Senate Bill 337 Report

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

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Unrepresented Defendant Crisis Plans

BACKGROUND

- In 2023, the Legislature passed SB 337, which ushered in significant reforms to the public defense system in Oregon.
  - Section 103 required presiding judges in each judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan and to submit the plan to the CJC by 1 September 2023.
  - Section 106 required the CJC to conduct a review of the crisis plans and to submit a report on this review to the Legislature by 1 October 2023.
- On 7 July 2023, the Chief Justice released CJO 23-024, which provided a statewide framework for the crisis plans.
  - All jurisdictions with more than 20 unrepresented defendants were required to convene crisis teams.
  - Teams included at least the presiding judge, district attorneys, and an OPDS executive or designee.
  - Local teams were provided a facilitators guide and plan template.
  - Local data packets and OSCA and OPDS staff were provided to assist in plan development.
- All 27 judicial districts crafted plans and submitted them to the OJD. Plans were compiled and submitted by OJD to CJC as required under SB 337.

Unrepresented Defendant Crisis Plans

THE FOUR LEVERS

Reduced Filings

This lever reduces the number of criminal cases filed in Oregon circuit courts or provides means for diverting cases from criminal courts, meaning fewer public defenders would be required to cover fewer overall cases.

Increasing Dispositions

This lever increases case processing speed and reduces the time public defenders spend on cases. Less time spent on cases would allow attorneys to increase ethical capacity while promoting system efficiencies.

Adding Attorneys

This lever increases the number of public defense attorneys available to take cases in Oregon circuit courts by focusing on ways to recruit new attorneys to public defense work and to retain attorneys already in the public defense system.

Adding Attorney Capacity

This lever increases the capacity of individual public defense attorneys by prioritizing appointed cases and developing interventions to increase attorneys' ability to use contracted MAC efficiently.

Unrepresented Defendant Crisis Plans

ANALYTICAL APPROACH

Method Used to Analyze Crisis Plans

- Staff began by independently reviewing each of the 27 plans and coding the substantive information contained in them to identify common themes.
- Staff met to discuss common themes and categorization approaches to develop a standardized coding scheme.
- Using the standardized coding scheme, the plans were reviewed again and coded accordingly.

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

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

Unrepresented Defendant Crisis Plans

ANALYTICAL APPROACH

Limitations

- While plans followed the required templates, the depth and detail found in the plans varied substantially.
- The absence of a discussed intervention does not necessarily mean that it is not being used in a given jurisdiction.
- Information on implementation and timelines varied. Some interventions are currently being employed, while others may be employed in the future or depend on factors beyond the control of local districts.

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Crisis Plan Analysis

Factors Contributing to the Unrepresented Persons Crisis

Crisis Plan Analysis

FACTORS CONTRIBUTING TO THE UNREPRESENTED PERSONS CRISIS

Lack of Defense Attorneys

- Many jurisdictions have issues with hiring, which leads to long term vacancies and reduced capacity, as well as retention, which results in the loss of experienced attorneys.
- When experienced attorneys leave the profession, replacements are not one-to-one, as new attorneys must build their qualifications before taking on more complex cases.
- Many jurisdictions are in precarious positions—the loss of even a single attorney could lead to a local crisis almost overnight.
- In some jurisdictions, an overall lack of attorneys is also concerning.

Crisis Plan Analysis

FACTORS CONTRIBUTING TO THE UNREPRESENTED PERSONS CRISIS

Conflict Cases

- The statewide impact of conflict cases is small, accounting for 7% of unrepresented cases.
- In some counties, however, conflict cases account for more than 75% of cases with unrepresented defendants.
- The interventions necessary to address high numbers of conflict cases differ from those needed to address a issues driven by a lack of attorneys and/or capacity.

Table 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%**

Crisis Plan Analysis

Analysis of Crisis Plan Solutions and Interventions

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KEY THEMES AND TAKEAWAYS

Recruitment and retention strategies must be improved to both bring more public defenders into the system and to retain them long term.

- The need for additional attorneys was discussed in more than 90 percent of crisis plans. Plans suggested:
  - Oregon should employ coordinated, aggressive recruitment strategies to create pipelines into public defense.
  - Compensation is a central concern given cost of living challenges. Any assistance in this area, ranging from increased pay to loan forgiveness/tuition reimbursement, housing stipends, etc. would be beneficial.
  - Training and support is needed to increase retention rates once attorneys become public defenders.

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KEY THEMES AND TAKEAWAYS

Oregon must move toward an open workload model. In the short term, attorneys should be allowed to exceed their MAC, but only with careful oversight.

- Interventions tied to attorney capacity were discussed in almost 78 percent of crisis plans.
  - 63 percent of plans proposed methods for allowing attorneys to exceed their existing MAC, arguing that for some attorneys in their jurisdictions, their contracted MAC was below their ethical capacity.
  - Over 50 percent of plans reported that courts are triaging and prioritizing cases with unrepresented defendants to ensure MAC is being used for unrepresented individuals first.
  - Over 40 percent of plans suggested that removing attorneys from cases in warrant status could free up existing MAC (*note: there is disagreement as to the impact of warrant case removal on MAC*).
  - Almost 20 percent of plans focused on the need for local/regional conflict coordinators.
  - Almost 20 percent of plans recommended increases to provider supports for public defense (e.g., case managers, social workers, other support staff).
  - Four districts suggested that “duty attorneys” could free up MAC.

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KEY THEMES AND TAKEAWAYS

Additional efforts should be made to find opportunities to reduce case filings and increase case dispositions.

- Nearly 25 percent of the crisis plans discussed the use of diversion programs as a means for reducing caseloads.
- Six judicial districts discussed charging non-violent, low-level conduct as violations, not misdemeanors (*note: this would need to be timed appropriately to avoid assignments of public defenders*).
- Five plans discussed policies that seek to avoid formal "show cause" filings for probation violations (e.g., warning letters, use of local jail sanctions through parole and probation).

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KEY THEMES AND TAKEAWAYS

Additional efforts should be made to find opportunities to reduce case filings and increase case dispositions.

- Eleven plans discussed the use of settlement conferences to resolve cases more quickly and efficiently.
- Similarly, six plans discussed the use of global resolution/settlement dockets to resolve cases.
- Four plan focused on the use of specialty courts or specialty dockets to increase dispositions.

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KEY THEMES AND TAKEAWAYS

There needs to be continued improvement of State-Local partnerships.

- **Continued work is needed to improve information and data coordination and communication between state and local agencies**. Building on efforts made during the development of the crisis plans, 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 system partners.
- **OPDS should continue to work toward improved responsivity to providers**. 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.

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KEY THEMES AND TAKEAWAYS

The crisis plans contained a substantial number of other interventions and recommendations.

- Flexible docketing and scheduling, such as remote appearances, court timeline changes, etc.
- Adoption of efficiencies, such as allowing pleas up and until trial, the use of omnibus hearings, improvements in the pretrial discovery process, reductions in the number of hearings, etc.
- The use (or future use) of conflict case managers at the local/regional level to find attorneys who can take conflict cases.
- Improvements in jail access for attorneys, whether in person or remote.
- Nearly every crisis plan cited robust collaboration and communication as a key factor in the districts' abilities to address the crisis.
- Over 40 percent of crisis plans identified ideas for reforming the contracts or contracting process between OPDS and providers.