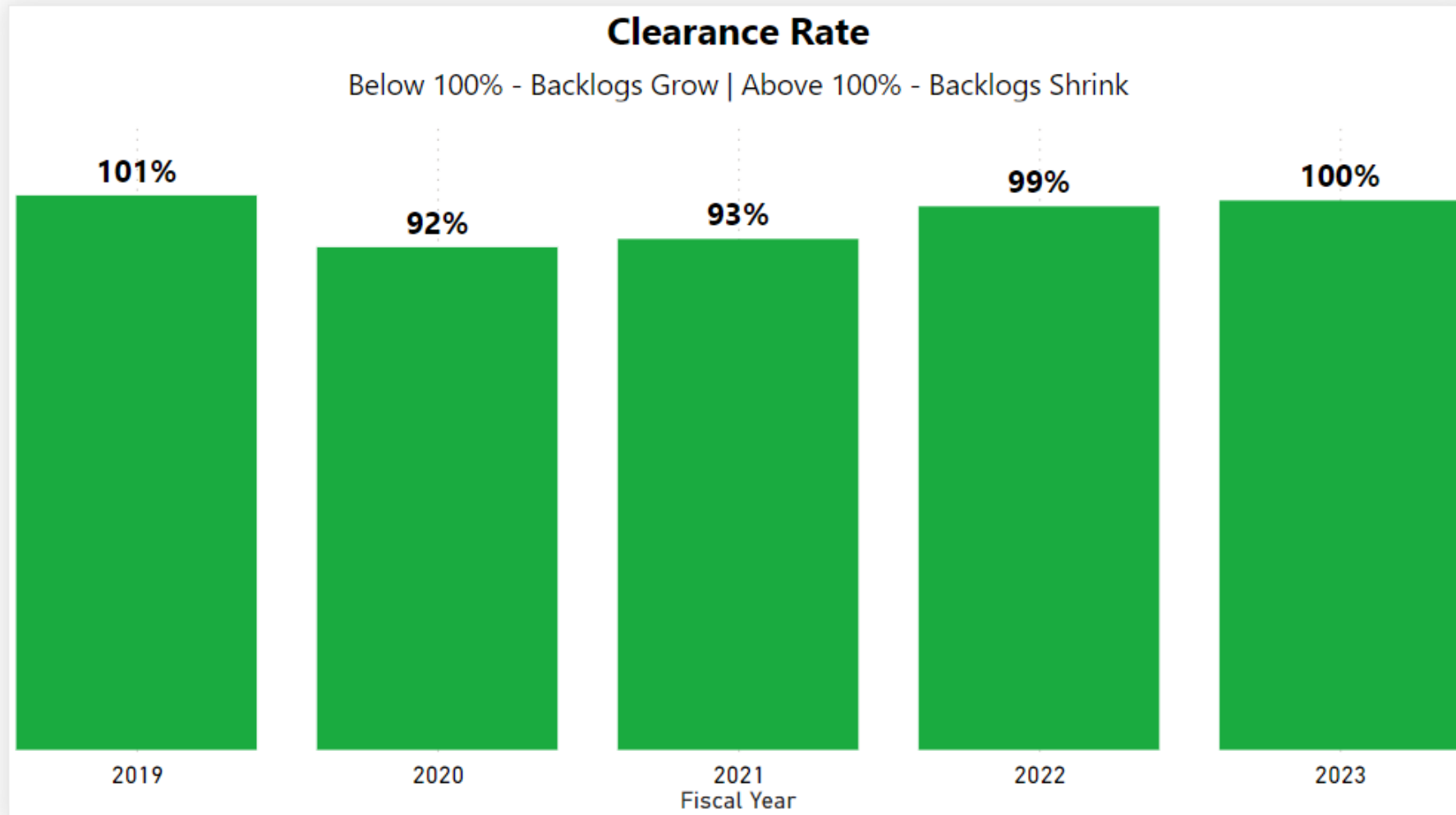
- Creative Local Approaches
 - pro-bono representation in early disposition court
 - facilitate remote access between jail and attorneys
 - develop regional list of attorneys for conflict cases
 - create new expedited resolution dockets and settlement conference opportunities
- Working with the legislature, CJC, and others to identify ways to stabilize and enhance specialty court options
- Exploring new grant funding opportunities

COURTS AND OJD TOOK SIGNIFICANT STEPS PRIOR TO SB 337

- See: OJD-Led Actions to Alleviate Public Defense Crisis
 - Settlement conferences and settlement programs
 - Remote proceedings
 - Worked with Oregon State Bar to simplify process for out-of-state attorneys to practice in Oregon
 - Prioritization of representation for in custody defendants
 - Enhanced case resolution dockets
 - Coordination and collaboration with private bar
 - Worked with law schools and others to explore specialized pathways to public defense work
 - Regular stakeholder meetings to identify opportunities for streamlining of court processes

Courts will continue to explore system improvements and expedite case resolution, but courts do not have the statutory authority needed to solve this crisis.

COURTS ARE PROCESSING PUBLIC DEFENSE CASES EFFICIENTLY



RECENT OJD ACTIONS TAKEN APART FROM CRISIS PLANS

In the Matter of Appointment of
Members to the Oregon Public
Defense Commission

CHIEF JUSTICE ORDER
No. 23-047

ORDER APPOINTING MEMBERS TO THE
OREGON PUBLIC DEFENSE COMMISSION

I HEREBY FIND AS FOLLOWS:

1. ORS 151.213 grants the Chief Justice of the Oregon Supreme Court authority to appoint members to the Public Defense Services Commission (PDSC).
2. Section 8 of Senate Bill (SB) 337 (Oregon Laws 2023, chapter 281) abolishes the PDSC, and ceases the tenure of the current PDSC members, effective January 1, 2024.
3. Section 2 of SB 337 amends ORS 151.213 and establishes the Oregon Public Defense Commission (OPDC) to replace the PDSC, effective January 1, 2024. The OPDC will consist of nine voting members and four nonvoting members appointed to the commission by order of the Chief Justice. Each seat has a dedicated appointing or recommending entity and specific criteria that the OPDC member holding the seat must meet.
4. Section 14 of SB 337 requires that, no later than November 1, 2023, the Chief Justice shall, by order, appoint nine voting members and four nonvoting members to the OPDC, based in part on recommendations from the Governor, President of the Senate, and Speaker of the House of Representatives.
5. Listed in the chart below are the 13 OPDC member seats, as numbered and described in section 2 of SB 337, including the appointing or recommending entity, and any criteria associated with each seat.

Appointing/ Recommending Entity	Seat Criteria	Seat #	Voting / Nonvoting
Chief Justice	Retired Judge who performs no judicial function	#1	Voting
Chief Justice	Experience as a public defense provider in criminal cases	#2	Voting
Chief Justice	No criteria specific to the seat	#3	Voting
Governor	Has been represented by a public defense provider	#4	Voting
Governor	Experience as a public defense provider in juvenile delinquency or juvenile dependency cases	#5	Voting
Governor	No criteria specific to the seat	#6	Voting
or	Currently employed as a public defense	#7	Nonvoting

- Improved data sharing with OPDS
- Better data dashboards and visualizations
- Engaged with all three branches to ensure smooth transition to new Oregon Public Defense Commission
- Changes to Uniform Trial Court Rules
- Weekly meetings with OPDS and DAS to support the transition to the executive branch



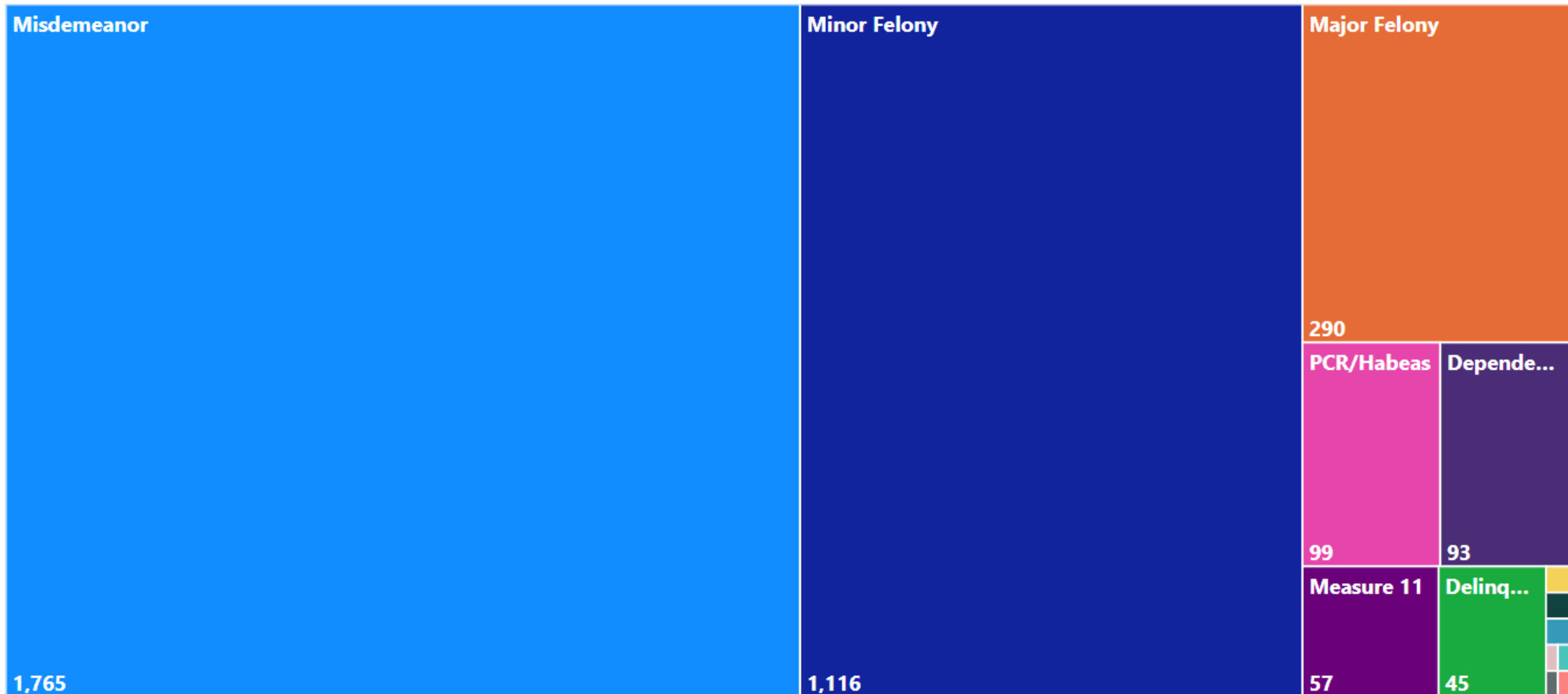
EXPECTED OUTCOMES

Court efficiencies implemented since the pandemic have increased case resolution

The majority of Oregon courts resolve criminal cases as fast or faster than new cases are filed

Without swift and significant change, the problem will continue at current levels or get worse

Unrepresented Cases - November 1, 2023



Unrepresented and In Custody More Than 10 Days

November 1, 2023



HOPE FOR THE FUTURE

- New regional offices should add capacity
- New Commission members will bring new ideas
- Increased compensation and new programs will attract additional lawyers
- Justice Data Warehouse using Odyssey and OPDS data will allow for better monitoring
 - Odyssey caseload dashboard creates opportunities for real-time caseload information for providers to reconcile their caseload reports
 - OPDS can compare information, such as motions filed, case outcomes, time to disposition, and other metrics, to better understand quantitative and qualitative aspects of representation across the state

UNREPRESENTED CHANGES



UNREPRESENTED

November 1, 2023

Questions?

Contact Jessica Roeser

Jessica.C.Roeser@ojd.state.or.us

Assistant Deputy State Court
Administrator

