

ANALYSIS

Item 1: Judicial Department Unrepresented Defendant Persons Crisis

Analyst: John Borden

Request: Acknowledge receipt of a report on the unrepresented defendant/persons crisis.

Analysis: The Oregon Judicial Department (OJD) was directed by the Emergency Board in May 2024 to report to the Emergency Board in September 2024 with an update on the unrepresented defendant/persons crisis, including how judicial district crisis plans are being implemented, as directed by SB 337 (2023) and reported to the Joint Interim Committee on Ways and Means in November 2023.

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 eligible for a court appointed attorney at the state's expense. 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 (now the Public Defense Commission) or the director's designee, to coordinate the development and implementation of a public safety unrepresented defendant crisis plan.

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 to counties with at least 20 unrepresented persons.

Circuit court presiding judges have updated the implementation status of the crisis plans developed under SB 337. Updates include, but are not limited to, the federal court ruling in *Betschart et al. v. Garrett et al.*, Case No 3:23-cv-01097-CL, which requires release of most unrepresented in-custody defendants within seven days after their first court appearance. OJD has also instituted monthly reporting on the crisis.

Although the number of unrepresented persons began to decline between December 2023 and May 2024, that trend has reversed, with 5,005 unrepresented persons as of August 23, 2024, of which 1,534 are on warrant status. This is the highest number since the state began tracking unrepresented defendant/persons in 2022. The report also notes that case filings are still below pre-pandemic level. Statewide, there has been an increase in misdemeanor and Ballot Measure 11 and decrease in felony cases, though this varies by judicial district.

OJD continues to follow and act upon the four "levers" that could address or impact the crisis using the limited duration positions authorized by the 2023 Legislature to assist in their efforts:

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.

OJD's report notes the following general themes while stating that "...approaches to solving the crisis varied by geographic location, judicial district population and size, and other factors."

- At the local level, courts and public defenders have had some limited success in preserving and prioritizing attorney capacity.
- Several courts considered whether to remove attorneys from cases where the defendant was in warrant status for a set number of days (e.g., 30/60/90 days).
- While the overall number and capacity of attorneys may have increased in the past year, several judicial districts have seen a decrease in the number of defense attorneys taking public defense cases.
- While recommendations to preserve and prioritize the MAC, or number of weighted cases an attorney can take within the contract cycle, would appear to solely be within the control of PDC and defense providers, several courts working with their providers have undertaken this task out of necessity.
- For some jurisdictions, the unrepresented population continues to consist entirely of cases where local attorneys cannot represent a client due to a conflict of interest (conflict cases). Regional conflict teams, recommended in several crisis plans, have not been created by PDC and these jurisdictions continue to report issues finding attorneys for conflict cases.
- A few courts report seeing an increase in attorneys accepting appointments to public defense cases due to the Temporary Hourly Increase Program.
- Courts continue to have concerns about the lack of attorneys qualified to represent individuals facing felony charges.
- Circuit courts are also reporting increased dispositions through remote appearance options, settlement conferences, better access to in-custody defendants, and early resolution dockets.

There appears to be an improved data collaboration between OJD and PDC; however, the concerns and issues arising from circuit courts may not be able to be effectively implemented without major structural changes to the contracting method for public defense or other barriers to implementation that may exist.

Recommendation: The Legislative Fiscal Office recommends that the Emergency Board acknowledge receipt of the report.

Request: Report on Unrepresented Defendant Crisis Plans updates per direction of the Joint Ways & Means Committee Subcommittee on Public Safety by the Oregon Judicial Department.

Recommendation: The Oregon Judicial Department is not under Executive Branch budgetary authority.

Discussion: This report was requested to provide an update regarding the unrepresented defendant crisis in Oregon's public defense system. The 2023 Legislative Assembly passed Senate Bill 337 to tackle systemic issues in public defense and the unrepresented defendant crisis. The bill required the presiding judge in each judicial district to create and implement a crisis plan in collaboration with local public safety partners. The Oregon Judicial Department (OJD) was requested to present updates on the implementation of these plans to the Emergency Board. OJD's findings are that despite efforts, the crisis continues, with a significant number of unrepresented individuals affecting the justice system. The Department reports that as of August 23, 2024, there were 3,471 unrepresented individuals; the highest number since tracking began in 2022.

As a reaction to the crisis in Oregon, the U.S. District Court for Oregon has issued a preliminary injunction requiring most in-custody criminal defendants who have been unrepresented for seven days after their first court appearance to be released from custody. OJD reports this has increased the pressure on an already-strained justice system.

The report highlights systemic challenges, the impact to defendants, and the efforts of the courts to assist in ameliorating the crisis. OJD reports that the unrepresented defendant crisis continues despite efforts of the courts, which report having limited influence over systemic problems such as increasing demand for defense attorneys. The lack of representation causes significant personal disruptions, including loss of housing, jobs, and relationships, and increases stress for defendants and victims. Finally, though courts have implemented various interventions, their impact varies across jurisdictions, and significant changes to public defense contracting and caseload management are needed.

While the report does not specifically mention budget impacts to OJD or to the state more broadly, it does highlight the ongoing efforts and challenges in addressing the unrepresented defendant crisis, which likely have financial implications. Key downstream impacts include increased pressure on existing resources, the potential for release of unrepresented defendants after seven days due to federal action, and the need for additional resources to support special dockets and treatment programs.



OREGON JUDICIAL DEPARTMENT
Office of the State Court Administrator

August 30, 2024
(SENT BY EMAIL)

The Honorable Sen. Rob Wagner, President of the Senate
The Honorable Rep. Julie Fahey, Speaker of the House
Joint Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Re: Update on Unrepresented Persons Crisis and Implementation of Judicial District
Crisis Plans

Dear President Wagner and Speaker Fahey:

Nature of the Request

The Oregon Judicial Department (OJD) requests that the Joint Emergency Board acknowledge receipt of the attached update on the status of the unrepresented persons crisis and how judicial district unrepresented defendant crisis plans (crisis plans) are being implemented.

Background

OJD was requested to provide these updates during the May meeting of the Joint Emergency Board. This is the third such update provided to the legislature since the plans were originally submitted on September 1, 2023.

The severe shortage of public defense representation has fluctuated over time and presents differently in different jurisdictions. Growing numbers of eligible persons without a court-appointed attorney first appeared in Marion and Multnomah counties in mid-to-late 2021. The growth in number and expansion into other areas of the state has fluctuated but overall continued to increase, to the point where, **as of August 23, 2024, Oregon had a record number of unrepresented persons (3,471)**, not including the 1,534 unrepresented persons on warrant status.

President Wagner
Speaker Fahey
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The legislature passed Senate Bill (SB) 337 in 2023, which directed changes to the state agency responsible for providing qualified counsel for courts to appoint for eligible persons. The bill also directed presiding judges in judicial districts above a specified population threshold to develop coordinated public safety unrepresented defendant crisis plans, with a focus on prioritizing resolution of cases of unrepresented defendants in custody. Chief Justice Meagan Flynn issued a Chief Justice Order directing additional judicial districts – based on the number of unrepresented persons in those districts – to also prepare crisis plans. The plans were submitted to the Oregon Criminal Justice Commission on September 1, 2023.

This report focuses on the elements of those crisis plans that courts had significant roles in implementing, such as creating expedited case resolution dockets and adding opportunities for settlement conferences and remote appearances. Most of the recommendations in the crisis plans were recommendations to other entities, such as the Oregon Public Defense Commission, especially focusing on ways to increase the number of public defense attorneys or increase the capacity of attorneys to take cases.

Courts have made extraordinary efforts to identify qualified attorneys to accept public defense appointments and to make available processes to fairly, efficiently, and timely resolve these cases. While these efforts likely have prevented the problem from being even worse, courts continue to believe that this crisis will continue to persist without significant changes to the current approach to public defense contracting and caseload management policies.

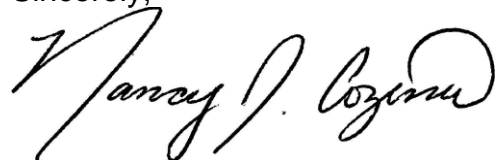
Action Requested

The Oregon Judicial Department requests that the Joint Emergency Board acknowledge receipt of this report.

Legislation Affected

None.

Sincerely,

A handwritten signature in black ink, reading "Nancy J. Cozine". The signature is fluid and cursive, with the first name "Nancy" and last name "Cozine" clearly legible.

Nancy J. Cozine
State Court Administrator

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Attachment

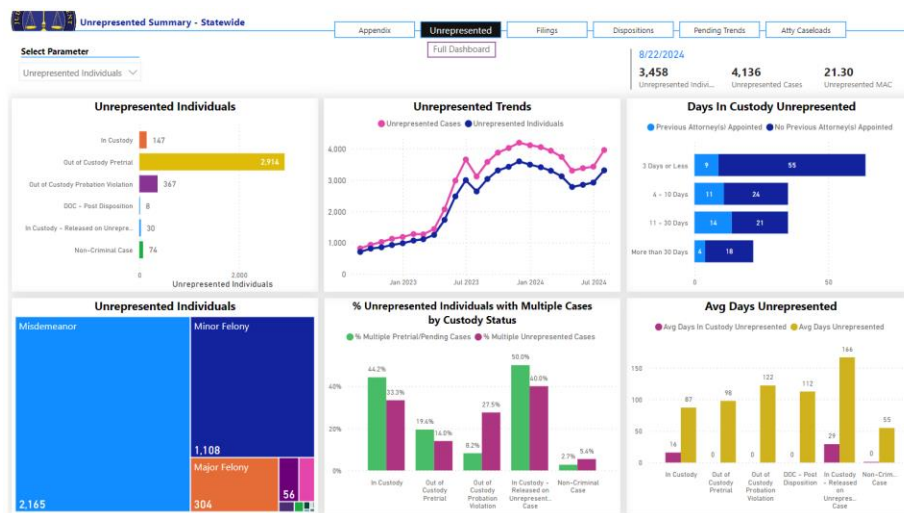
cc: Chief Justice Meagan A. Flynn
Amanda Beitel, Legislative Fiscal Officer, LFO
Kate Nass, Chief Financial Officer, DAS
John Borden, Principal Legislative Fiscal Officer, LFO
Zachary Gehringer, Policy and Budget, DAS-CFO
David Moon, BFSB Director, OJD



Oregon Judicial Department
Office of the State Court Administrator

Summary of Circuit Court
Unrepresented Defendant Crisis Plans
Implementation Updates

Submitted to the
Joint Emergency Board
August 26, 2024



EXECUTIVE SUMMARY

The 2023 Legislative Assembly passed Senate Bill (SB) 337 to address systemic issues within Oregon's public defense delivery services and to immediately address the unrepresented crisis. As part of that effort, the legislature required the presiding judge in each judicial district to create and implement an unrepresented defendant crisis plan (hereafter "crisis plan" or "plan") in collaboration with other local public safety system partners.

The Oregon Judicial Department (OJD) was requested by the Joint Emergency Board to present an update on implementation of those plans at its September 2024 meeting.

The crisis plans included a variety of recommendations and interventions for courts and for system partners to consider and implement. The common themes in the crisis plans that would have the greatest impact on the crisis – increasing the number and capacity of defense attorneys – are areas the courts have limited ability to influence, but where they have made extraordinary efforts to assist the Oregon Public Defense Commission (OPDC) to fulfill its statutory responsibilities.

While many changes have been made or are in process, the crisis continues.

- As of August 23, 2024, there are 3,471 unrepresented persons – the largest number since the state started tracking that data in 2022 - and another 1,534 who are unrepresented but have failed to appear in court and have warrants issued for their arrest.
- The U.S. District Court for Oregon has issued a preliminary injunction that requires most in-custody criminal defendants who have been unrepresented for seven days after their first court appearance to be released from custody. This has increased the pressure on an already-strained justice system.
- Filings in case types that typically involve a public defender – including felony, misdemeanor, civil commitment, delinquency, and others – are still below pre-pandemic levels but are gradually and steadily increasing. This trend will increase if district attorney offices are able to fill vacancies and also when possession of a controlled substance becomes a misdemeanor on September 1, 2024. Changes in the number of filings vary by judicial district.
- Courts continue to adjudicate the vast majority of cases that have been disposed in a timely manner (99% of felonies are disposed within a year), but the clearance rate is slipping as the number of cases filed increases and defendants remain unrepresented for longer periods of time.
- Courts continue to offer expanded opportunities for remote appearances, settlement conferences, and docket time to resolve cases efficiently. Special resolution dockets are commonly available but have been found to be effective only when the prosecution and defense agree to the approach, and when OPDC has been able to approve resources for those dockets, when requested.

Presiding judges began implementing their crisis plans soon after their crisis meetings, focusing on the interventions and recommendations within the court's ability to accomplish; however, the impact of these interventions has varied across jurisdictions. Some judicial districts saw a decrease in the number of defense attorneys, with corresponding increases in the number of unrepresented individuals, regardless of the changes the court made under the crisis plan. Others saw an increase in the number of defense attorneys without any decrease in the number of unrepresented individuals. This report summarizes the interventions courts have implemented and the impact of those interventions on the unrepresented crisis.

When the crisis plans were submitted in September 2023, the number of unrepresented individuals was trending upwards – Oregon reached a record number of unrepresented individuals on December 1, 2023, at 3,477 unrepresented defendants with 3,989 cases. The number of unrepresented individuals began to decrease slightly until May 1, 2024, when the numbers began to rise again. As of August 1, 2024, there were 3,306 unrepresented individuals in the state of Oregon.

While numbers are an important way to measure and describe the extent of this crisis, they don't adequately demonstrate the tremendous human cost associated with the lack of representation across the state. When people are charged with a crime but not provided with an attorney, it can cause extreme disruption in their lives: from the loss of housing, jobs, and relationships, to the inability to travel or maintain "normal" routines, and the inevitable stress of having a serious, potentially life-altering, matter hanging over their heads. It is unacceptable that we are continuing to ask people to simply wait for weeks, months, and sometimes even years.

Judges tell us that these individuals often return to court multiple times, each time requesting a lawyer while explaining the tremendous stress of not being able to resolve the matter, only to be directed to appear once again because no lawyer is available to represent them. And all too often, we see that these individuals simply continue to accrue new charges, and by the time they get an attorney, their criminal behavior has escalated to a point where they can no longer avoid a prison sentence; the opportunity to intervene early and change the downward spiral of their lives has passed, new crimes have been committed and new victims created.

Victims also suffer. Without a way to have the case move forward, their lives are also frozen in time, and often they sometimes are faced with the unavoidable result of a case dismissal because an attorney cannot be found within a reasonable period of time. This is a particularly dangerous outcome when the charges stem from an act of violence, leaving the victim without protection and with a sense of fear as a result of the lack of a conviction, a sense of justice, and the protections of an appropriate sentence. And even when the district attorney can re-file the charge, the victim must decide whether they want to again engage in this unsatisfactory process. And witnesses – usually willing to participate in court processes to bring justice in our communities – must wait while their information becomes more stale; their lives also indefinitely disrupted.

Courts remain extremely concerned about all of these individuals, the lack of a clear plan to ensure representation for each and every person accused of a crime despite significant investments to enhance the state's ability to provide representation, and the resulting loss of trust and confidence in Oregon's justice system.

Courts remain willing partners, ready to do whatever is necessary to ensure representation for all individuals. But our experiences have confirmed that without significant changes to the current approach to public defense contracting and caseload management policies, the problems will continue.

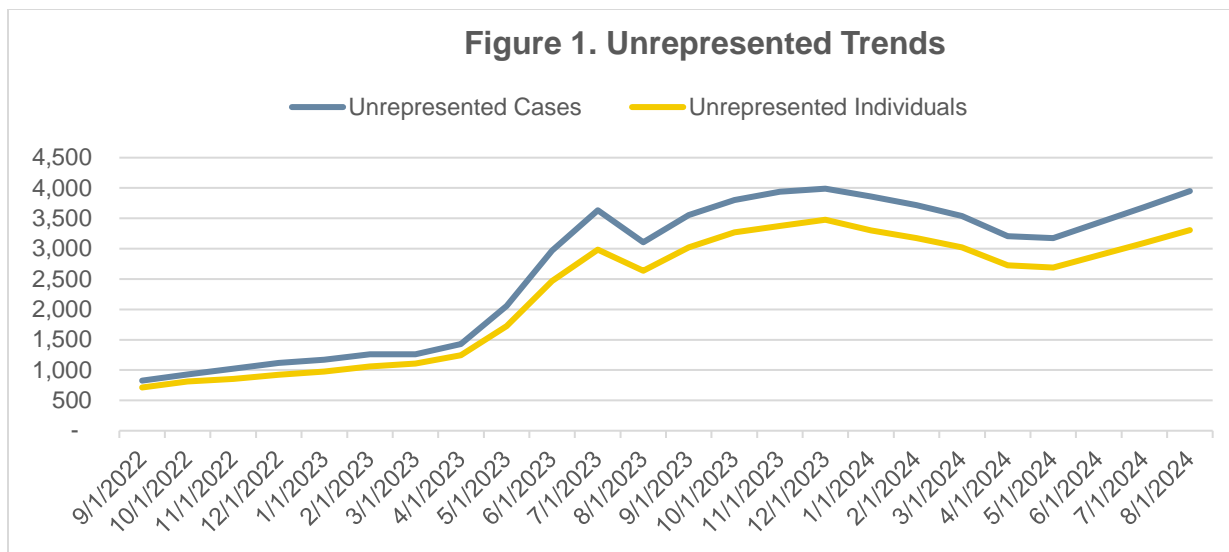


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Appendix A: Crisis Plans

A.1 Crisis Plans

Appendix B: OJD Monthly Unrepresented Crisis Reports to the OPDC

B.1 Letter to OPDC

B.2 Unrepresented Crisis Plans February 2024 Status Update

B.3 Unrepresented Crisis Plans March 2024 Status Update

B.4 Unrepresented Crisis Plans April 2024 Status Update

B.5 Unrepresented Crisis Plans June 2024 Status Update

B.6 Unrepresented Crisis Plans July 2024 Status Update

B.7 Unrepresented Crisis Plans August 2024 Status Update

1 BACKGROUND

In 2023, the Oregon legislature passed SB 337 to address immediate and long-term, systemic issues in the public defense system and provide funding to facilitate solutions. Sections 103 through 108 required the presiding judge of each judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan. SB 337 took effect on July 13, 2023, and required each crisis plan to be submitted to the Oregon Criminal Justice Commission (CJC) “as soon as practicable” and no later than September 1, 2023. Before the bill was signed into law, Chief Justice Meagan Flynn directed the courts subject to the law, and others with unrepresented populations, to create the crisis plans.

OJD created a planning framework and collaborated with the Oregon Public Defense Commission (OPDC)¹ to align the framework with OPDC’s guidance for the crisis plans. OJD’s framework and OPDC’s guidance focused on exploring “Four Levers” related to representation capacity: (1) the number of public defense attorneys, (2) the capacity of those attorneys, (3) the number of case filings, and (4) the time to reach case disposition (including system efficiencies). Presiding judges convened crisis teams (required by SB 337 for judicial districts with a total population of over 100,000 and by Chief Justice Order (CJO) 23-024 for judicial districts with more than 20 unrepresented individuals) and OJD compiled the resulting crisis plans. The Summary of Circuit Court Unrepresented Defendant Crisis Plans, along with a crisis plan for every judicial district, was submitted to CJC on September 1, 2023. As directed by SB 337, CJC then reviewed each crisis plan and submitted their findings, along with the crisis plans, to the legislature.

SB 337 also transfers OPDC from the judicial branch to the executive branch of state government, effective January 1, 2025. In addition to implementing the crisis plans, OJD has actively partnered with OPDC and the Governor’s Office to support this transition. Since OJD has provided technology support for OPDC, the Chief Information Officers from OJD, OPDC, and the state have been meeting to ensure OPDC will have the technological infrastructure in place. When it became clear that OPDC would not be prepared on January 1, 2025, OJD agreed we could continue to provide technological support for OPDC through the end of the current contract on June 30, 2025. The Chief Justice and State Court Administrator meet regularly with OPDC’s Executive Director and Commission Chair and the Governor’s Public Safety Policy Advisor to discuss issues.

OJD first presented on the crisis plans to the Joint Interim Committee on Ways and Means Subcommittee on Public Safety on November 7, 2023. On January 12, 2024, OJD presented an update to the House and Senate Interim Committees on Judiciary, and on February 6, 2024, to the Joint Ways & Means Committee Subcommittee on Public Safety. The subcommittee invited OJD to present an update on the implementation of the crisis plans during the September 2024 Joint Emergency Board meetings.

Presiding judges began to implement the SB 337 crisis plans immediately after the plans were developed. As leaders and neutral arbitrators, judges are often in the best position to bring together justice system partners to facilitate conversations about difficult issues affecting the justice system, develop solutions, and inspire action. The people who make up the judicial department – courtroom clerks, data entry and counter clerks, judicial assistants, analysts, program coordinators, administrators, and information technology specialists – have demonstrated over many years a strong commitment to providing quality service to the people of Oregon. However, due to the nature and role of the judiciary, the actions a court can take are often limited, and to effectuate true change in the public defense system requires the

¹ When SB 337 took effect, the Oregon Public Defense Commission (OPDC) was named the Public Defense Services Commission (OPDC).

commitment and action of all system partners. While OJD was able to quickly convene crisis teams and create crisis plans to address the unrepresented crisis, the courts were only able to implement the parts of those plans that fell within the court's control.

The crisis plans, with input from prosecutors and defense providers, included interventions and recommendations that could be implemented either by one justice system partner or by two or more justice system partners working together. Of the four levers originally identified by OJD and OPDC, the one that most directly aligns with the role and responsibility of the court is increasing dispositions, which can be accomplished either by increasing the number of cases that close or decreasing the time cases are active in the court system. A foundational part of the court's work is caseflow management – how a court monitors and controls the progress of a case to meet its constitutional obligation for timely justice, while providing fair and accessible justice services that protect the rights of individuals. Effective caseflow management is measured, in part, by the time it takes for a case to reach disposition. Many of the crisis plan interventions related to efficient court processes and improving time to disposition have been implemented. This updated report focuses on the interventions within the courts' ability to implement.

2 OJD IMPLEMENTATION PROCESS

After the crisis plans were submitted to CJC, presiding judges updated the implementation status of their crisis plans quarterly. OJD also holds monthly meetings with presiding judges, trial court administrators (TCAs), and the Office of the State Court Administrator (OSCA). During these meetings, successes and challenges related to the unrepresented crisis are shared and discussed, as well as new innovations individual courts have undertaken to address the crisis. Through this regular communication, courts have been able to share ideas and implement changes that have proven successful in other jurisdictions. For instance, court staff in Washington County pioneered the use of OJD's pretrial release supervision system, acquired after SB 48 (2022) passed, to reduce the number of court appearances unrepresented out-of-custody individuals were required to attend. When appropriate, unrepresented individuals are directed to use a call-in system to see if an attorney has been assigned to their case. Court staff from Washington County conducted a training for other courts interested in implementing a similar process.

Since the inception of the unrepresented crisis almost three years ago, presiding judges have been working diligently to find counsel for unrepresented defendants and coordinate with justice system partners to develop solutions to help resolve the crisis. Some courts were allocated limited-duration staff positions in the 2023 legislative session to help manage the unrepresented crisis in their jurisdiction. The work of these employees includes monitoring unrepresented lists, prioritizing appointments, collecting local defense providers' capacity to take new cases on a weekly or monthly basis, conducting outreach to attorneys to expand the pool of public defense attorneys, responding to unrepresented defendants' questions or concerns, communicating with OPDC, and implementing new business processes and data entry protocols to improve data collection and tracking of unrepresented individuals. As the number of unrepresented individuals has increased since September of 2023 and there has been little to no change by system partners in moving the other three levers, these positions continue to provide vital support for courts to operate efficiently. Other courts that were not allocated limited-duration positions but have seen an increase in the number of unrepresented individuals in the past year have taken on some of the same work and are focusing on reallocating resources to manage the crisis in their districts and find attorneys for defendants. Presiding judges also have been reaching out to local criminal defense attorneys to take cases, and reaching out to local attorneys to see if they would be interested in expanding their practices to include criminal defense work.

3 BETSCHART FEDERAL DISTRICT COURT ORDER

On July 27, 2023, a group of individuals who were held in custody while unrepresented filed an injunction against the Washington County Sheriff. In *Betschart et al. v. Garrett et al.*, Case No 3:23-cv-01097-CL, the district court issued a preliminary injunction requiring the Washington County Sheriff's Office to release in-custody defendants who are indigent; facing criminal charges, and in the physical custody of the jail if the defendant is not appointed counsel within ten days of their initial court appearance. The final order issued on November 2, 2023, required release in seven days and applied the order statewide. An amended order issued on November 14, 2023, further clarified the circumstances when an unrepresented defendant is and is not required to be released.

The amended order was appealed and temporarily stayed during the appeal. On May 31, 2024, the Ninth Circuit Court of Appeals affirmed the federal district court's November 2023 injunction imposing a seven-day timeline for release or appointment of counsel for unrepresented defendants in pretrial custody. Almost immediately, it became clear that a single data dashboard that identified cases potentially subject to the *Betschart* order would be needed by both OJD and OPDC. This single, statewide data source would help OPDC efficiently prioritize appointments of counsel for in-custody defendants potentially subject to release under the federal court order. OJD updated the existing [unrepresented data dashboard](#)² to more clearly identify unrepresented cases potentially subject to release under *Betschart*.

Additional actions taken by OJD in response to *Betschart* included developing and disseminating new guidance and business processes for courts, and regular collaboration with OPDC and the Oregon District Attorneys Association (ODAA). OJD began meeting weekly with OPDC and ODAA to discuss in-custody defendants who are potentially subject to *Betschart*, and the status on finding attorneys for those cases, and review which cases are a priority for assignment of counsel. OPDC created an intake form for all courts to use to request assignment of counsel. Courts and OPDC can view the requests through a joint dashboard, allowing for more effective prioritization and assignment of counsel.

The work of the limited-duration staff allocated to OJD in 2023 has expanded to include regular review of the data dashboard to ensure its accuracy. Courts are also in regular communication with OPDC and their local sheriff's offices to help identify defendants potentially subject to *Betschart*.

4 THEMES

While changes to any one of the four levers can affect the unrepresented person crisis, the most effective interventions to reducing the number of unrepresented cases relate to levers one and two – the number of public defense attorneys and attorney capacity. These levers are both within the control of OPDC through their contracting policies, recruitment and retention efforts, and relationship with the legislature. Without significant changes to the number of criminal defense attorneys or attorney capacity to take cases, the impact of other interventions is minimal.

Several common themes emerged as crisis plans were implemented, although approaches to solving the crisis varied by geographical location, judicial district population and size, and other factors. Below are some of the most common themes identified by courts when reporting on the progress of implementing their crisis plan.

² [Unrepresented Individuals Public Dashboard](#)

4.1 ADD ATTORNEYS/NUMBER OF ATTORNEYS

- Attorney Recruitment/Retention. While the overall number and capacity of attorneys may have increased in the past year, several judicial districts have seen a decrease in the number of defense attorneys taking public defense cases. In smaller districts like Clatsop County, the loss of two defense attorneys has meant a considerable increase in the number of unrepresented cases. Deschutes County and Coos County each lost four defense attorneys in 2024, also causing each district to suddenly have large numbers of unrepresented cases. Rural and frontier courts have seen their defense providers struggle to recruit attorneys. In Clatsop County, the consortium was unable to fill a vacancy within the timeframe required by OPDC, which resulted in the vacant position being moved to a different provider in another county. The executive directors of non-profit public defense firms in Lane and Douglas counties are leaving their positions this year to go into private practice. Several jurisdictions are losing defense attorneys this year because the attorneys have been appointed or won elections for district attorney or judicial positions.
- Better Compensation. A few courts report seeing an increase in attorneys accepting appointments to public defense cases due to the Temporary Hourly Increase Program (THIP).³
- Regional Conflict Team. In some jurisdictions, the unrepresented population continues to consist entirely of cases where local attorneys cannot represent a client due to a conflict of interest (conflict cases). Regional conflict teams, recommended in several crisis plans, have not been created by OPDC and these jurisdictions continue to report issues finding attorneys for conflict cases. Josephine County's unrepresented list as of August 2, 2024, consisted of nine co-defendant cases related to a large drug bust, and all of the local providers have conflicts with these cases. The nine Josephine County defendants have been unrepresented since their cases were filed in November 2023.
- Qualifications. Courts continue to have concerns about the lack of attorneys qualified to represent individuals facing felony charges. In jurisdictions that have lost attorneys, when providers are able to hire, they are often hiring less-experienced attorneys who are only qualified to handle misdemeanors. Additionally, courts have had to facilitate communication between attorneys and OPDC so the attorneys could be approved by OPDC to take unrepresented cases. Courts report communication from OPDC to the courts is often slow, and defense providers have reported the same issues to courts.

4.2 ATTORNEY CAPACITY

Many crisis plans contained recommendations regarding OPDC contracts with defense providers. Although contract changes are outside of both the local court and public defender's control, they were consistently identified as an effective intervention to reducing the number of unrepresented individuals. Many of the recommendations were made based on feedback and input from local defense providers. At the local level, courts and public defenders have had some limited success in preserving and prioritizing attorney capacity.

OPDC currently sets a Maximum Attorney Capacity (MAC) per year for attorneys in their contracts. In 2023, OPDC began to prorate the yearly MAC to a monthly MAC to help prevent situations where

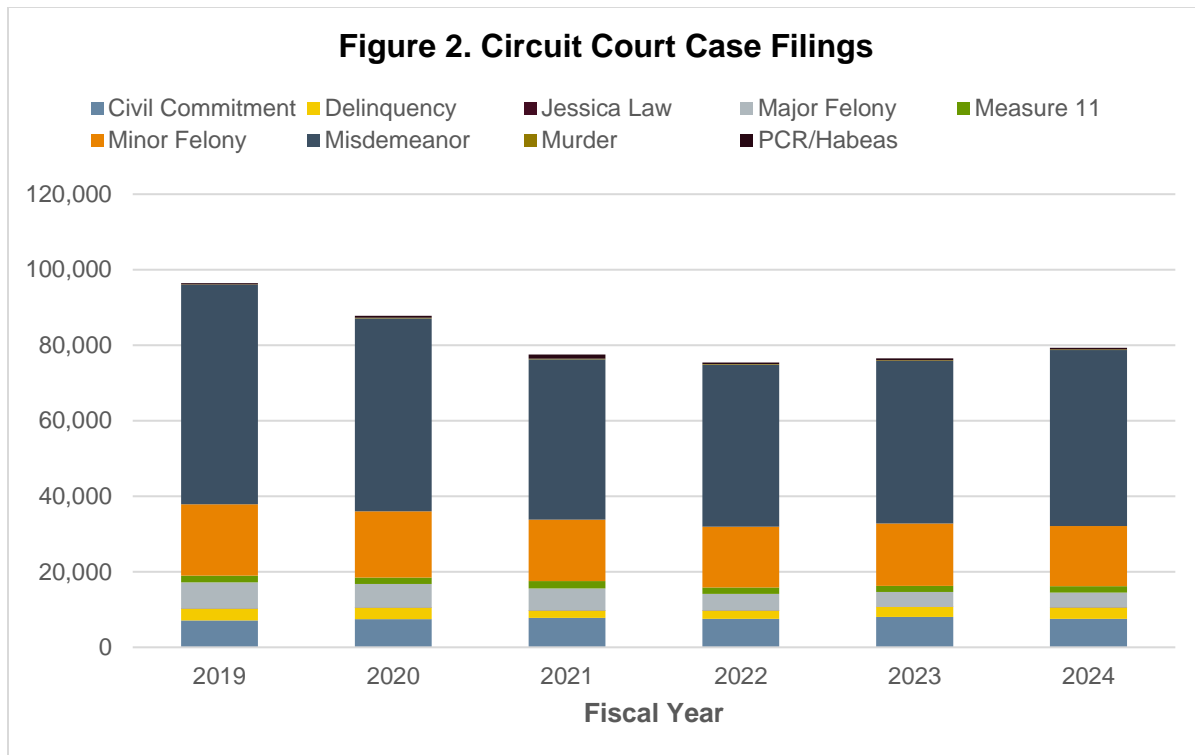
³ An OPDC program that authorizes a higher hourly pay rate for private (non-provider contract) attorneys representing in-custody unrepresented defendants.

attorneys run out of MAC before the end of the contract cycle. Case types are weighted, and attorneys are not supposed to accept appointments to more cases beyond their MAC without authorization from OPDC. Attorneys are not required to take cases up to the MAC, though, attorneys can assert they have reached their ethical capacity and are unable to accept more cases. In some districts, attorneys are routinely taking cases beyond their MAC, and in other jurisdictions attorneys have consistently stayed below their MAC due to ethical capacity.

- Preserving and Prioritizing MAC. While recommendations to preserve and prioritize the MAC, or number of weighted cases an attorney can take within the contract cycle, would appear to solely be within the control of OPDC and defense providers, several courts working with their providers have undertaken this task out of necessity. Several courts maintain a list of the amount of MAC available for each attorney and prioritize appointing counsel to in-custody cases (typically sex crimes, person crimes, domestic violence crimes) at the initial appearance, while placing other defendants who qualify for court-appointed counsel on the unrepresented list. At the end of the week or month, the court will work with providers to assign attorneys who still have available MAC to the lower priority cases. This action has not reduced the overall number of unrepresented cases, it has only allowed courts to help ensure persons facing more serious charges are assigned an attorney faster. Defense attorneys have also asked courts to help verify the amount of MAC they have available when there has been a discrepancy between their own numbers and OPDC's.
- Requiring Contractors to Allocate Capacity According to Priorities Set by the Local Court. In some jurisdictions, providers have agreed to allocate capacity based on the priorities set by the local court. This has not reduced the overall number of unrepresented cases, but it has allowed the court to ensure higher priority cases are assigned an attorney before lower priority cases. This has proven especially helpful in light of the *Betschart* decision when there are cases that have a significant public interest and victim or community safety concerns.
- Handling Appointments for Individuals in Warrant Status Differently. Several courts considered whether to remove attorneys from cases where the defendant was in warrant status for a set number of days (e.g., 30/60/90 days). Some courts decided to remove attorneys from those cases; however, it had no impact on attorney capacity because OPDC's contracts allow a half MAC credit if the appointment is open for more than five days (even if part of that time was in warrant status) and a full MAC credit if the appointment is open for thirty-one days or more. Other courts decided not to remove attorney appointments because of OPDC's contract requirements. OJD's data continues to show approximately 70% of individuals on warrant status return to court within 60 days.

4.3 DECREASE FILINGS

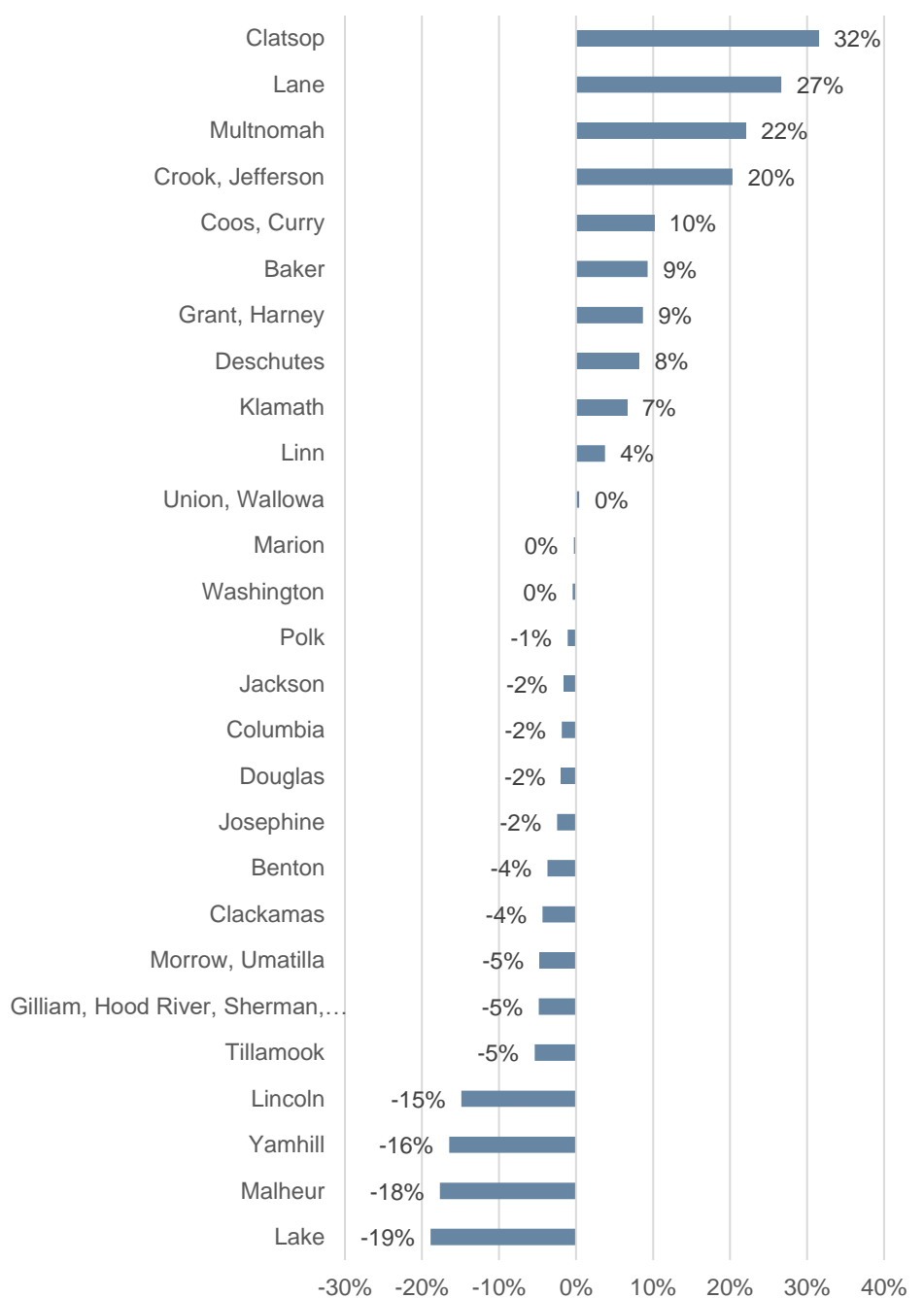
In fiscal year 2024 statewide data shows an increase in misdemeanor and Ballot Measure 11 cases and a decrease in major and minor felony cases. However, case filings are still significantly lower than they were pre-COVID. Individual judicial district case filing trends have varied, for instance Multnomah County has seen a significant increase in felony case filings.



In some jurisdictions there has been a decrease in filings, though this decrease appears to be driven primarily by a reduction in district attorney staffing capacity. While several district attorney offices continue to have staffing shortages, some district attorney offices have been able to hire attorneys. With the passage of HB 4002 (2024), courts anticipate an increase in criminal filings as soon as September 1, 2024. Counties are working to create deflection programs pursuant to HB 4002, which may minimize the potential increase in filings resulting from HB 4002.

Figure 3 below shows the one-year change in cases filed between fiscal years 2023 and 2024. Of note, Clatsop, Multnomah, Coos, Deschutes, and Klamath counties, who have all seen an increase in case filings, are also among the ten judicial districts with the highest number of unrepresented individuals. Filings fluctuate in individual judicial districts from year to year – Multnomah and Linn counties are the only jurisdictions where filings increased in both fiscal year 2023 and fiscal year 2024.

**Figure 3. One-Year Change in Cases Filed
FY 2023 to FY 2024 by Judicial District**



4.4 INCREASE DISPOSITIONS

In fiscal year 2024, dispositions declined compared to fiscal year 2023 by 2.2%. The longer a case remains open before an attorney is assigned, the longer it takes to resolve the case, thus impacting time to disposition numbers. The clearance rate for public defense-related cases in fiscal year 2024 was 95%, a 5% decrease from 2023.

- Remote Appearance Options. Courts continue to provide remote appearances to increase efficiencies with case resolution. One of OJD's 2024-2027 Justice Campaign initiatives is to continue to expand court proceedings that are accessible and conducted in a mode and manner that best serve the need for justice in our communities.
- Settlement Conferences. Many courts began utilizing settlement dockets prior to the SB 337 crisis plans and sought to increase their use of these dockets to increase early dispositions. These dockets have resolved some cases; however, the impact on the number of unrepresented cases is more nuanced and depends on a variety of other factors. For instance, Clatsop County Circuit Court introduced settlement conference dockets pre-SB 337, and they were successful in decreasing the backlog of pending criminal cases created due to COVID. Since the crisis plans were implemented, though, Clatsop County saw both an increase in case filings and a decrease in the number of defense providers, which has resulted in an increase in unrepresented cases. The presiding judge in Deschutes County has held more than 80 settlement conferences for cases with serious charges, including Ballot Measure 11 charges, and resolved a significant number of cases. However, they experienced a sudden decrease in the number of defense attorneys, which caused the district to suddenly have a significant number of unrepresented defendants. Depending on the circumstances of the jurisdiction, these dockets can result in several cases resolving; however, simply resolving cases faster does not mean under the current OPDC contracts a defense attorney will have capacity to take additional cases if they have already reached their monthly MAC.
- Better Access to In-Custody Defendants. While these recommendations were directed to jails and prisons, several courts have helped facilitate conversations to improve access to in-custody clients. Overall, sheriff's offices have been receptive to the requests and some improvements have been implemented; however, some changes cannot be implemented without additional funding through the county. In Coos County, the court was able to help bridge the gap by providing the technology needed to set up virtual access for attorneys to speak with their in-custody clients. Even after that effort, the court reports OPDC needs to implement a technology change so remote consultations can be conducted.
- Early Resolution Dockets. "Early resolution dockets" is a term used to describe both ongoing, regular dockets set up to resolve less time-consuming cases close in time to initial appearance; or a special, limited-duration docket not regularly held to resolve unrepresented cases. The limited-duration dockets sometimes only focus on certain case types, such as criminal traffic offenses or DUIs. Several courts have implemented, or attempted to implement, early resolution dockets, and some courts have had early resolution dockets for several years. Creating these dockets is no small feat, it requires significant coordination and communication upfront between the court, district attorney's office, and defense providers to create criteria, establish expectations, and initiate scheduling. System partners also need to work through how discovery will be provided, where defense attorneys can meet privately with defendants, how conflicts for defense attorneys will be handled, how set-overs will be handled, and the defense attorney's scope of representation. Marion and Douglas counties were unable to fully implement these dockets because OPDC could not secure or fund a defense attorney to staff the dockets. Courts that were able to implement early resolution dockets have had varied levels of success in reducing their unrepresented lists. Lincoln County Circuit Court reported 70% of cases on their early resolution dockets resolved, greatly reducing the number of unrepresented cases in that district; however, OPDC required the court to first provide a detailed written plan for the docket before committing to it. Additionally, none of the local defense providers were

willing to staff the docket. The contract administrator who was retired agreed to staff the docket for a short period of time, but OPDC would only repay him the cost of reinstating his license and his malpractice insurance. The district attorneys in Lincoln and Linn counties have stated they are not interested in participating in these dockets again. In Multnomah County Circuit Court between June 2023 and June 2024, 382 cases were set on their early resolution docket and only 28% of those cases resolved, having no impact on their unrepresented list. Washington County has had a long-standing early resolution docket, which is a successful avenue for resolving cases quickly in that jurisdiction; however, with the decrease in in-custody cases, the out-of-custody docket has grown too large for the number of defense attorneys currently contracted to staff the docket. When considering the time and resources that courts, prosecutors, and defense attorneys allocate to creating and staffing these dockets, in certain jurisdictions, they have not proven to be worthwhile endeavors. Courts offer several opportunities for attorneys to resolve cases early; whether those options are used depends on the parties.

5 DATA-INFORMED DECISION MAKING

OJD and OPDC continue to work together to ensure accurate data collection to identify in-custody and out-of-custody unrepresented individuals and manage efficient appointment of counsel. In April 2024, OJD and OPDC updated and expanded their data share agreement to address systemic gaps that prevent OPDC from accurately tracking attorney start and end dates, annual maximum attorney caseload, attorney availability, attorney qualification, and attorney capacity. In May 2024, OPDC was provided direct access to the OJD Data Warehouse and in June 2024 OPDC transitioned from using OJD created dashboards to accessing data directly from the Warehouse. OPDC also began sharing data with OJD regarding updated contract and hourly attorney start and end dates (prorated MAC), attorney qualifications, attorney caseload reports, and the THIP case list. OSCA staff meet weekly with OPDC's data team to collaborate on enhancing data quality and creating system efficiencies through data collection and reporting.

Starting in February 2024, OJD has submitted a SB 337 Unrepresented Crisis Update for each OPDC Commission meeting. These reports generally include monthly data regarding the number of unrepresented cases statewide by county and custody status, trends in case filings, average amount of time an individual is unrepresented, number of appointments taken by the new state Trial Division offices, and spotlights on different courts that continue to be in crisis or are suddenly experiencing a crisis.

6 NEXT STEPS

The impact of the unrepresented crisis continues to threaten the viability of our justice system, not only affecting the constitutional rights of individuals facing prosecution, but also the rights and safety of crime victims and community members. The public defense system continues to be severely compromised with little visible sustained change since the passage of SB 337. After the implementation of the crisis plans in early 2024, statewide numbers showed a temporary decrease in the number of unrepresented cases; however, that was not necessarily true in each judicial district. Some judicial districts that only had a few unrepresented individuals at the time the crisis plans were created have seen a drastic increase in their unrepresented population. Judicial districts with the highest number of unrepresented individuals such as Jackson, Marion, and Multnomah counties have at times seen small decreases in the number of unrepresented cases, but overall the number of unrepresented cases has increased in each county since

the crisis plans were implemented. Overall, the total number of unrepresented individuals with a right to counsel has increased since September 2023. OJD remains committed to continuing its efforts to work efficiently at the local level and to partner with OPDC to provide comprehensive and real-time data to better understand attorney capacity, produce accurate forecasts, and ensure that each person entitled to court appointed counsel is provided timely representation as required by law.

APPENDIX A: CIRCUIT COURT CRISIS PLAN UPDATES

A.1 CRISIS PLANS

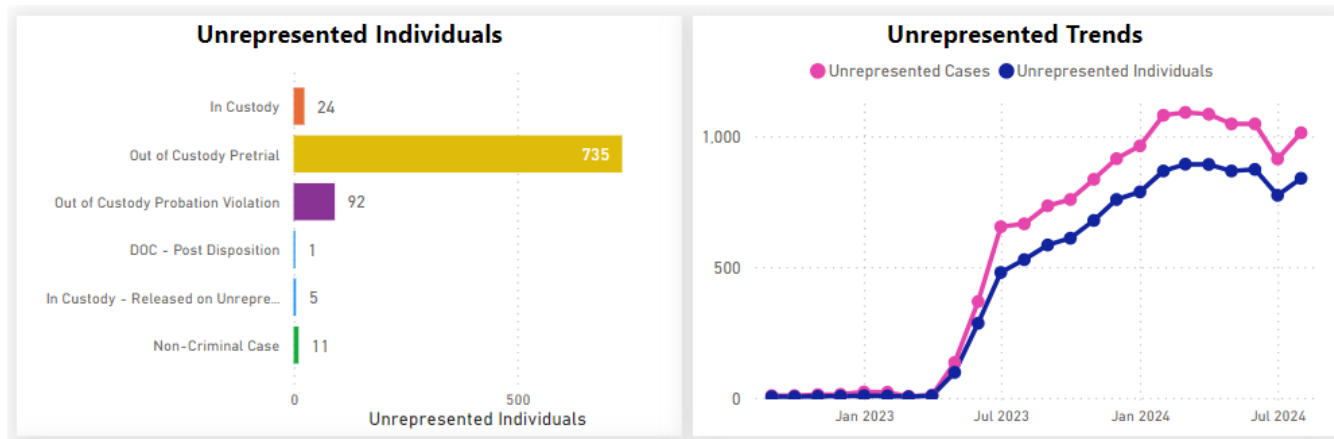
Judicial District 01	<u>Jackson County</u>
Judicial District 02	<u>Lane County</u>
Judicial District 03	<u>Marion County</u>
Judicial District 04	<u>Multnomah County</u>
Judicial District 05	<u>Clackamas County</u>
Judicial District 06	<u>Umatilla and Morrow Counties</u>
Judicial District 07	<u>Sherman, Wasco, Gilliam, Wheeler, and Hood River Counties</u>
Judicial District 08	<u>Baker County</u>
Judicial District 09	<u>Malheur County</u>
Judicial District 10	<u>Union and Wallowa Counties</u>
Judicial District 11	<u>Deschutes County</u>
Judicial District 12	<u>Polk County</u>
Judicial District 13	<u>Klamath County</u>
Judicial District 14	<u>Josephine County</u>
Judicial District 15	<u>Coos and Curry Counties</u>
Judicial District 16	<u>Douglas County</u>
Judicial District 17	<u>Lincoln County</u>
Judicial District 18	<u>Clatsop County</u>
Judicial District 19	<u>Columbia County</u>
Judicial District 20	<u>Washington County</u>
Judicial District 21	<u>Benton County</u>
Judicial District 22	<u>Jefferson and Crook Counties</u>
Judicial District 23	<u>Linn County</u>
Judicial District 24	<u>Grant and Harney Counties</u>
Judicial District 25	<u>Yamhill County</u>
Judicial District 26	<u>Lake County</u>
Judicial District 27	<u>Tillamook County</u>

JUDICIAL DISTRICT 01 – JACKSON COUNTY

Presiding Judge: Benjamin M. Bloom

Trial Court Administrator: Tina Qualls

JACKSON COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

The 1st Judicial District has had a public defender crisis for nearly three years. The crisis is the result of a combination of related and unrelated factors that when combined has created a shortage of local attorneys available for court appointment. The stakeholders in the criminal justice system in the 1st Judicial District have a collaborative working relationship between the court, the public defense providers, and the district attorney's office.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 5

The court will analyze where terminating the appointment of attorneys after a defendant is on warrant status for 60 days is constitutionally permissible and will create more MAC while ensuring that attorneys are compensated for their work. Alternatively, the court will consider whether granting attorney withdrawal after the same period of time would help resolve the current crisis.

Intended Outcome or Goal:

Increase attorney ethical capacity and reduce the number of unrepresented individuals.

Actions Taken:

The court reviewed whether to terminate appointments after a defendant has been in warrant status for 60 days and decided not to proceed in this direction.

Outcome Reached:

No.

Additional Resources Needed:

None.

Next Steps:

None.

INTERVENTION/RECOMMENDATION 6

Case Resolution:

- DUII/Diversion Session – OPDC to reimburse attorneys through the hourly rate or provide out-of-county attorneys for the session.
- Case Resolution Conference – Can OPDC assign two to three OPDC attorneys to appear twice a year for a scheduled case resolution conference? The OPDC attorneys would be paid out of the hourly rate. The conference would be developed in partnership with the district attorney's office and local defense providers.

Intended Outcome or Goal:

Free up MAC by having OPDC attorneys available. Preserve Jackson County attorney MAC.

Actions Taken:

The court held four special dockets to resolve criminal traffic cases and DUII diversion cases.

Outcome Reached:

Yes and no. While some dockets were successful in resolving a significant number of cases, at least two sessions were not successful in resolving cases. The defense attorney assigned by OPDC to the less successful sessions did not appear prepared to move cases forward.

Additional Resources Needed:

Special resolution or early case resolution dockets require resources, backing, and support by all of the necessary stakeholders in order to be successful.

Next Steps:

INTERVENTION/RECOMMENDATION 9

Prioritize appointment of counsel for clients in custody, and then for clients based on seriousness of charge.

Intended Outcome or Goal:

Decrease the number of unrepresented defendants who are in custody and the number of unrepresented with the most serious charges. Improve community safety by resolving the most serious cases for those who are out of custody.

Actions Taken:

The court hired an analyst to focus on court appointments and data analysis of unrepresented persons.

Outcome Reached:

Partially. Since October 2023, when defense providers' new contract started, the capacity of defense attorneys has decreased significantly. While in-custody clients have been appointed counsel faster, the number of unrepresented persons has grown due to lack of capacity and/or not enough attorneys. Prioritizing appointment based on seriousness has also led to the local defense bar running out of capacity early in the month, especially when serious charges (e.g., murder) have been filed.

Additional Resources Needed:

Additional attorneys and/or increase in caseload capacity for attorneys who are ethically capable.

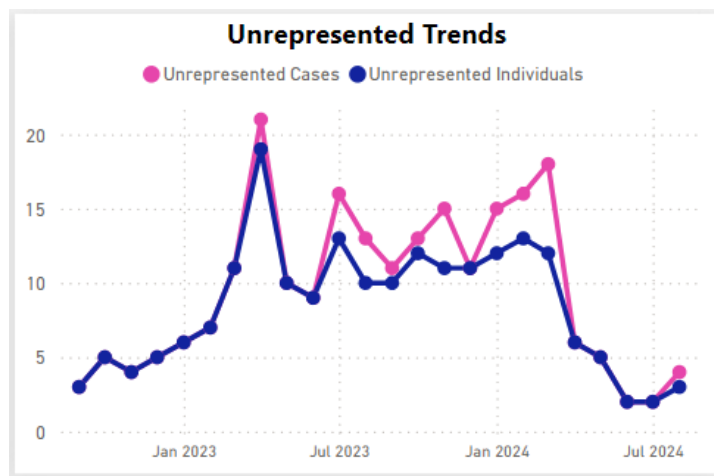
Next Steps:

JUDICIAL DISTRICT 02 – LANE COUNTY

Presiding Judge: Jay A. McAlpin

Trial Court Administrator: Elizabeth Rambo

LANE COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

The public defense crisis looks different in each judicial district. Lane County's crisis continues to consist of defendants who are unrepresented due to ethical conflicts with local contract providers and a shortage of experienced attorneys qualified to handle more serious criminal cases. Until recently, there were a large number of unfiled misdemeanor and low-level felony cases; however, these cases are now being filed and will potentially overtax the local defense providers' capacity. The increase in filings is due to the district attorney's office hiring attorneys for positions that were previously vacant.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Community Partner Workgroups: Form workgroups comprised of a broad spectrum of community partners with each workgroup proposing specific solutions to the Lane County Presiding Judge that will address the unrepresented persons crisis by increasing system efficiencies. The specific groups are as follows:

1. Education: This workgroup will collaboratively devise a training curriculum for less experienced attorneys that would improve their qualification status from misdemeanor and minor felonies to major felonies.

2. **Communication with the Court:** This workgroup will identify situations where modes of communication other than formal motion are appropriate. Additionally, this workgroup will draft a rule or business process that publicly explains those situations.
3. **Discovery:** This workgroup will identify barriers to timely discovery, collaboratively attempt to remove those barriers and provide a mechanism for efficient and timely resolution of discovery disputes.
4. **Behavioral Health (Aid and Assist, & Civil Commitments):** This workgroup will synthesize the lessons learned from the initial year of the court's Behavioral Health docket and formalize business processes.

Intended Outcome or Goal:

During our crisis team meetings, team members discussed general areas for improvement in the court system. The team identified: (1) education; (2) communication with the court; (3) discovery; and (4) behavioral health as areas where efficiencies would be mutually beneficial. Each workgroup has a specific mandate. Each group is to propose potential solutions to the presiding judge for consideration. For example, groups will plan to (1) discuss, clarify, and publish best practices for different forms of communication with the court and the use of technology; (2) discuss issues related to discovery and discovery timeliness; and (3) analyze whether CLEs, trainings, or other materials may support enhanced knowledge for the local bench and bar. It may be that new or modified Supplemental Local Rules (SLRs) result from these workgroup proposals. By bringing together defense providers, prosecution, court staff, and other interested parties, the goal will be to open communication and come up with solutions before bigger problems arise and to continue to collaborate to improve system efficiencies.

Actions Taken:

Each workgroup has met at least once and developed action plans, as outlined below:

- (1) The Education Workgroup has begun a CLE series sponsored by the court that would be helpful for both less experienced and more experienced local attorneys. The group made a presentation to the local bar association promoting public defense work and attorney recruitment. The group developed a series of programs to teach criminal trial skills. The group identified local attorneys who are highly experienced and approached them on qualification standards and payment structure for public defense work.
- (2) The Communication with the Court Workgroup discussed a variety of communication issues and prepared a draft proposal of recommendations regarding different communication issues for the Lane County Circuit Court judges to review.
- (3) The Discovery Workgroup has facilitated open conversation with the district attorney's office regarding ongoing efforts to speed up the process for obtaining evidence from local law enforcement. The group is reviewing UTCR 7.010(2) and statutes from other states that have discovery deadlines and considering whether to develop a rule with the goal of creating timelines to prompt parties to take action on discovery before trial preparation.
- (4) The Behavioral Health Workgroup consists of two subcommittees: Aid and Assist, and Civil Commitment. The Aid and Assist Subcommittee (1) reviewed and agreed on revisions to the court's forms for the aid and assist docket (the court will make these forms available on its website); (2) discussed the Oregon State Hospital docket and notice requirements; and (3) discussed the need to improve communication between defense providers and the district attorney's office in order to improve efficiencies. The subcommittee discussed the community

restoration review process, agreeing to consider moving towards a new staffing model to improve efficiency and avoid damaging defense attorneys' rapport with clients. The subcommittee also discussed contested hearings, remote appearances, and email communications with the court, and how to best ensure communication arrives to the appropriate attorney. The Civil Commitment Subcommittee identified improvements from the previous docket system and is discussing service process issues, hearing times and whether hearings can be moved to another time to accommodate all parties, and streamlining diversions.

Outcome Reached:

No, the public defense crisis is generally unchanged in Lane County. There is a shortage of experienced attorneys in the county. Since the district attorney's office has been able to hire more attorneys, albeit still under-staffed compared to the public defender's office, misdemeanor and low-level felony case filings have been rising. There has been an increase in delay in cases progressing through the system, largely due to an increase in the aid and assist cases. These workgroups are taking small steps toward long-term objectives and outcomes.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 2

Conflict Resolution Team. Form an ongoing Conflict Resolution Team comprised of the Lane County Circuit Court Presiding Judge (Judge McAlpin), a representative from Public Defender Services of Lane County (Brook Reinhard), and a representative from the Lane County Defense Consortium (Rebecca Gouge), and consult with a representative of Oregon Public Defender Services (Laurie Bender) as needed, to discuss, prioritize, and resolve the conflicts list by reaching out to attorneys identified by the Conflict Resolution Team as capable of handling these conflict cases.

Intended Outcome or Goal:

Increased communication, prioritization, and resolution of conflict cases.

Actions Taken:

A conflict team was formed and the team initially identified a list of attorneys capable of handling conflict cases. The team meets to discuss, prioritize, and resolve the conflicts list and has successfully identified attorneys for nearly all in-custody unrepresented persons.

The conflict team continues to meet. The purpose of the meetings is to resolve specific representation issues and to work on general issues around conflicts in representation.

Outcome Reached:

Yes. The outcome was creating a team. The work of the team will be ongoing.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 3

Local coordinator for attorney appointments. The coordinator, an OJD employee, will identify available qualified attorneys with capacity, assist the court in prioritizing appointment (considering custody status of individuals in need of counsel and attorney qualifications), identify and coordinate appointment of

conflict counsel, and monitor adults in custody (AIC) and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.

Intended Outcome or Goal:

Increase attorney capacity and system efficiencies; reduce the number of unrepresented individuals.

Actions Taken:

The court has looked at the resources needed to hire a staff person to do this work.

Outcome Reached:

No. The court does not have the resources to allocate a position specifically for this work.

Additional Resources Needed:

One FTE Court Coordinator is needed for this challenging and increasing workload.

Next Steps:

Obtain funding. Hire position.

INTERVENTION/RECOMMENDATION 4

End representation of defendants on warrant status. Terminate appointment of attorney if defendant is on warrant status for failure to appear (FTA) for non-compliance with release conditions after 60 days.

Intended Outcome or Goal:

Increase attorney ethical capacity and accurately reflect the number of unrepresented individuals with active cases.

Actions Taken:

Court now terminates appointment for publicly funded defense counsel if a defendant is on warrant status for FTA for non-compliance with release conditions after 60 days.

Outcome Reached:

The intervention was implemented; however, the goal was not reached due to OPDC's current contract provisions.

Additional Resources Needed:

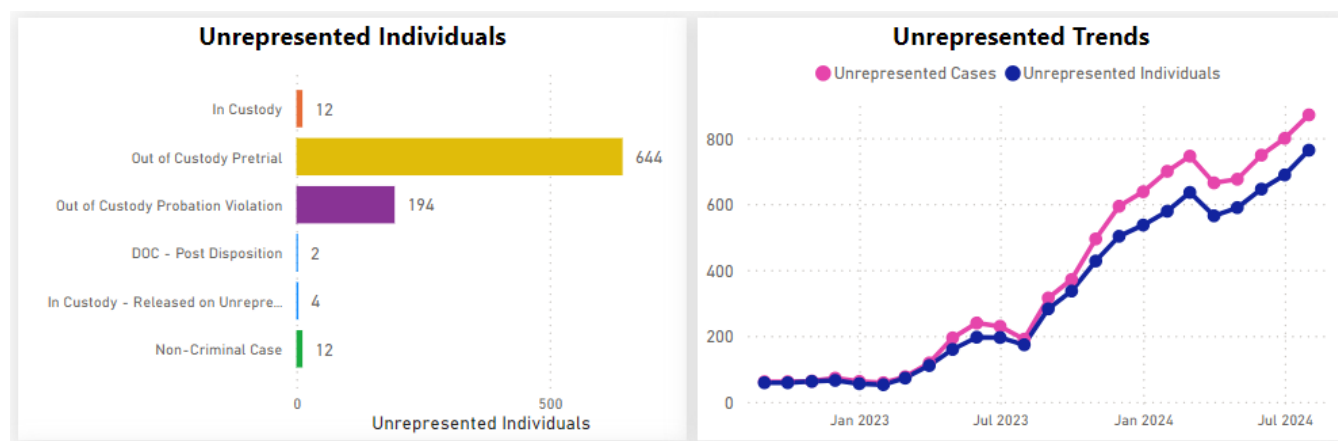
Next Steps:

JUDICIAL DISTRICT 03 – MARION COUNTY

Presiding Judge: Tracy A. Prall

Trial Court Administrator: Linda Hukari

MARION COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

In July 2021, the Public Defender of Marion County (PDMC) advised the court they had no capacity to accept Ballot Measure 11 cases a few days in July and all of August or September. While the Marion County Association of Defenders (MCAD) lawyers were able to take up the slack, they became overloaded by September. The influx of attorneys predicted by OPDC in prior discussions with legislators did not materialize. Marion County struggled to find attorneys available for appointment through the end of that year and into 2022. Despite multiple meetings with OPDC leadership, efforts to reduce caseloads, including mass settlement dockets for both in-custody and out-of-custody defendants, and recruitment efforts, the crisis continued to build. By March of 2022, following another round of settlement conferences, we felt some relief. It was, however, short lived. Contract limitations prevented attorneys from accepting more cases and many attorneys left MCAD and PDMC. The limitations on defense attorney availability for appointments have continued for over three years. As of August 22, 2022, there are 831 unrepresented individuals and 945 unrepresented cases.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Coordinator for Attorney Appointments: Local or regional coordinator for attorney appointments. The coordinator, an OJD employee, will identify available qualified attorneys with capacity, assist the court in prioritizing appointments (considering custody status of individuals in need of counsel and attorney qualifications), identify and coordinate appointments to conflict counsel, and monitor AIC and

unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.

Intended Outcome or Goal:

Increase attorney capacity and system efficiencies; reduce the number of unrepresented individuals.

Actions Taken:

The court hired an analyst on November 27, 2023, to review attorney caseload data and make recommendations for appointment based on contract and ethical capacity.

Outcome Reached:

Yes. The court analyst has been able to ensure every in-custody defendant has an attorney within 24-hours. The analyst is also working to identify attorneys for out-of-custody unrepresented defendants. However, a decrease in attorney capacity and turn-over at the public defender's office limits the number of unrepresented cases that can be assigned. Private bar attorneys are hesitant to take cases due to OPDC's process to be approved for hourly appointments. The analyst monitors a phone line set up for unrepresented defendants to "check-in" rather than appear in court and contacts any that fail to check-in.

Additional Resources Needed:

This analyst is a limited duration position. We do not see sufficient progress in the unrepresented crisis to believe that it will be resolved within the next 12 months. We will be seeking permanent funding for this position, as OPDC has failed to monitor and track attorney capacity.

Next Steps:

Seek permanent funding for the analyst position.

INTERVENTION/RECOMMENDATION 3

Cite and Release Warrants: Increase or maintain use of cite-and-release warrants.

Intended Outcome or Goal:

Reduce the number of in-custody defendants.

Actions Taken:

We continue to utilize the cite-and-release option for bench warrants on non-person offenses.

Outcome Reached:

The intention is to limit the number of in-custody defendants requiring the immediate appointment of counsel.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 4

Warrants: Terminate appointment of attorney at 30 days if the individual is on warrant status for FTA, and return the individual to the unrepresented list – judicial discretion for exceptions.

Intended Outcome or Goal:

Increase attorney ethical capacity and reduce the number of unrepresented individuals.

Actions Taken:

We did not implement this practice, as an amendment to the OPDC contracts meant it did not impact attorney MAC.

Outcome Reached:

N/A – No action taken.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 6

Semi-annual mass settlement dockets on in and out-of-custody cases to increase attorney capacity.

Intended Outcome or Goal:

Reduce caseloads and increase capacity.

Actions Taken:

We shifted to an attorney-specific settlement docket. The analyst monitors the attorneys' open weighted caseloads and when any attorney reaches 250 open weighted cases, she offers settlement days for that attorney. The analyst works with the supervisors in the district attorney's office to ensure coverage of the settlement days.

Outcome Reached:

Ensure attorneys have an opportunity to resolve cases quickly and efficiently, when warranted. Provides ethical capacity ensuring that attorneys are available to accept up to their contracted MAC.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 8

Standardized Pretrial Expectations: Discovery complete, offers exchanged, witness(es) contacted, investigation and evaluations complete.

Intended Outcome or Goal:

Improve case disposition rates to increase attorney capacity.

Actions Taken:

Marion County has an individual docket system. The judges have been advised of the necessity to actively monitor case progress, specifically to ensure discovery is being completed, evaluations are scheduled, and that the parties are moving toward settlement or trial. The judges report they are tracking age of case, discovery progress, evaluations barriers, and general negotiation status.

Outcome Reached:

The intended outcome is to ensure cases continue to move through the system. We have a tremendous backlog of out-of-custody unrepresented cases that will continue to grow. We need to ensure that cases with attorneys move through the system in a timely manner as to not add to the backlog.

Additional Resources Needed:

OPDC needs to continue to focus staff resources on timely approval or rejection of requests for evaluation funding. Our community needs to recruit additional qualified evaluators.

Next Steps:

Recommendations to OPDC regarding staff resources and to our Local Public Safety Coordinating Council (LPSCC) regarding recruitment of qualified evaluators.

INTERVENTION/RECOMMENDATION 11

Continue Early Disposition Program (EDP) Resolutions: Recently expanded to Class C felonies.

Intended Outcome or Goal:

Reduce appearances and increase capacity by resolving cases quickly.

Actions Taken:

The district attorney immediately implemented an expansion of cases eligible for EDP to include low-level property and motor vehicle felonies. MCAD attorneys are provided compensation through an agreement with MCAD but are not funded for this work directly or contractually through OPDC.

Outcome Reached:

Swift resolution of cases that would otherwise require appointment of counsel.

Additional Resources Needed:

OPDC should specifically fund special docket assignment such as EDPs, Diversion dockets, and probation violation dockets.

Next Steps:

Recommend a contract addendum to OPDC.

INTERVENTION/RECOMMENDATION 13

Expand Specialty Courts and Prison Diversion Programs: - Veterans Treatment Court, Adult Drug Court, Mental Health Court – Supervised Treatment and Recovery (STAR) Court, Fostering Attachment Treatment Court, 416 Alternative Program

Intended Outcome or Goal:

Create appropriate offramps to address underlying causation of crime. Requires early recognition and accountability, leading to early disposition. Early disposition increases attorney capacity.

Actions Taken:

We have struggled to expand our treatment court population mostly because a large portion of the cases that would have been eligible for these dockets are now on our unrepresented call-in system. We have changed the message on our unrepresented call-in line to now included a question about veteran status. If a defendant identifies as a veteran, our analyst will contact that defendant and connect them with the

Veterans Treatment Court attorneys. The analyst is now working with the district attorney's office to identify unrepresented defendants eligible for Adult Drug Court. The analyst will contact the identified defendants and connect them with the Adult Drug Court attorneys.

Outcome Reached:

Provide a timely intervention for defendants willing to engage in treatment. Utilize the attorney resources available through the treatment courts.

Additional Resources Needed:

Attorney resources available at arraignment to discuss treatment court options with defendants identified as eligible by the district attorney. This would be in addition to the arraignment attorney of the day. This would avoid a delay in treatment engagement.

Next Steps:

Recommend OPDC contract for additional attorney resources at arraignment dockets.

INTERVENTION/RECOMMENDATION 14

Review of how eligibility for a court appointed attorney (CAA) is verified locally in Marion County Court process and ensure statewide qualification standards are in line with national standards.

Intended Outcome or Goal:

Ensure that the net of CAA eligibility is not cast too wide; thus capturing individuals NOT eligible for funding. Will ensure public defense resources are only provided to those who qualify. Will reduce caseloads.

Actions Taken:

We have ensured that all defendants complete an application for court appointed counsel prior to arraignment and have indigent verification clerks review each application. If an in-custody defendant is not able to complete the application prior to arraignment, we work with jail staff to ensure the application is completed and reviewed prior to the next appearance.

Outcome Reached:

Ensuring the attorney resources are used appropriately.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 18

DUII Diversion and Domestic Violence Deferred Sentence Docket. Individuals eligible for diversion or deferred sentences are fast tracked to specialized dockets with a dedicated attorney (perhaps the arraignment attorney).

Intended Outcome or Goal:

Increase disposition rates and attorney capacity.

Actions Taken:

The court has set multiple special mass dockets for DUII diversions and PV hearings.

Outcome Reached:

Yes and no. The court has held several DUII diversion dockets and two PV dockets. These dockets were successful in resolving a large number of cases from the unrepresented list; however, the court learned that the defense attorneys staffing the docket encountered issues being paid by OPDC.

Additional Resources Needed:

Funding allocated to a defense attorney to staff these dockets.

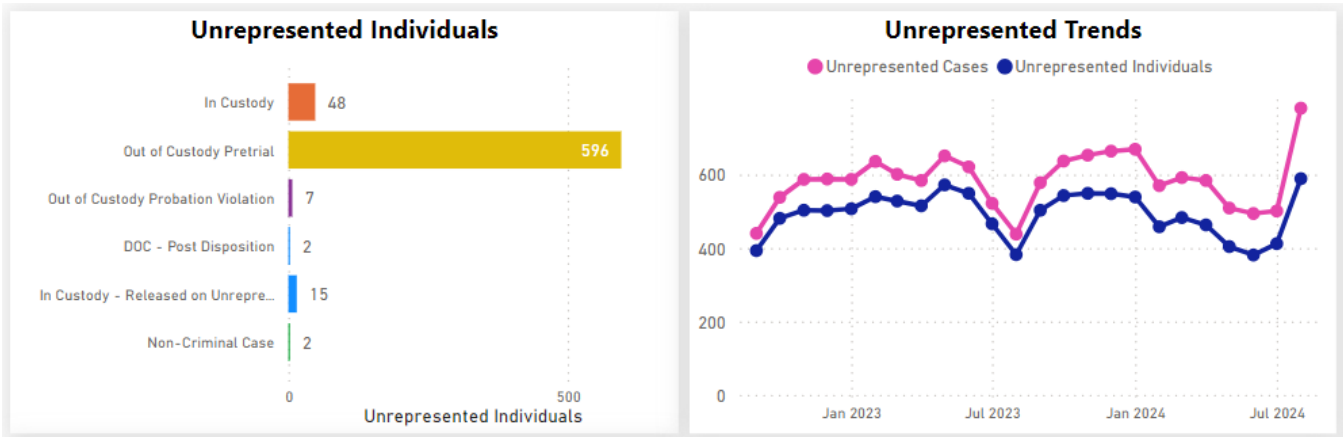
Next Steps:

JUDICIAL DISTRICT 04 – MULTNOMAH COUNTY

Presiding Judge: Judith H. Matarazzo

Trial Court Administrator: Barbara Marcille

MULTNOMAH COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

In early January 2022, Metropolitan Public Defender (MPD) announced that they would temporarily cease taking appointments on any felonies in Multnomah County, and by the end of January 2022 Multnomah Defenders Incorporated (MDI) also ceased taking any felony appointments in Multnomah County. By April 2022, both MPD and MDI also ceased taking misdemeanor appointments. At times there have been over 600 people facing criminal charges who have not had an assigned lawyer in this county; most have been defendants who are released from custody. The limitations on defense attorney availability for appointments has continued for over 30 months, and in August of 2024 Multnomah County reached a new high of 668 unrepresented individuals and 853 unrepresented cases. OPDC's Trial Division office has taken 61 appointments in Multnomah County.

There have also been cases that were dismissed due to multiple reappearances without an available attorney to represent the defendant. Stakeholders, including leadership from MPD, MDI, the Portland Defense Consortium, the district attorney's office, OPDC, and the court, have been meeting multiple times per month since the crisis began to explore solutions.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

All interventions/recommendations were directed to OPDC, the district attorney's office, and other system partners.

Intended Outcome or Goal:***Actions Taken:***

N/A - Recommendations are directed at OPDC and other system partners.

Outcome Reached:

- We started seeing the effects of the public defense shortage in Multnomah County in fall 2021.
- In January 2022, there were 41 unrepresented cases eligible for public defenders in Multnomah County.
- By the end of June 2022, there were 622 unrepresented cases in Multnomah County.
- As of July 1, 2024, there are 659 unrepresented cases in Multnomah County. There are 523 unrepresented people in Multnomah County, so many individuals are unrepresented on multiple pending cases.

We have not seen an improvement in the unrepresented crisis in Multnomah County. Fifty-nine percent of those unrepresented are charged with minor felonies, 27% are charged with misdemeanors, and 13% are charged with major felonies.

There are no unrepresented cases in Multnomah County that are potentially subject to release under the *Betschart* ruling. To date, the only individuals in custody without representation in Multnomah County are defendants who were previously appointed public defense counsel but who have been granted substitution of counsel and are awaiting a new appointment.

We anticipate the number of unrepresented cases to grow significantly in the coming months due to several factors:

- Criminal case filings in Multnomah County are increasing in both misdemeanors and felonies:
 - Property crimes filed increased by 15% in 2023
 - Person crimes filed increased by 26% in 2023
 - DUII crimes filed increased by 26% in 2023; and
 - Drug crimes filed increased by 62% in 2023.
- Changes in laws related to camping and controlled substances will increase our arraignment volume in the coming months as enforcement begins.
- Changes in the Multnomah County Pretrial Release Guidelines will result in fewer defendants being released on recognizance and more being held until arraignment; therefore, more cases active and needing attorney capacity at arraignment.

Additional Resources Needed:

Funding for additional contract attorneys is desperately needed to reduce the number of unrepresented cases and individuals in Multnomah County.

Next Steps:

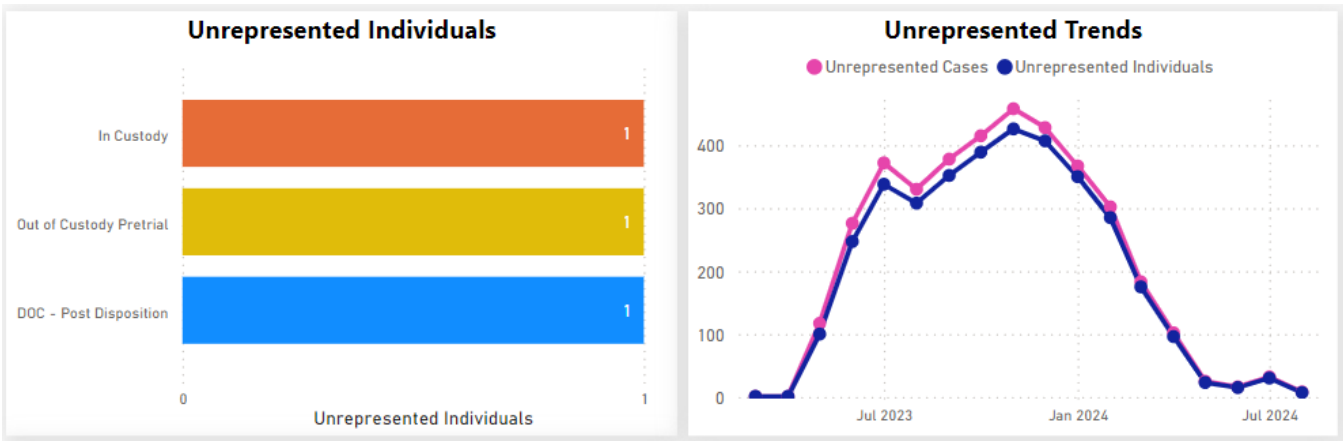
We presented a Multnomah County spotlight to OPDC at the July 24, 2024 commission meeting. We have also sent a letter directly to all the commissioners explaining the unique circumstances in Multnomah County.

JUDICIAL DISTRICT 05 – CLACKAMAS COUNTY

Presiding Judge: Michael C. Wetzel

Trial Court Administrator: Debbie D. Spradley

CLACKAMAS COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

For many years, indigent defense services in Clackamas County have been provided by the Clackamas Indigent Defense Corporation (CIDC), a nonprofit defense consortium. CIDC currently has approximately 31 independent defense lawyers, each of whom run their own firm or solo practice. Because each practitioner is responsible for their own overhead, this consortium model maximizes system efficiencies by encouraging lawyers to minimize costs and emphasize productivity. In part, because of the independence fostered by this model, we generally have lower defense lawyer turnover than other models, giving us a more experienced bench of lawyers. We are also able to deal with conflicts of interest and lawyer withdrawals efficiently since each provider is separate and distinct from each other for conflict-of-interest purposes. Finally, in large part due to the professionalism of our district attorney/deputy district attorneys, as well as defense counsel, we have a collegial practice environment. In short, we have a model that works, lawyers want to be here, and structural changes would not only be unwanted, but likely counterproductive.

We currently have four defendants without lawyers. Lawyers for these individuals are being assigned on a first-in-first-out method, so that the oldest cases receive lawyers before newly filed cases.

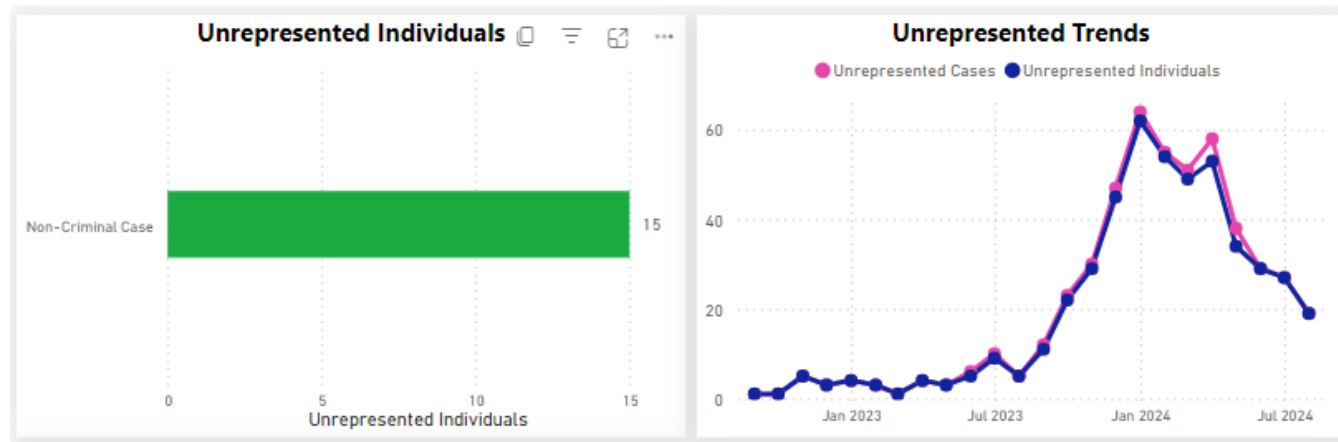
All interventions/recommendations were directed to other entities, none are within the court's power to implement.

JUDICIAL DISTRICT 06 – UMATILLA AND MORROW COUNTIES

Presiding Judge: Daniel J. Hill

Trial Court Administrator: Irma Solis

UMATILLA AND MORROW COUNTIES UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

The 6th Judicial District has several public defender organizations. Each were consulted on the crisis. The court has also coordinated with the district attorneys and the Local Public Safety Coordinating Councils (LPSCCs) of both counties in our district (Umatilla and Morrow counties). The local defense providers have worked with the court to ensure representation on all criminal cases. Providers have often expressed having ethical capacity to take more cases but were told by OPDC they could not. As of August 22, 2022, there are fifteen unrepresented individuals at this time, all are habeas or post-conviction relief (PCR) cases.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Local Public Defense Organizations (PDOs) will advise the court when they are within 10% of meeting their capacity. On August 25, 2023, the Presiding Judge Order (PJO) was updated to reflect the course of action taken when the local PDOs are near, or exceeding, capacity.

Intended Outcome or Goal:

PDOs will communicate with the court to coordinate next steps, while prioritizing defendants consistent with SB 337 and CJO 23-024.

Actions Taken:

PJO 23-007 was implemented and has been followed by the local public defense organizations and the court.

PJO 24-006 was implemented June 21, 2024, and has been followed by the local PDOs and the court.

Amended PJO 24-006 was implemented June 28, 2024, and followed by the local PDOs and the court.

Outcome Reached:

Yes.

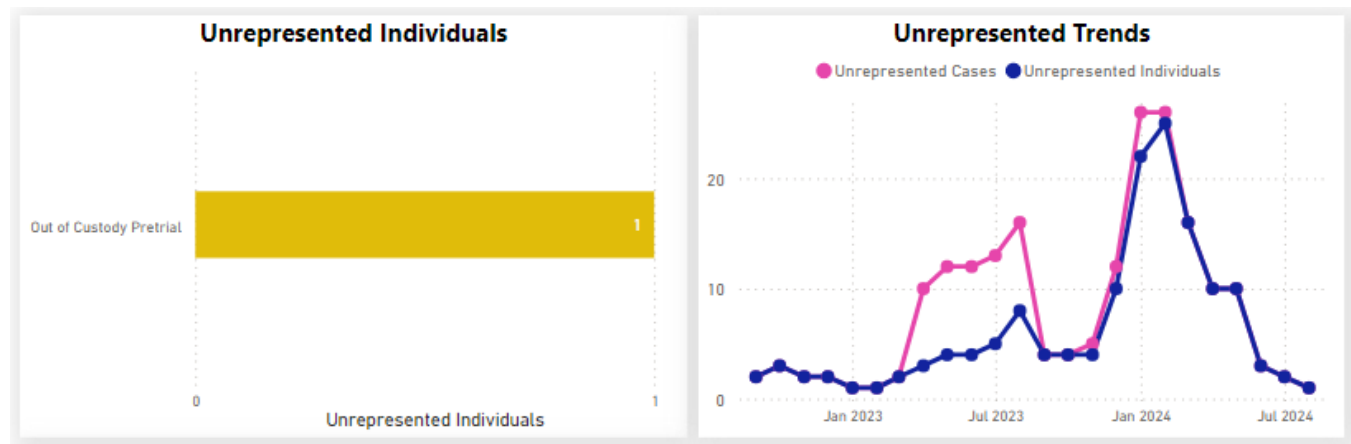
Additional Resources Needed:***Next Steps:***

JUDICIAL DISTRICT 07 – SHERMAN, WASCO, GILLIAM, WHEELER, AND HOOD RIVER COUNTIES

Presiding Judge: Karen Ostrye

Trial Court Administrator: Rian Beach

SHERMAN, WASCO, GILLIAM, WHEELER, AND HOOD RIVER COUNTIES UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

The 7th Judicial District is very different than other districts of our size. We have FIVE counties in our district, three of which are extremely rural and remote. Our most rural counties include Gilliam, Sherman, and Wheeler counties. Each of those three counties have one lawyer that lives there, the county's district attorney. All the other lawyers that typically represent defendants in Gilliam, Sherman, and Wheeler counties travel from Hood River and Wasco counties. Hood River County is a four-hour round trip from Wheeler County. The only reason that we have not had significant difficulties appointing lawyers in our three rural counties is because our defense firm requires coverage of the entire district as a condition of any defense lawyer's employment with that firm. Even defendants who do not qualify for a court-appointed attorney find it very difficult to locate one willing to travel the distance involved.

Our consortium of conflict attorneys is managed by the same administrator. Again, without this commitment of covering the entire district we simply would not have lawyers for criminal defendants in Gilliam, Sherman, or Wheeler counties and would quickly be in the crisis category. As of August 22, 2024, we have one unrepresented individual.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Original recommendation was directed to OPDC. After the crisis plan was submitted, in the fall of 2023 we had one lawyer leave our local defense firm. The departure of that lawyer and the reassignment of his cases quickly took all the other lawyers in the firm to their maximum MAC limit. Our local lawyers receive additional capacity for cases at the beginning of each month.

Actions Taken:

At the time of an out-of-custody arraignment, we would advise the defendant that we would not be able to appoint them a lawyer for a few weeks and we would give them a date certain to come back to court to find out who their lawyer would be and to meet with them. We would choose a date at the beginning of a month anticipating more capacity. We would keep track of how many more cases lawyers could absorb at the beginning of the month and appoint lawyers to cases in chronological order (oldest cases first). Generally speaking, defendants would receive a lawyer within approximately 60 days of their arraignment.

We saved appointments to our consortium lawyers for cases where a lawyer was immediately required and for serious crimes and in-custody defendants. For example, cases where the state was asking for no contact with an out-of-custody defendant's own children, or cases with complicated conditions of release for an out-of custody, non-English speaking defendant.

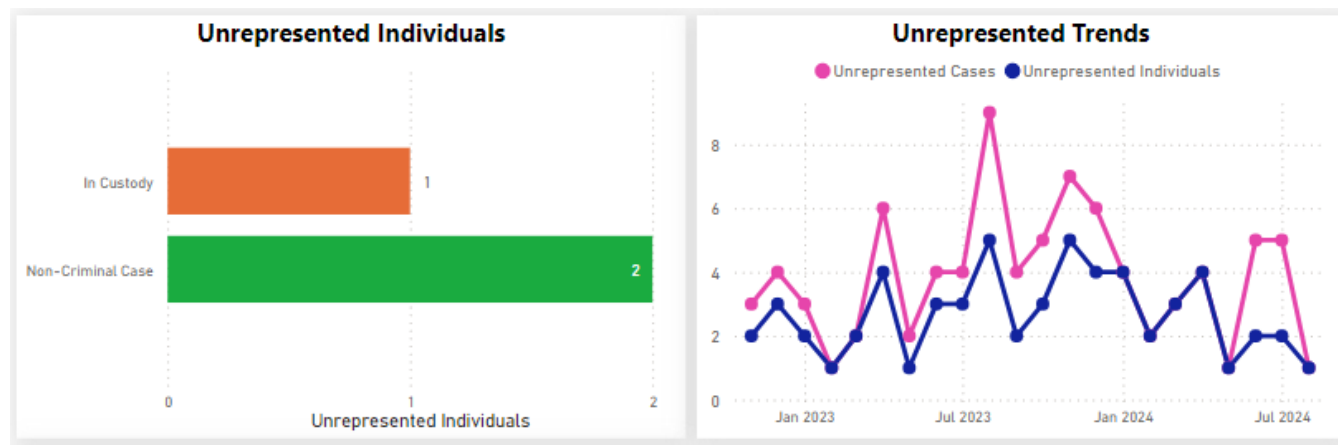
Eventually, in the spring of this year, our local defense firm was finally able to hire a replacement for the lawyer who left and we were able to work our way back to appointing lawyers to defendants at the time of their first arraignment. Early this summer, we had a murder case filed. That case, had the defendant not hired his own lawyer, would have used all the MAC for a court-appointed attorney and we would have been right back in the situation described above. The ability for us to appoint attorneys to qualifying defendants depends upon (1) no attorneys leaving the area to go work elsewhere; and (2) no murders. This is not sustainable.

JUDICIAL DISTRICT 08 – BAKER COUNTY

Presiding Judge: Matthew B. Shirtcliff

Trial Court Administrator: Amy Swiger

BAKER COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Based on the data, Baker County is not in a "crisis" situation involving unrepresented defendants. As of August 22, 2024, we have three unrepresented individuals, one is a Ballot Measure 11 case, one a juvenile delinquency case, and the third is a PCR/habeas case. Finding attorneys when all the local providers are conflicted continues to be a struggle. The court was recently informed that one out-of-county attorney can no longer afford to take cases in Baker County because of how long it takes to be paid by OPDC for hourly cases.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

- District attorney's office reviewing policy of filing criminal FTA charges and trying a practice of filing an Order to Show Cause in lieu of FTA.
- Developing a coordinated plan with the individual consortiums in Eastern Oregon to ensure providers have some additional cap for conflict cases from another county's primary consortium due to conflicts.
- Continuing work to develop a regional conflict coordinator position that can contact and assign representation from OPDC contractors that have available MAC for those individuals deemed to be a conflict for the primary consortium(s).

Intended Outcome or Goal:

Continue to allow our primary contractor to have sufficient MAC while allowing some cap-specific conflicts from other counties, ensuring each provider does the same.

Actions Taken:

The first task is a recommendation to the district attorney's office.

The court is actively working with the surrounding counties and individual consortiums in Eastern Oregon to ensure coverage for conflict cases.

The court has been working with the Office of the State Court Administrator (OSCA) to develop an unrepresented list specific to Baker County and a master list for Eastern Oregon counties to ensure unrepresented defendants with cases in separate counties are appointed the same attorney. This was a lower priority goal and has not been addressed in a while.

The court had hoped to work within the region and the region's consortium to develop a conflict coordinator position that can contact and assign representation from OPDC contractors that have available MAC for those individuals deemed to be a conflict for the primary consortium(s). We were hoping that, since the consortiums in the 8th, 9th, 10th, and 24th judicial districts are all technically one law firm, they would be willing and able to have one staff member act as a regional coordinator, but so far that has not happened.

Outcome Reached:

The court continues to work with the surrounding counties and individual consortiums in Eastern Oregon to ensure coverage for conflict cases.

Additional Resources Needed:***Next Steps:***

Contact OSCA to readdress the unrepresented list specific to Baker County and a master list for Eastern Oregon counties to ensure unrepresented defendants with cases in separate counties are appointed the same attorney.

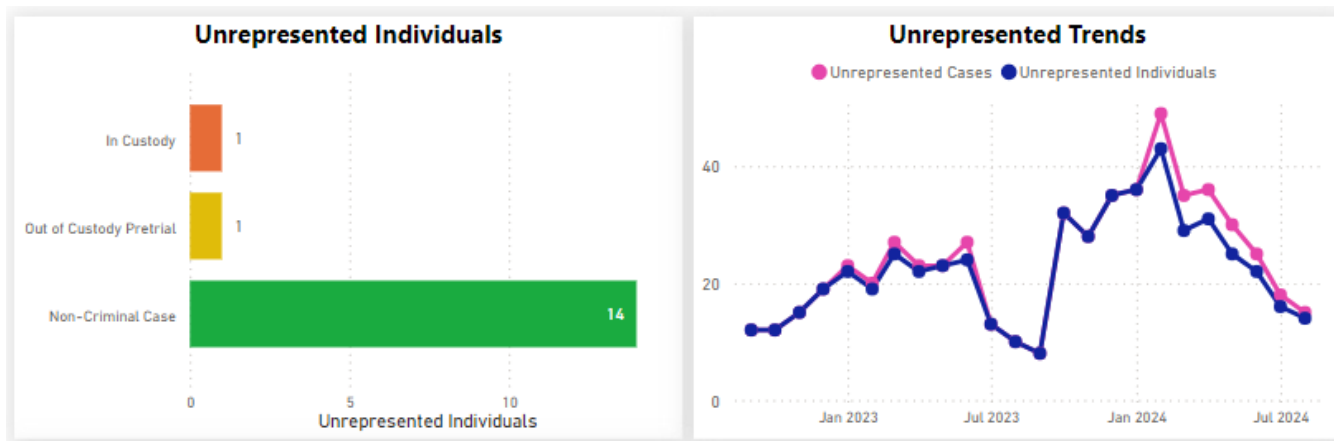
Talk to our local consortium director to see if their staffing levels have improved to the point where the consortium can provide a staff member to act as regional conflict coordinator.

JUDICIAL DISTRICT 09 – MALHEUR COUNTY

Presiding Judge: Lung S. Hung

Trial Court Administrator: Marilee Aldred

MALHEUR COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Malheur County has historically had a low unrepresented count, even though we have always been on the cusp of not having enough public defenders. In April of 2023 attorney contracts were maxed out and the court lacked attorneys for appointment in May and June of 2023. The number of unrepresented defendants in Malheur County peaked at 43 in February 2024. The local consortium was able to add two additional defense attorneys since the crisis plan was created. We have found that we are able to find attorneys faster than OPDC for unrepresented cases; however, there are also delays in receiving confirmation that OPDC has approved of the attorney taking the case and this is additional work for court staff to complete and track. As of August 22, 2024, there are 16 unrepresented cases, 14 of which are PCR/habeas cases.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

New Courthouse: Our current courthouse only has one courtroom that can handle jury trials even though we have two judges. We do not have a jury assembly room. This greatly limits our ability to process cases. Also, the current courthouse is limited in space for attorneys and clients to meet privately. A new courthouse would provide such space.

Intended Outcome or Goal:

New Courthouse.

Actions Taken:

The presiding judge worked with local legislators and the Joint Committee on Ways and Means, and submitted a request for planning funding during the 2024 legislative session. The funding was not approved in the 2024 legislative session. Next, we worked with the Association of Oregon Counties to get on their priority list for recommended funding. We were approved as the #1 recommendation for a new courthouse. We continue to work with the Chief Justice and legislators to seek funding for the 2025 legislative session.

Outcome Reached:

No.

Additional Resources Needed:

Funding.

Next Steps:**INTERVENTION/RECOMMENDATION 2**

Additional Judicial Position: In Malheur County, we have had 1,443 cases filed between January 2023 and August 2023 that involve public defense. We have two judges, which means 722 cases per judge. We have the highest case count per judge in the state. The next judicial district has 100 less per judge. The top five are (1) Malheur County – 722; (2) Clackamas County – 621; (3) Washington County – 620; (4) Jackson County – 605; and (5) Benton County – 594. It is clear Malheur County needs a third judge. In addition, dependency cases also use public defender resources. Malheur County has a very high count of dependency filings compared to its population. To date, we have 75 dependency filings for a population of 32,000. For comparison, Deschutes County has 77 filings for a population of 201,000 and Multnomah County has 284 filings for a population of 803,000.

Intended Outcome or Goal:

New judicial position.

Actions Taken:

We do not have room for three judges in the current courthouse. We are working on getting a new courthouse. When that happens, we will work on this step.

Outcome Reached:

No.

Additional Resources Needed:

Funding for a new courthouse, then funding for an additional judge and staff.

Next Steps:**INTERVENTION/RECOMMENDATION 3**

Work with OPDC

1. Move from yearly cap model to pending case model.
2. Incentivize attorneys to take more serious cases.

3. Permit attorneys to go over cap to represent clients they have previously represented on multiple occasions. This will require a change at OPDC, but the local court and OJD can support these changes by assisting OPDC in pushing for these changes and maintaining a strong database permitting easy analysis of the data.

Intended Outcome or Goal:

1. A pending case model will be a true measure of an attorney's ethical ability to accept cases. Such model will encourage the parties and the court to assure cases are disposed of in a timely manner to manage active case loads.
2. Incentivizing attorneys to take more serious cases will assist the court in disposing of cases faster, which will benefit the bar and the court.
3. The current method of appointing only available attorneys, rather than keeping attorneys consistent with repeat clients, causes conflict. Malheur County has only four providers. If all four providers represent a certain defendant and that defendant becomes a victim in a new case, none of Malheur County's local counsel can represent the new criminal defendant, even if they have room within their cap.

Actions Taken:

We have supported these concepts with OPDC. The second and third intervention have been adopted. The first intervention is a work in progress.

Outcome Reached:

Implementing these concepts have helped reduce attorney conflicts. We have also had more success with attorneys being willing to take more serious cases hourly.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 4

Work with the jail to address defense counsel concerns regarding visitation. Defense bar generally have access to clients in jail. The jail does not generally limit access to clients except during head counts and inmate lunch time. The concerns defense counsel expressed were:

- (1) Only two visiting rooms.
- (2) Not sure inmates always get message to call attorneys.
- (3) Not able to hand inmates documents, must be mailed.

Intended Outcome or Goal:

Come to solutions with jail regarding attorney concerns.

Actions Taken:

The second and third actions have been resolved. The first is a funding issue. We have supported the sheriff in their funding requests.

Outcome Reached:

The outcome has been successful in improving processes for attorneys to contact clients in the jail. Due to turnover with jail staff, the jail is continually working on training staff and making sure that attorneys are able to contact clients when needed.

Additional Resources Needed:

Additional funding for the jail.

Next Steps:**INTERVENTION/RECOMMENDATION 5**

The court will facilitate a meeting between the district attorney and public defenders to implement strategies to create more efficient process for criminal cases. Everyone, including the court, district attorney, and public defenders, will recognize that any agreement will require effort and compromise by all. Creating a more unified structure with clear expectations will benefit both parties and the court. The court, district attorney, and public defender representatives agree to:

- Two or more meetings to work diligently towards an agreement;
- Signing a memo of understanding (MOU) once an agreement is reached; and
- The court either signing PJOs or amending the SLR as necessary to comply with the agreement.

The MOU should contain agreements as follows:

- Setting discovery and offering deadlines for in-custody defendants;
- Setting discovery and offering deadlines for out-of-custody defendants;
- Assuring there is a recognition that obligations are reciprocal to all parties; and
- For out-of-custody defendants, setting up a system where a status hearing is the first hearing after arraignment.

Allowing defense counsel to cancel the first hearing with the submission of a letter reports to the court that the matter is on track and a status hearing is set. On track would include discovery has been given and received, plea negotiations have begun, counsel has met with their client, there are not issues that need the court's assistance, etc. The letter would further request a plea hearing with a requested time period for the hearing.

Intended Outcome or Goal:

A stipulated, efficient pre-trial case management plan.

Actions Taken:

The district attorney's office is now providing plea offers at least a week prior to entry of plea hearings for all cases in which the state is planning on giving an offer.

Outcome Reached:

There was not a formal MOU, just a verbal agreement that the district attorney's office tries to follow. This agreement has helped improve efficiency in pre-trial case management.

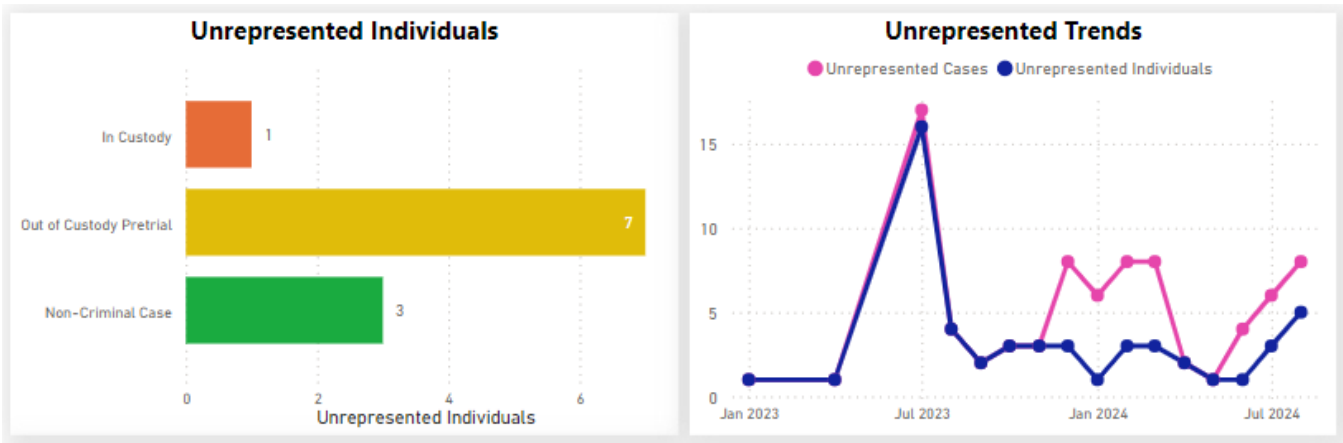
Additional Resources Needed:**Next Steps:**

JUDICIAL DISTRICT 10 – UNION AND WALLOWA COUNTIES

Presiding Judge: Thomas Powers

Trial Court Administrator: Michelle Leonard

UNION AND WALLOWA COUNTIES UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

We encountered our first unrepresented crisis in May of 2023, when the contract administrator informed the court that attorneys were at, or nearly at, capacity based on MAC. By the end of June 2023, we were informed that all available capacity under the contract had been used, leaving us with 20 unrepresented individuals. Most of those defendants were provided counsel in early July, but our attorneys were capped again by approximately July 17, 2023. We ended the month with 11 unrepresented individuals. These 11 individuals were assigned lawyers in August, based on additional capacity, or were appointed at hourly rates.

It is worth noting that most of the providers in this judicial district, including all four public defense lawyers who were members of the pre-2022 consortium, have been willing to take cases at an hourly rate, in excess of their MACs, indicating that the MAC numbers may be artificially lower than the workloads the individual attorneys ethically can manage. The timely and diligent provision of services by those lawyers, in this court's estimation, indicates that "ethical capacity" is in fact greater than the MAC numbers suggest.

Although not directly related to the shortage of public defense lawyers and their ability to take cases, it bears mention that in this two-judge judicial district, one judge has been disqualified from all criminal matters in both counties, such that Judge Powers is assigned all criminal and juvenile delinquency matters in both counties. This does create additional scheduling challenges on top of the public defense issues; however, this issue will be resolved after January 2025 when a newly elected judge takes the bench. However, the newly elected judge is a current defense provider.

Our current processes have kept us from falling into a crisis designation; however, with eleven unrepresented defendants (one in-custody), there is a risk of having to take crisis actions.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes

the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Our current processes have kept us from falling into a crisis designation. However, if we do drop into that category, the following actions will be taken:

- Work with the district attorney and current public defender consortium on some form of pre-disposition program to resolve cases earlier.
- Work with the defense bar and district attorneys on increasing the number of settlement conferences.
- Bring in Plan B judges to conduct mass settlement conferences.
- Asking existing lawyers to take cases above their MAC but within their ethical capacity.
- Encourage OPDC to promptly appoint and pay at hourly rates those attorneys taking cases above their caps.
- Additional recommendations would be to increase both attorney MAC and the number of attorneys willing to follow the local processes in our area.

Currently, when we get out-of-area attorneys, they are quite often expecting we change our processes for them, this has proven to be disruptive, given that we are extremely limited on judicial resources.

Intended Outcome or Goal:

Have few-to-no cases on the unrepresented list at the end of each month. Never have unrepresented defendants in custody, except for brief periods following an attorney withdrawal. Move cases along without overburdening the judge. Not be required to micromanage the process all the time.

Actions Taken:

To date, it has not been necessary to implement the crisis plan. Some of the recommendations are directed to OPDC. The court has noticed that unrepresented conflict cases are languishing, especially when the defendants are out-of-custody.

Outcome Reached:

Additional Resources Needed:

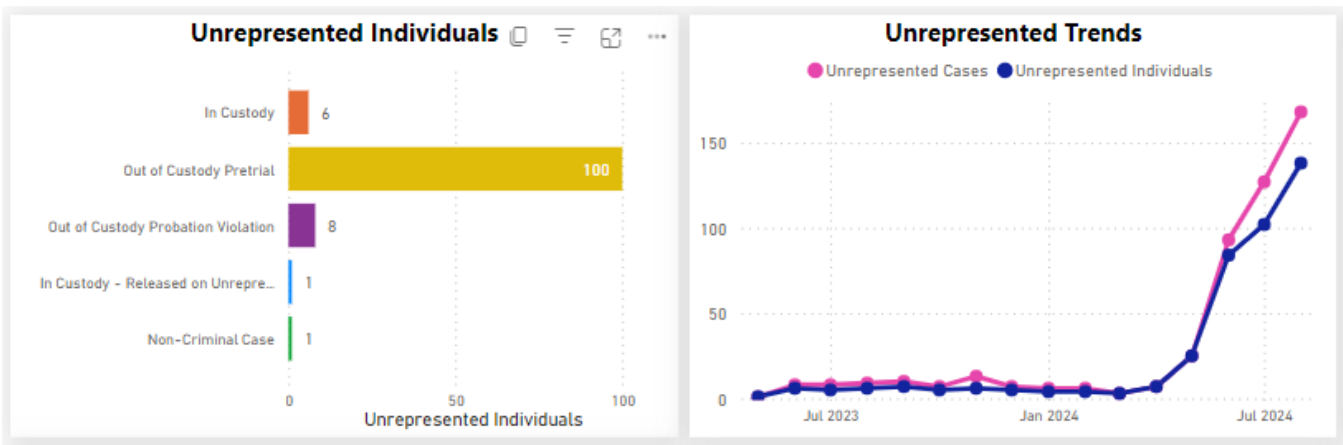
Next Steps:

JUDICIAL DISTRICT 11 – DESCHUTES COUNTY

Presiding Judge: Wells B. Ashby

Trial Court Administrator: Angie Curtis

DESCHUTES COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

On July 20, 2023, Deschutes County had four unrepresented defendants in five cases. Two of those defendants were in-custody. The number of unrepresented defendants remained low until May 2024 when four defense attorneys left their jobs. Some of the attorneys joined a new defense provider firm but were unable to maintain their previous caseload due to conflicts. Other attorneys no longer engage in public defense work. Compounding the situation, several of the defense attorneys reached their MAC and were unable to take new cases. The court created a reoccurring docket for unrepresented cases to check on the status of finding an attorney for each case. The presiding judge sent a memorandum to local bar associations requesting attorneys who might be qualified to handle criminal defense cases consider taking a limited number of court-appointed cases. While some of the attorney vacancies have been filled since May, the attorneys hired are only qualified to handle misdemeanor cases. As of August 22, 2024, there were 121 unrepresented individuals and 142 unrepresented cases.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Create more flexibility in contracting for public defense providers to recognize the actual amount of time it takes to replace and hire attorneys (i.e., more than 60 days).

Intended Outcome or Goal:

Contract modification that increases times before the contracted rate is reduced. Create more flexibility in contract limits to allow attorneys to take more than 115 % of MAC after cases with serious charges

reach full disposition. The work for the public defense attorney ends once the disposition is entered, which may not compromise their ethical capacity.

Actions Taken:

Recommendation to OPDC.

In an effort to resolve cases and respond to limited public defense capacity, Deschutes County Circuit Court Presiding Judge Wells Ashby has conducted over 80 settlement conferences since July 1, 2023, on cases with the most serious charges, including Ballot Measure 11 charges. This has resolved a significant number of cases and avoided weeks and weeks of trial time for public defenders.

Outcome Reached:

At a recent meeting with OPDC, the court and stakeholders were told that OPDC would not be inclined to allow attorneys to take additional cases over the 115 % MAC, even if cases that had been assigned to attorneys with a significant MAC had a full sentencing and disposition entered on the case. If allowed, this would potentially provide the option for the attorney to take additional cases without compromising their ethical capacity.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 7

Hire local or regional coordinator(s) for attorney appointments, particularly in districts with a high number of conflicts.

The coordinator would ideally be an employee of OPDC who has sufficient capacity and expectations of timely and responsive work on these cases. Identifying and contracting with attorneys is the responsibility of OPDC, not OJD. If it is determined that regional coordinators would be employees of OJD, additional capacity (FTE) would be required within OJD to perform these duties. The local or regional coordinator will identify available qualified attorneys with capacity, assist the court in prioritizing appointments (considering custody status of individuals in need of counsel and attorney qualifications), identify and coordinate appointment to conflict counsel, and monitor AIC and unrepresented defendants that may qualify to be released to prioritize those AIC that will remain in custody.

Intended Outcome or Goal:

Increase attorney capacity. Increase system efficiencies. Reduce the number of cases with unrepresented defendants due to conflicts of interest.

Actions Taken:

The recommendation is for OPDC to create and fill this position; however, since Deschutes County began to experience a crisis in March 2024, the court has designated a staff person to manage and track the unrepresented persons list and attorney appointments.

Outcome Reached:

Additional Resources Needed:

OPDC stated in a recent meeting that the court would likely have more success recruiting attorneys to take cases than they would and encouraged us to continue this practice. We are much more successful than OPDC at finding attorneys. This, however, takes time and energy. The crisis emerged too late in Deschutes County to receive a legislatively-funded position. However, we increased the compensation

class for the employee designated to do this work and will likely need to add part of an FTE to support this employee. Net result: We are spending OJD budget funds to do OPDC's work, and we are not receiving funding to do so. We are committed to this currently because not doing the work is offensive to the constitutional rights of defendants and threatens community safety. If this situation persists, every court with this workload should be specifically funded for this purpose.

Next Steps:

INTERVENTION/RECOMMENDATION 8

If required, terminate appointment of attorney at 60 days if the individual is on warrant status for FTA and return the individual to the unrepresented list. If this becomes required, it will be critical for OPDC and OJD to agree on the period at which attorneys are removed from their appointment once an FTA warrant is issued. This will avoid conflicting direction to attorneys from the local court and OPDC regarding removal from these appointments.

Intended Outcome or Goal:

Increase attorney ethical capacity. Reduce the number of cases with unrepresented defendants.

Actions Taken:

The court has evaluated whether to terminate appointments after a defendant has been in warrant status for 60 days; however, the court has not begun to do so because it would not increase capacity due to OPDC's contract policies.

Outcome Reached:

Our continued analysis of the warrant issue indicates that this process would have little to no impact on increasing attorney capacity. Our service providers indicate that resolving major crimes cases is the most effective way to increase ethical capacity, other than adding new attorneys. Also, OPDC's method of calculating capacity is unrealistic, both professionally and financially. This view follows an in-person meeting we had with the director of OPDC and the chair of the board, a meeting that was polite, professional, and wholly unproductive. OPDC exhibits no sense of urgency or institutional vision to solve the problems that exist or perform their core function. OPDC recently increased the FTEs whose job it is to identify attorneys from 1 - 2.5, and this is for the entire state. OPDC refuses to make the process for qualifying attorneys easier. More could be said. The point is this, OPDC stated, "Do not expect any improvement until July of 2025 at the earliest." I'm sorry, but that response is unacceptable to the 11th Judicial District; we reject it and continue to work on local solutions that include doing the job of OPDC with no additional funding.

Additional Resources Needed:

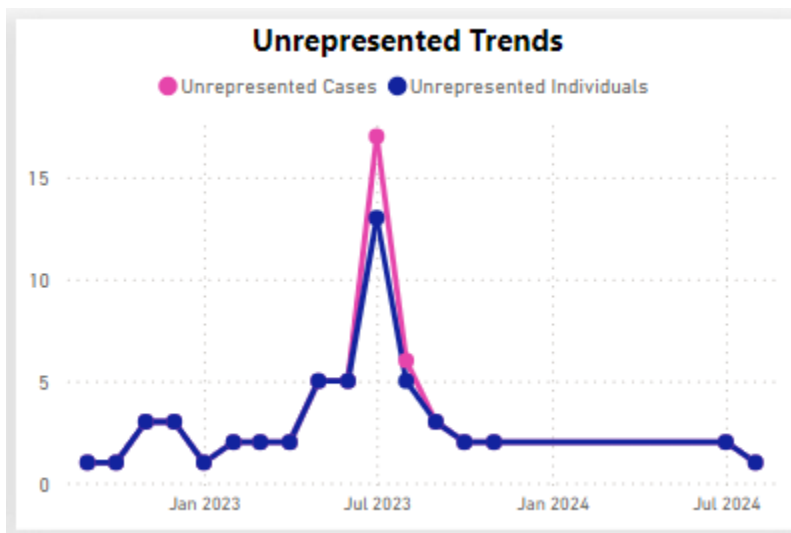
Next Steps:

JUDICIAL DISTRICT 12 – POLK COUNTY

Presiding Judge: Norm R. Hill

Trial Court Administrator: UnCha Kim

POLK COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Near the end of the 2023 fiscal year, Polk County saw a brief rise in the number of unrepresented defendants due to a lack of available MAC in the contract cycle. Collaboration with providers and OPDC allowed us to resolve some of the backlog of cases without appointed counsel. An early case resolution docket allowed significant reduction in unrepresented cases, there are currently no unrepresented individuals in the district.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Create a docket designed to facilitate early case resolution with limited judicial assistance. Require all decision makers (assigned attorney, client, and victim) to either be present or easily reached by phone. The court offers limited intervention – in a settlement conference-like setting – to ascertain whether the cause can be resolved. The docket facilitates face-to-face negotiations with all interested parties. If the case can be resolved, the court has the ability to accept a plea or pleas and sentence the defendant on the same docket.

Intended Outcome or Goal:

Increase attorney availability to work on cases that are more serious or are definitely headed to trial by resolving those cases that do not need to go to trial. Eliminate wasted trial dates, attorney time, and other wasted resources that are spent because the parties are not communicating efficiently enough to resolve cases.

Actions Taken:

This was implemented prior to the crisis plan discussions and is on-going.

Outcome Reached:

Based on the most recent data review, we are able to resolve/disposition approximately 60% of the cases scheduled for this docket.

Additional Resources Needed:

Next Steps:

Continue the docket, monitor, evaluate, and modify to increase effectiveness.

INTERVENTION/RECOMMENDATION 2

Changes to the attorney assignment process for Jessica's Law cases. Currently, most cases, including Jessica's Law cases, are assigned to providers based upon the day of the week. Recommend changing the process, as follows: Create a list of all attorneys, regardless of firm, group, or consortium, that are qualified and have the ability to handle Jessica's Law cases. As Jessica's Law cases are filed, the attorneys are assigned individually based on who is next on the list and no longer assigned based upon the attorney/firm/consortium of the day.

Intended Outcome or Goal:

Distribute the Jessica's Law cases that consume more MAC across the available defense providers in the county.

Actions Taken:

A justice partner meeting will be convened soon to discuss feasibility of the plan and gain buy-in for implementation.

Outcome Reached:

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 6

Polk County schedules the first pretrial conference on out-of-custody cases approximately six weeks after arraignment. At that time, attorneys often report issues obtaining discovery, issues or delays getting approval from OPDC for non-routine expenses (i.e., private investigator services, expert funding, or different kinds of evaluations), and lack of contact by the defendant. Resolving those issues at the 6-week mark functionally delays the resolution of the case and leaves the case on the attorney's caseload without any practical movement towards resolution.

Recommend moving the first pretrial conference to four weeks after arraignment. Four weeks will be ample time for the attorney to meet with the defendant, identify any missing discovery, identify any non-

routine expenses necessary and request them, and to know whether any delays in funding are apparent. The move itself will not resolve those issues but will allow the court to intervene sooner – either by request or sua sponte – to address the issues raised above.

Intended Outcome or Goal:

Increase attorney capacity.

Actions Taken:

This plan was further evaluated by the court, and it was concluded that no additional MAC will result from implementation and would cause scheduling complications.

Outcome Reached:

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 8

Issue a PJO that requires each public defense service provider to report quarterly* the following to the TCA:

- The number of attorneys that still have MAC;
- How much MAC is available for each attorney;
- What the qualifications are for those attorneys (e.g., can handle misdemeanors and minor felonies, but not major felonies); and
- Any facts known to the provider that could affect the attorney's MAC or availability (extended vacations, medical leave, etc.)

The TCA then distributes that information to the presiding judge and others, as appropriate.

*Can be modified to require monthly or weekly reports as we close in on the end of the contract period.

Intended Outcome or Goal:

Allow the court to prepare for any upcoming shortage in attorney MAC by prioritizing attorney appointments, as necessary, or take other action, as appropriate.

Actions Taken:

Working on PJO for potential implementation now.

Outcome Reached:

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 9

Work with providers to identify those attorneys that can handle Ballot Measure 11 and major felony cases. Recommend that they develop a procedure that protects those attorneys' availability to handle those cases by not needlessly burning through their MAC with lower-level cases that other attorneys could handle.

Intended Outcome or Goal:

Ensure that the attorneys that have the qualifications and willingness to handle higher-level or large-count cases have the MAC available to accept those cases as they arise.

Actions Taken:

A Qualified Attorneys spreadsheet has been developed and maintained on an ongoing basis by the court.

Outcome Reached:

Yes.

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 10

Work with providers and OPDC to develop a training process to allow newer attorneys to gain the requisite experience to enable them to be able to handle higher-level cases.

Intended Outcome or Goal:

Increase the number of attorneys qualified and willing to handle serious cases.

Actions Taken:

This plan was not implemented. Given the continuing experience and history of poor communication and responsiveness from OPDC, the court is not able to expend the effort at this time.

Outcome Reached:

Additional Resources Needed:

Next Steps:

INTERVENTION/RECOMMENDATION 11

Propose eliminating one out-of-custody arraignment docket. Polk County has two out-of-custody arraignment dockets each week. Each docket requires the appearance of an attorney to assist with arraignments. We no longer have such a volume of cases that would justify two separate dockets. Propose citing defendants to appear 30 minutes ahead of the start of the out-of-custody arraignment docket. Defendants are cited by law enforcement or released from custody to appear at the time the arraignment docket is set. However, the docket rarely starts on time as court staff need time to interview defendants for eligibility for court-appointed counsel, to process the applications, and create the appropriate orders for the arraignment judge. Staggering the appearance time and the docket start time (for example, citing defendants to appear at 2:30 p.m. for a 3:00 p.m. docket) would allow time for staff to complete their work so that the docket can start on time. This would keep the attorneys required to be at arraignment from sitting around waiting for the staff to complete their work.

Intended Outcome or Goal:

Decrease the number of hours attorneys spend in court at arraignments.

Actions Taken:

Implemented.

Outcome Reached:

Goal reached, resulted in attorney and staff time savings.

Additional Resources Needed:**Next Steps:****INTERVENTION/RECOMMENDATION 12**

Prioritize appointment of lawyers to cases**

Prioritize the appointment of lawyers on cases to address the more needy and the most vulnerable defendants first.

Suggested priority list:

- In-custody cases,
- Civil commitments,
- Out-of-custody RAD defendants,
- Out-of-custody Ballot Measure 11 and major felony cases,
- Out-of-custody domestic violence (misdemeanor and felony) and sex offense cases (non-Ballot Measure 11),
- Out-of-custody minor person felony (presumptive prison) cases,
- Out-of-custody minor property felony (presumptive prison) cases,
- Out-of-custody DUIIs,
- Out-of-custody minor person felony (presumptive probation) cases,
- Out-of-custody minor property felony (presumptive probation) cases,
- Out-of-custody person misdemeanors,
- Out-of-custody non-person misdemeanors,
- Out-of-custody contempt and out of custody PVs.

**Adjustments can be made as needed.

Intended Outcome or Goal:

Ensure that in-custody defendants have counsel.

Actions Taken:

We are using this method when needed locally.

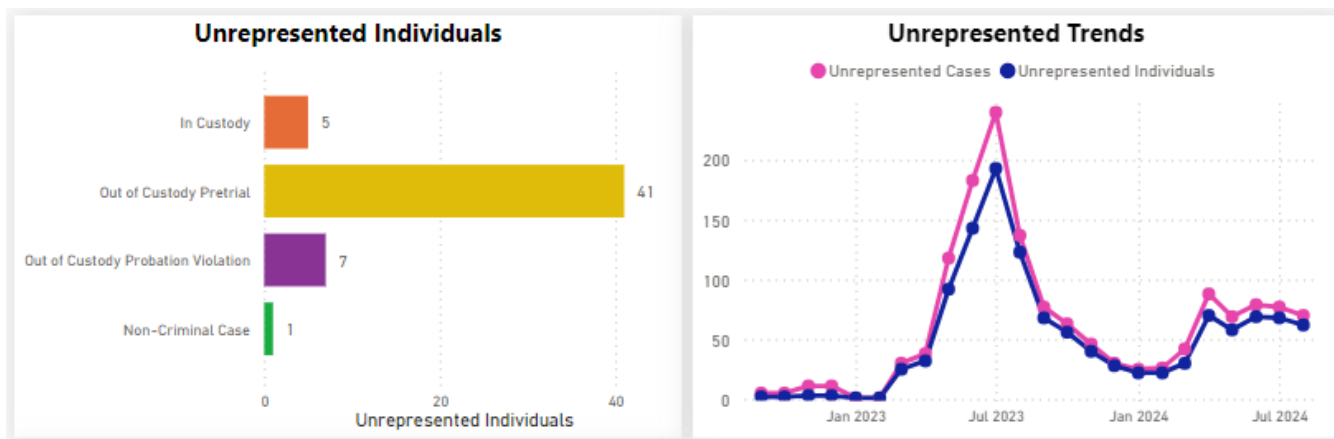
Outcome Reached:**Additional Resources Needed:****Next Steps:**

JUDICIAL DISTRICT 13 – KLAMATH COUNTY

Presiding Judge: Andrea M. Janney

Trial Court Administrator: John Powell

KLAMATH COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

The 13th Judicial District has had a public defense crisis since the beginning of 2023. The number of unrepresented persons peaked in July 2023 and subsequently decreased; the number of unrepresented defendants has remained above 58 since April 2024. There are a variety of factors that have contributed to this problem. The local defense consortium was dissolved a few years ago and we have approximately ten privately contracted defense attorneys available to represent our indigent defendants. We simply lack a sufficient number of qualified attorneys to represent the number of defendants in our county. OPDC's Southern Trial Division Office has handled a total of nine cases in Klamath County, two of which have been in warrant status for three months. This crisis is complicated by the fact that we did not have a district attorney from approximately October 2022 until February 3, 2024, and there are only two full-time deputy district attorneys working in the district attorney's office. As of August 22, 2024, there are 53 unrepresented individuals and 68 unrepresented cases in the district.

Despite these issues, we have a strong, collaborative relationship between the court system, defense providers, and the district attorney's office. We have been working tirelessly to ensure the criminal justice system continues to function as efficiently and fairly as possible.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 3

Create and implement rapid or fast-track dockets to resolve cases quickly. Specifically, create a DUII diversion court where diversion eligible defendants can receive appropriate legal advice from a qualified

defense attorney and then decide whether to enter the DUII diversion program. Create a fast-track docket for low-level, non-person misdemeanors that can be resolved with minimal court and attorney time. For example, said cases can be set out of arraignments for the nearest Friday morning. A defense attorney, district attorney, and judge would be available to resolve the case. Offers would be made available. Defense attorneys could review discovery and advise the client. Pleas could be taken that day, if appropriate. If the case cannot be resolved with a plea, an attorney could be formally appointed, and the case set out for appropriate dates.

Intended Outcome or Goal:

The intended goal would be for low-level, non-person misdemeanors to be resolved quickly without using excess attorney MAC. The defense attorney would be appropriately compensated for providing competent advice on cases that can be quickly resolved. This would avoid creating a backlog of minor cases and using attorney MAC.

Actions Taken:

The court has implemented a fast-track settlement docket to resolve low-level cases faster and continues to offer judicial conferences for all serious felony cases.

Outcome Reached:

We have resolved some cases quickly or more efficiently, however it has not been as successful as we had hoped. This has been difficult to implement for several reasons. First, there simply aren't enough attorneys available to add an additional docket to the work week. We don't have enough deputy district attorneys or defense attorneys to be present in the court for an additional docket. Further, it has been quite difficult to resolve attorney compensations issues. It takes an unreasonable amount of time for OPDC to evaluate attorney requests for hourly or special compensation. Without that resolution, or at least a somewhat more efficient system, this docket would be very difficult to keep going.

Additional Resources Needed:

We need more attorneys. We need more deputy district attorneys and more defense attorneys. The attorneys we have are still too busy to take on the task of a fast-track docket.

Next Steps:

The court is continuing to review and restructure dockets to promote efficient case management.

We have additional meetings set with the district attorney and defense to discuss possible changes to our docketing system and will continue to work together to address the issues.

INTERVENTION/RECOMMENDATION 5

Implementation of "global settlement days" to resolve backlog of cases. Our courts will implement a once-monthly settlement day where a judge will be available all morning to resolve cases. There will be a deputy district attorney available who has made sure offers have been made on all scheduled cases. Attorneys will have the opportunity to meet with clients and negotiate with the district attorney's office. If an agreement is reached, a judge will be available to accept the plea and resolve the case.

Intended Outcome or Goal:

The goal is to resolve cases that are not appropriate for trial and ultimately lessen the workload on attorneys. If an attorney's caseload can be lessened significantly through settlement dockets, their ethical MAC should be increased, and they may be able to competently represent more clients.

Actions Taken:

We have not implemented a specific settlement day. We have, however, opened up judicial settlement conferences for all felony cases or even misdemeanor cases where a defendant has multiple open cases. We are able to resolve a lot of cases via judicial settlement conferences.

Outcome Reached:

We are still having conversations with both the district attorney and defense around docketing. We will continue to work together to structure our dockets in a manner that promotes efficiency and accounts for our lack of attorney availability.

Even though we are resolving more cases, this doesn't have an effect on attorney MAC. We still aren't able to increase attorney availability, only clear out existing cases.

Additional Resources Needed:

More lawyers.

Next Steps:

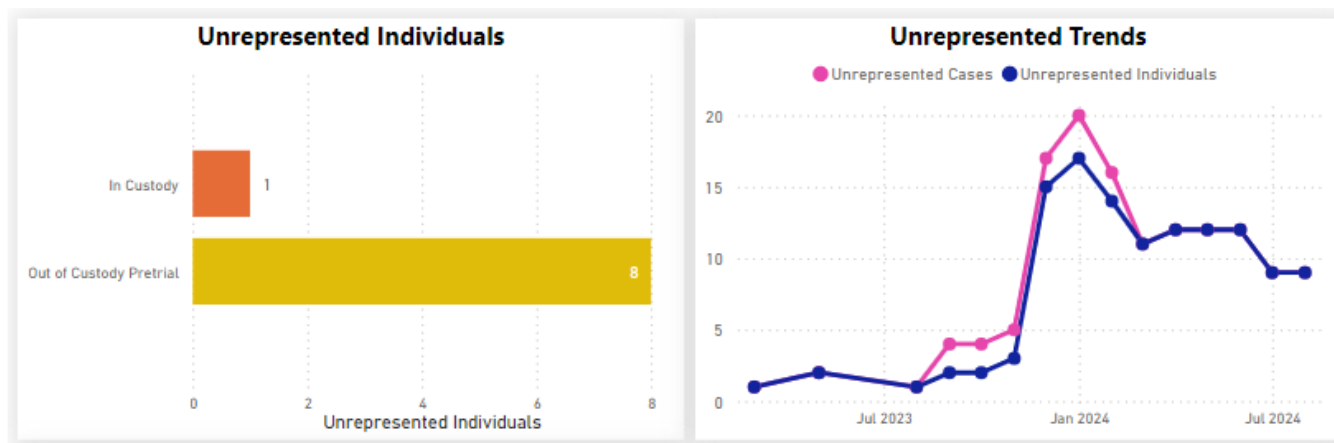
Ongoing discussions.

JUDICIAL DISTRICT 14 – JOSEPHINE COUNTY

Presiding Judge: Robert S. Bain

Trial Court Administrator: Trina A. Swaja

JOSEPHINE COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

As of August 22, 2024, Josephine County has nine unrepresented individuals. Josephine County has been able to maintain a low number of unrepresented persons due to the collaborative efforts of the local public safety stakeholders. However, when all of our local providers are conflicted on a case, it is very difficult to find attorneys who can take those cases. The eight out-of-custody unrepresented individuals are co-defendants and all of our providers have conflicts. The presiding judge has reached out to as many local attorneys as he can to find counsel for these cases, but has not been successful. The court has also reached out to OPDC on a monthly basis regarding these cases. The one in-custody unrepresented case is a murder case.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Terminate appointment of attorney at 30 days if the individual is on warrant status for FTA and return the individual to the unrepresented list.

Intended Outcome or Goal:

Increase attorney ethical capacity and reduce the number of unrepresented individuals.

Actions Taken:

The court has been removing attorneys when a defendant is in warrant status for six months. We found that 30 days was not enough time as many defendants are picked up within that time frame, causing unnecessary work.

Outcome Reached:

No. OPDC contract policies for when a defendant is in warrant status means this intervention did not increase attorney capacity. Since the crisis plans were implemented, we have seen a decrease in attorney capacity among our local providers.

Additional Resources Needed:

More defense attorneys.

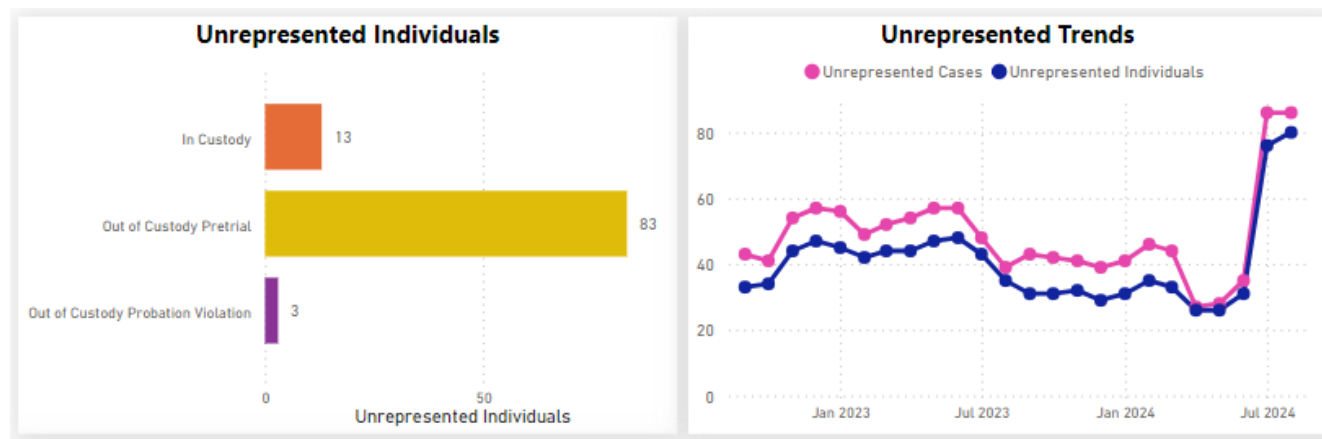
Next Steps:

JUDICIAL DISTRICT 15 – COOS AND CURRY COUNTIES

Presiding Judge: Martin E. Stone

Trial Court Administrator: Thomas Lankford

COOS AND CURRY COUNTIES UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Coos County's crisis has become worse for its unrepresented defendants. Initially the number of unrepresented defendants was largely due to conflict cases; however, in May 2024 the local public defender's office notified the court they would stop accepting new cases effective May 31, 2024. The public defender's office did indicate they would accept new cases for current clients and, as soon as they can accept new cases, will focus on accepting in-custody cases. However, the public defender's office soon had an attorney shortage with four attorneys resigning. As of August 22, 2024, there are 99 unrepresented individuals and 108 unrepresented cases in Coos and Curry counties. There are over 14 cases that have been unrepresented for at least 100 days, one case over 400 days, one case over 500 days, and two cases over 600 days. The recent *Betschart* decision is putting additional pressure on the crisis in Coos County.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 4

Terminate appointment of attorney at 60 days if individual is on warrant status for FTA and return the individual to the unrepresented list.

Intended Outcome or Goal:

Increase attorney ethical capacity and reduce the number of unrepresented individuals.

Actions Taken:

We continue to monitor the crisis and have taken the following steps:

1. We have met with the OPDC Director regarding the need for attorneys in our district and the need for expediting certification of attorneys willing to take existing and future cases.
2. We met with several local attorneys between July 22 and July 26, 2024, to determine a willingness and ability to take case assignments from OPDC at the hourly rate. Several of those attorneys were approved and qualified by OPDC and have begun taking cases, and at least one is working to submit the required documentation to OPDC.
3. We are prepared to implement a procedure to remove lawyers in cases on warrant status once we receive a unified statewide approach.
4. We have continued to work on remote access for attorneys to consult with clients at the Coos County Jail.
5. We piloted and are actively utilizing the OPDC Nintex form to request lawyers from OPDC.

Outcome Reached:***Additional Resources Needed:***

The court continues to wait on OPDC to execute its end of the remote technology related to Microsoft Bookings to connect the attorneys to the jail remotely so that remote access for attorneys to consult with clients at the Coos County Jail can be achieved.

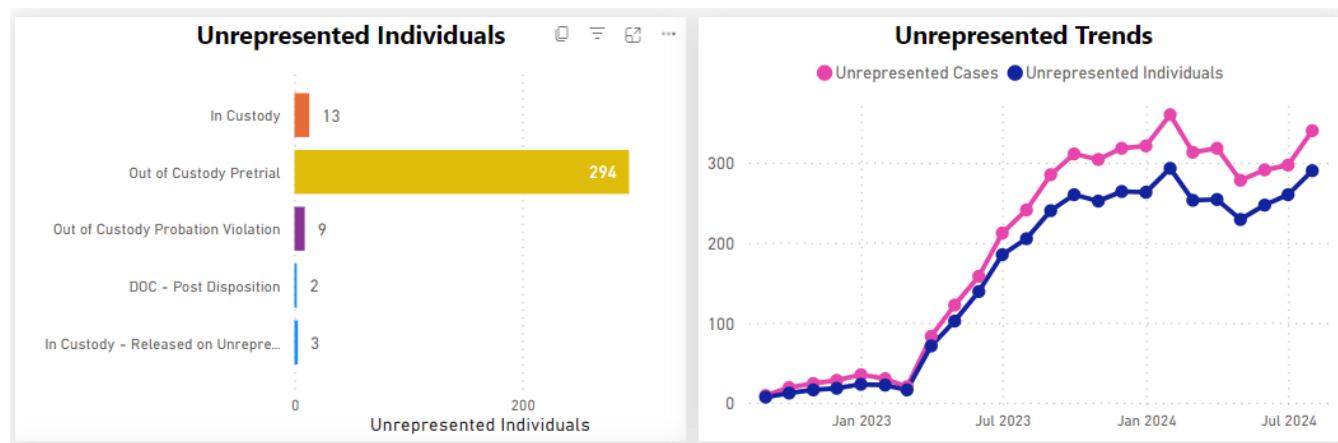
Next Steps:

JUDICIAL DISTRICT 16 – DOUGLAS COUNTY

Presiding Judge: Kathleen E. Johnson

Trial Court Administrator: Christina Parazoo

DOUGLAS COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Between March 2023 and February 2024, Douglas County's unrepresented list trended upwards, reaching its highest number of unrepresented defendants on February 1, 2024, at 293 individuals. The number of unrepresented defendants decreased slightly, but has been trending upwards since May. The local public defender's office recently lost two attorneys with no notice, and its executive director also gave notice. Historically, the public defender's office has had great difficulty filling attorney vacancies. OPDC's Trial Division has taken 16 appointments in Douglas County. The recent *Betschart* decision has added additional pressure on the crisis. As of August 22, 2024, there are 321 unrepresented individuals and 375 unrepresented cases.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Early Disposition Docket: Upon notification from OPDC that they have contracted for a defense attorney to handle the docket as a specialty court (i.e., the attorney will not receive case credit for each case, but will contract to handle all cases at a set compensation), we will implement an early disposition docket to encourage low-level misdemeanors to resolve early. At present, the plan is that all cases in which the most serious charge is B and C misdemeanors or non-person Class A misdemeanors (excluding DUII and FTA) will be diverted to a set docket structured for early disposition. The district attorney will be asked to include an offer with discovery, or in any event, no later than seven days before the case is set on the docket. The parties will be allowed time to negotiate, and changes of plea will occur at that time so that the case is cleared quickly.

Intended Outcome or Goal:

Remove these cases from the caseload of other attorneys, allowing them to work on their more serious cases and eliminating consideration of the diverted cases in deciding their contractual and ethical capacity. We estimate that this will divert approximately 40 cases per month from the other attorneys' caseloads. The actual number of cases that would have qualified for this docket January through July 2023 was: 189 Class A misdemeanors, 54 Class B misdemeanors, and 37 Class C misdemeanors.

Actions Taken:

The court has not been able to move forward with this intervention because OPDC has not contracted with an attorney who can staff the early disposition docket.

Outcome Reached:

No. OPDC has not been able to contract with an attorney to cover an early disposition docket.

Additional Resources Needed:

OPDC needs to contract with an attorney to staff this docket. The resources needed to make that happen are unknown to the court.

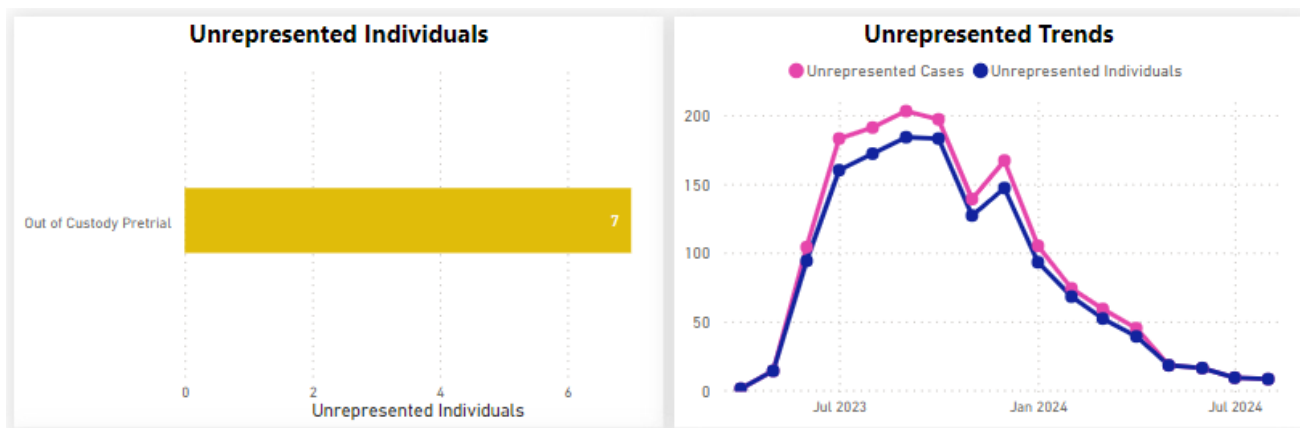
Next Steps:

JUDICIAL DISTRICT 17 – LINCOLN COUNTY

Presiding Judge: Sheryl Bachart

Trial Court Administrator: Sally Bovett

LINCOLN COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

On September 1, 2023, Lincoln County had its highest number of unrepresented defendants with a total of 184 defendants. The attorneys in the local consortium had reached their MAC by May 2023, and all of the attorneys reduced their capacity under the contract extensions in 2023. Since then, the number of defense lawyers has increased from seven to nine contract attorneys. Case filings have also decreased by nearly 15%, in part due to a shortage of attorneys in the district attorney's office (as of July 2024 there were nine vacancies).

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 1

Implementation of an Early Disposition Program docket (EDP): The first goal of this docket is to reduce the backlog of unrepresented cases. After the backlog is addressed, the EDP docket would preserve MAC by assigning a single defense attorney to the EDP docket and maximizing MAC for all attorneys on the contract. Cases identified for this docket would be lower-level misdemeanors and felonies. Discovery will be provided in advance of the EDP hearing and offers made to encourage settlement. If a defendant wishes to resolve a case, plea and sentencing will occur the same date of the EDP hearing. DUII diversions may also be added to this docket.

To address the backlog, the district attorney will review the list of unrepresented cases and identify cases appropriate for this docket. Those cases that may be assigned to this docket will be assigned a single attorney and that attorney will receive a certain contracted MAC for that docket, similar to a specialty court assignment. This preserves MAC for less complex cases which may be resolved short of trial. The

presiding judge met with the district attorney and defense counsel and prepared an outline of the EDP docket. In addition, Mr. Greco, the coordinator of the local public defense consortium and a public defense attorney, agreed (if approved by OPDC) to work pro bono on this docket for the cases with OPDC currently appointed as counsel. This would greatly reduce the backlog.

There is no way Lincoln County can resolve the backlog of unrepresented defendants given the current MAC limitations. If MAC continues at current levels, the EDP is a viable intervention to preserve MAC. If the attorneys continue at reduced MAC beyond the contract extension period, this intervention is vital to address the ongoing shortage of attorney capacity. If Mr. Greco is approved by OPDC to be assigned the EDP docket to address the backlog of unrepresented cases, Lincoln County's backlog may be resolved within six months. Given the reduced MAC for all attorneys, there is no way the backlog may be addressed without bringing in counsel outside the local consortium.

Intended Outcome or Goal:

By assigning a single attorney with an agreed upon MAC for the assignment to the EDP docket, overall MAC will be preserved. In other words, it would reduce the caseloads for other consortium attorneys. This would free up other attorneys within the consortium to take more cases. If Mr. Greco is allowed to be assigned the EDP to address the backlog in Lincoln County, the backlog of unrepresented defendants should be resolved within six months of implementation of the EDP. Faster resolution of cases can clear many of the misdemeanor cases that account for the increase in filings.

Actions Taken:

The EDP docket was successful in resolving the backlog of out-of-custody cases. It could not have been implemented without the work of Mr. Greco who is the coordinator for the consortium and handled these cases without any compensation other than payment for his license reinstatement and PLF for the months he practiced. The district attorney was also very cooperative in identifying cases appropriate for this docket. As of this date, the only unrepresented defendants in our county are on warrant status.

Outcome Reached:

Yes. The local contract administrator agreed to handle cases on the early resolution docket pro bono. Over 100 cases were reviewed, and 70 cases were resolved, helping to address the backlog.

Additional Resources Needed:

Next Steps:

We currently do not have a need to resume this docket.

INTERVENTION/RECOMMENDATION 2

Modification to procedures at the jail for client visits. Currently, defense counsel are unable to conduct client visits by remote means. In addition, electronic discovery is unable to be viewed by clients in custody without the presence of counsel. In-custody defendants need to be provided a confidential, secure space to communicate by remote means with counsel. In-custody defendants are issued i-pads currently. Procedures need to be implemented to allow AICs to review discovery on the i-pads. Jail visitation hours also need to be expanded for counsel to meet with clients. Currently, it is taking longer to resolve cases because of limited access to in-custody defendants and the lack of ability to meet by remote means with clients.

Intended Outcome or Goal:

Result in increased time to disposition and clearance rates. Increase attorney's ability to take more cases and contract for higher caseloads with OPDC.

Actions Taken:

The presiding judge worked with the jail to provide defense attorneys remote means to meet with in-custody clients. The jail was able to set up a process and acquire the necessary resources, and attorneys have access to remote meetings with their in-custody clients.

Outcome Reached:

No. The jail reports very few attorneys have utilized remote means as an option to communicate with their in-custody clients.

Additional Resources Needed:

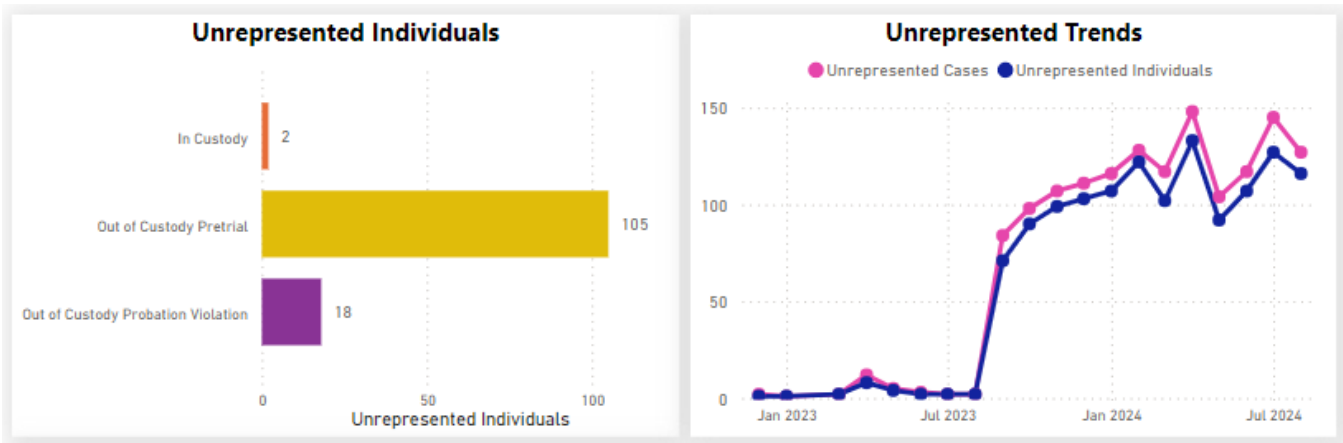
Next Steps:

JUDICIAL DISTRICT 18 – CLATSOP COUNTY

Presiding Judge: Beau V. Peterson

Trial Court Administrator: Julie L. Vredeveld

CLATSOP COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Clatsop County does not have a local public defender's office and has, for many years, successfully operated with a consortium/private bar contract model. We have several experienced, committed and hardworking attorneys who, until recently, were able to provide quality representation to all of our indigent criminal defendants despite the chaos at OPDC.

In April 2023, Clatsop County unexpectedly lost one full-time defense attorney because of personal issues. Notwithstanding that event, due to the commitment and hard work of our remaining attorneys, in July 2023, Clatsop County had only two unrepresented individuals waiting for appointment of counsel. Both individuals were in that position because all remaining local attorneys had conflicts.

During the week prior to our August 2, 2023, crisis team meeting, a longtime member of the defense consortium unexpectedly and without notice to the court, his colleagues, or his clients, left the area and is no longer practicing in Oregon. He left over 70 active cases, including 13 defendants in custody, without counsel and launched us into the middle of the crisis we are facing today. We also know another defense attorney will leave the county at the end of 2024 because he was elected as the Lake County District Attorney. Recruitment of new lawyers has proven to be extremely difficult given the cost of living, contract uncertainty, and lack of confidence in OPDC. Since the consortium was unable to fill one of the vacancies last year, that position was moved to another county, so according to OPDC's information it appears that we are only down one attorney when in reality we have lost two. The defense provider who will leave at the end of this year contracted directly with OPDC rather than one of the consortiums, and we have met with OPDC to discuss how they will recruit to fill that position.

As of August 22, 2024, there are 123 unrepresented individuals and 141 unrepresented cases in the district, two defendants are in custody.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 8

Modification of current pretrial release criteria in PJO 2023-09 to reduce the number individuals held in custody pending arraignment.

Intended Outcome or Goal:

Reduction in number of unrepresented individuals in custody.

Actions Taken:

The judges reviewed the pretrial release PJO and determined that it is appropriate in addressing pretrial release and community safety.

Outcome Reached:

The number of defendants held until arraignment did not change as result of the review of the PJO; however, judges have been ordering defendants released at arraignment more often when no attorney is available to be assigned.

Additional Resources Needed:

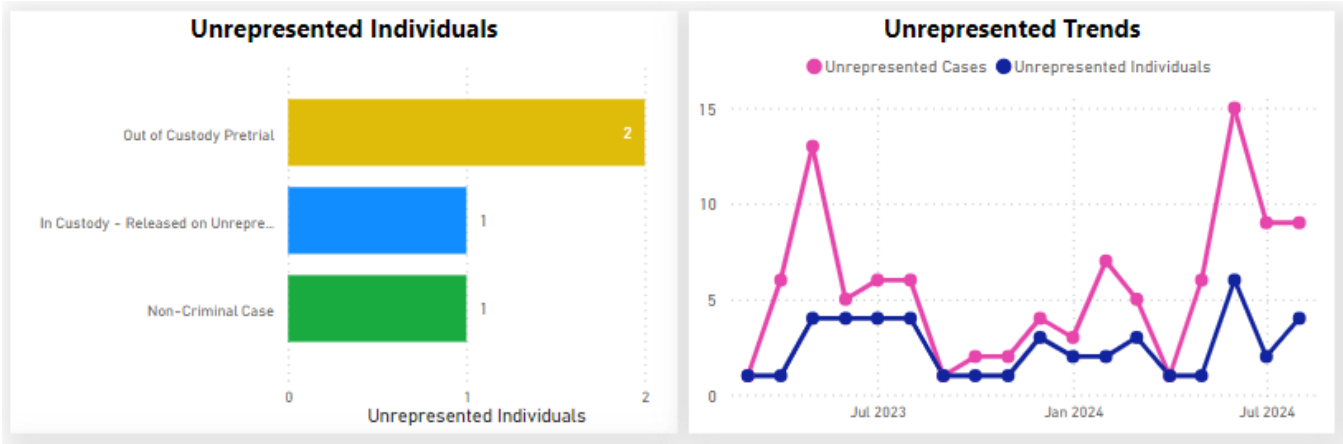
Next Steps:

JUDICIAL DISTRICT 19 – COLUMBIA COUNTY

Presiding Judge: Michael T. Clarke

Trial Court Administrator: Toria Fraser

COLUMBIA COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Columbia County, historically, has had a low number of unrepresented defendants. In the last year, there have been anywhere from one to five defendants without counsel at a time. Currently there are five unrepresented defendants, two of whom are in custody on other matters. All of our unrepresented cases have been conflict cases where none of our local providers are able to take the case.

While we do not currently have a crisis, the court, consortia administrators, and district attorney have agreed to continue to openly communicate and collaborate, so we can identify issues before they become a crisis.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Regular communication and meetings among the court, consortia, and district attorney's office regarding issues in the system.

Intended Outcome or Goal:

Incremental improvements to overall criminal case flow and addressing concerns of current defense bar in order to retain defense attorneys. While we do not currently have a crisis, the court, consortia administrators, and interim district attorney have agreed to continue to openly communicate and collaborate so we can prevent a crisis.

Actions Taken:

The court is holding quarterly criminal bar meetings and meeting with the consortia executive directors to discuss issues and concerns. The court is not experiencing an unrepresented crisis. The unrepresented cases that do arise are due to conflicts with the local providers.

Outcome Reached:

The meetings have resulted in increased communication between the bench and the criminal attorneys, both prosecutors and defense attorneys; however, only a few attorneys attended the most recent meeting.

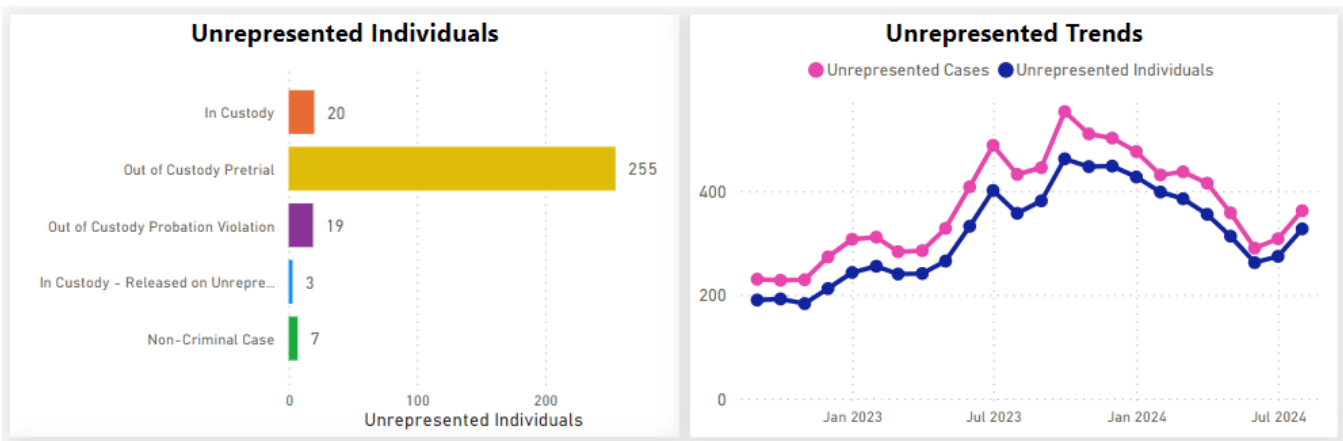
Additional Resources Needed:***Next Steps:***

JUDICIAL DISTRICT 20 – WASHINGTON COUNTY

Presiding Judge: Rebecca D. Guptill

Trial Court Administrator: Richard E. Moellmer

WASHINGTON COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Washington County (and Multnomah, Jackson, and Marion counties) have been “ground zero” for Oregon’s unrepresented defendant crisis for the past several years. Local public defense service providers – Metropolitan Public Defender (MPD), Washington County; Oregon Defense Attorney Consortium (ODAC); and various private firms and attorney contractors – routinely state they are unable to accept new appointments for contractual and ethical limit reasons. As of August 8, 2024, there are 276 unrepresented defendants, 11 in custody. Washington County was the first county subject to the *Betschart* decision and has been identifying and prioritizing in-custody cases potentially subject to the decision since August 2023. The local jail has been understaffed over the past few years, so there was already limited capacity to hold defendants. Since the *Betschart* decision, while the number of in-custody unrepresented defendants has decreased significantly, the number of out-of-custody unrepresented defendants has increased. OPDC’s Trial Division Office has accepted 51 appointments in Washington County.

The interventions/recommendations listed below are those that were identified in the judicial district’s crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Have one person/entity (OPDC) be responsible in our county, located locally, for coordinating and analyzing attorney availability, conflicts, and recommending appointments with transparency.

Intended Outcome or Goal:

Will likely increase attorney capacity because there will be less confusion about appointments and who has been contacted to take cases.

Actions Taken:

New OJD-employed Washington County Circuit Court Unrepresented Persons Analyst Ashli James was hired to work for the court and with OPDC and local public defense service providers to coordinate and analyze attorney availability, conflicts, and recommend criminal defense attorney appointments to represent priority criminal defendants/cases (e.g., in-custody defendants/cases).

Outcome Reached:

We're making significant progress, particularly related to in-custody individuals. Our new Unrepresented Persons Court Analyst is a professional-level court staff member focused daily on the unrepresented persons crisis in Washington County.

Additional Resources Needed:***Next Steps:*****INTERVENTION/RECOMMENDATION 3**

Return Early Case Resolution (ECR) eligible cases back to ECR.

Intended Outcome or Goal:

More defendants will have the opportunity to resolve their cases early through a plea deal and this will free up attorneys to work on other cases, thereby reducing the number of cases without attorneys.

Actions Taken:

OPDC contracted and funded criminal defense “advice counsel” assigned to staff criminal Early Case Resolution (ECR) dockets at the Washington County Law Enforcement Center are stretched thin by the ongoing unrepresented persons crisis. Not having enough defense attorneys to appoint and represent criminal defendants impacts the entire criminal justice system.

Washington County prioritizes identifying defendants and cases eligible for criminal ECR, getting them plea offers, and, when appropriate, resolving cases. Doing so reduces the need to appoint criminal defense attorneys during the ongoing unrepresented persons crisis.

Outcome Reached:

Washington County's criminal ECR dockets continue to resolve 30% of new cases, including probation violations, at, or soon after, arraignment.

Additional Resources Needed:

OPDC contracts with and funding of (MPD) – Washington County and Oregon Defense Attorney Consortium (ODAC), who staff ECR with criminal defense “advisory counsel”, should be reviewed and enhanced to increase ECR criminal defense attorneys’ capacity. We don’t want to miss the opportunity to resolve criminal cases early because assigned ECR defense attorneys are too busy and unable to give every defendant and case the legal representation and attention needed.

Next Steps:

INTERVENTION/RECOMMENDATION 7

Revise current PJO that prioritizes in-custody defendants over other types of cases due to federal order.

Intended Outcome or Goal:

Actions Taken:

PJO 331 - Directing the priority of appointments of defense attorneys in Washington County, dated July 13, 2023.

Outcome Reached:

Goal reached.

Additional Resources Needed:

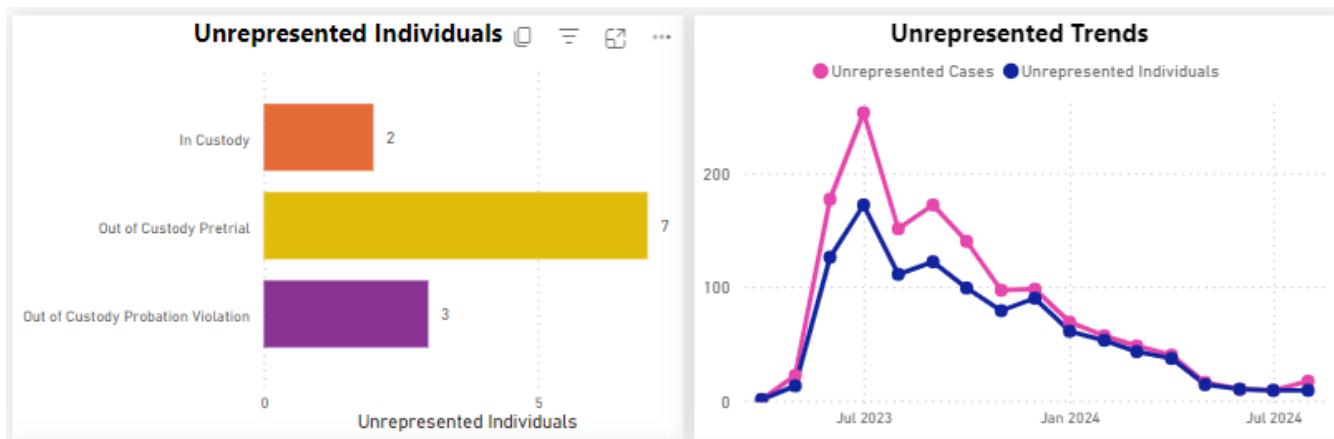
Next Steps:

JUDICIAL DISTRICT 21 – BENTON COUNTY

Presiding Judge: Matthew Donohue

Trial Court Administrator: Chris C. Westfall

BENTON COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

The 21st Judicial District has one public defense consortium, the Benton County Legal Defense Consortium (BCLDC), which currently has nine members, an increase of two since 2023.

As of August 22, 2024, we have 12 out-of-custody unrepresented individuals and 17 unrepresented cases. Two defendants are in custody.

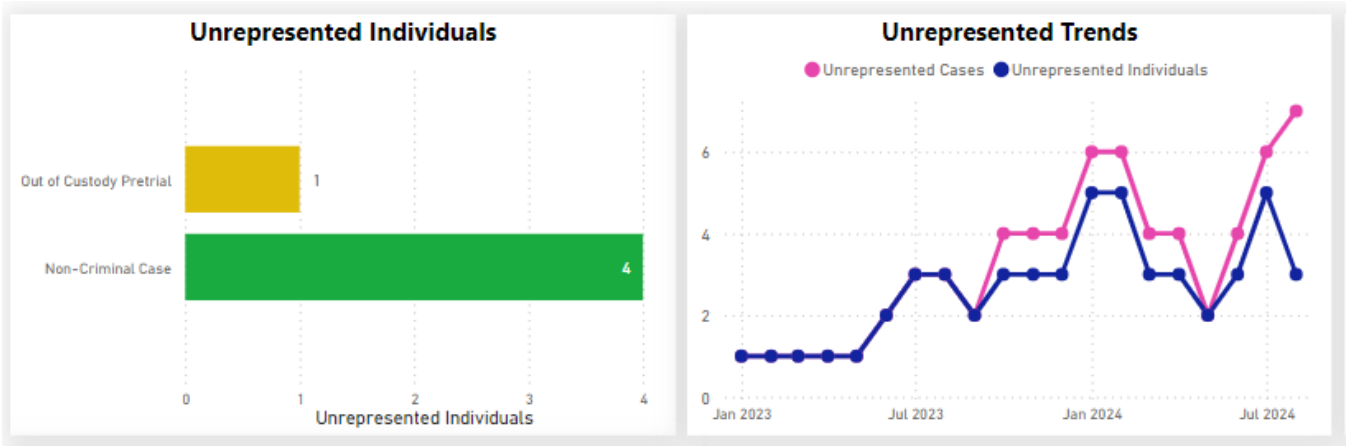
All interventions/recommendations were directed to other entities, none are within the court's power to implement.

JUDICIAL DISTRICT 22 – JEFFERSON AND CROOK COUNTIES

Presiding Judge: Annette C. Hillman

Trial Court Administrator: Katie Slattery

JEFFERSON AND CROOK COUNTIES UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Jefferson and Crook counties have enjoyed a collegial practice environment that has largely ensured representation for indigent defendants. In 2023, there were no unrepresented defendants; however, in January 2024, there were five defendants without counsel. In April 2024, another defense attorney was added to our district. Filings also increased in fiscal year 2024 by 20.3%, likely due to the Jefferson County District Attorney’s Office filling two vacancies in the beginning of the fiscal year.

As of August 22, 2024, there are five unrepresented individuals and eight unrepresented cases in Jefferson and Crook counties, only one is unrepresented on a criminal case, the other four are unrepresented on PCR/habeas cases.

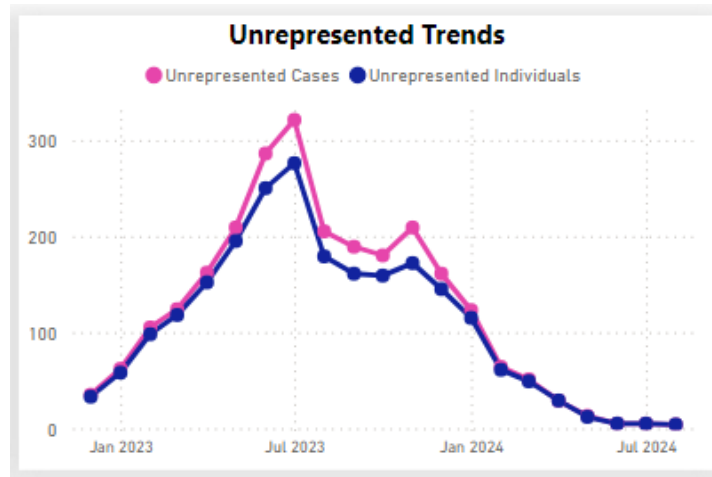
All interventions/recommendations were directed to other entities, none are within the court’s power to implement.

JUDICIAL DISTRICT 23 – LINN COUNTY

Presiding Judge: Thomas A. McHill

Trial Court Administrator: Jim Belshe

LINN COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

As of August 22, 2024, there are no unrepresented defendants in Linn County. This is a significant reduction from July 2023, when there were 276 unrepresented individuals in the county. The court prioritized the appointment of attorneys in either pending civil commitment or person in-custody cases. Between July and October 2023 there were three defense attorneys added to our district. While case filings increased 3.8% in fiscal year 2024, case dispositions increased by 3.9%.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Terminate the appointed representation of a defendant who has failed to appear in court which results in the issuing of a warrant and has not re-entered the system within 60 days. As a corollary, the court supports a reconsideration as to the use of techniques, such as the point system, to more adequately provide attorney capacity. OPDC should either eliminate any point system or find a different way of budgeting attorney capacities.

Intended Outcome or Goal:

The court realizes that the current contract between consortium attorneys and OPDC are beyond any control of the court. We also realize that this recommendation may not impact those contractual obligations and limitations. However, allowing attorneys to terminate the professional relationship with defendants who are outside of the system for a shorter period of time than OPDC's contract provides can

increase the contractor's ability to ethically take more cases and preserve MAC. Attorneys are subject to the Oregon Rules of Professional Conduct in determining their professional capacity for handling cases.

Actions Taken:

The court has not adopted a uniform or automatic termination of representation of cases on warrant status. The court does require defendants to reapply for counsel when the case is in warrant status for more than six months.

Outcome Reached:

Yes and no. While the goal has not been formally achieved, the outcome is being reached informally because the court and parties are handling the appointment of counsel with more management in considering older cases.

Additional Resources Needed:

N/A

Next Steps:

Plan to adopt a more structured way of dealing with cases where defendants are not in custody, but on warrant status.

INTERVENTION/RECOMMENDATION 3

Linn County will continue to use and increase the use of the court's early resolution program with limited-scope defense attorneys to counsel defendants, pending funding support for attorneys who provide this limited representation.

Intended Outcome or Goal:

Early intervention in cases where offers can be made to defendants will result in earlier disposition of cases. Thus, the workload of appointed counsel can be reduced, increasing attorney capacity.

Actions Taken:

The court has dedicated time, judges, and court staff for the Early Resolution docket, which was a program created by the criminal bar. There have also been increased efforts to provide for early resolution at arraignment of out-of-custody defendants.

Outcome Reached:

The docket has been successful in resolving cases.

Additional Resources Needed:

Next Steps:

We will continue to review caseloads and ways to provide for early resolution. However, no formal program has been currently adopted.

INTERVENTION/RECOMMENDATION 4

The court will continue to reach out to members of the local bar association and non-criminal defense attorneys to encourage taking public defense cases. The court will explain to interested attorneys how to be approved and paid by OPDC for the representation of individuals.

Intended Outcome or Goal:

The goal is to encourage more involvement with the local bar members as to supporting the criminal justice system, which requires the constitutional right to be represented in criminal cases. Even attorneys who are willing to represent persons who are accused of misdemeanors and/or minor felonies can reduce the necessity of the court appointing public defense attorneys who can then focus on more serious cases.

Actions Taken:

The court has continued to encourage private practitioners to participate in appointment cases. However, our local consortium has added lawyers to their group, which has reduced the need for private attorneys to participate. Attorneys in the local area are limited as to the numbers of which are most probably qualified to represent some of the cases, and those numbers are currently being serviced by the consortium.

Outcome Reached:

The outcome of additional private practitioners has been less than we hoped. However, the local consortium has added lawyers which has helped with the service levels needed.

Additional Resources Needed:***Next Steps:*****INTERVENTION/RECOMMENDATION 6**

The court will reach out to defense consortium attorneys in an effort to identify attorneys who are willing and able to take more than 300 MAC cases and would agree to get on OPDC's hourly list once the attorney has reached the attorney's contract maximum.

Intended Outcome or Goal:

This intervention will allow the appointment of attorneys not only to increase the attorney's availability for representation, but also to allow the appointment of those attorneys more frequently instead of rationing their appointments throughout the month.

Actions Taken:

As noted above, the court has continued to encourage private practitioners to participate in indigent defense in Linn County. A few have participated since this intervention was created.

Outcome Reached:

With the limitations of numbers of qualified local attorneys, I think that the court has reached a reasonable response.

Additional Resources Needed:***Next Steps:*****INTERVENTION/RECOMMENDATION 7**

The court has adopted prioritization of the cases for the appointment of counsel. As of this date, the court has not adopted a PJO, but judges and members of the bar have agreed that the highest priority is to provide for appointed counsel for civil commitments and persons who remain in custody. Appointment for persons who are out of custody will take into consideration the age of the case, the nature of the case with higher priority to cases charging felony or misdemeanors involving victims, and any other factors which may be reasonable in raising the priority of an individual case.

Intended Outcome or Goal:

The immediate goal is to provide attorneys for those persons in custody. That goal has already been largely accomplished. The further goal is to provide for the appointment of counsel for those persons who are out of custody, but the resources available need to be prioritized on a monthly basis. Ultimately, it is the goal to provide to those persons who qualify for court appointed attorneys, while preserving the priority of appointing attorneys for persons who remain in custody, but there is now something of a backlog of out-of-custody persons..

Actions Taken:

No additional PJO has been implemented; however, the court has prioritized appointing attorneys to in-custody defendants and then allocating MAC available for the month to appoint attorneys to as many cases as possible. The members of the defense bar, the prosecution, and the court have worked cooperatively to manage the resources available. Currently, all persons who are considered eligible for court appointed counsel are appointed attorneys at arraignment.

Outcome Reached:

Goal has been reached.

Additional Resources Needed:***Next Steps:***

We will continue to work together to manage resources to allow appointments at arraignment.

INTERVENTION/RECOMMENDATION 8

The court will continue to review and adopt the use of remote appearances in order to free up more court docket time for cases and to allow attorneys fewer required court appearances.

Intended Outcome or Goal:

The outcome of this continued review is to increase attorney capacity by further reducing court appearances which do not move the case forward. As a part of this intervention, the court will continue the use of remote appearances, which, pursuant to a PJO, favors the use of remote appearances for court appearances (e.g., arraignment) and other pretrial court appearances (e.g., status checks and sentencing), unless a defendant objects to remote appearance.

Actions Taken:

The court continues to encourage remote proceedings for status hearings, arraignment and plea changes, and sentencing.

Outcome Reached:

Goal has been reached to the extent that time is used by attorneys more efficiently by remote appearances, particularly in mass dockets, such as status conferences and other appearances which are not likely to be used to resolve the cases. The court continues to use remote hearings for pleas and sentencings where defendants are in custody or out of the area, as needed. This not only frees up time for lawyers but also other justice partners, such as corrections and law enforcement.

Additional Resources Needed:***Next Steps:***

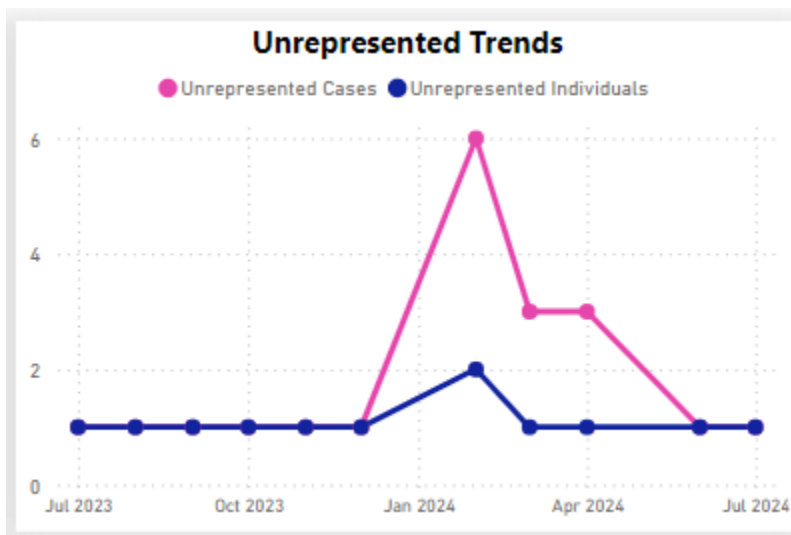
We will continue to use remote appearances, as needed.

JUDICIAL DISTRICT 24 – GRANT AND HARNEY COUNTIES

Presiding Judge: Robert S. Raschio

Trial Court Administrator: Samantha Dowell

GRANT AND HARNEY COUNTIES UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

In the summer of 2023, the district had no more than one unrepresented case; however, that changed in early 2024, when the number of defense providers dropped from six to four. One defense attorney left to join OPDC's State Trial Division Office in southern Oregon. While the maximum number of unrepresented cases was six in February 2024, for a small district that number is significant. Currently, there are no unrepresented defendants.

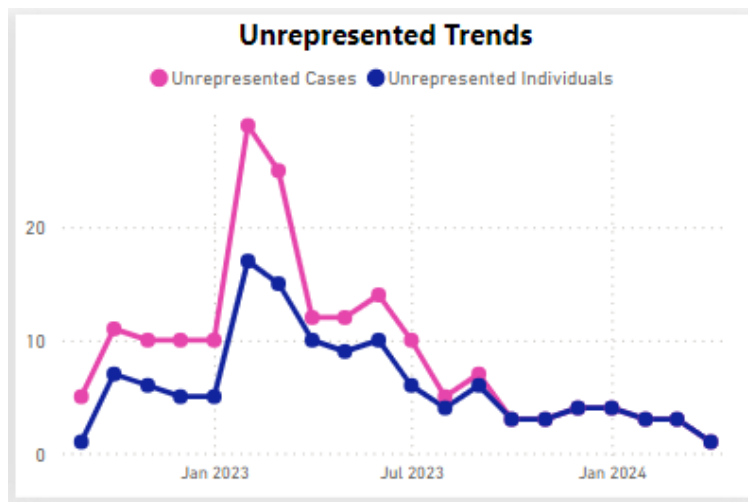
All interventions/recommendations were directed to other entities, none are within the court's power to implement.

JUDICIAL DISTRICT 25 – YAMHILL COUNTY

Presiding Judge: Ladd J. Wiles

Trial Court Administrator: Mandi M. Montgomery

YAMHILL COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Yamhill County, the 25th Judicial District, has historically had a low unrepresented count and currently has one unrepresented person. Typically, a defendant ends up without representation when defense attorneys have a conflict. Prior to the creation of the crisis plan, the public defender list had a total of five attorneys, but they were able to fill 2.5 positions in October 2023. Yamhill County has been able to maintain a low number of unrepresented persons due to the collaborative efforts of the local public safety stakeholders.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION 2

Presiding judge to discuss with the district attorney and executive director of the public defense consortium approaches to cases in warrant status and whether the court should terminate the appointment of an attorney after an agreed upon number of days that an individual is on warrant status for FTA and return the individual to the unrepresented list.

Intended Outcome or Goal:

If there is agreement among the members of the crisis team on an approach to cases in warrant status, then the intended goal or outcome is to increase attorney ethical capacity and reduce the number of unrepresented individuals.

Actions Taken:

The presiding judge issued a PJO to remove court-appointed attorneys 60 days after a warrant has been issued if the warrant is still outstanding. The PJO also directs court-appointed attorneys to be removed in deferred sentencing cases after 60 days, as long as there is not a violation in that time frame.

Outcome Reached:

The number of defendants with appointed attorneys has been reduced.

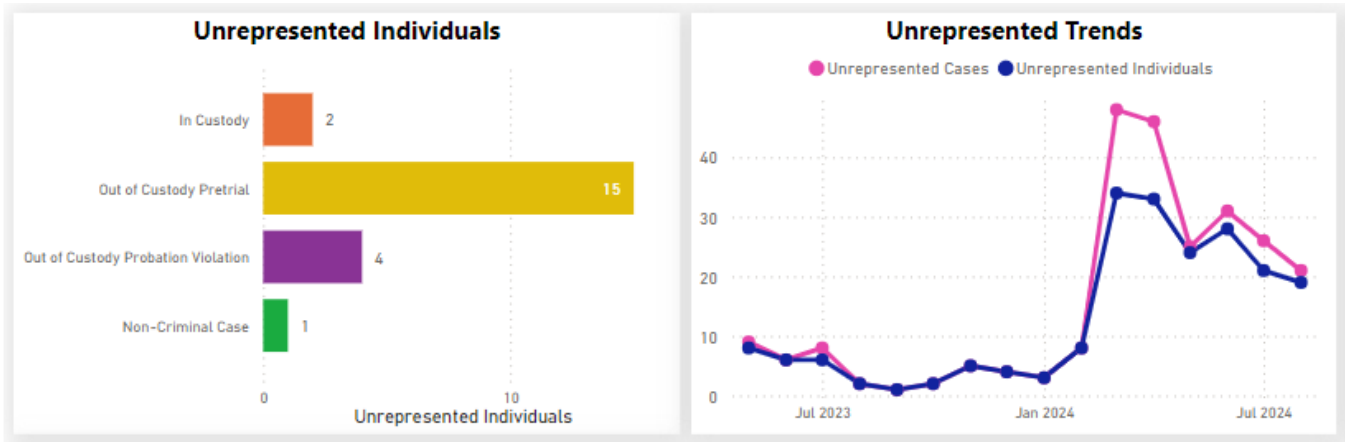
Additional Resources Needed:***Next Steps:***

JUDICIAL DISTRICT 26 – LAKE COUNTY

Presiding Judge: David M. Vanderberg

Trial Court Administrator: John Powell

LAKE COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

Lake County consistently had a low number of unrepresented persons in 2023 and by September 2023 only had one unrepresented person. However, the number of unrepresented persons climbed significantly by March 2024, peaking at 34 unrepresented persons. The sudden increase in unrepresented persons is due to a loss of defense attorneys, the district went from three defense attorneys to one within a couple of months. One attorney left because he was appointed as the Klamath County District Attorney and the other moved to Washington. OPDC was able to expedite filling one vacancy, but the district is still down one attorney, and defense attorneys from Klamath County have been accepting appointments in Lake County. As of August 22, 2024, there are 22 unrepresented persons in Lake County, two of which are in custody.

The interventions/recommendations listed below are those that were identified in the judicial district's crisis plan as steps that the court could undertake through direct action. Additional information includes the intended outcome or goal, as identified at the time of the crisis plan, actions taken to date, whether the outcome or goal was achieved, whether additional resources are needed, and whether next steps are pending.

INTERVENTION/RECOMMENDATION

Review court practices regarding warrant status cases (from resignation in six months to 60 days). Revise show-cause filings to include detailed explanation for resolution so that cases may get resolved prior to court hearing reducing appointments. Seek additional MAC for increase in cases. If needed, work with the district attorney's office to review policy for filing FTA and contempt matters. Recruit additional providers to the area.

Intended Outcome or Goal:

Continue to have attorneys available with sufficient MAC to cover all cases. Have out-of-county attorneys available for conflict matters.

Actions Taken:

The only action within the court's control is reviewing whether to remove attorneys from cases where a defendant has been in warrant status for 60 days. The remaining recommendations are directed to OPDC, local defense providers, the district attorney's office, and probation office.

Outcome Reached:

Additional Resources Needed:

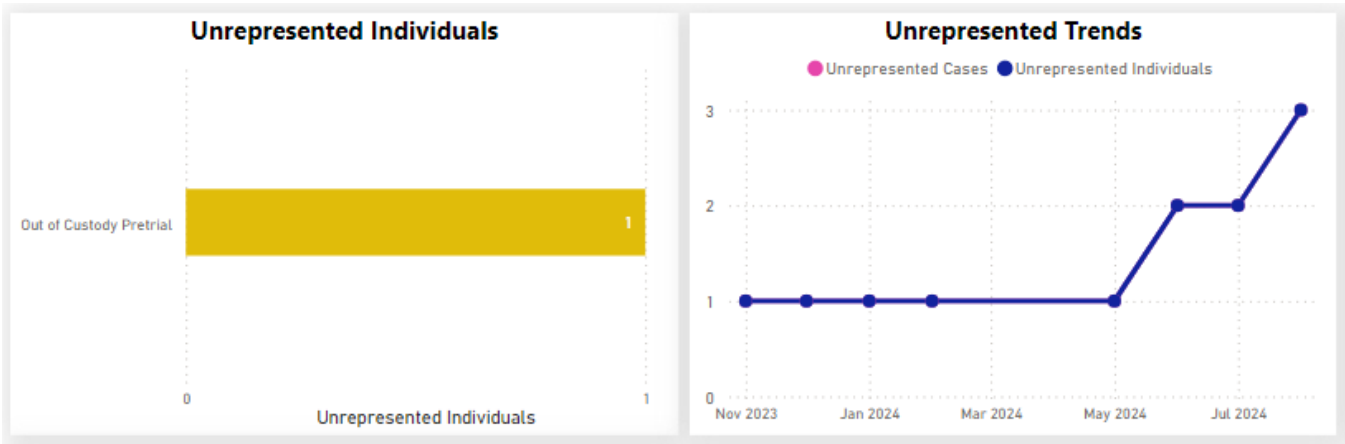
Next Steps:

JUDICIAL DISTRICT 27 – TILLAMOOK COUNTY

Presiding Judge: Jon R. Hill

Trial Court Administrator: Christopher Hamilton

TILLAMOOK COUNTY UNREPRESENTED INDIVIDUALS AS OF AUGUST 22, 2024



BACKGROUND

As of July 31, 2023, Tillamook County did not have any unrepresented defendants. Unlike other courts, Tillamook County has not experienced an unrepresented individual crisis. Tillamook County has struggled with conflict cases, though. There used to be one defense attorney who could handle nearly all of the conflict cases in the district, but that attorney started taking cases in Clatsop County when that district began experiencing a crisis and is no longer able to take conflict cases in Tillamook County due to capacity issues. As of August 22, 2024, there is one unrepresented out-of-custody defendant in Tillamook County.

All interventions/recommendations were directed to other entities, none are within the court's power to implement.

APPENDIX B: OJD MONTHLY UNREPRESENTED CRISIS REPORTS FOR OPDC

B.1 [LETTER TO OPDC](#)

B.2 [UNREPRESENTED CRISIS PLANS FEBRUARY 2024 STATUS UPDATE](#)

B.3 [UNREPRESENTED CRISIS PLANS MARCH 2024 UPDATE](#)

B.4 [UNREPRESENTED CRISIS PLANS APRIL 2024 UPDATE](#)

B.5 [UNREPRESENTED CRISIS PLANS JUNE 2024 UPDATE](#)

B.6 [UNREPRESENTED CRISIS PLANS JULY 2024 UPDATE](#)

B.7 [UNREPRESENTED CRISIS PLANS AUGUST 2024 UPDATE](#)

Meagan A. Flynn
Chief Justice



1163 State Street
Salem OR 97301
Phone: 503.986.5676
Fax: 503.986.5730
Oregon Relay Service: 711

OREGON SUPREME COURT

February 6, 2024

Oregon Public Defense Commission
1175 Court Street NE
Salem, OR 97301

Re: SB 337 Unrepresented Crisis Plans Status Update

Dear Commission Members:

In July, I issued Chief Justice Order 23-024 to ensure a uniform, timely approach to the development, submission, and implementation of local unrepresented crisis plans as directed in Senate Bill (SB) 337 (2023). Since the plans were submitted in September 2023, Presiding Judges in each judicial district (along with district attorneys, public defense providers, and the Oregon Public Defense Commission (OPDC) have been working together to implement those plans.

Attached to this letter is a status update on the implementation of SB 337 Unrepresented Crisis Plans and the interventions and outcomes to date. Given the immediate and continued crisis, I will continue to work with OPDC and our courts to monitor the crisis, help address issues as they arise, and assist the commission to add clarity and transparency as needed. To that end, I will be submitting status update reports for each of your commission meetings as we move forward together to ensure that Oregon meets its obligation to provide counsel in all case types where there is a constitutional or statutory right to counsel.

Sincerely,

A handwritten signature in blue ink that reads "Meagan A. Flynn".

Meagan A. Flynn
Chief Justice

MAF:jm/24eMAF003jm
Attachment

B.2

Unrepresented Crisis Plans

FEBRUARY 2024 STATUS UPDATE

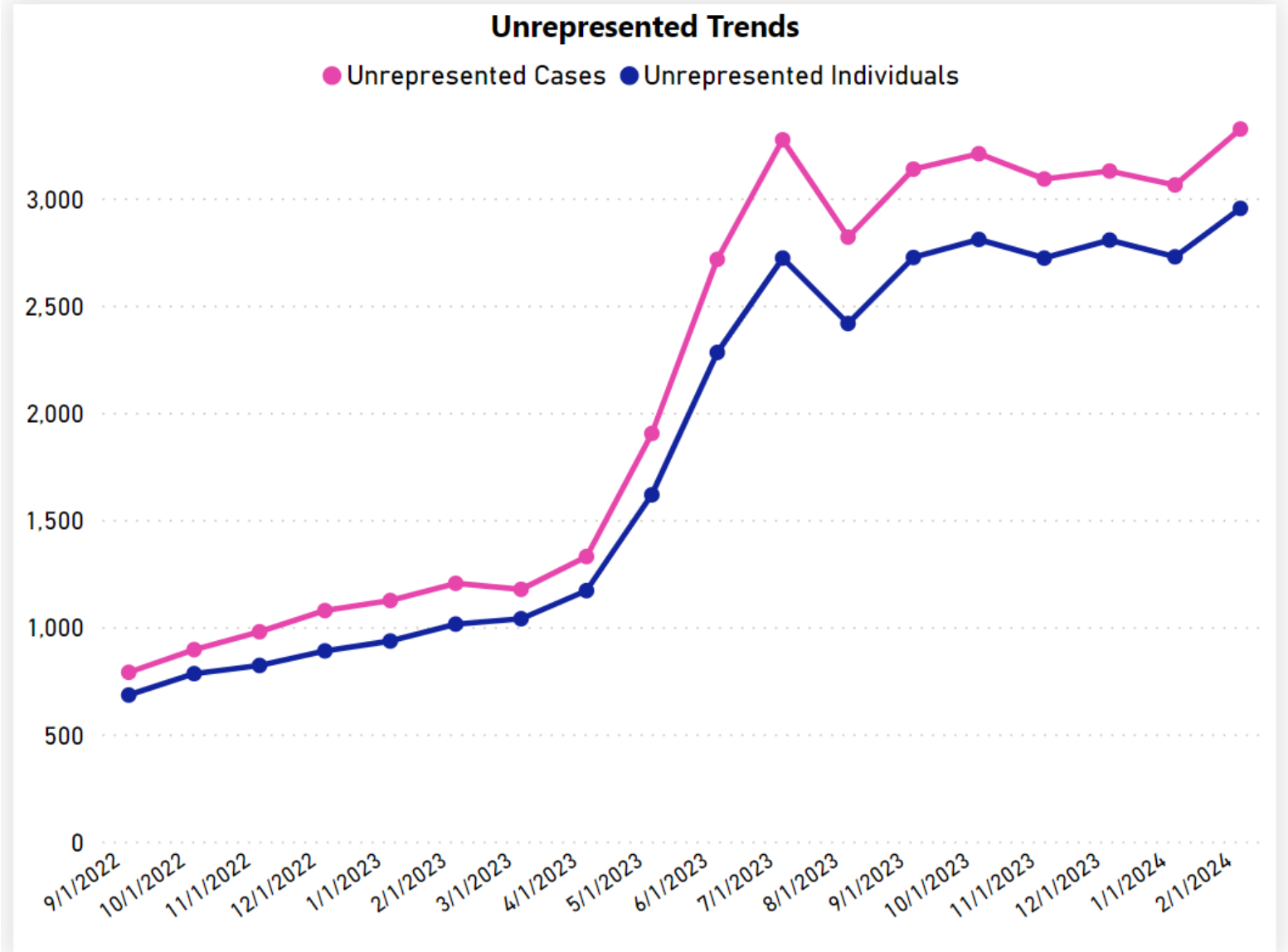
CHIEF JUSTICE ORDER 23-024, ENROLLED SENATE BILL 337 (2023)

Oregon Judicial Department



CURRENT STATUS

- The crisis escalated in April through June of 2023 as contract attorneys reached their annual caseload limits.
- In July 2023, OPDC set monthly limits on the number of cases attorneys can take within their annual MAC.
- The rate of growth in unrepresented has slowed but continues to increase even as new attorneys are added.



CRISIS PLANS: FOUR LEVERS - COMMON THEMES

Lever	Authority
1. Add Attorneys	OPDC (stakeholders can help with recruitment and retention efforts)
2. Attorney Capacity	OPDC (stakeholders can recommend adjustments to increase available attorney time)
3. Decrease Filings	DA (stakeholder communication about filing trends and priorities can lead to system efficiencies through deflection or diversion, where appropriate)
4. Increase Dispositions	COURT (input from public safety partners can help the courts engineer more efficient systems)

While specific entities hold different kinds of authority, each crisis plan assumes that system change - and progress - requires a shared vision, shared goals, and a group effort.

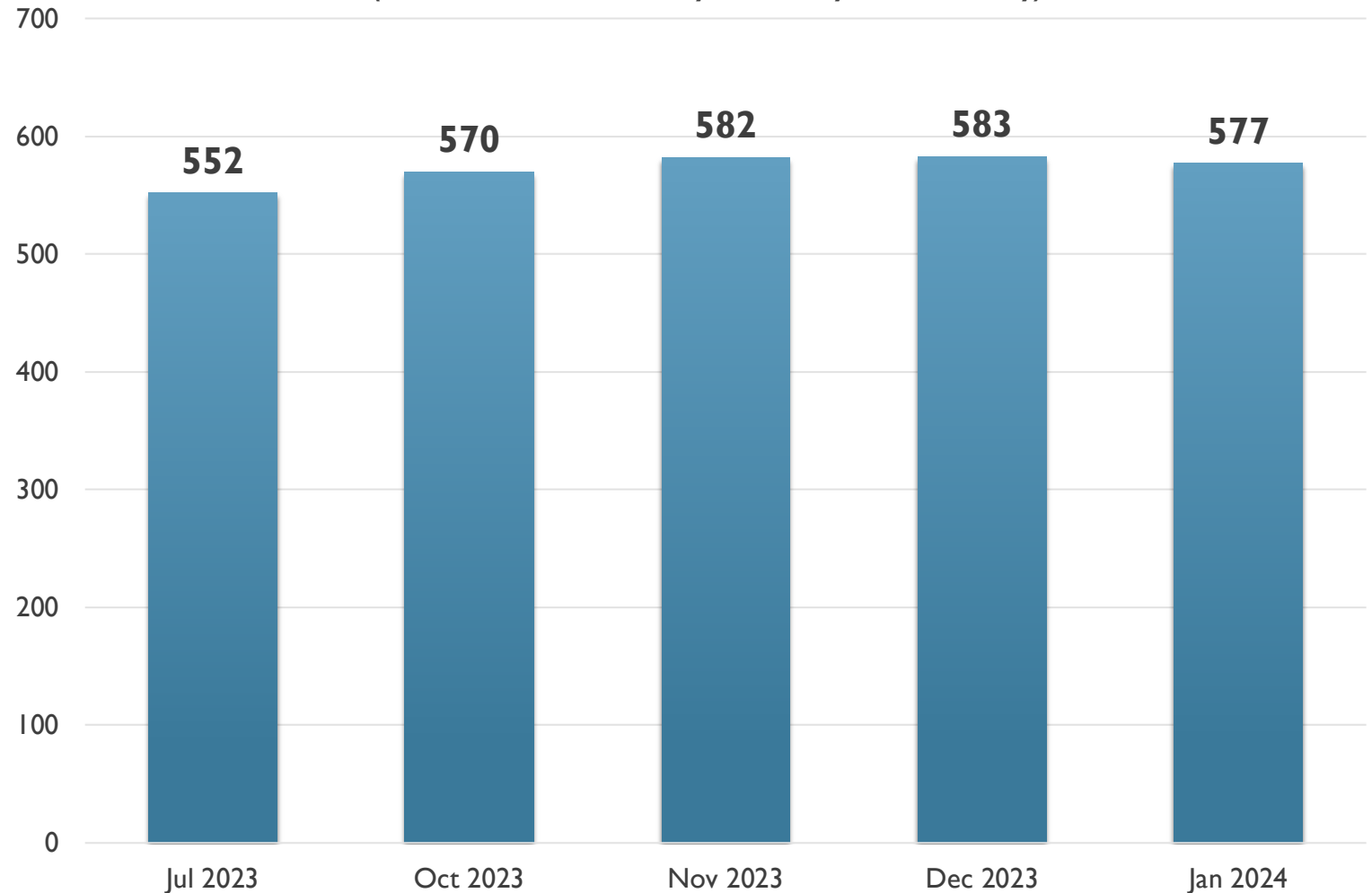
LEVER I – ADD ATTORNEYS

Crisis Plan Recommendations

- Attorney Recruitment
 - Improve compensation
 - Fellowships; law school partnerships; mentorships
- Regional OPDC offices to take conflict cases

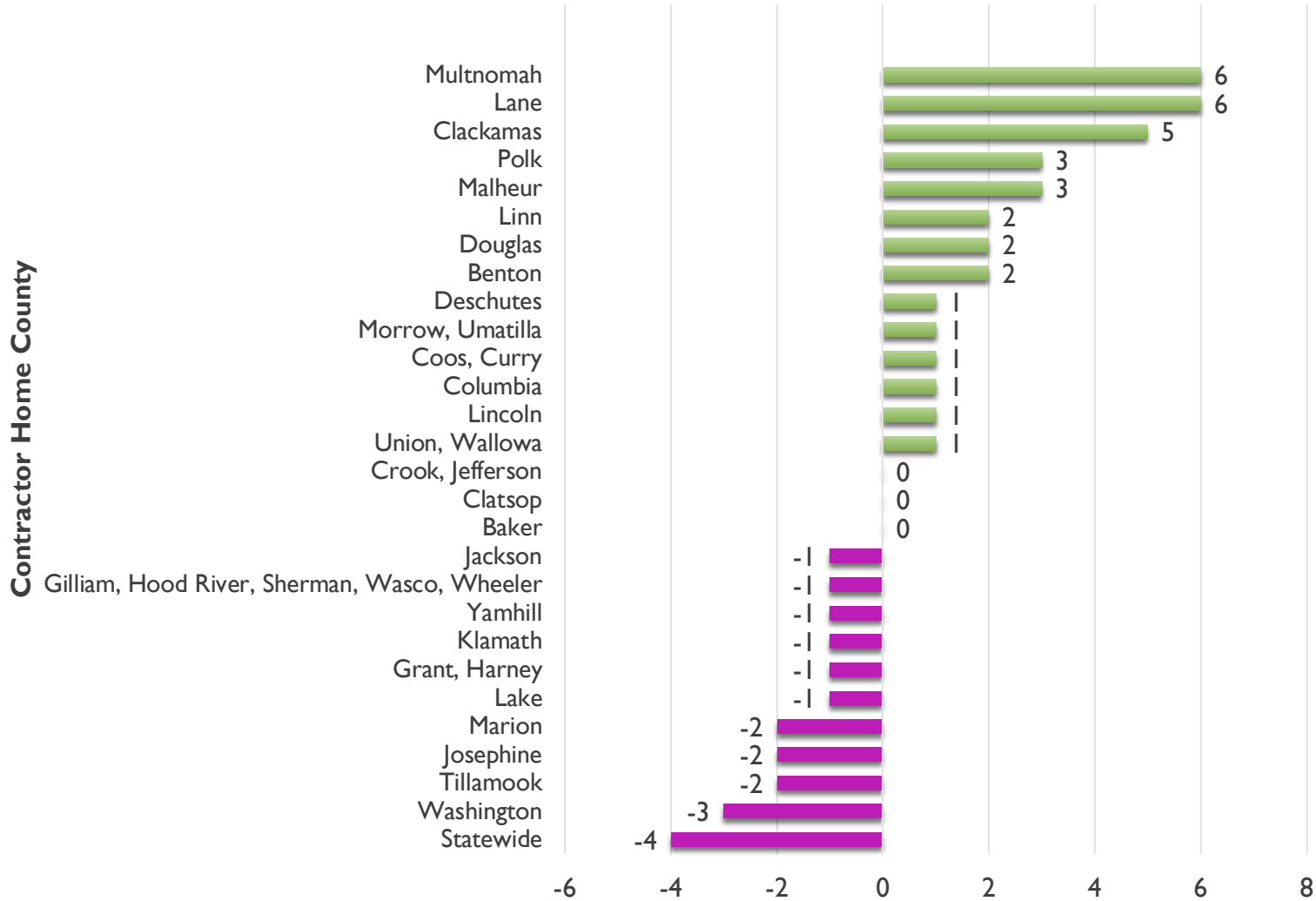
Criminal Contract Attorneys

(Does not include attorneys on hourly contracts only)



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023 and 1/16/2024

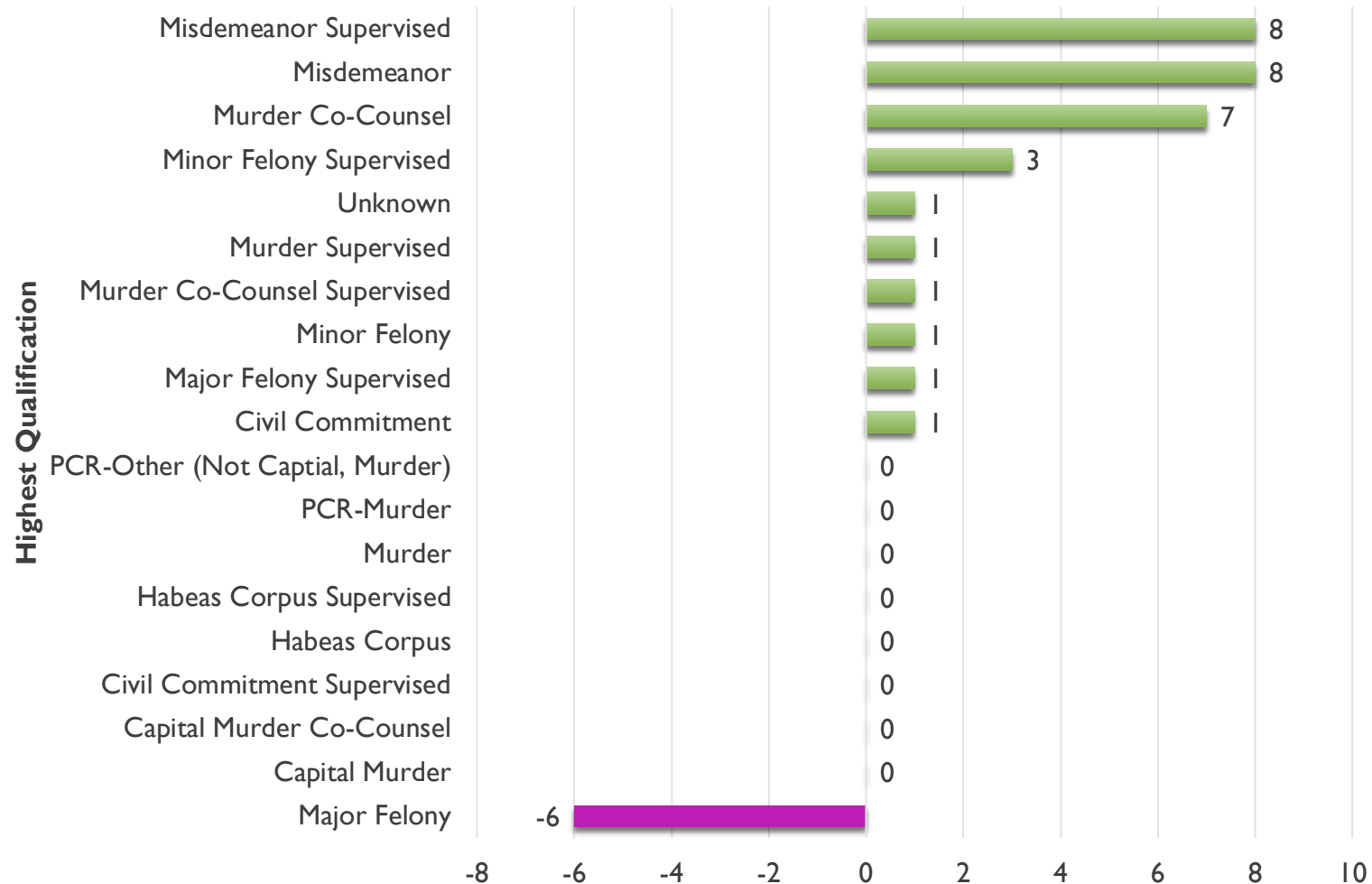
Criminal Contract Attorneys Net Change by Contractor County
July 2023 – January 2024



26 ATTORNEYS
added to criminal
contract providers
(net)

Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023 and 1/16/2024

Statewide Criminal Contract Attorneys Net Change by Qualification July 2023 – January 2024



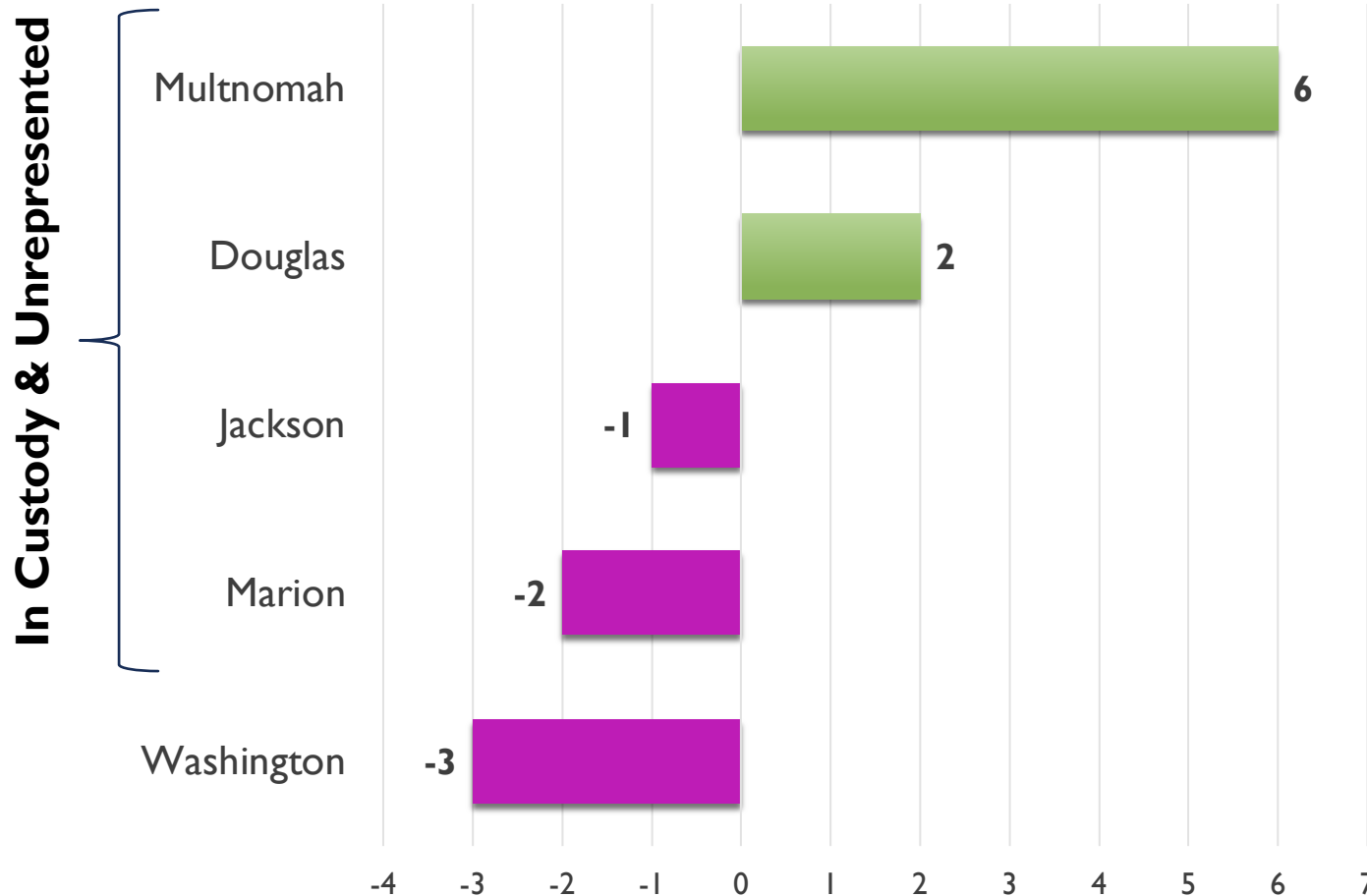
STATEWIDE
MOST UNREPRESENTED
CASES ARE MINOR FELONY
AND MISDEMEANOR

16 MISDEMEANOR
qualified attorneys added (net)

6 MAJOR FELONY
qualified attorneys lost (net)

Unrepresented Hotspots

Criminal Contract Attorneys Net Change by Judicial District
July 2023 – January 2024



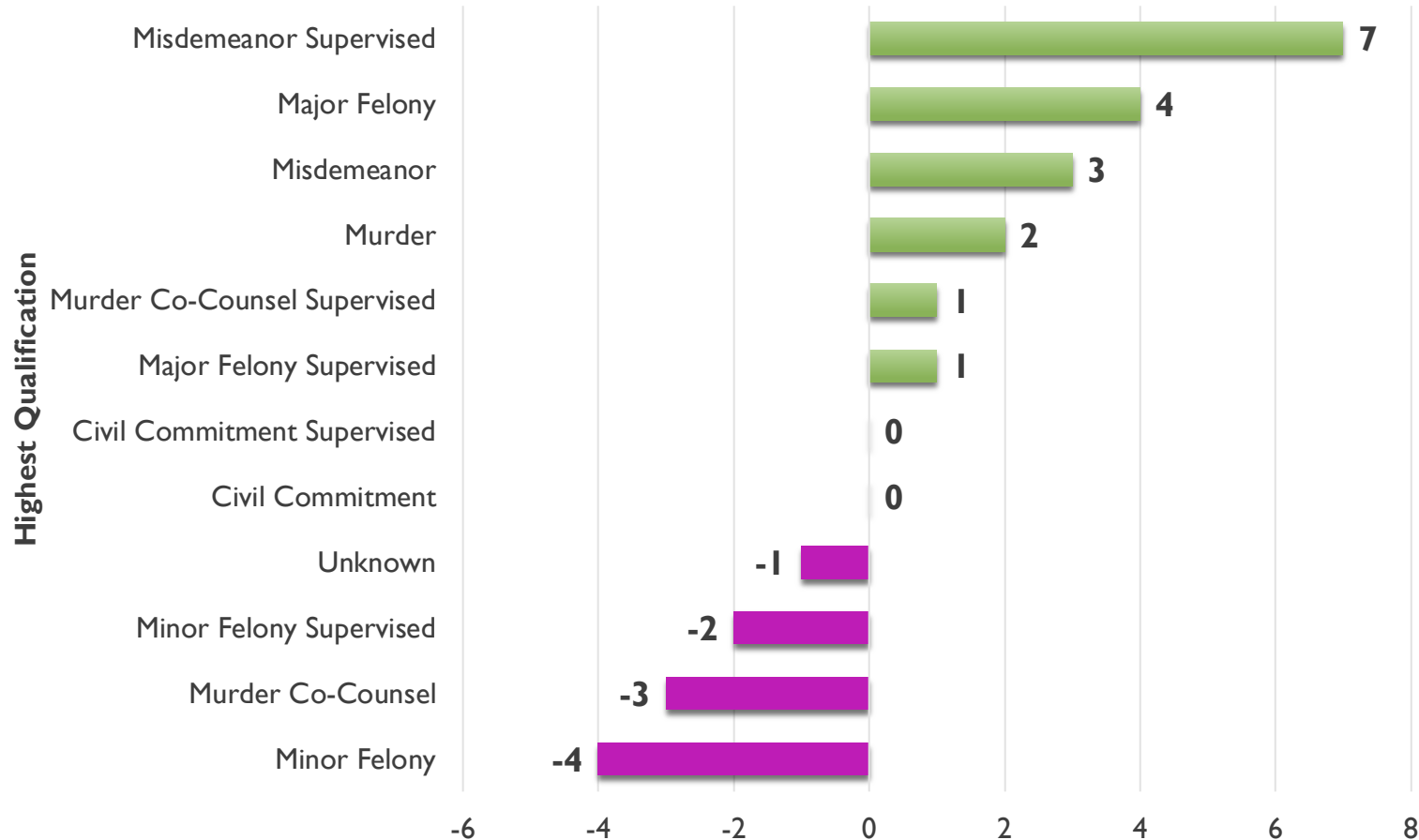
UNREPRESENTED
HOTSPOTS

2 ATTORNEYS

added to criminal
contract providers in
unrepresented
hotspots (net)

Unrepresented Hotspots

Jackson, Multnomah, Marion, Washington, Douglas
Criminal Contract Attorneys Net Change by Attorney Qualification
July 2023 – January 2024



UNREPRESENTED HOTSPOTS

MOST UNREPRESENTED CASES ARE MINOR FELONY AND MISDEMEANOR

10 MISDEMEANOR
qualified attorneys added (net)

6 MINOR FELONY
qualified attorneys lost (net)

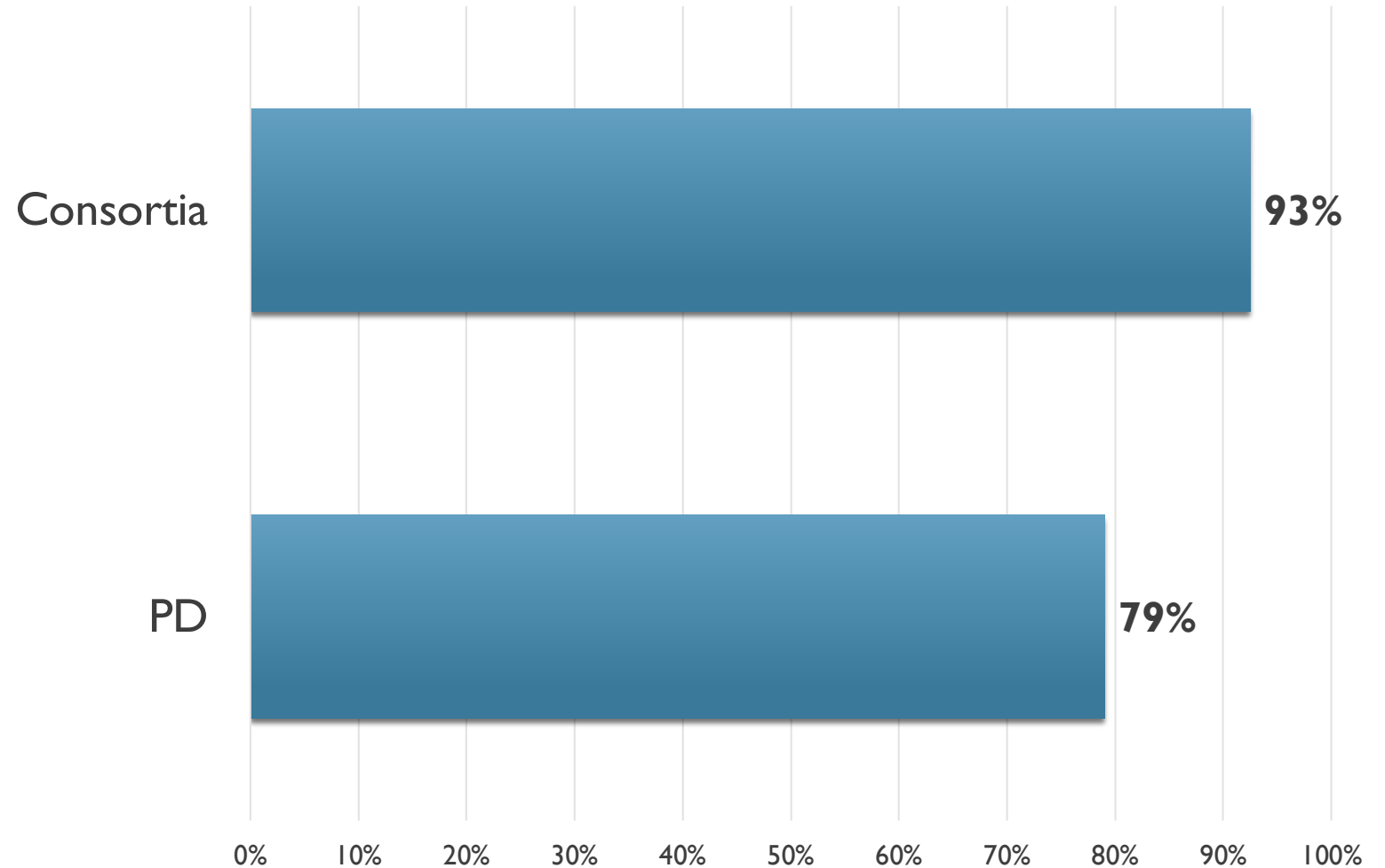
LEVER 2 – ATTORNEY CAPACITY

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

Statewide FY 2023 % of Contract MAC Taken

MAC – Maximum Attorney Caseload (annual)



Source: OPDC Provider Contract Data and OJD Odyssey Data

B.2 - 9

MEASURING ATTORNEY CAPACITY – SYSTEM LIMITATIONS



No automated way to see if attorney is/was available for the entire contract period



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

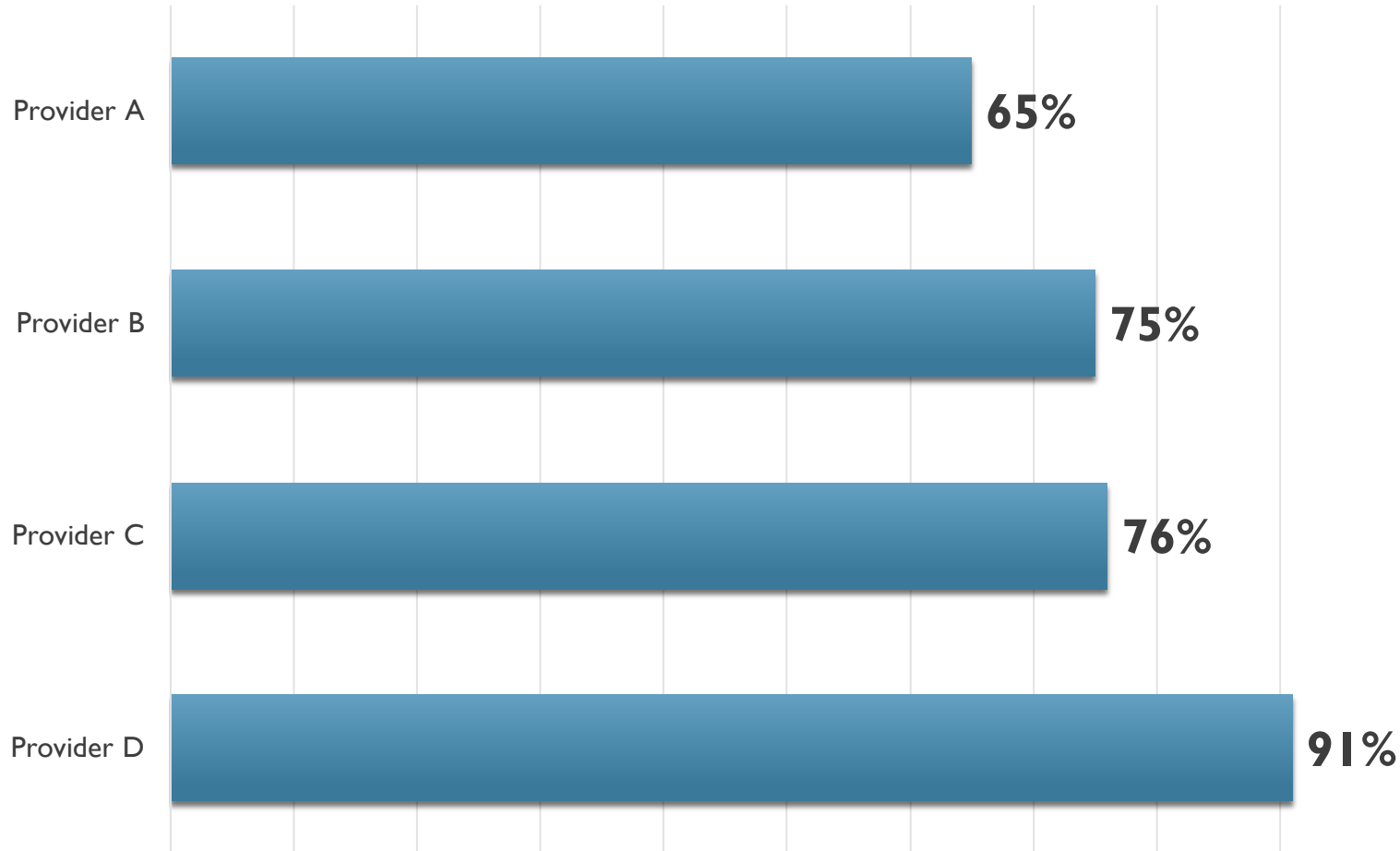


Total open caseload per attorney vs. annual contracted caseload



No time to disposition standards or comprehensive tracking

% MAC Taken by Providers Varies Widely Fiscal Year 2023 Contract Examples – Validated

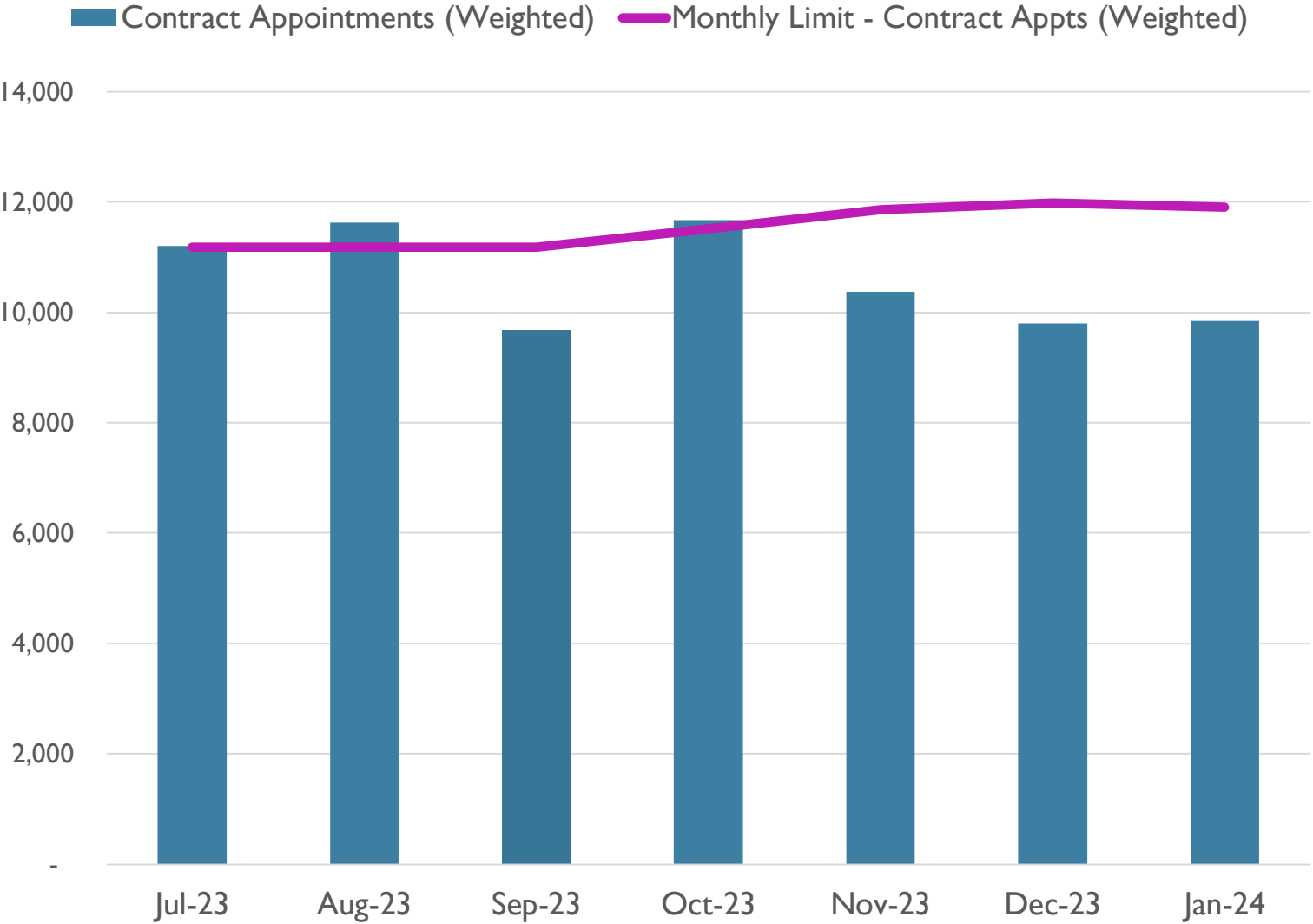


Source: OPDC Provider Contracts FY 2023

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

MAC – Maximum Attorney Caseload
(annual caseload)

Monthly Criminal Contract Appointments Taken



UNREPRESENTED GROWING EVEN AS NEW ATTORNEYS ADDED

In FY 2024, appointments taken each month are not reaching the monthly maximums.

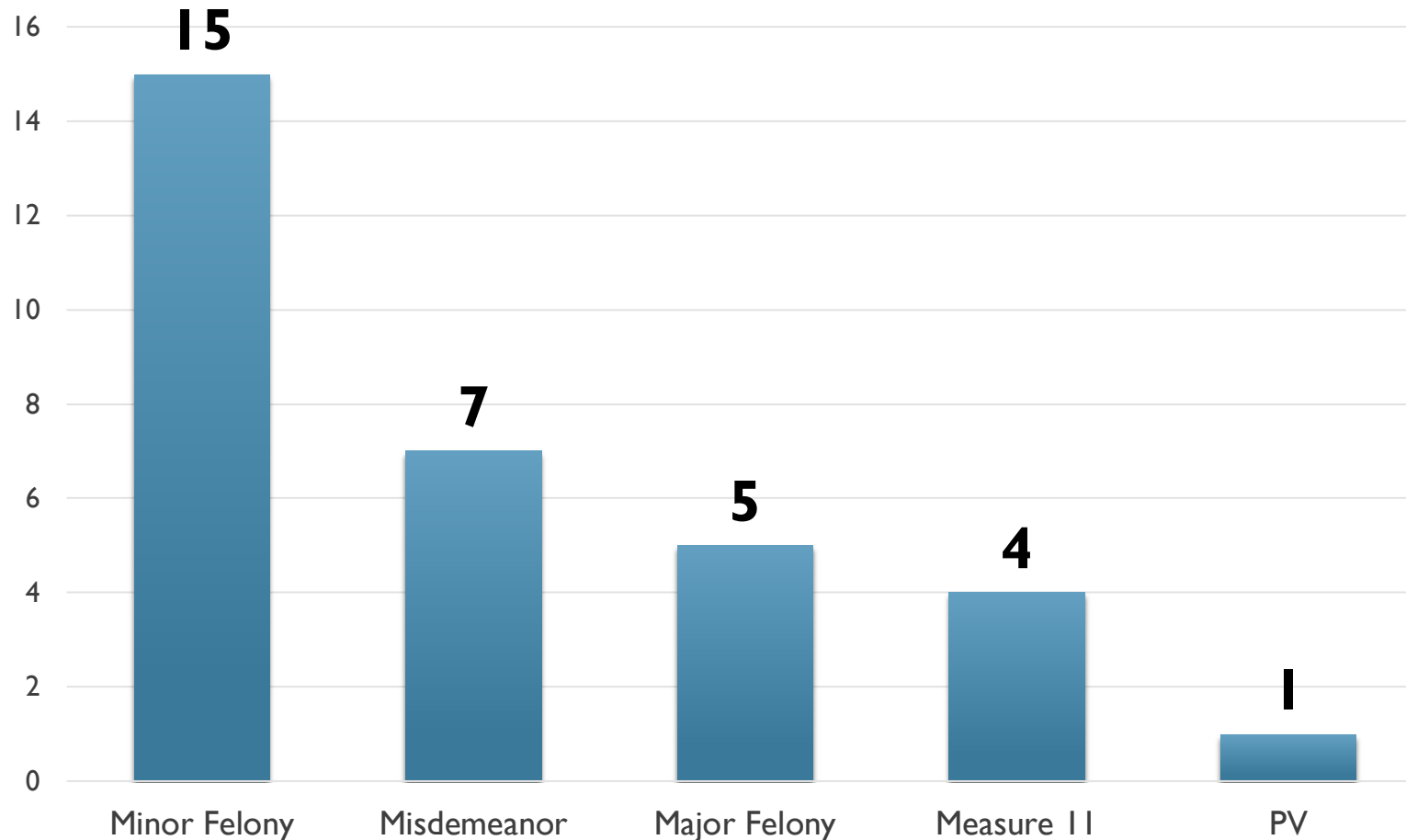
The blue bar shows how many appointments (weighted) were taken each month by criminal contract attorneys.

The pink line is the maximum amount of contract attorney capacity based on the monthly limits OPDC sets in the contract (25 weighted cases per month for a full-time contract attorney).

Northwest Regional Trial Office

December 2023 – January 2024

■ Appointments Taken



Source: OJD Odyssey Data

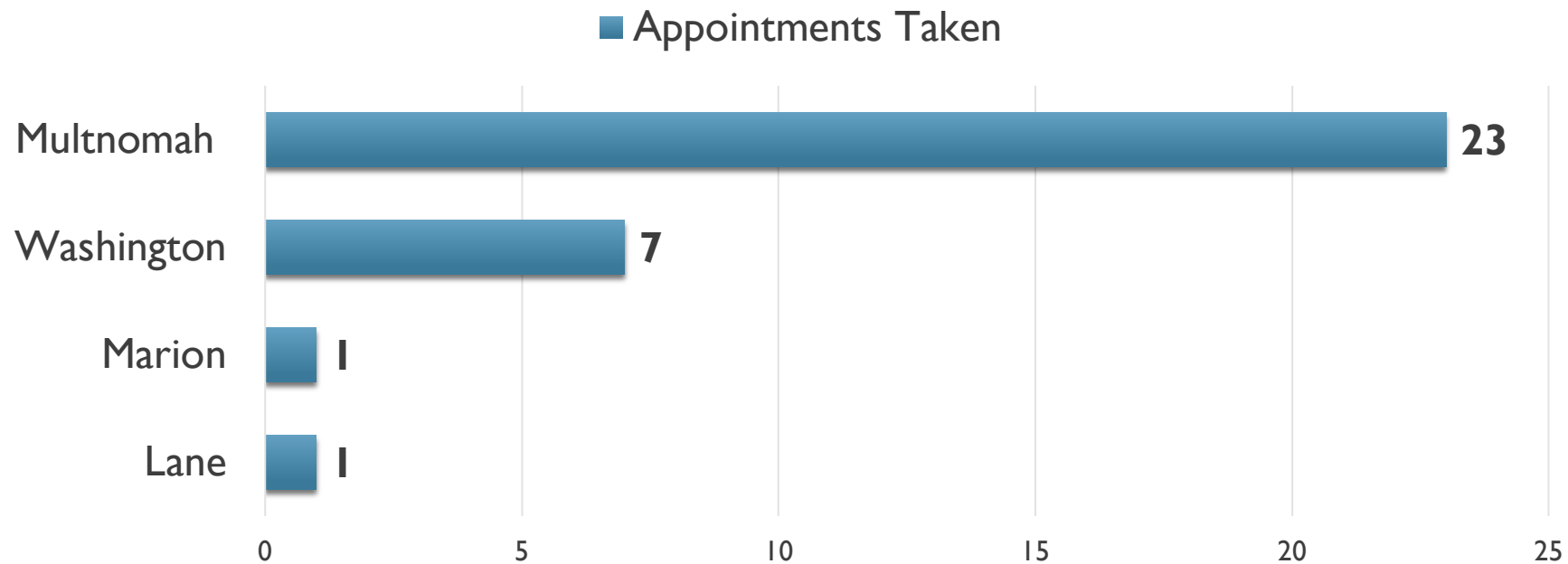
NORTHWEST REGIONAL TRIAL OFFICE ATTORNEYS

- Two attorneys started in December, two started in January, and one will start in February
- Data shows appointments during “ramp up” period
- Will continue tracking appointments for regional trial office attorneys
- Representation in 32 cases (6 in December and 26 in January)

NW REGIONAL TRIAL OFFICE APPOINTMENTS BY COURT

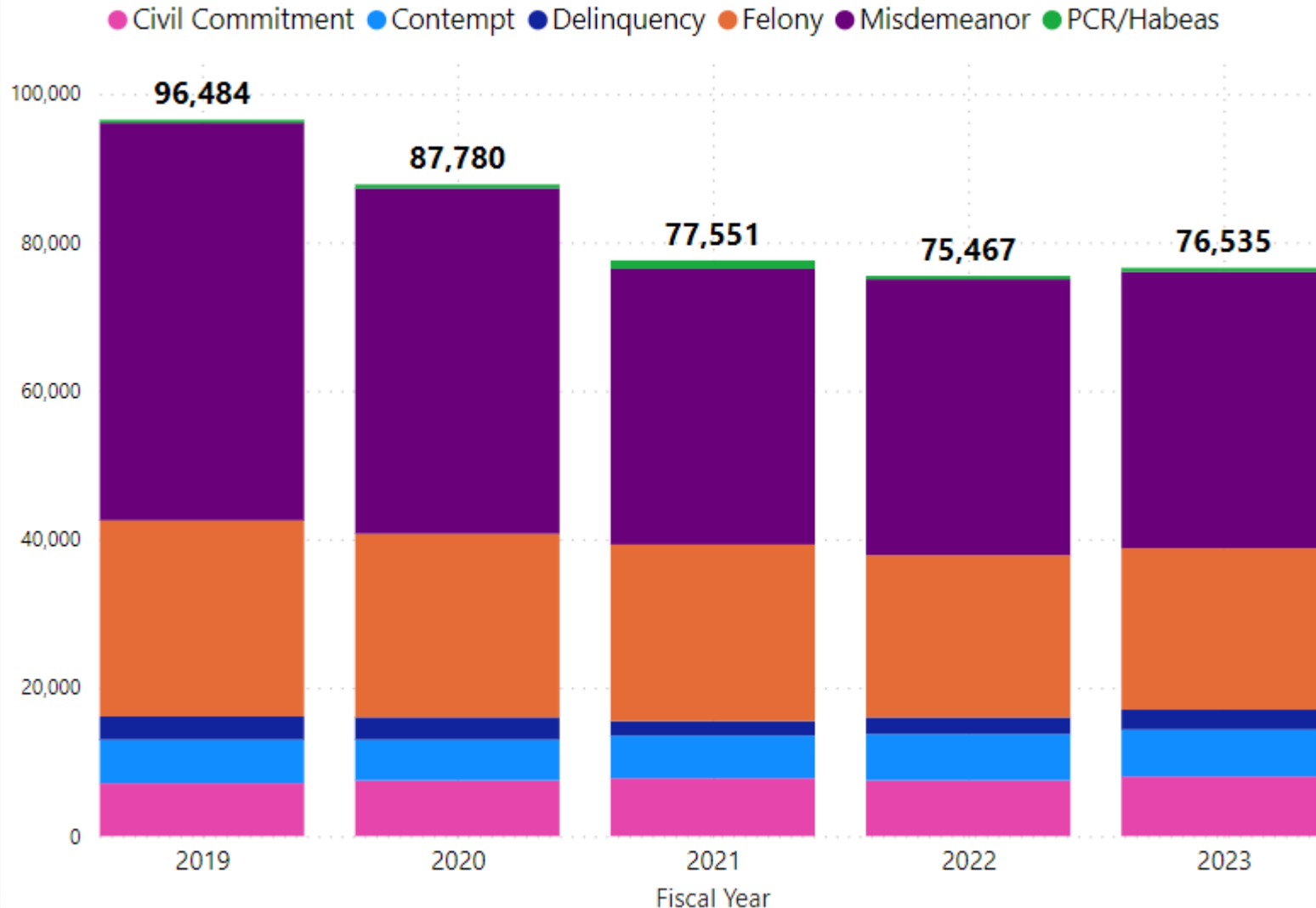
Northwest Regional Trial Office

December 2023 - January 2024



Source: OJD Odyssey Data

Cases Filed



LEVER 3 – DECREASE FILINGS

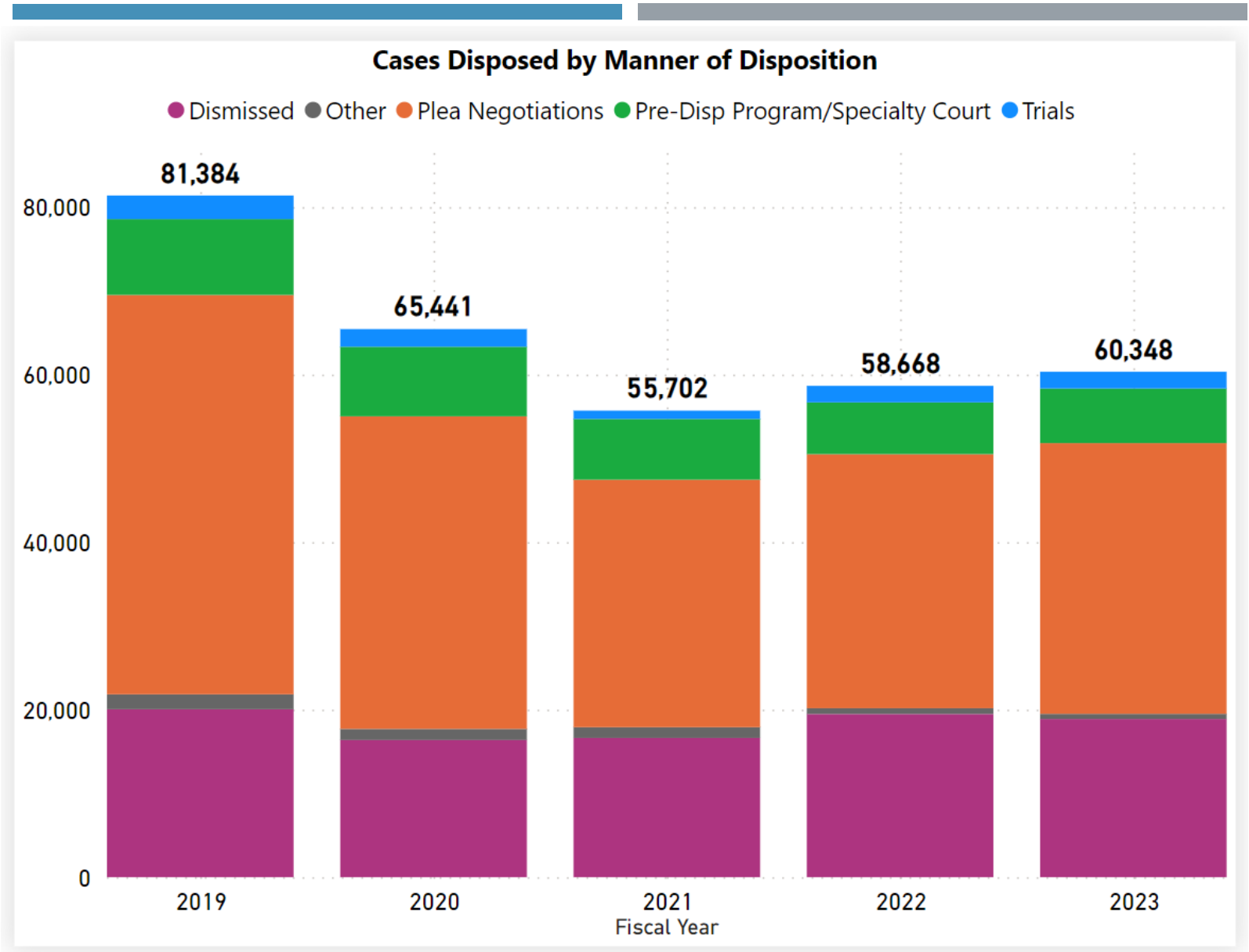
Crisis Plan Recommendations

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

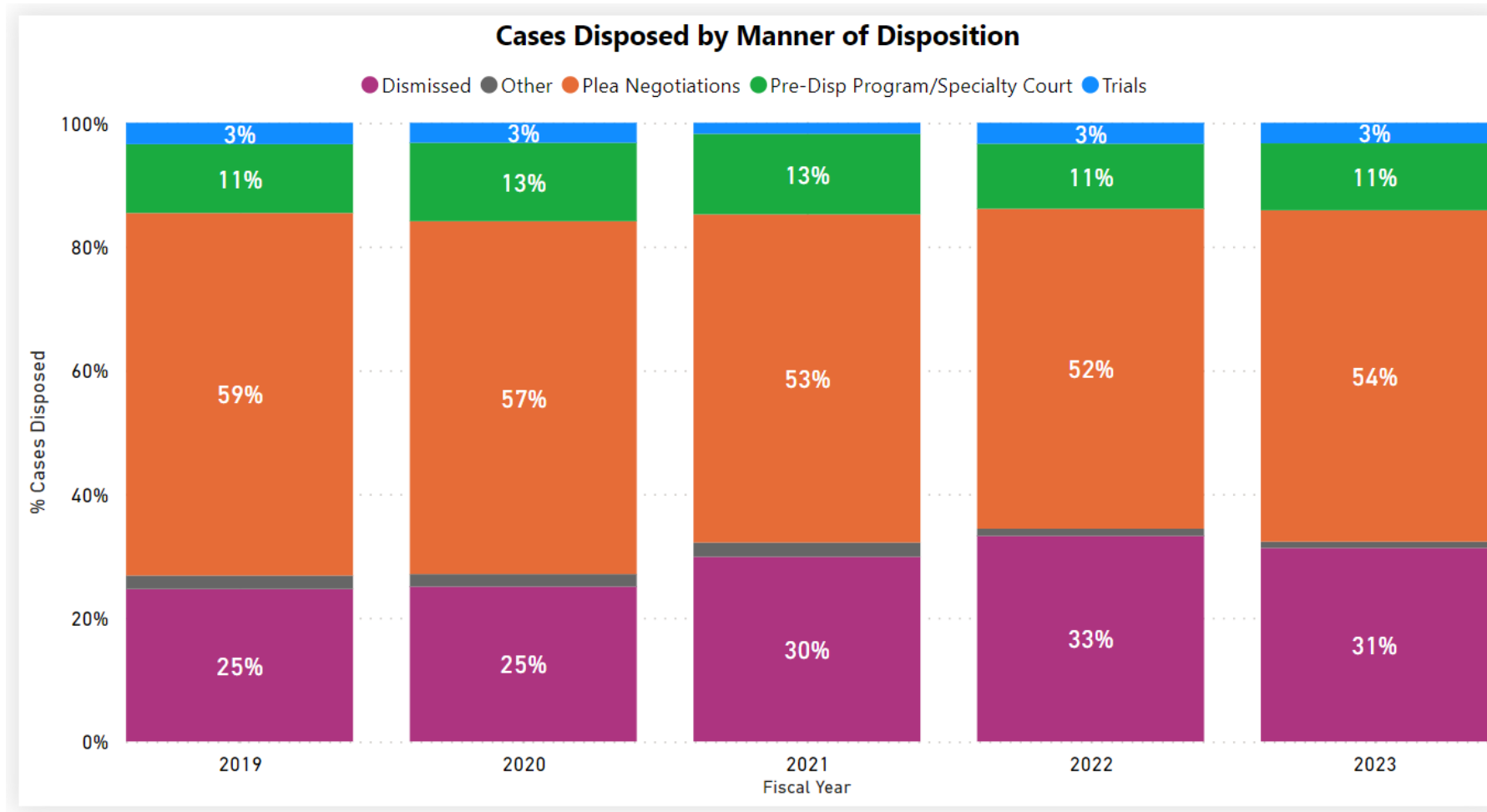
LEVER 4 – INCREASE DISPOSITIONS

Crisis Plan Recommendations

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



RELATIVE % OF TOTAL CASES DISPOSED OVER TIME





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

HOPE FOR THE FUTURE

- New regional offices are intended to add capacity
- New Commission members will bring new ideas
- If implemented, Justice Data Warehouse using Odyssey and OPDC data will allow for better monitoring and more transparency
 - Odyssey caseload dashboard creates opportunities for real-time caseload information for providers to reconcile their caseload reports
 - OPDC 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

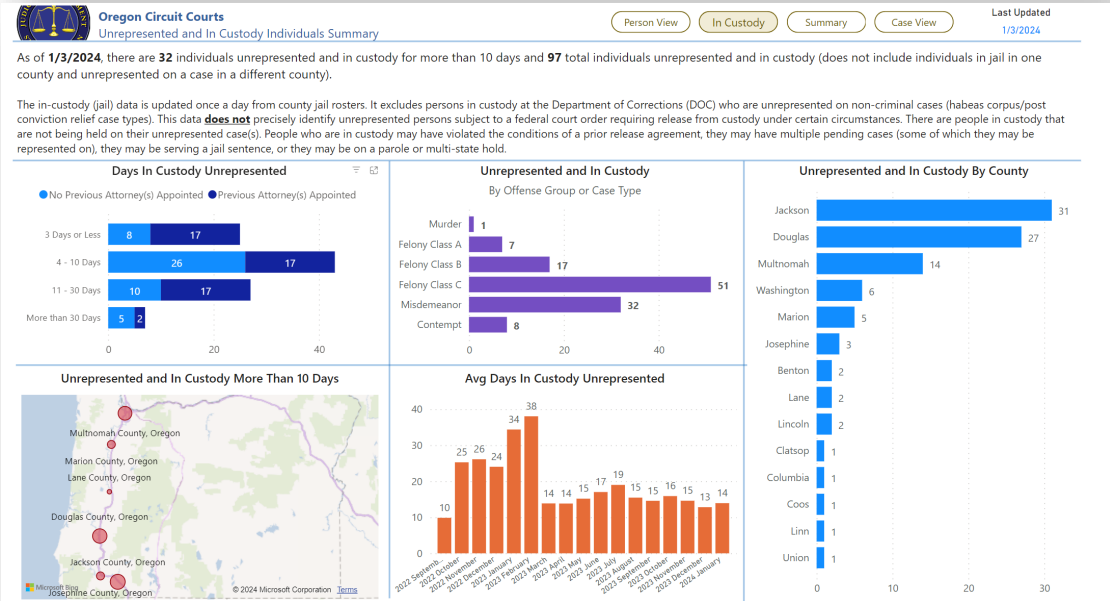
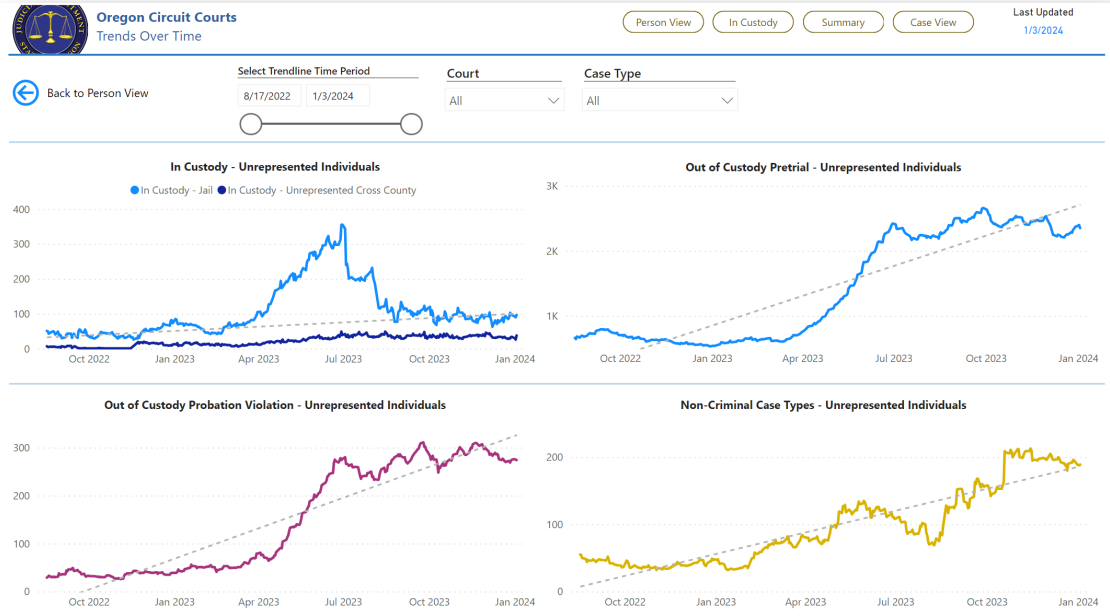
UNREPRESENTED DASHBOARD

Questions?

Contact Jessica Roeser

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

Assistant Deputy State Court Administrator





Oregon Judicial Department

Unrepresented Crisis Plans – March 2024 Update

Key Insights

Unrepresented Trends

- The number of unrepresented individuals continues to increase, although the rate of growth has stabilized ([Figure 1](#)).

Lever 1 – Add Attorneys

- Although attorneys have been added to existing contracts ([Figure 2](#)), the total appointments taken under contract has decreased ([Figure 5](#)).
- The OPDC Trial Division opened two regional offices ([Figure 6](#)). As contract attorneys are hired into OPDC regional trial division offices, a transition plan with the court and local public defense providers would benefit the clients OPDC serves.

Lever 2 – Attorney Capacity

- Courts continue to see the lack of standardized, objective contract MAC expectations resulting in variation in the caseload that individual attorneys can manage. This makes it difficult to predict whether the number of contracted attorneys in a district is adequate to keep up with case filings.

Lever 3 – Decrease Filings

- Criminal case filings remain more than 20% below pre-pandemic levels but they have been on the rise for two consecutive years ([Figure 8](#)).

Lever 4 – Increase Dispositions

- More cases are being filed than are closed each month ([Figure 11](#)).
- People with out of custody felony and misdemeanor cases are waiting longer for an attorney which delays resolution of their cases ([Figure 12](#)).

Local Court Spotlights

- Clatsop, Multnomah, and Washington County Circuit Courts shared their local experiences with the unrepresented crisis.

Data-Driven Decision Making

- Statewide, there are systemic gaps in data collection that prevent OPDC from tracking attorney availability, attorney qualification, and attorney capacity.
- OJD and OPDC are sharing data and have created dashboards on public defense caseloads, but more work needs to be done to address the systemic gaps in data collection.

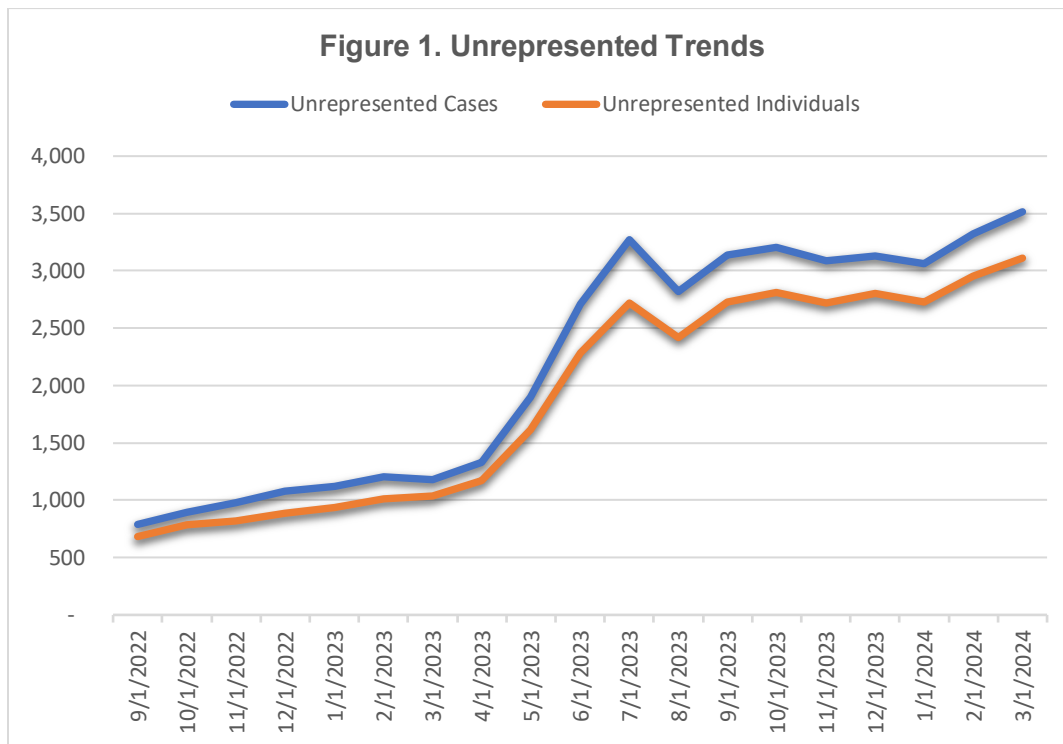
Unrepresented Trends

Figure 1 shows the unrepresented trendline since OJD began tracking the crisis 18 months ago. For daily updates, you can access the [Unrepresented Dashboard](#) on the OJD website.

- Even as the number of criminal case filings remains more than 20% below pre-pandemic levels and the number of contracted attorneys has increased since July 2023, the number of unrepresented individuals continues to increase.
- Overall, the rate of growth has slowed but continues to increase even as new attorneys are added, this looks to be due to a decrease in appointments taken over the last few months.
- Some attorneys have reported to the courts that the monthly and annual contracts limits prohibit them from taking new appointments when they have the capacity to take additional appointments.



Judges continue to hear from attorneys that removing administrative barriers to taking appointments at the hourly rate could increase participation in the program.



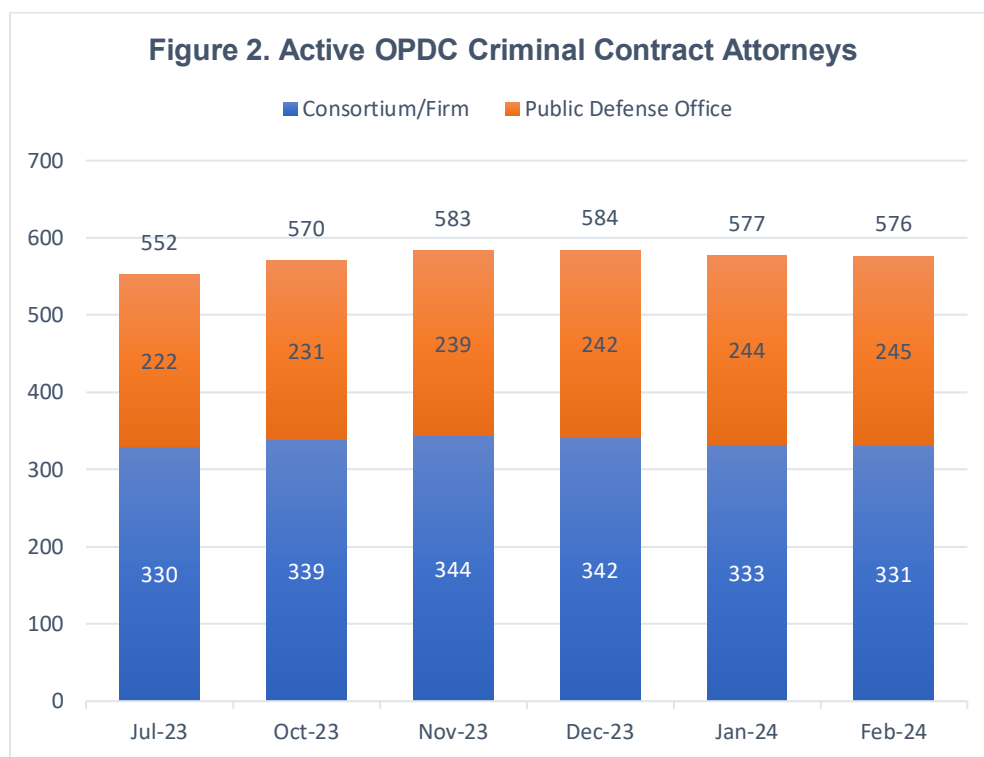
Unrepresented Crisis Plans – The Four Levers

The unrepresented crisis plans focused on the four levers that could impact the crisis. Many of these “levers” are not within the court’s authority but require action from other stakeholders. While specific entities hold different kinds of authority, each crisis plan assumes that system change - and progress - requires a shared vision, shared goals, and a group effort.

Lever 1 - Add Attorneys

Figure 2 shows the number of active attorneys on criminal contract in July 2023, and then monthly from October 2023 through February 2024.

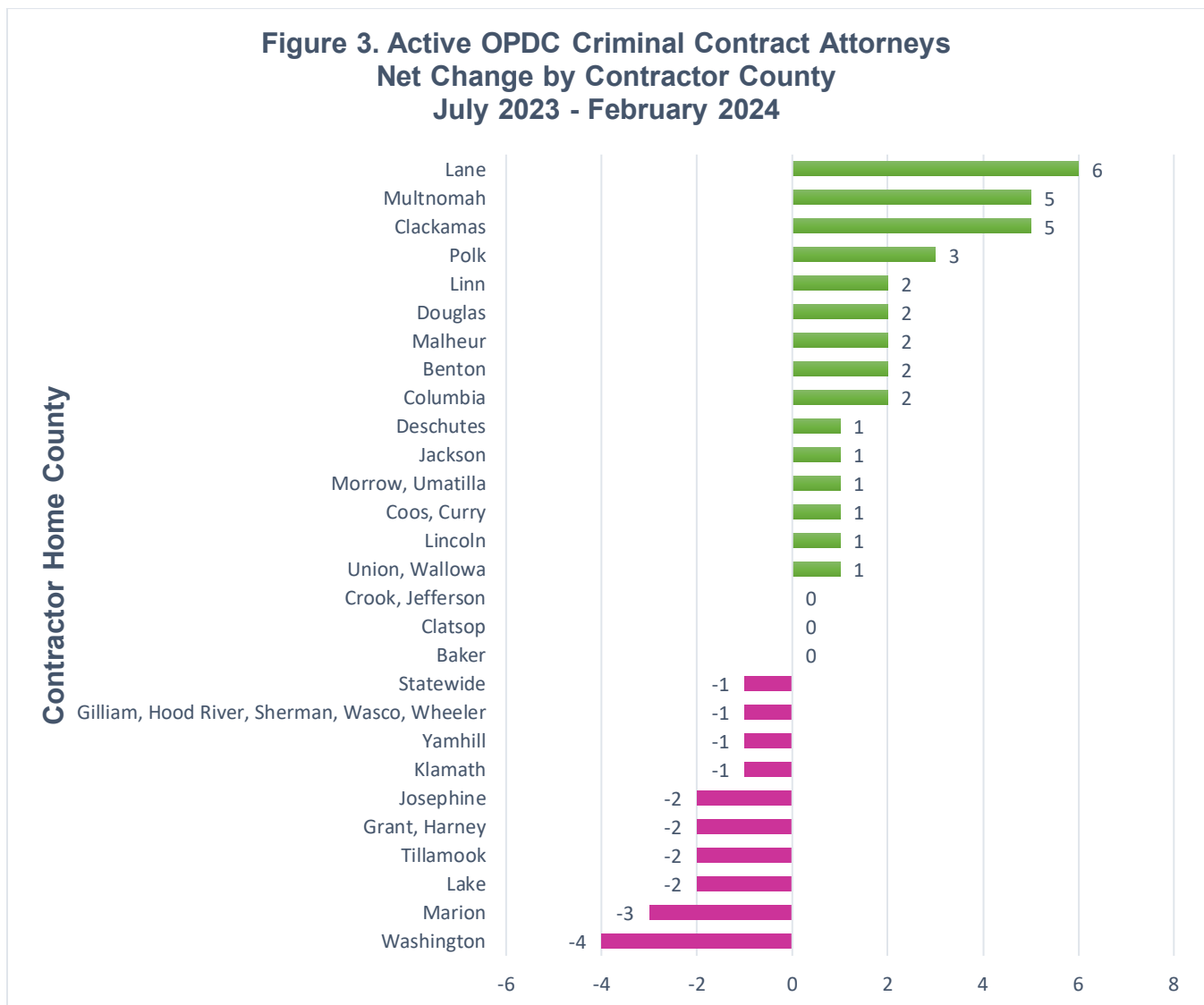
- There has been a net increase of 24 attorneys added to criminal contracts between July 2023 and February 2024.
- Consortia gained one attorney and public defense offices gained 23 attorneys.



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

Figure 3 shows the net change in contract attorneys by county since July 2023.

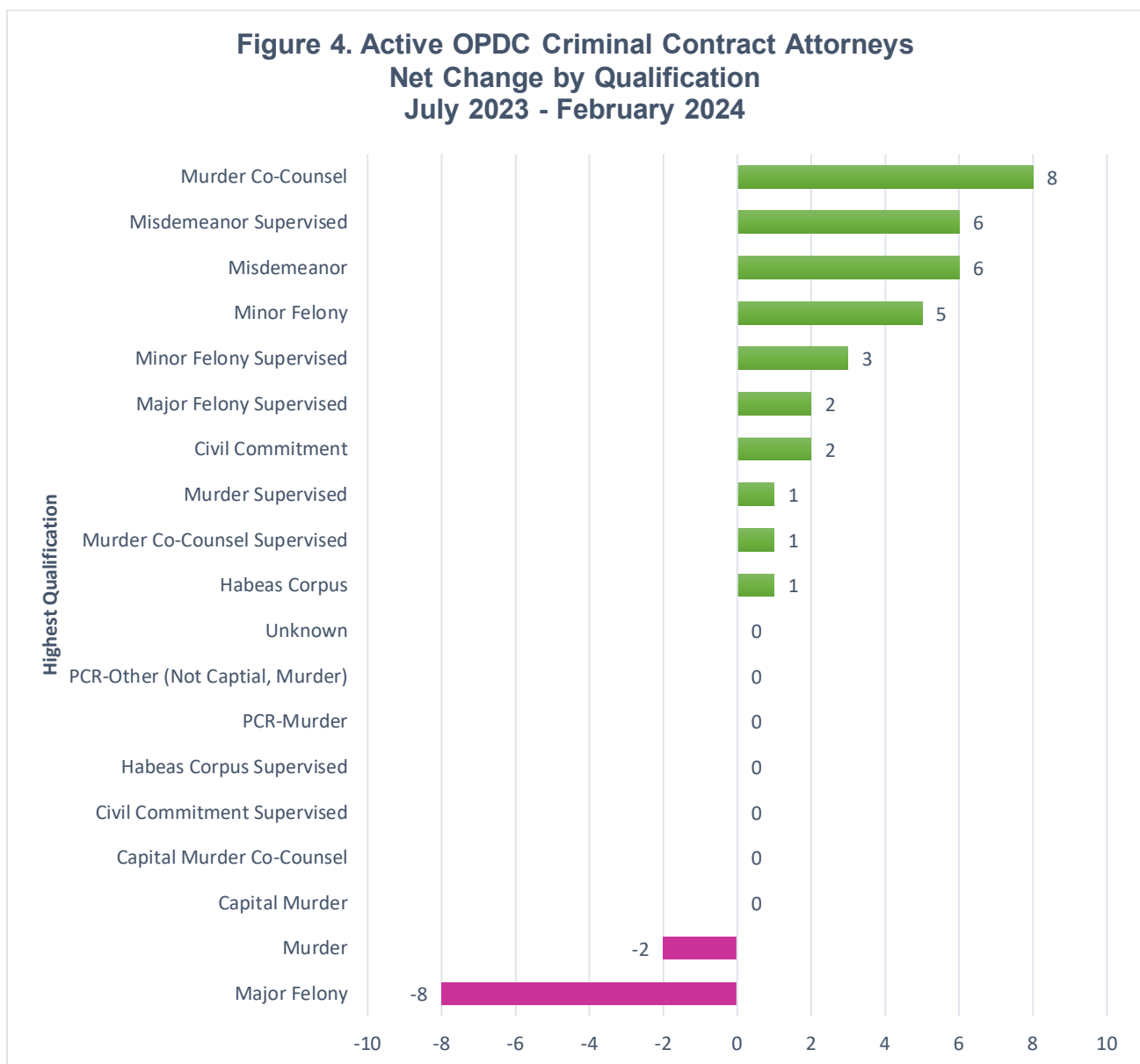
- Attorneys have been added in 15 judicial districts, including in three unrepresented hotspots (Douglas, Jackson, and Multnomah).
- In 3 judicial districts there has been no change in the number of attorneys (although there could have been changes in their contract MAC over this time).
- There was also a net loss of attorneys in 10 judicial districts, particularly in the unrepresented hotspots of Marion and Washington and in smaller counties where losing attorneys can create a crisis overnight, which happened in Clatsop County when they lost an attorney in August.
- Some new hires in the OPDC regional trial division offices were losses to contract attorneys in Marion (2) and Grant/Harney (1).



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

In Figure 4, the net change in contract attorneys is listed by attorney qualification.

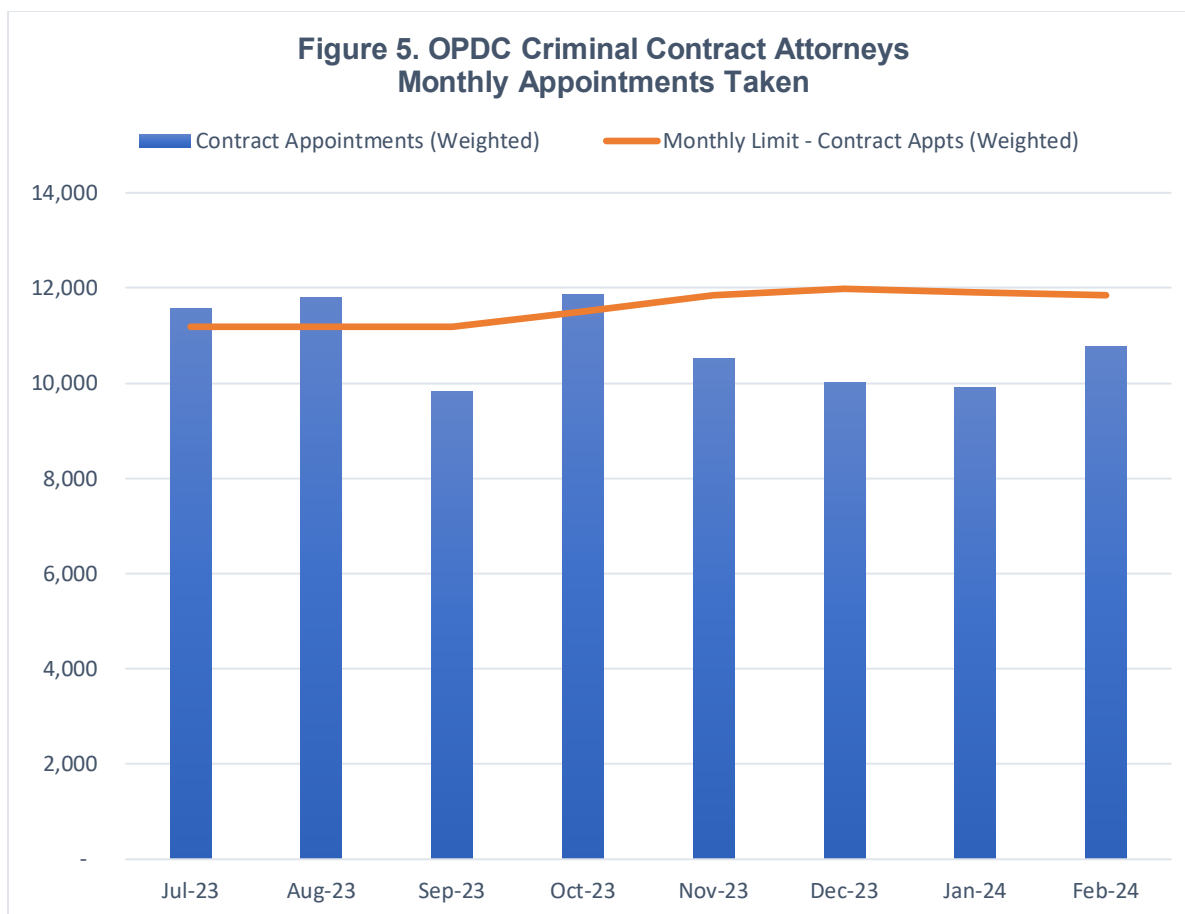
- Most new attorneys added since July 2023 have been misdemeanor qualified, and they are most likely newer attorneys who may not be able to take their full MAC (maximum caseload).
- There was also a net decrease of 8 major felony qualified attorneys between July 2023 and February 2024.
- Courts are concerned about a lack of attorneys qualified to represent persons accused of a felony, as well as the time it takes for less-experienced attorneys to be qualified by OPDC for certain case types.



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

Figure 5 shows the number of monthly appointments taken under contract this fiscal year for contract attorneys in each month compared to their monthly contract limits (1/12 of annual maximum attorney caseload).

- Although attorneys have been added to existing contracts, the total appointments taken under contract has decreased.



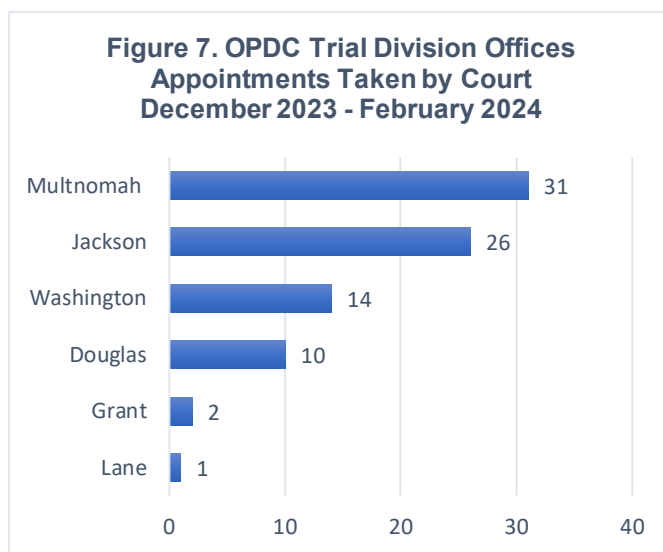
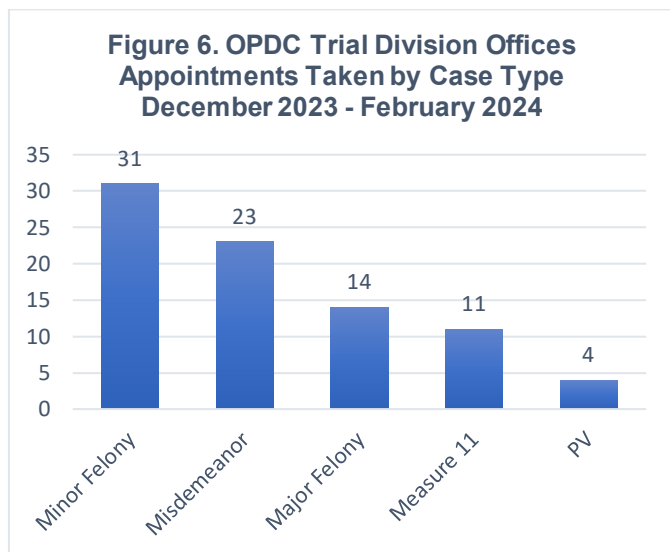
Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024 and OJD Odyssey Data (eCourt).

Figure 6 and Figure 7 show the new appointments taken by the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.

- Eight new attorneys took 84 new appointments from December 2023 through February 2024.
- Three new hires in the OPDC regional trial division offices were losses to contract attorneys in Marion County (2) and Grant/Harney Counties (1).
- In Grant and Harney Counties, the loss of the local consortium attorney left the small jurisdiction's remaining public defense providers on the brink of collapse and sixteen children were left without representation in their dependency cases.



As contract attorneys are hired into OPDC regional trial division offices, a transition plan with the court and local public defense providers would benefit the clients OPDC serves.



Source: OJD Odyssey Data (eCourt).

Lever 2 - Attorney Capacity

Increased attorney capacity could be gained through prioritizing the assignment of cases to use attorney MAC more efficiently (e.g., ensuring felony-qualified attorneys are appointed on felonies before misdemeanors), as well as ways to reclaim attorney time (e.g., better administrative methods for payment and qualifications).

Many unrepresented crisis plans recommended OPDC move away from the MAC model to an open caseload, or workload model that would allow a more accurate reflection of an attorney's workload at any given time. The current MAC contract model only weights new appointments taken during the contract period, but attorneys carry open caseloads from prior contract periods which could, in part, explain why less appointments are taken each month as more attorneys are added to the contract.

- As of March 1, 2024, about 18% of open caseloads are from the prior contract period and are not reflected in the current contract MAC (and some of that open caseload from the prior contract period are cases in warrant status).
- The number of open appointments in warrant status is decreasing but still make up about 17% of open caseloads as of March 6, 2024.
- There are about 1,800 appointments in warrant status for more than 180 days, the contract requires attorneys withdraw from those cases in warrant status for more than 180 days, but those appointments remain open.

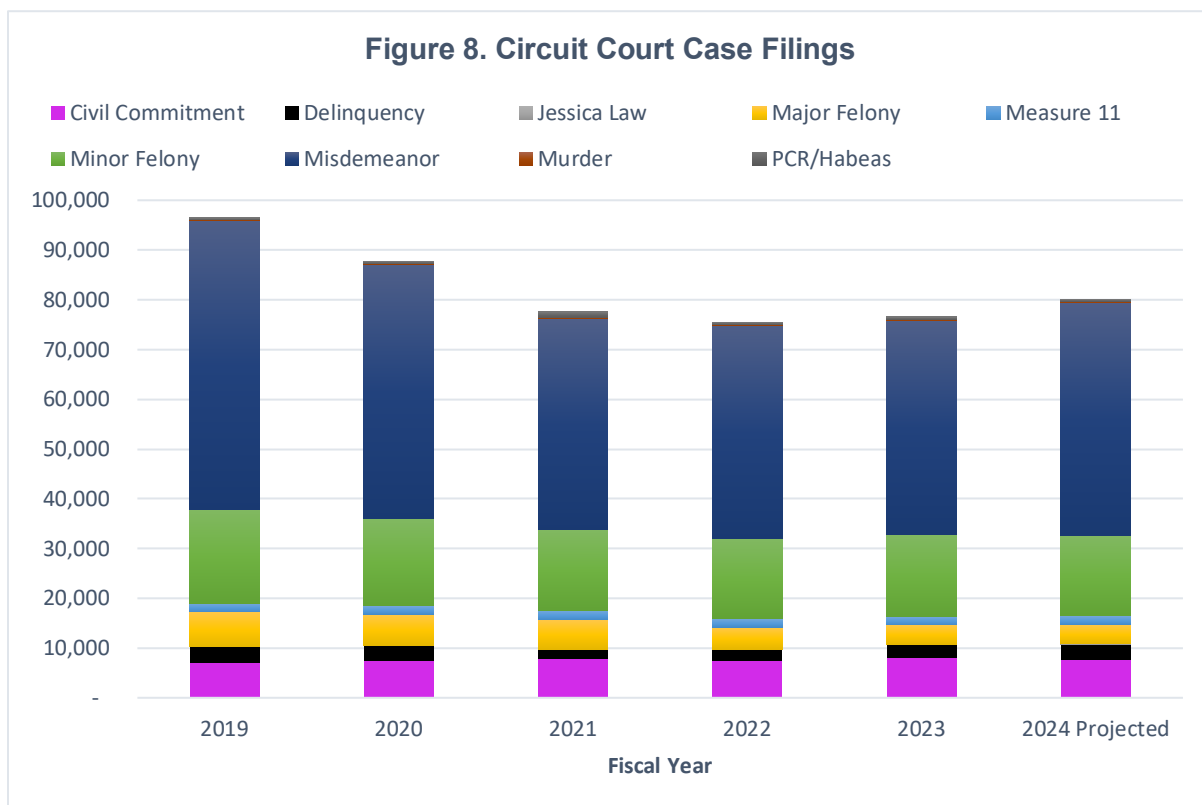


Ideally, OPDC would have a way to track and monitor open caseloads to determine attorney capacity and to enforce contract provisions.

Lever 3 - Decrease Filings

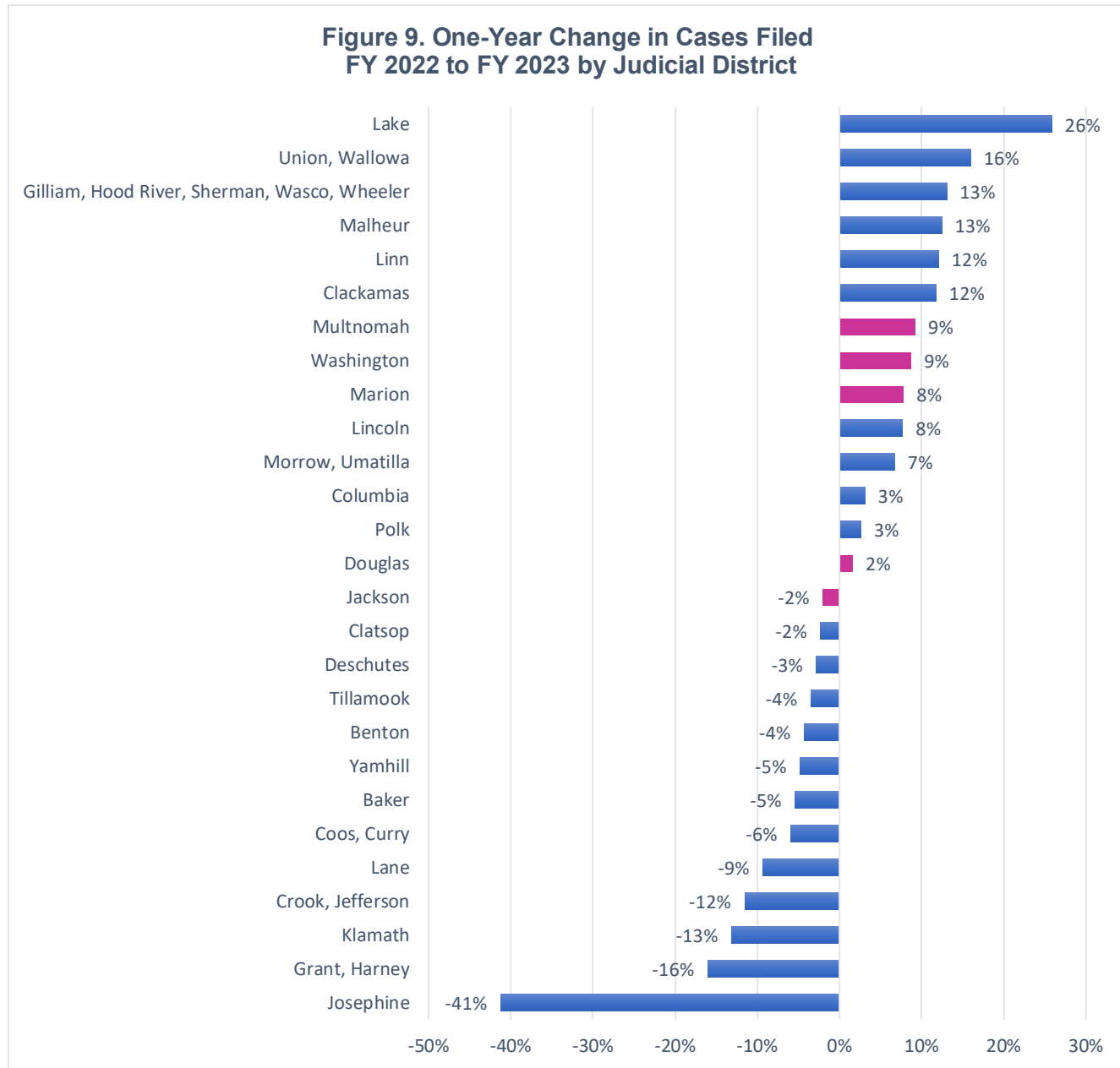
Figure 8 shows circuit court case filing trends.

- Filings remain more than 20% below 2019 levels but have started to increase in fiscal year 2023.
- In fiscal year 2023, case filings increased statewide by 1.4% over the prior year and in fiscal year 2024 case filings are projected to increase by another 5%.



Source: OJD Odyssey Data (eCourt).

Figure 9 shows the one-year change in cases filed by judicial district, the unrepresented hot spots are highlighted in pink.



Source: OJD Odyssey Data (eCourt).

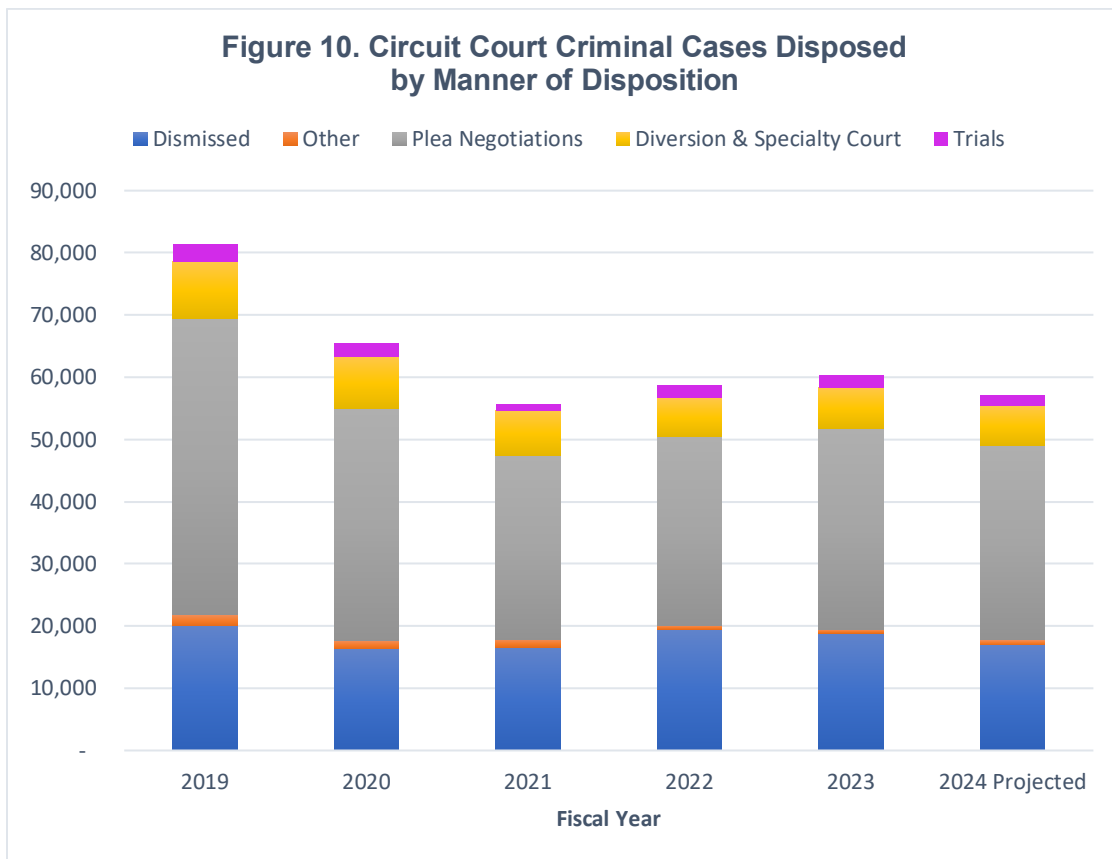
Lever 4 - Increase Dispositions

Figure 10 shows case dispositions since fiscal year 2019 by the manner of disposition.

- Like filings, case dispositions are well below 2019 levels.
- Case dispositions increased by almost 3% in fiscal year 2023 over the prior year.
- In fiscal year 2024 case dispositions are projected to decrease by 5% due to delays caused by the unrepresented crisis.
- Case dismissals are increasing while plea agreements are declining. Trial rates, diversions, and treatment court programs remained unchanged compared to 2019.



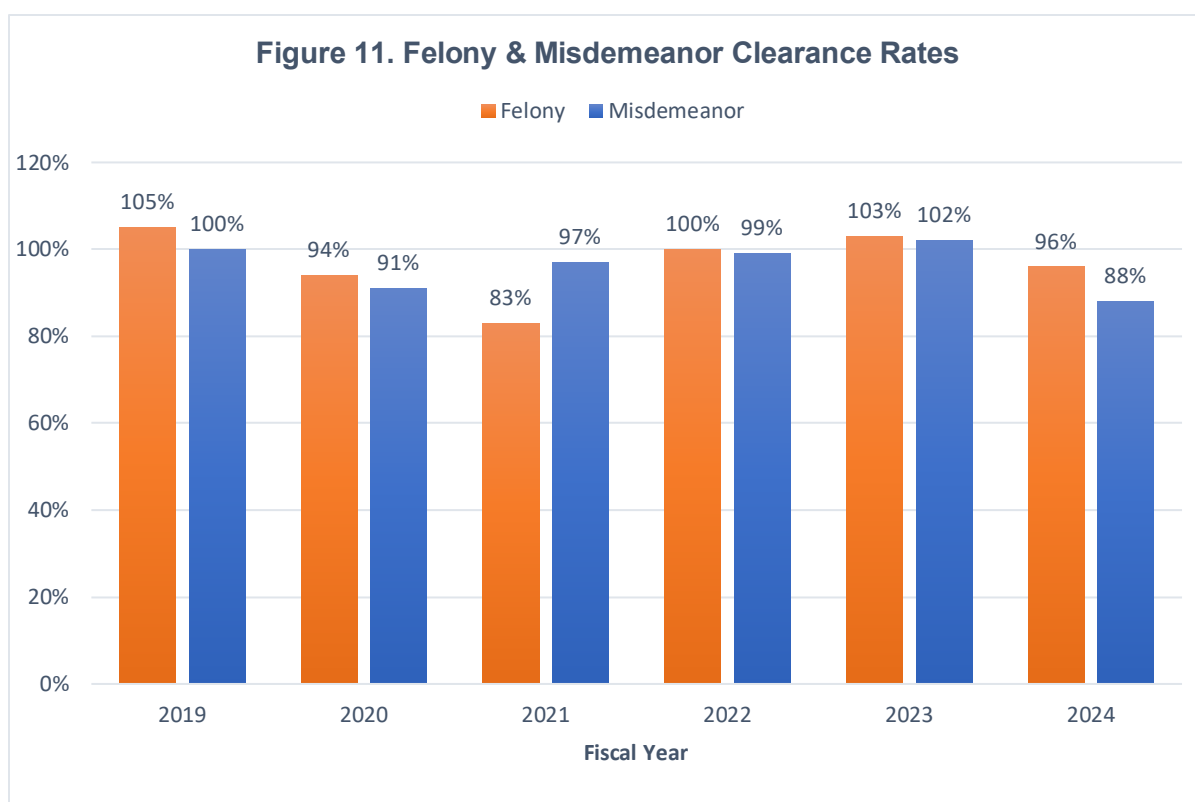
Courts across Oregon have increased their use of remote appearances to increase efficiencies with case resolutions and many courts are increasing their use of settlement conferences to increase early disposition of cases, to expedite plea negotiations and avoid a trial.



Source: OJD Odyssey Data (eCourt).

Figure 11 shows the statewide clearance rates for criminal cases since fiscal year 2019 through March 6, 2024.

- Clearance rates measure whether courts are keeping up with incoming caseload (cases closed divided by cases filed).
- When clearance rates are at or above 100%, open caseloads decrease and when clearance rates are below 100%, open caseloads increase.
- As the unrepresented crisis continues it will impact the courts' ability to resolve cases.
- In fiscal year 2024 to date, clearance rates have fallen below 100% for both felony and misdemeanor cases.



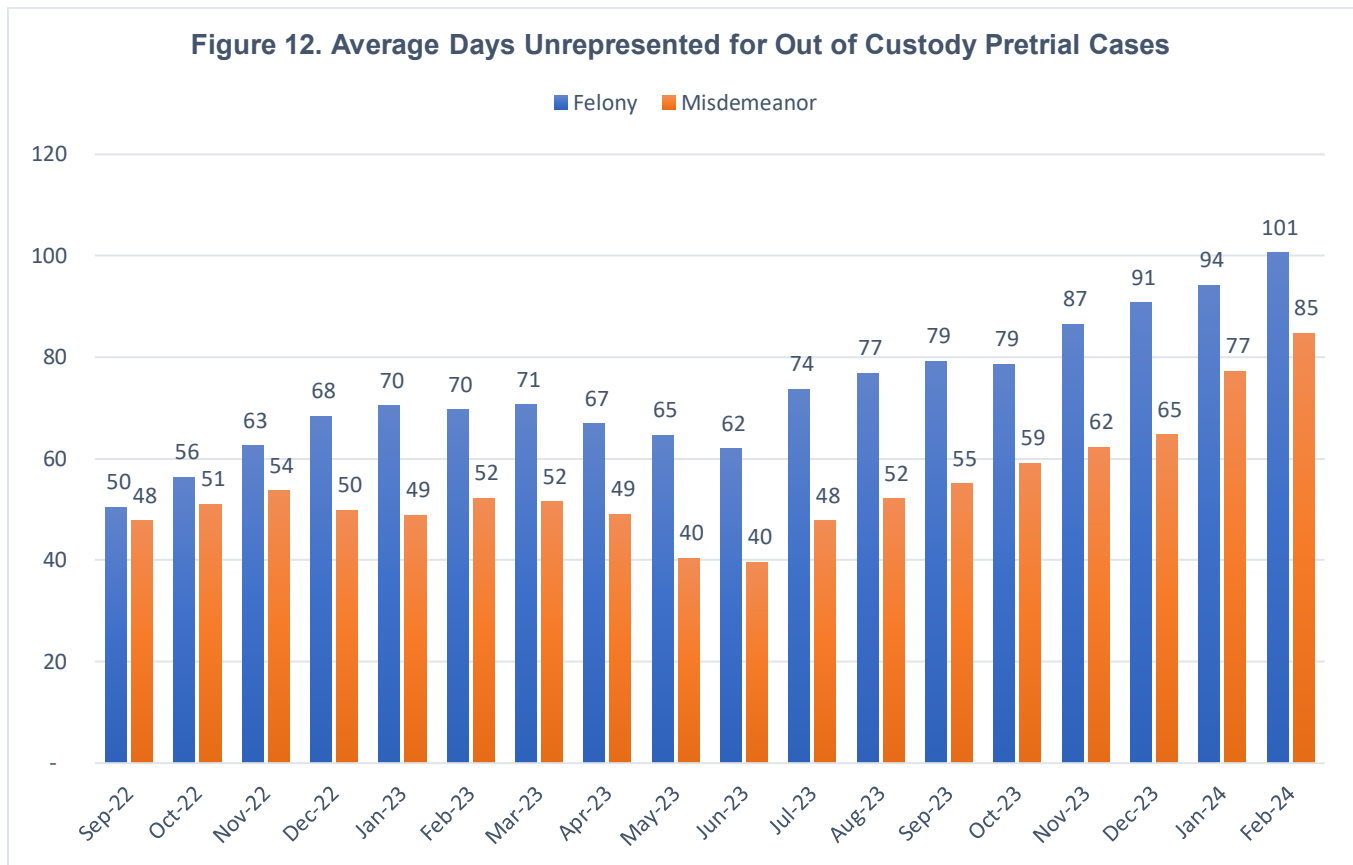
Source: OJD Odyssey Data (eCourt).

Figure 12 shows that people with out of custody felony and misdemeanor cases are waiting longer for an attorney which delays resolution of their cases.

- People with felony cases are unrepresented longer, on average, than people with misdemeanor cases.



Multiple providers expressed frustration about the difficulty accessing clients who are in custody. Improvements to the jail access, prosecutors reducing the time in providing discovery, and data sharing were all mentioned in unrepresented crisis plans as ways to improve system efficiency.



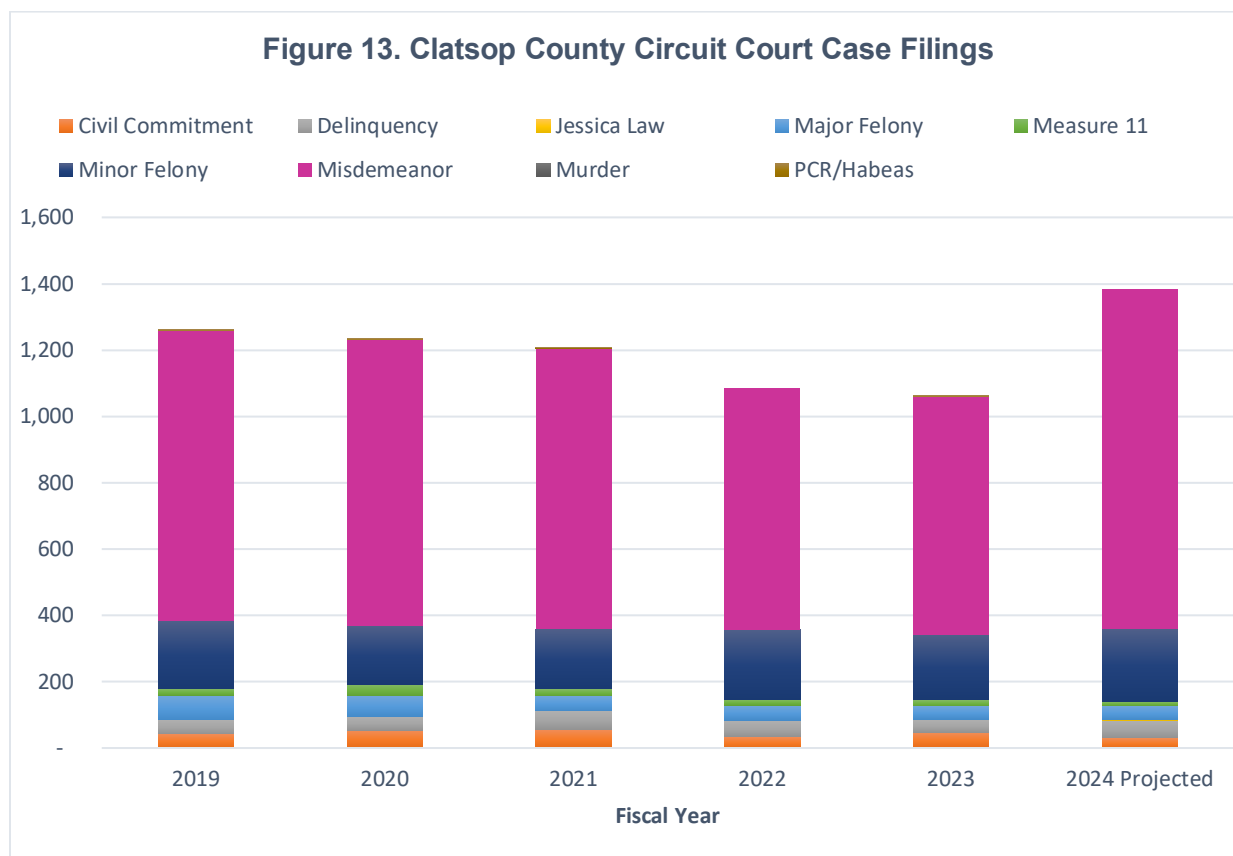
Source: OJD Odyssey Data (eCourt).

Local Court Spotlights

Clatsop County Circuit Court

Figure 13 shows filings by fiscal year since 2019 in Clatsop County Circuit Court.

- Filings for fiscal year 2024 are projected to be 31% more than fiscal year 2023, driven by an increase in misdemeanor filings. Unrepresented cases in Clatsop account for 14% of the court's open criminal caseload.
- The court has been operating with about two fewer attorneys than are needed and one attorney has recently taken leave for a serious health issue; the court is now struggling to find representation for the attorney's open caseload, approximately 50 more unrepresented cases.



Source: OJD Odyssey Data (eCourt).

To ensure that the most serious cases are receiving attorneys the court has been prioritizing in custody individuals. This has led to a concentration of more serious matters for public defense attorneys, more 60-day trial issues, and a serious and substantial risk of attorney burnout in the county.

Even on cases that have counsel, requests for investigative expenses and experts are taking several weeks to get approved which creates delays in the docket and adds time, and frustration to an already overburdened system.



The court is attempting to build a resolution docket to resolve the backlog of unrepresented and out of custody cases. OPDC was able to confirm funding of the soon to be retired defense lawyer that is willing to handle docket.

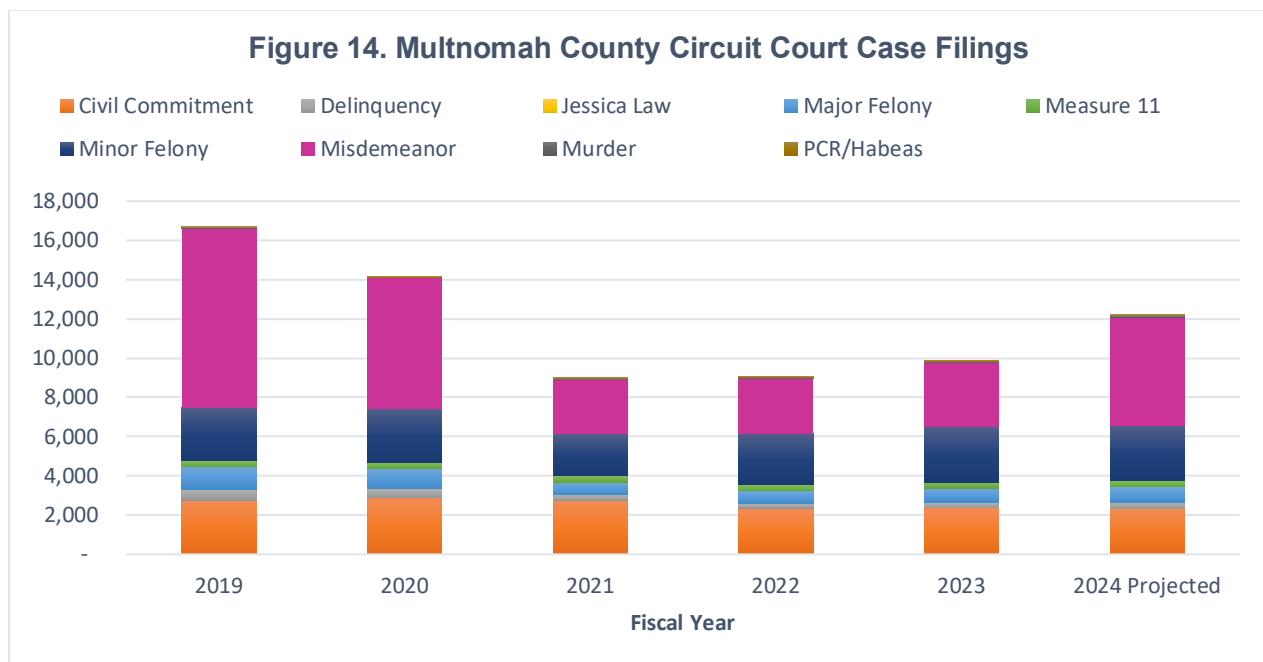
Managing unrepresented cases requires substantial staff time to monitor, track, and prioritize the unrepresented caseload, identify attorneys who can take new appointments, appoint the attorneys, and reschedule hearings when multiple appearances are required before an attorney can be appointed.

The court cannot move these cases forward without attorneys to appoint, as a result, time to disposition and clearance rates are being impacted by the delays created by the unrepresented crisis.

Multnomah County Circuit Court

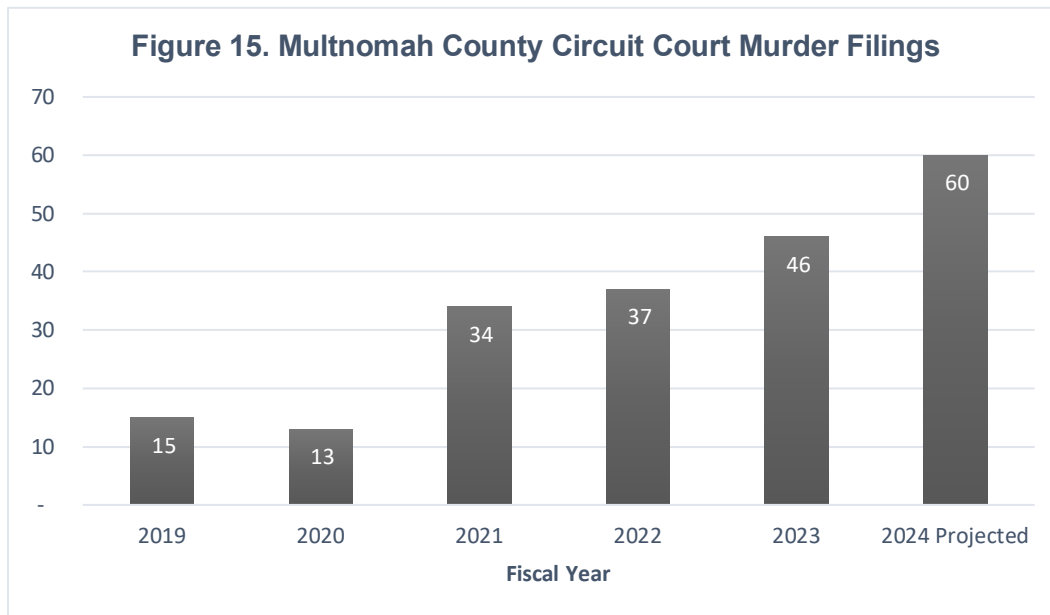
Figure 14 shows filings by fiscal year in Multnomah County Circuit Court.

- Criminal filings are down substantially compared to 2019 but they are increasing (9% increase in FY 2023 and another 24% increase projected in FY 2024).



Source: OJD Odyssey Data (eCourt).

Figure 15 shows Murder charges are historically high in recent years.



Source: OJD Odyssey Data (eCourt).

The court is particularly concerned about increasing levels of Murder charges and the projected impact of the passage of HB 4002 (2024) exacerbating the unrepresented crisis in Multnomah.

Since 2022, turnover has improved substantially in the public defense offices, vacancies are lower, and 5 attorneys have been added in Multnomah County.

- The number of out of custody unrepresented individuals eligible for public defense counsel is as high as it has ever been - 569 on 9/15/22 (almost 18 months ago) and 587 on 3/7/24.
- Public defense offices are consistently below the contractual MAC while consortium attorneys are consistently at or above their monthly MAC and continue to meet specialized and critical needs for representation of major felonies.
- The court supports maintaining the structure and funding for the Portland Defense Consortium (PDC) if possible. PDC attorneys work collaboratively with the court to resolve minor felonies and all criminal cases through representation in the early resolution docket and other specialized programs.
- The District Attorney's office should be staffed at a level suitable for a jurisdiction the size of Multnomah County and to accommodate timely discovery, timely communication with opposing counsel, timely settlement offers, and adequate levels of staffing for docket appearances to resolve cases efficiently.

The court recommends a new open caseload/workload contracting model be developed.

- Development of objective criteria to determine when contracting lawyers and law firms have reached their ethical limits will improve the OPDC's ability to project public defense need in each jurisdiction.
- Tracking and monitoring open caseloads (and workload) per attorney would allow OPDC to know how many cases each attorney is managing and to what extent their open caseload includes cases that are in bench warrant status.
- An additional recommendation is for OPDC to consider innovative ways to free up attorney time such as providing funding for trained case managers and social workers who can effectively and efficiently provide critical services currently provided by attorneys and paralegals.



Considerations for evaluating public defense workload and capacity should include the number of clients in-custody versus out-of-custody (jail access issues), discovery needs including lab reports and body camera video that can impact timeframes, and time to disposition standards to keep cases moving towards disposition.

Washington County Circuit Court

Washington County Circuit Court has had several successful interventions to the public defense crisis including:

- Continued Arraignment docket shaped the Wingspan 2.0 – Settlement Resolution Docket.
 - Wingspan 2.0 Settlement Resolution Dockets resolved approximately 686 out of 1,210 eligible cases. In cases where the defendant did appear, resolution rate was about 77%.
 - Wingspan 3.0 resolved another 62 unrepresented cases.
- Hired analyst to analyze data, communicate with partner agencies, perform research assignments, and provide recommendations for prioritization of appointments.
- Steady and sustained decline of in-custody and unrepresented since August 2023.
- Increased efficiency and timeliness when processing orders appointing counsel, improving defense firms' ability to track cases and meet with clients.
- Increased collaboration with Multnomah and Clackamas for global resolutions.



Automated check-in or telephonic check-in process for people with unrepresented cases waiting on appointment of counsel, has reduced docket time and FTAs while increasing convenience and accessibility for the participants.

The court has also experienced several challenges implementing local crisis plans including:

- Unable to accurately calculate and view attorney availability and workload.
- Difficulty finding attorneys willing to take out of custody cases above the C Felony level, especially Jessica's Law and sex abuse cases.
- Attorneys are taking newer cases over older cases, and engagement with provider staff is mixed.
- There are not enough experienced attorneys.
- The court needs more proactive engagement from OPDC.
- Early Case Resolution (ECR) cases have increased by approximately 30% since 2022 and there are not enough attorneys to accommodate the increase, which means fewer cases settling. The cases are set over, which increases risk of FTA and overloads the docket.
- Capacity issues at the jail create delays for attorneys to meet with clients.
- Wingspan type settlement dockets need buy-in from DA, Defense, and Judges.

The court will focus on the following goals in the next few months to continue implementation of their crisis plan:

- Increase clearance rates and reduce FTAs.
- Establish regular meetings with community partners.
- Continue efforts to analyze unrepresented data to determine the best course of action to prioritize appointment of counsel, increase efficiency, and clear the unrepresented out of custody caseload.



The court found that a quarterly docket to address driving/motor vehicle offenses would reduce out of custody unrepresented cases by 26%. This type of specialized docket would be an excellent use of a CLS or newer attorney.

Eligible persons who may have a single, stand-alone offense and have not reoffended may be eligible for a quicker resolution based on the DA's approval and recommendation.

Data-Driven Decision Making

OJD continues to work closely with OPDC to provide data to identify in-custody and out-of-custody unrepresented individuals, manage efficient appointment of counsel, and improve contract oversight by OPDC. Statewide, there are systemic gaps that prevent OPDC from tracking attorney availability, attorney qualification, and representation capacity.

The public defense system is severely compromised, with a growing number of individuals who have a right to counsel but remain unrepresented across the state. The need for accurate and reliable data continues and is necessary to make data-informed decisions to address the current crisis and ensure representation in the future. OJD is committed to continuing its efforts to work efficiently at the local level and to working with OPDC and providers to develop comprehensive data sets that provide real-time data to better understand current capacity, produce accurate forecasts, and ensure that each person entitled to court appointed counsel has representation as required by law.



Oregon Judicial Department

Unrepresented Crisis – April 2024 Update

Key Insights

[Data Share Update](#)

OJD and OPDC have updated and expanded their data share agreement to address the systemic gaps in data collection that prevent OPDC from accurately tracking attorney start and end dates, annual maximum attorney caseload, attorney availability, attorney qualification, and attorney capacity.

[Unrepresented Trends](#)

The number of unrepresented individuals continues to increase, although the rate of growth has stabilized ([Figure 1](#)). For daily updates, you can access the [Unrepresented Dashboard](#) on the OJD website.

[Average Time Unrepresented](#)

People who are out of custody with pending felony cases continue to wait longer, on average, than people who are out of custody with misdemeanor cases ([Figure 2](#)), but significant improvements have been made for people in-custody ([Figure 3](#)).

[In-Custody Data Collection](#)

Maintaining adequate analyst resources for OJD and OPDC is critical to managing the unrepresented crisis given the challenges associated with collecting the in-custody data.

[Unrepresented by County](#)

The crisis is most severe Jackson, Multnomah, Marion, Washington, and Douglas counties and growing more severe in Clatsop and Klamath counties ([Figure 4](#)).

[OPDC Trial Division Offices](#)

The OPDC Trial Division Offices continue to ramp up. Eight attorneys have taken 205 new appointments since December 2023, primarily in Jackson and Multnomah on misdemeanors and minor felonies ([Figure 5](#) and [Figure 6](#)).

[Opportunities to Make Data-Informed Decisions](#)

Most unrepresented cases are misdemeanors and minor felonies ([Figure 7](#)). Unrepresented individuals with multiple unrepresented cases in the same county make up **half** of the unrepresented criminal caseload ([Figure 8](#) and [Figure 9](#)).

A holistic approach to client representation could significantly decrease the unrepresented caseload and provide a higher quality of service to people who need an attorney.

The March 2024 update focused on activities and progress to date on each of the four levers and local court spotlights for Clatsop, Multnomah, and Washington County Circuit Courts. This month's report will focus on the unrepresented data and opportunities to make data-informed decisions.

Data Share Update

In April 2024, OJD and OPDC updated and expanded their data share agreement to address the systemic gaps that prevent OPDC from accurately tracking attorney start and end dates, annual maximum attorney caseload, attorney availability, attorney qualification, and attorney capacity.

OJD and OPDC will work together to develop comprehensive data sets that provide real-time insights to improve data collection and reporting on current capacity, total open caseloads, and caseload forecasts.

Improved data collection and reporting will also facilitate the enforcement of contract provisions and the reconciliation of attorney caseload reports with OJD's court data. For example, OJD's court data show there are still about **1,800** open appointments in warrant status for more than 180 days. Public defense contractors are required to withdraw from those cases but tracking the age of warrants on open appointments is most likely burdensome for providers.

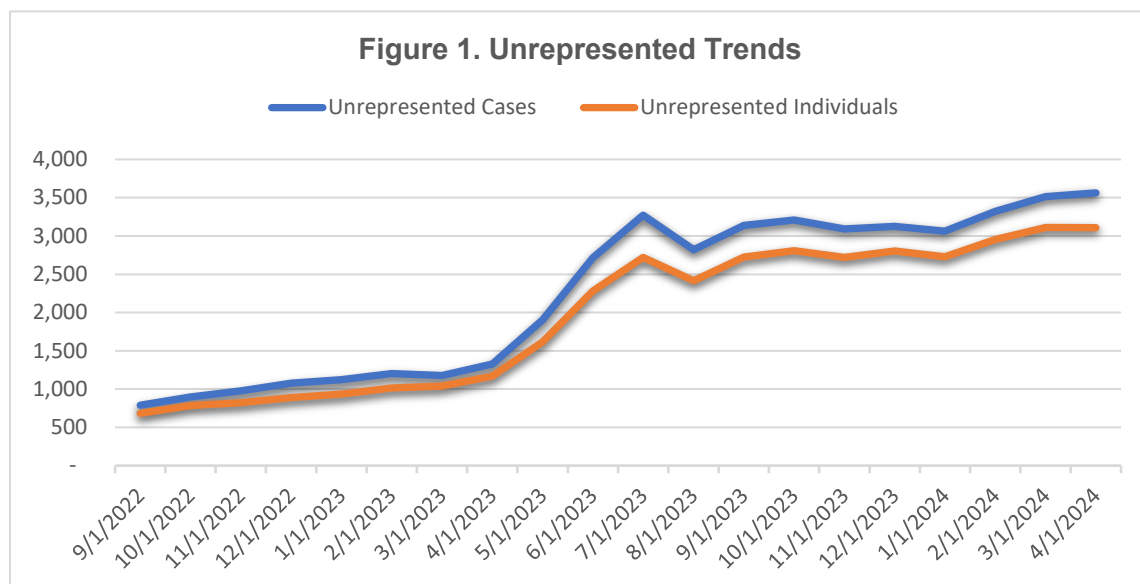


Improved reporting to providers could streamline the process to comply with contract provisions and produce more accurate caseload reporting for attorneys which in turn, will produce more accurate data on attorney capacity and open caseloads.

Unrepresented Trends

The number of unrepresented individuals continues to increase even as new attorneys are added in public defense offices and regional trial division offices.

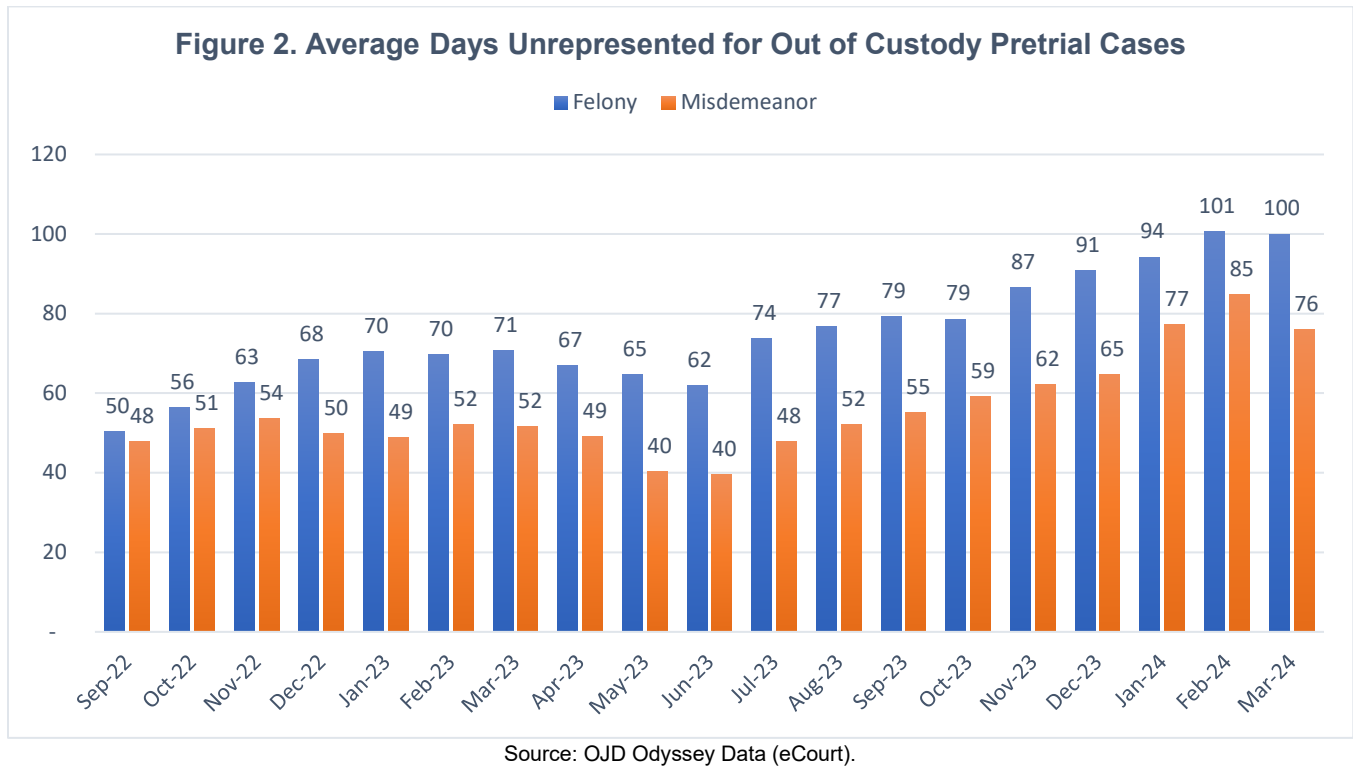
Although more than 20 attorneys have been added to existing contracts since July 2023, the total appointments taken under contract has decreased.



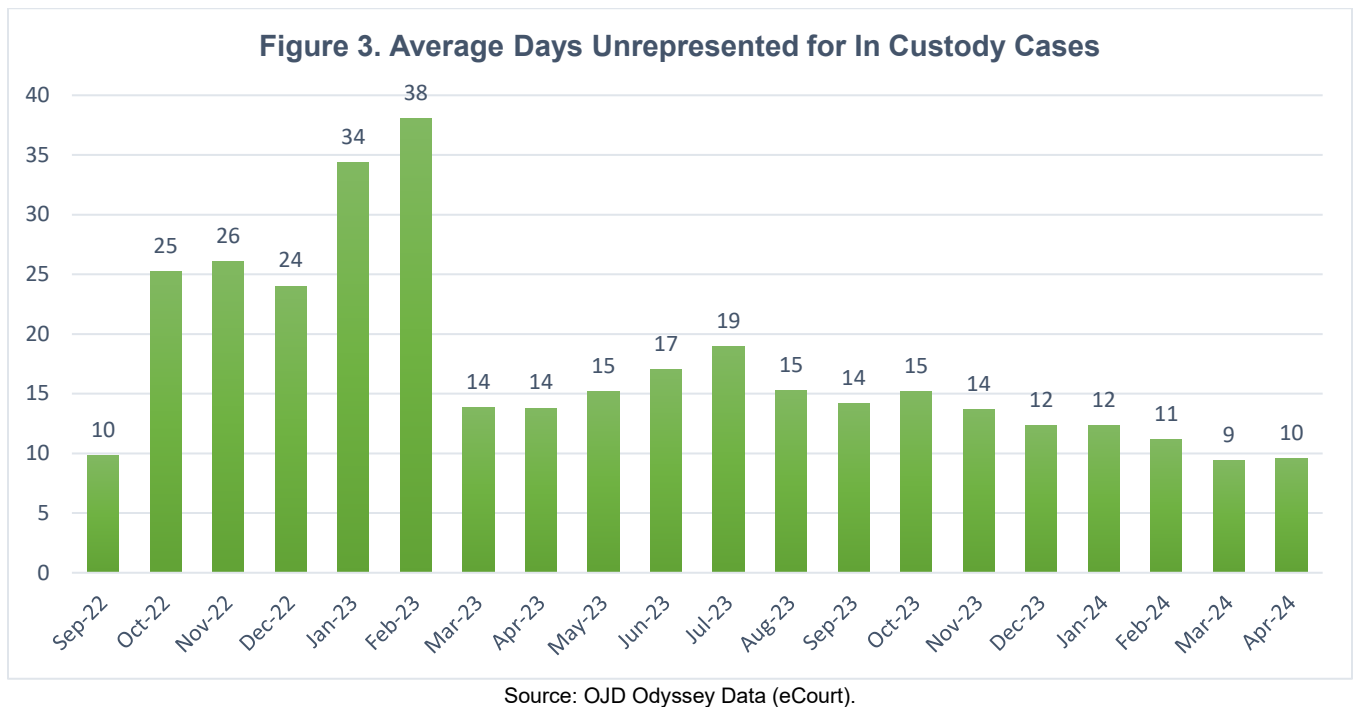
Source: OJD Odyssey Data (eCourt).

Average Time Unrepresented

People who are out of custody with felony cases continue to wait longer, on average, than people with misdemeanor cases.



Significant improvements have been made in the average time an unrepresented person must wait in custody before an attorney is appointed.



In-Custody Data Collection

As of **4/15/2024**, there were **33** individuals unrepresented and in custody for more than 10 days and **98** total individuals unrepresented and in custody (does not include individuals in jail in one county and unrepresented on a case in a different county). Although the number of people unrepresented and in-custody fluctuates daily, the numbers have stabilized since August 2023.

Since August of 2022, OJD has collected the in-custody (jail) data once a day either through integrations with individual counties or “screen scraping” programs that collect data from each county’s public jail roster.



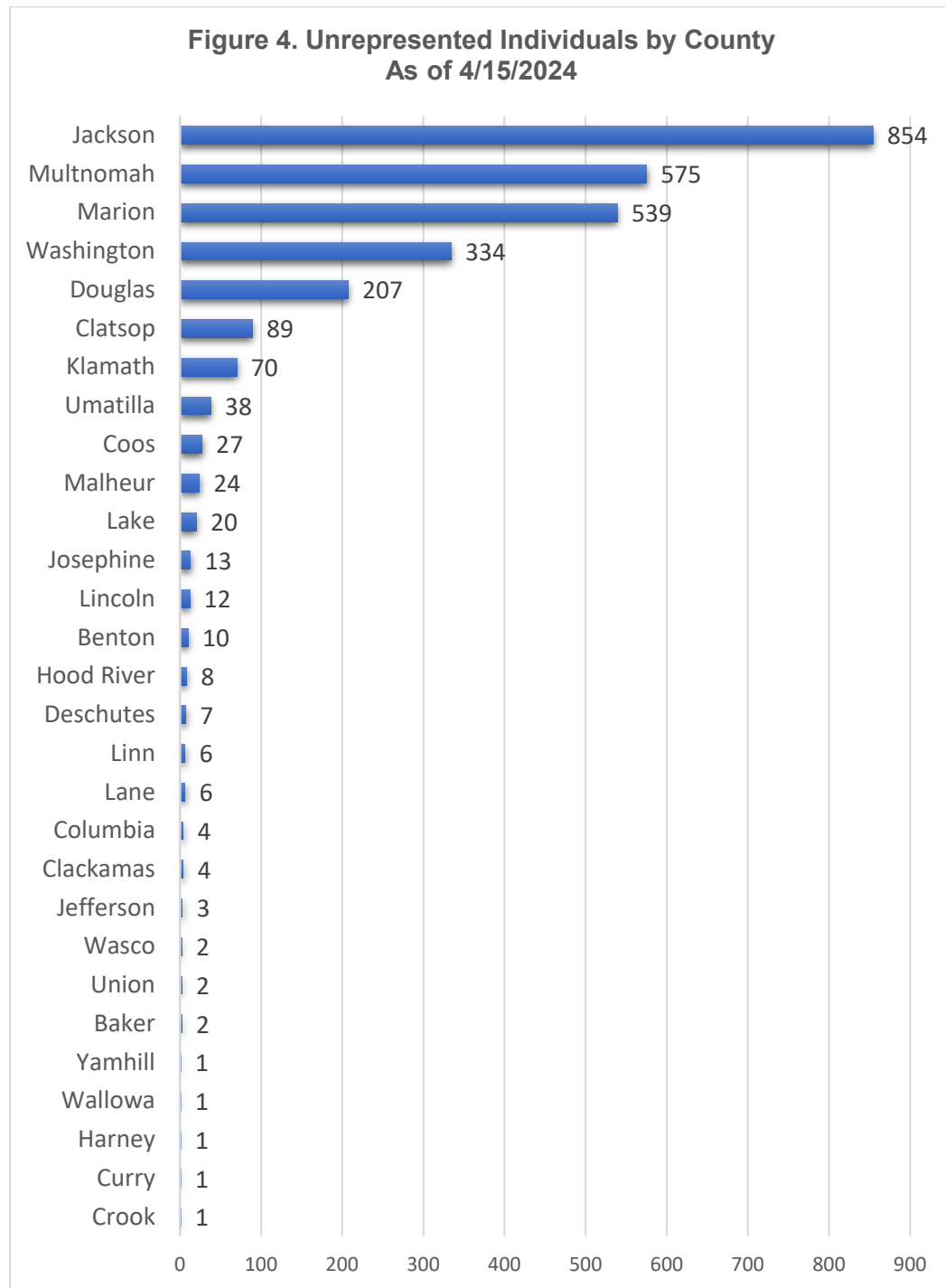
Maintaining adequate levels of analyst resources for OJD and OPDC are critical to manage the unrepresented crisis. The in-custody data often requires monitoring by both OJD and OPDC analysts to verify accuracy of the in-custody data.

The in-custody data is difficult to collect and track for the following reasons:

- There is no uniform jail management system in Oregon, meaning that each individual jail facility maintains its own record-keeping system of bookings, releases, and other data points.
- These systems also categorize, compartmentalize, and store data differently. Often the data needed to match a person across public safety systems is not collected.
- The data is not designed to integrate with other public safety partners and exporting the data can be challenging and costly for counties who do not have in-house resources and may have to contract with vendors and pay fees.
- These systems do not always precisely identify why a person is being held in custody. People who are in custody may have violated the conditions of a prior release agreement, they may have multiple pending cases (some of which they may be represented on), they may be serving a jail sentence, or they may be on a parole or multi-state hold.

Unrepresented by County

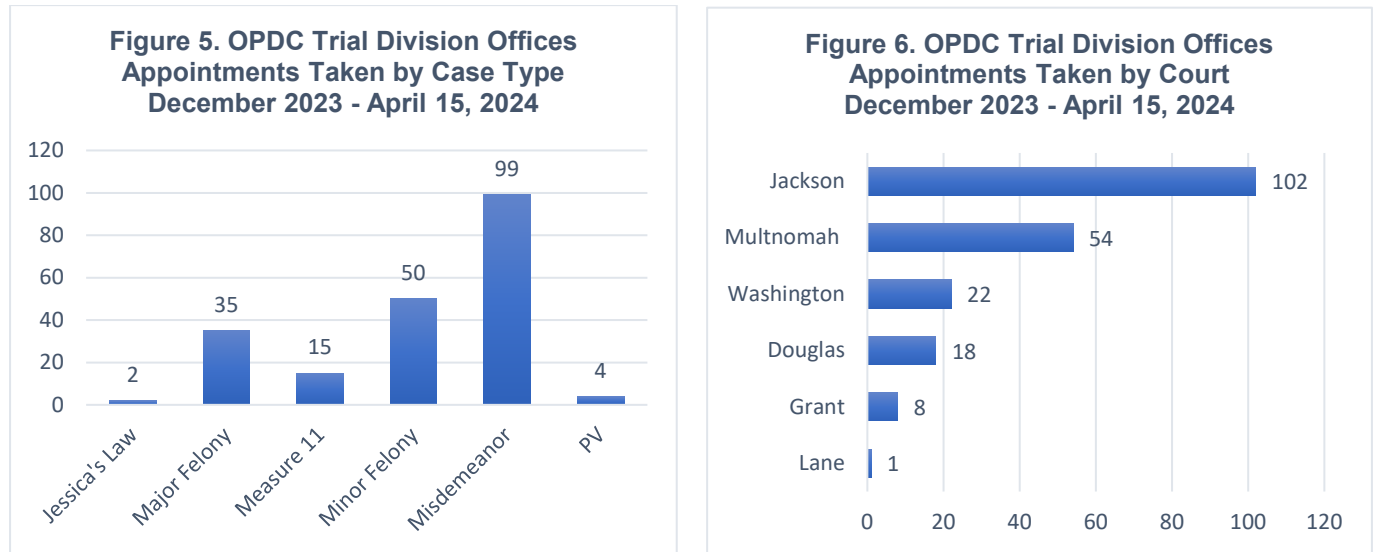
Figure 4 shows the number of unrepresented individuals by county and where the crisis is most severe. The OPDC regional trial division offices are primarily taking appointments in Jackson and Multnomah on misdemeanors and minor felonies.



Source: OJD Odyssey Data (eCourt).

OPDC Trial Division Offices

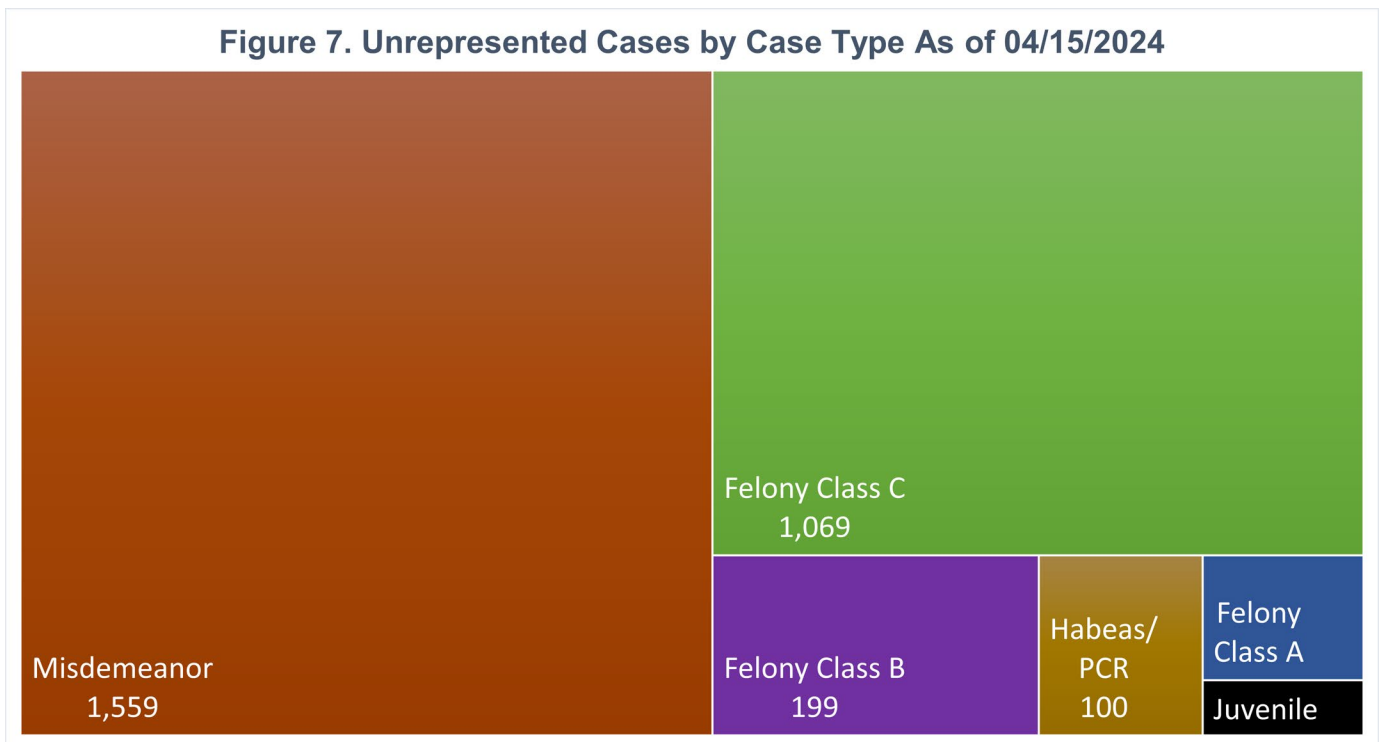
Figure 5 and Figure 6 show the **205** new appointments taken since December 2023 by eight attorneys in the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.



Source: OJD Odyssey Data (eCourt).

Opportunities to Make Data-Informed Decisions

The data in Figure 7 show that most of the unrepresented cases are misdemeanors and minor felonies.



Source: OJD Odyssey Data (eCourt).

An analysis of the unrepresented data show there are several opportunities to consolidate representation for unrepresented individuals who have multiple cases of the same case type in the same county.

- There are **341** unrepresented individuals with **771** cases of the same case type in the same county (Figure 8), and
- there are **213** unrepresented individuals with **539** cases of varying case types in the same county (Figure 9).

Figure 8. Unrepresented Individuals with Multiple Cases – Same Case Type

Case Type	Individuals	Cases
Other (Juvenile or Habeas/PCR)	7	16
Major Felony	13	31
Minor Felony	112	247
Misdemeanor	209	477
Total	341	771

Figure 9. Unrepresented Individuals with Multiple Cases – Varying Case Types

Most Serious Case Type	Individuals	Cases
Major Felony	59	154
Minor Felony	154	385
Total	213	539



Unrepresented individuals with multiple unrepresented cases in the same county make up **half** of the unrepresented criminal caseload.

A holistic approach to client representation will, most likely, be more effective than a case-by-case approach. If an attorney appointed to represent a client could be assigned to all their client's unrepresented cases for which the attorney is qualified, this could decrease the unrepresented caseload significantly. Courts could work with attorneys to facilitate global resolutions where appropriate, and when not, attorneys could focus on each case consecutively.



Oregon Judicial Department

Unrepresented Crisis – June 2024 Update

Key Insights

[Unrepresented Trends](#)

The number of unrepresented individuals continues to increase ([Figure 1](#)). Deschutes County is experiencing a severe and sudden attorney shortage and spike in unrepresented ([Figure 2](#)). Attorneys have been added to contracts, but appointments taken has not increased yet ([Figure 3](#)). For daily updates, you can access the [Unrepresented Dashboard](#) on the OJD website.

[Average Time Unrepresented](#)

People who are out of custody with pending felony cases continue to wait longer, on average, than people who are out of custody with misdemeanor cases, but significant improvements have been made for people in-custody. ([Figure 4](#)).

[Unrepresented by County](#)

The crisis is most severe in Jackson, Marion, Multnomah, Washington, and Douglas counties and growing more severe in Clatsop, Deschutes, Klamath, Lake, Coos, Umatilla, Malheur and Lincoln counties ([Figure 5](#)).

[OPDC Trial Division Offices](#)

The OPDC Trial Division Offices continue to ramp up. Nine attorneys have taken 268 new appointments since December 2023, primarily in Jackson and Multnomah on misdemeanors and minor felonies ([Figure 6](#) and [Figure 7](#)).

[Data Share Update](#)

In May 2024, OPDC was provided direct access to the OJD Data Warehouse which includes OJD court data on attorney appointments, unrepresented persons, and public defense caseloads. OPDC is starting to share data OJD has requested regarding updated prorated contract and hourly attorney start and end dates, attorney qualifications, attorney caseload reports, and the Temporary Hourly Increase Program (THIP) case list. OJD staff continue to meet weekly with the OPDC data team.

[Circuit Court Case Filings](#)

Criminal case filings remain more than 20% below pre-pandemic levels. They have been on the rise for two consecutive years and are projected to continue to increase. ([Figure 8](#)).

[Case Dispositions](#)

The number of cases resolved by courts is expected to decrease in fiscal year 2024 by 5% ([Figure 9](#)) primarily due to delays caused by the unrepresented crisis.

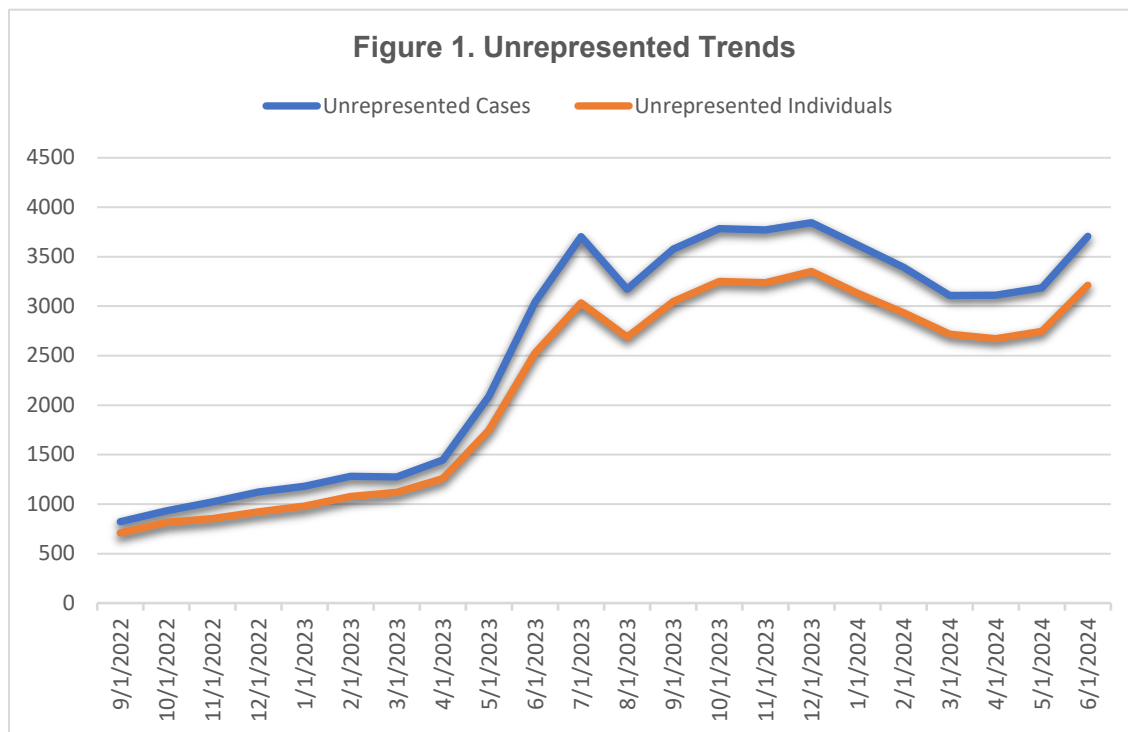
[Local Court Spotlights](#)

Courts involved with the [Intake Form Pilot Program](#) report positive experiences. The [Jackson County Circuit Court](#) shares its experience with the unrepresented crisis.

Unrepresented Trends

Figure 1 shows the number of unrepresented individuals continues to increase even as new attorneys are added in public defense offices and regional trial division offices.

- As of 4/1/2024, there were 2,671 unrepresented individuals with 3,110 unrepresented cases:
 - 1,693 misdemeanors,
 - 1,305 felonies, and
 - 112 non-criminal cases.
- As of 5/1/2024, there were 2,747 unrepresented individuals with 3,184 unrepresented cases:
 - 1,769 misdemeanors,
 - 1,340 felonies, and
 - 75 non-criminal cases.
- As of 6/1/2024, there were 3,210 unrepresented individuals with 3,707 unrepresented cases:
 - 2,082 misdemeanors,
 - 1,552 felonies, and
 - 73 non-criminal cases.

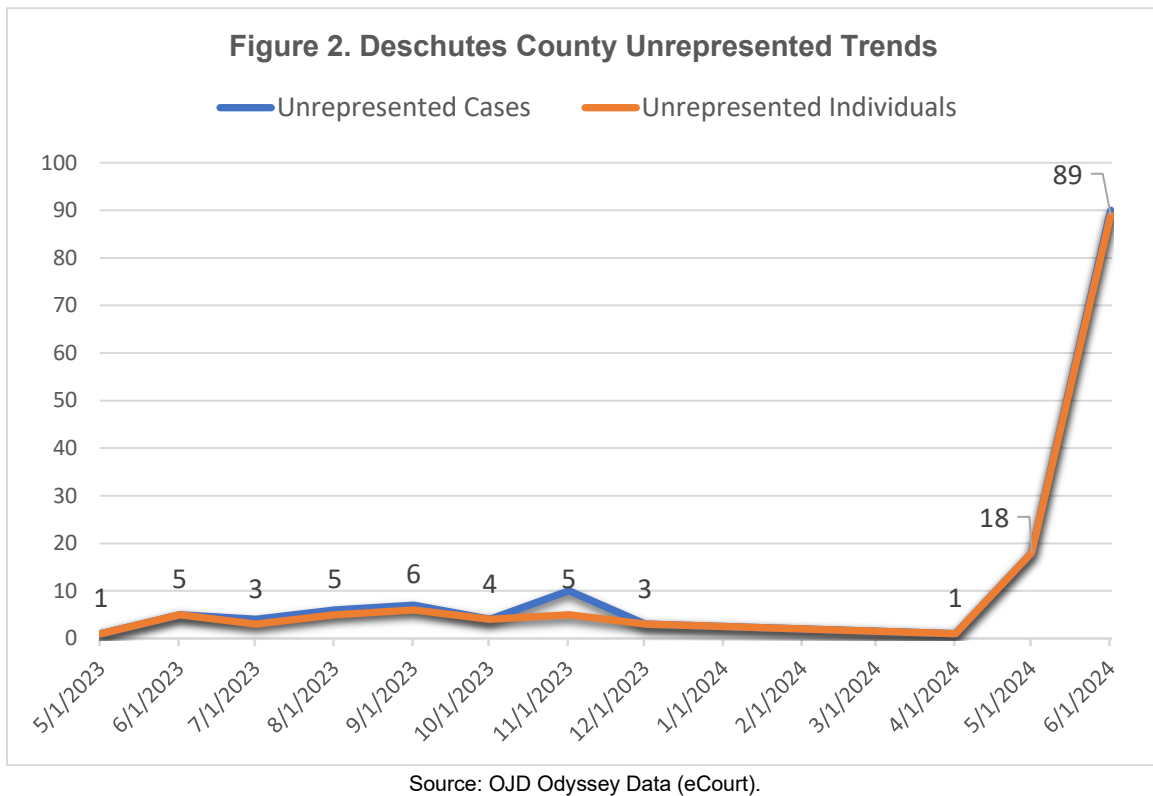


Source: OJD Odyssey Data (eCourt).

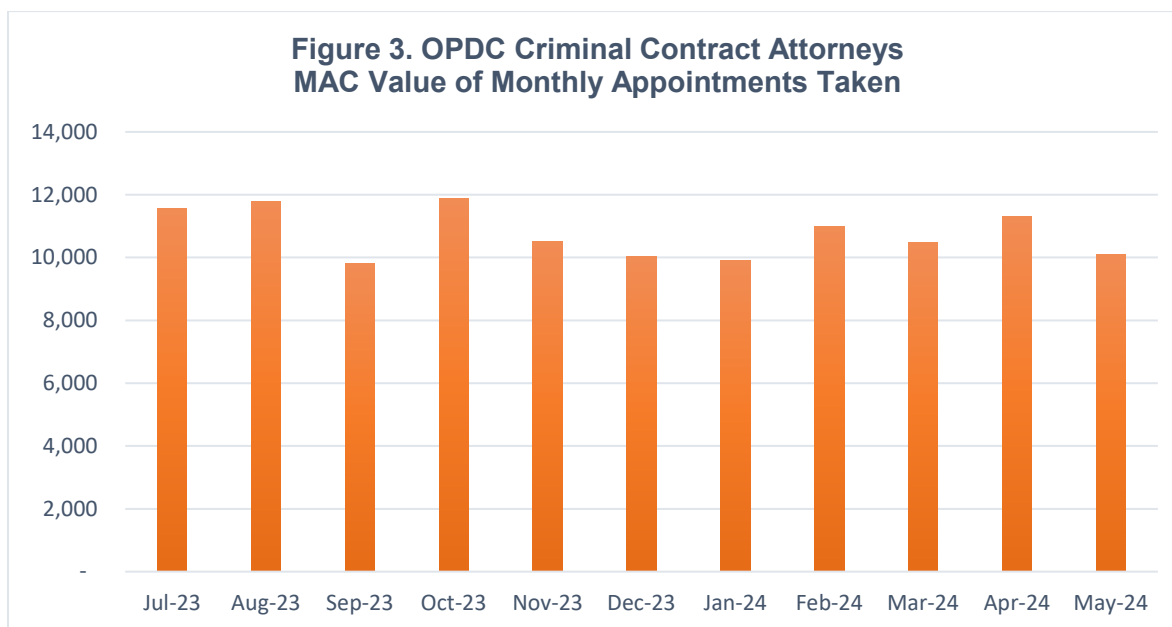
Deschutes County recently lost six attorneys and now has a spike in its unrepresented population.

As of 6/1/2024, Deschutes County had 89 unrepresented individuals with 90 unrepresented cases:

- 53 misdemeanors, and
- 37 felonies.



Although more attorneys have been added to existing contracts statewide since July 2023, total appointments taken under those contracts has not increased yet. OPDC staff can provide more information on MAC added since July and MAC utilization by county, provider, and attorney.

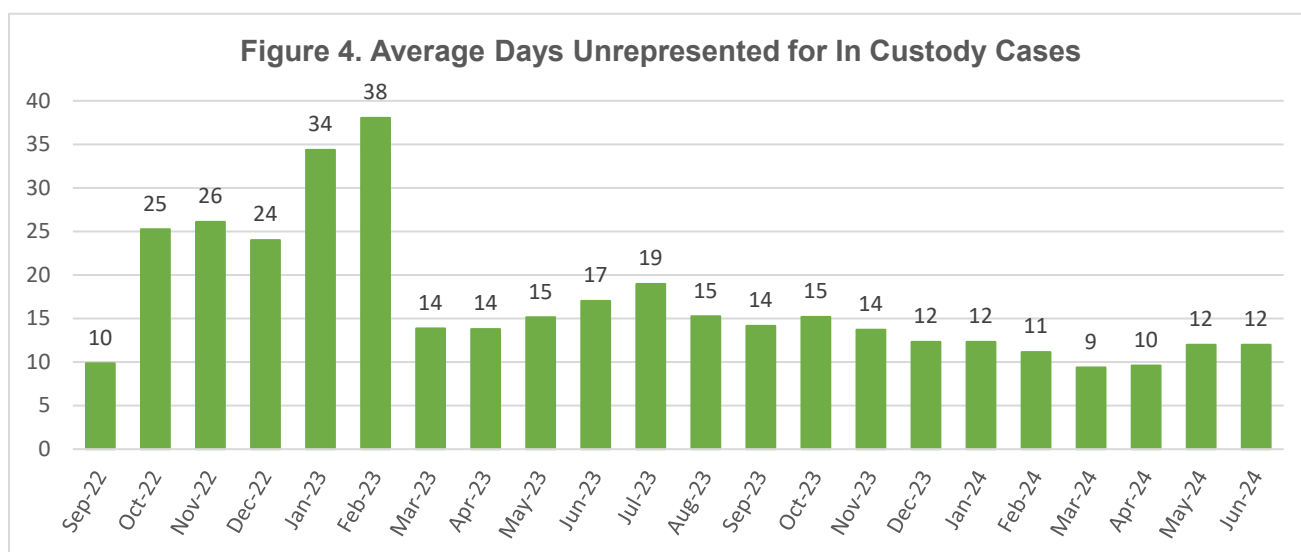


Source: OJD Odyssey Data (eCourt).

Average Time Unrepresented

People who are out of custody with felony cases are waiting an average of more than **three** months for an attorney. Out-of-custody people with misdemeanor cases are waiting an average of more than **two** months for an attorney.

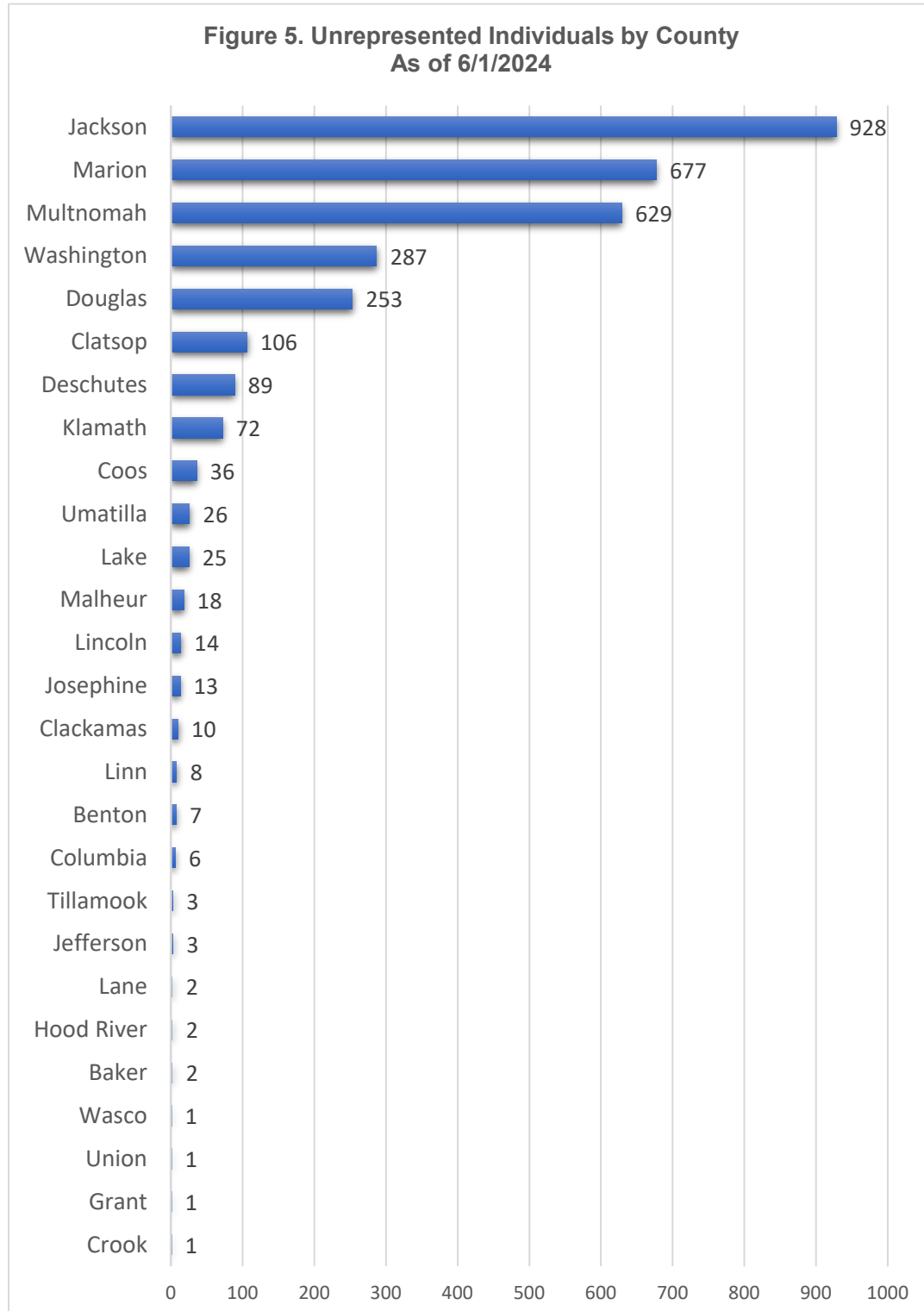
Figure 4 shows improvements have been made since 2022 on the average time an unrepresented person must wait in custody before an attorney is appointed.



Source: OJD Odyssey Data (eCourt).

Unrepresented by County

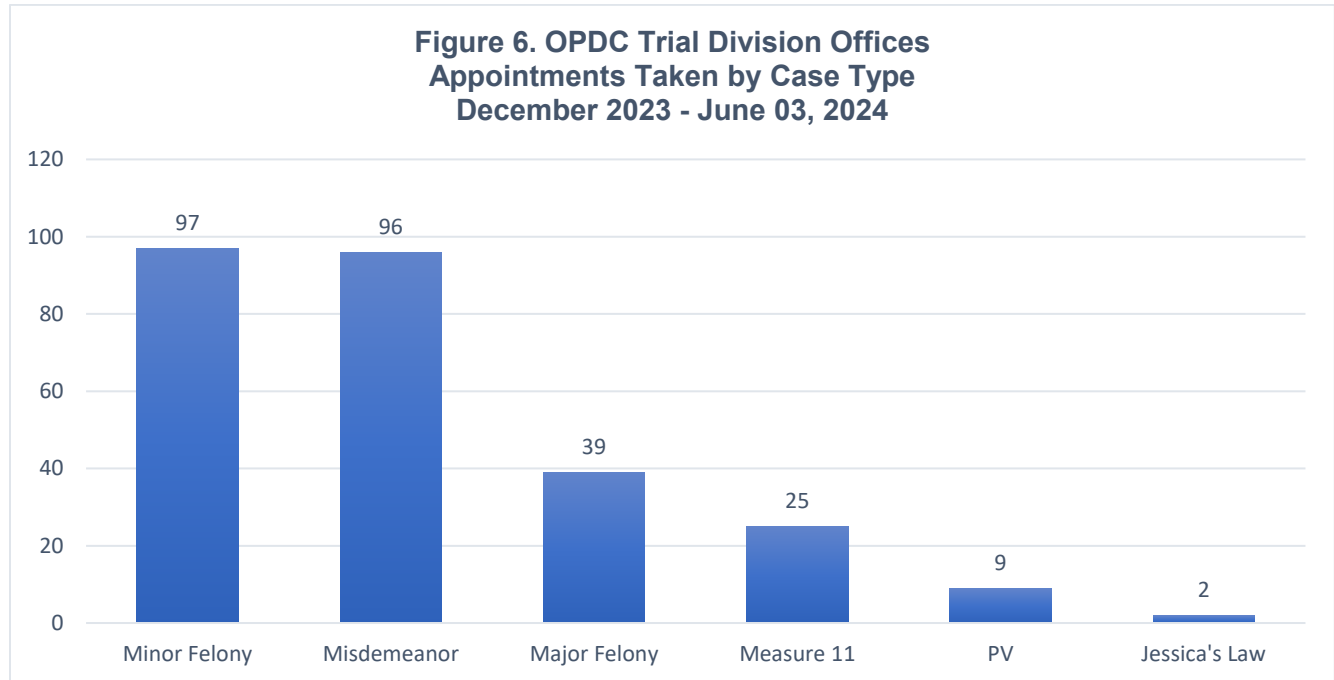
Figure 5 shows the number of unrepresented individuals by county and where the crisis is most severe. The OPDC regional trial division offices are primarily taking appointments in Jackson and Multnomah on misdemeanors and minor felonies.



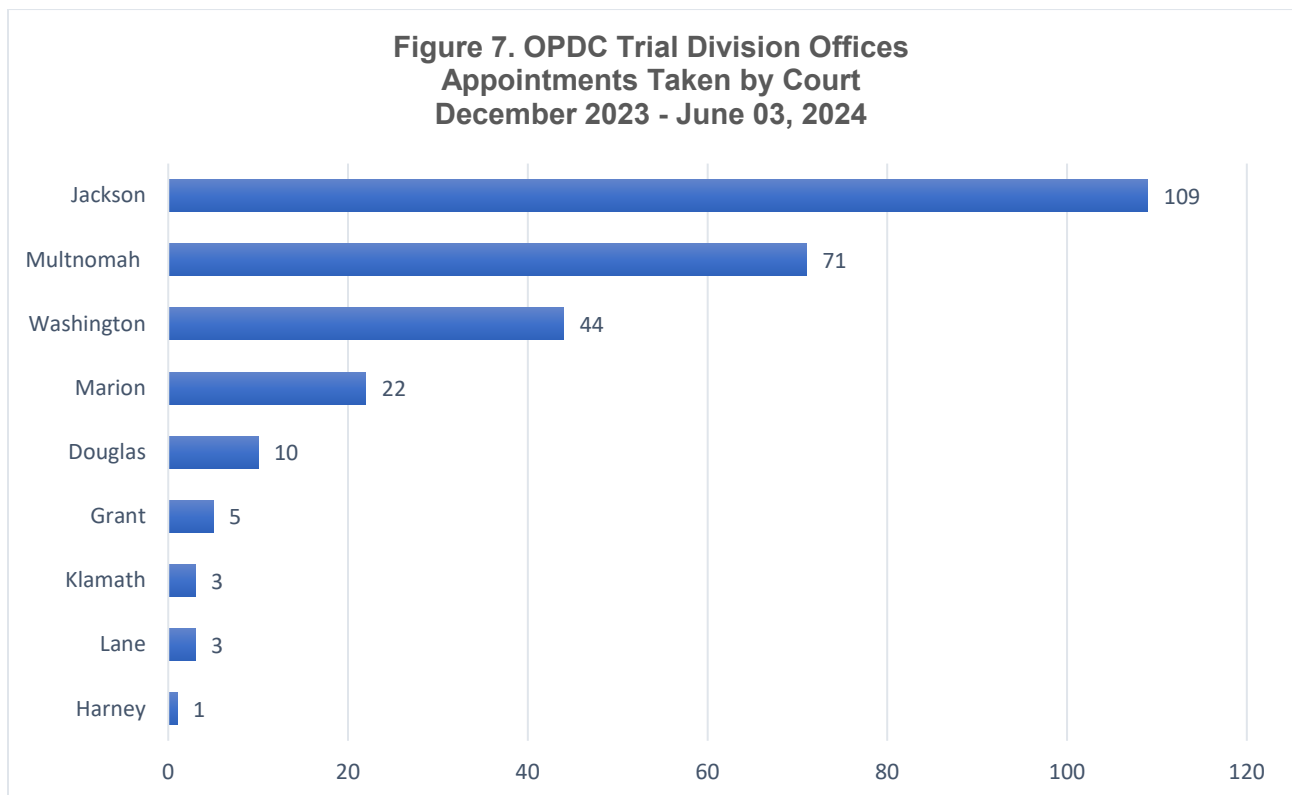
Source: OJD Odyssey Data (eCourt).

OPDC Trial Division Offices

Figure 6 and Figure 7 show the **268** new appointments taken since December 2023 by nine attorneys in the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.



Source: OJD Odyssey Data (eCourt).



Source: OJD Odyssey Data (eCourt).

Data Share Update

In May 2024, OPDC was provided direct access to the OJD Data Warehouse which includes OJD court data on attorney appointments, unrepresented data, and public defense caseloads.

OPDC can start using this court data and the data warehouse databases to:

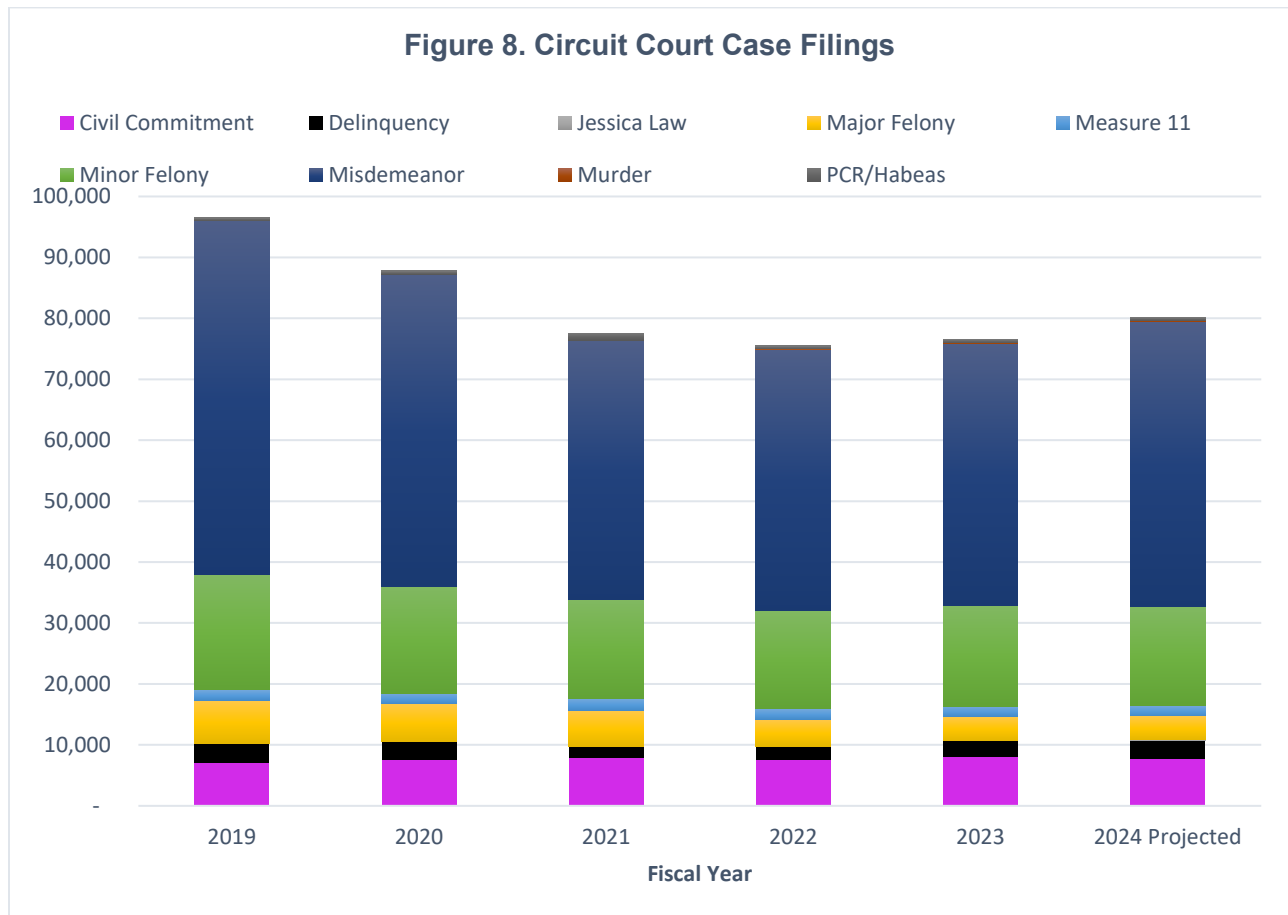
- verify attorney MAC utilization and self-reported attorney caseload reports by reconciling it with court data,
- streamline attorney appointments for unrepresented individuals through automated comparisons of attorney capacity, attorney qualification, and prioritize unrepresented cases using OPDC's new intake form/process,
- identify unrepresented individuals who have multiple cases in the same county (half of total unrepresented caseload) to consolidate attorney appointments and work down the unrepresented caseload faster,
- flag attorney appointments in warrant status for more than 180 days and request that attorneys close those appointments and notify the court,
- track caseload trends that impact public defense providers,
- track open public defense caseloads over time, and
- compare qualitative outcomes by provider (case outcomes, time to disposition, motions filed, cases with multiple attorney substitutions, time to trial, trial rates and trial outcomes).

OPDC has started sharing data requested by OJD regarding updated contract and hourly attorney start and end dates (prorated MAC), attorney qualifications, attorney caseload reports, and the Temporary Hourly Increase Program (THIP) case list.

Circuit Court Case Filings

Figure 8 shows circuit court case filings since fiscal year 2019 by case type.

- Filings remain more than 20% below 2019 levels but started to increase in fiscal year 2023.
- In fiscal year 2023, case filings increased statewide by 1.4% over the prior year. In fiscal year 2024, OJD projects case filings will increase by another 5%, due primarily to increases in misdemeanor filings. Minor decreases are projected in filings for major and minor felonies, Measure 11, and civil commitment cases.

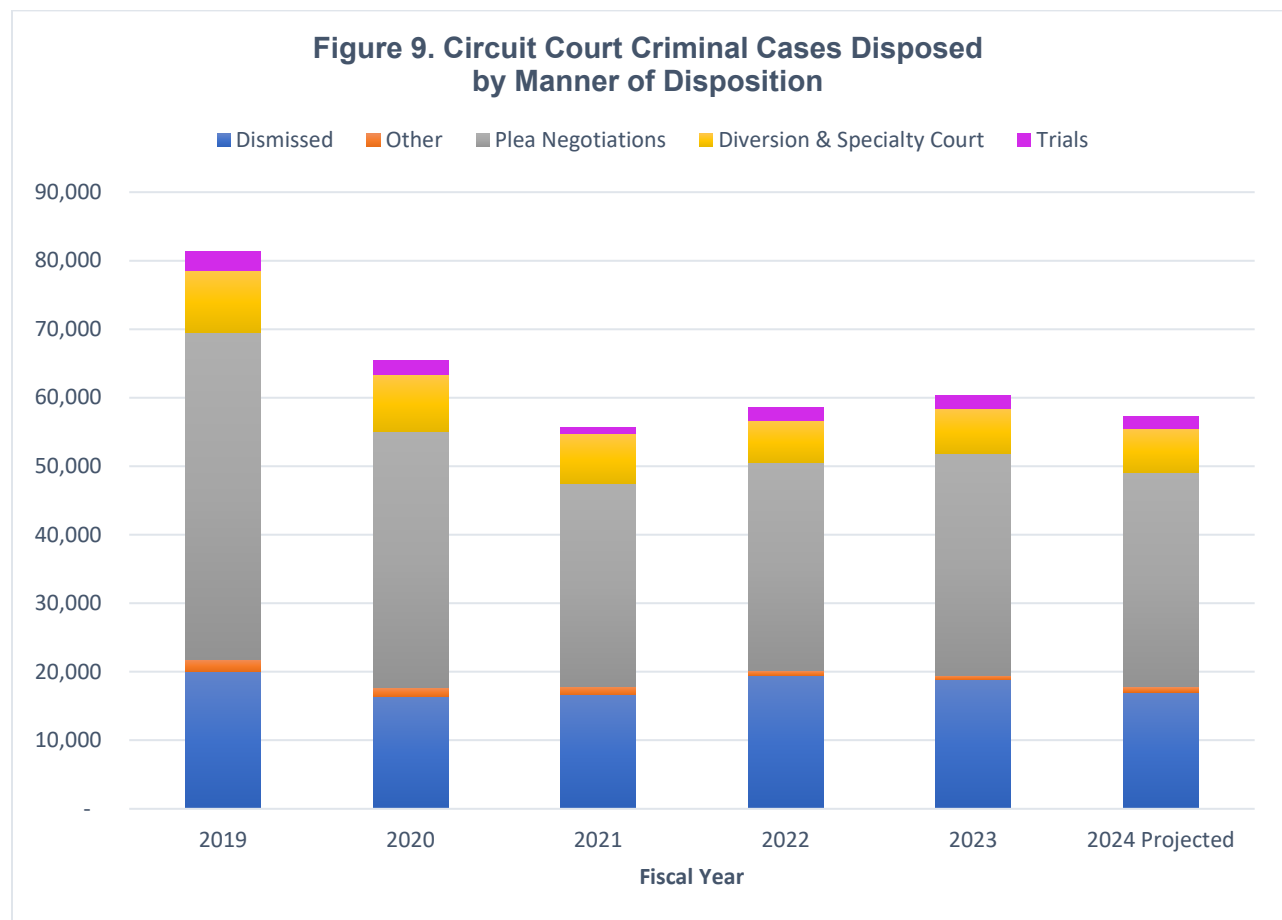


Source: OJD Odyssey Data (eCourt).

Case Dispositions

Figure 9 shows case dispositions since fiscal year 2019 by the manner of disposition.

- Like filings, case dispositions are well below 2019 levels.
- Case dispositions increased by almost 3% in fiscal year 2023 over the prior year.
- In fiscal year 2024, OJD projects that case dispositions will decrease by 5% primarily due to delays caused by the unrepresented crisis.
- Plea agreements are declining, while trial rates, diversions, and treatment court programs remained unchanged compared to 2019.



Local Court Spotlight

Intake Form Pilot Program Update

OPDC launched a pilot program May 1, 2024, where pilot courts submit an online form to request counsel be appointed to an in-custody unrepresented person, focusing on cases that qualify for the Temporary Hourly Increase Program (THIP). The pilot courts are circuit courts in Coos, Curry, Linn, and Douglas counties. All courts report the form is simple to use and the process is working well. One court noted a concern that court staff cannot update the form if a defendant is released from custody after the form is submitted but prior to an attorney being assigned. OJD and OPDC staff are collaborating so OPDC can use the data warehouse to more efficiently prioritize attorney assignments and ensure defendants are represented on all their open cases.

Jackson County Circuit Court

Jackson County continues to have the highest number of unrepresented persons in the state, which has been steadily increasing since October 2023 despite an increase in the number of attorneys and fewer cases being filed. The local public defense office and consortium typically meet or surpass their monthly MAC limits about half-way through the month.

Jackson has several dockets to help cases proceed more efficiently, including early resolution conferences, settlement conferences, and a rapid aid-and-assist docket. They have also held several special settlement dockets for criminal traffic offenses, such as diversion-eligible Driving Under the Influence cases. The impact of these dockets and their success, though, is limited based on whether there is a defense attorney available. For instance, defense attorneys are frequently in the best position to identify persons struggling with mental health who would be appropriate for the rapid aid-and-assist docket.

In addition to in-custody unrepresented persons, the court is particularly concerned about out-of-custody probation violations and animal abuse cases. As of May 21, 2024, there are 117 probation violation cases on the unrepresented list, with 36 cases unrepresented for more than 180 days. These include domestic violence cases where the alleged probation violation is having contact with the victim. Other cases of concern are felony cases where the defendant is on a downward departure and facing significant prison time.

Unrepresented persons charged with animal abuse incur other collateral consequences due to delays appointing counsel. These defendants typically have their animals taken from them and are entitled to a forfeiture hearing involving the animal. Since these defendants are out of custody and lower on the priority list, they are often without counsel at their forfeiture hearings. Since the case is unable to move forward, the animals stay with Animal Control, incurring thousands of dollars in expenses which either (1) the county will be responsible to pay, or (2) defendants will pay and incur additional costs because the time to disposition was extended for lack of an attorney.



Oregon Judicial Department

Unrepresented Crisis – July 2024 Update

Key Insights

[Unrepresented Trends](#)

The total number of unrepresented individuals decreased slightly from May to June; however, the number of unrepresented misdemeanor cases continues to rise. ([Figure 1](#)). Deschutes County continues to experience sharp growth in its unrepresented population ([Figure 2](#)). Daily updates are available at the OJD [Unrepresented Dashboard](#) web page.

[Betschart Federal Court Order](#)

The Ninth Circuit's appellate mandate in *Betschart et al. v. Garrett et al.*, issued on June 24, 2024, and U.S. District Judge McShane's November 14, 2023 injunction is in effect. Going forward, any state defendant who has been in custody unrepresented for seven days after their initial appearance and for whom an exception to the seven-day timeline does not apply must be released from custody. In response, OJD modified its Unrepresented Individuals data dashboard, displaying cases labeled as Potentially Subject To or Not Subject to Betschart. While the data on the dashboard should not be used to precisely identify the individuals and cases to whom the Betschart order applies, it is intended to be a tool to assist OPDC, the courts, policymakers, and the public.

OPDC staff have been able to find attorneys for many defendants subject to this order before the release timeline was reached. OJD is working with OPDC staff to disseminate and try to automate the Nintex forms used to request priority appointments.

[Average Time Unrepresented](#)

The amount of time people in custody are unrepresented has dropped to an average of 10 days. ([Figure 3](#)). People who are out of custody with pending felony cases continue to wait longer, on average, than people who are out of custody with misdemeanor cases.

[Unrepresented by County](#)

The crisis continues to be most severe in Jackson, Marion, Multnomah, Washington, and Douglas counties and is growing more severe in Clatsop, Deschutes, Coos, and Klamath counties ([Figure 4](#)).

[OPDC Trial Division Offices](#)

The OPDC Trial Division Offices continue to ramp up. Nine attorneys have taken 268 appointments since December 2023, primarily in Jackson and Multnomah counties and on misdemeanor and minor felony cases ([Figure 5](#) and [Figure 6](#)).

[Data Share Update](#)

In June 2024, OPDC transitioned from using OJD-created dashboards for attorney appointments, unrepresented data, and public defense caseloads to directly accessing the data from the OJD Data Warehouse. The OJD and OPDC data teams continue to meet biweekly to collaborate on enhancing data quality and creating efficiencies.

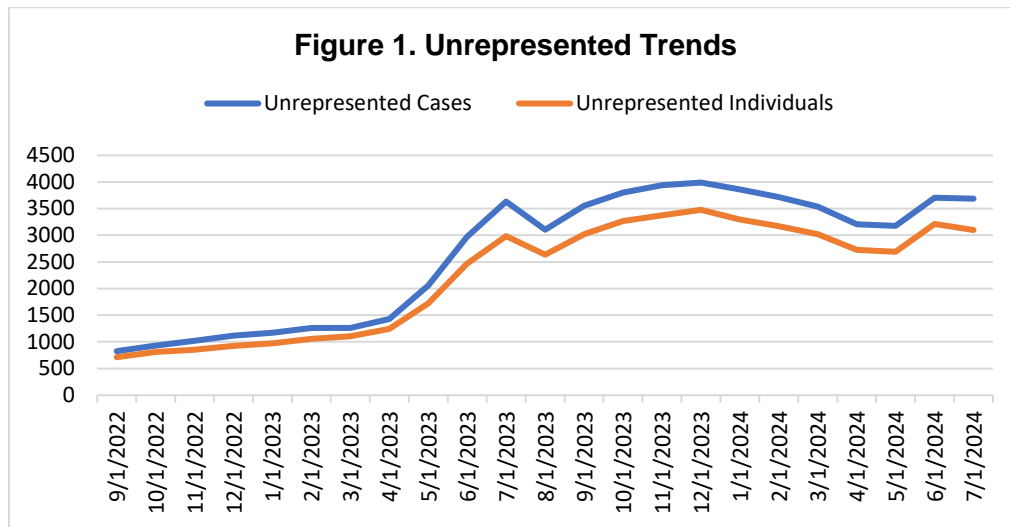
Local Court Spotlights

Multnomah County has consistently had one of the more severe crises in the state, and one of the longest, starting in January 2022. While the number of in-custody unrepresented individuals has decreased, the court continues to struggle with a growing number of out-of-custody unrepresented cases. The vast majority of unrepresented out-of-custody cases in Multnomah County are felony level, and the average time it takes to assign an attorney to those cases has been increasing since September 2022.

Unrepresented Trends

Figure 1 shows the number of unrepresented individuals has decreased slightly. While there are fewer unrepresented felony cases and non-criminal cases, the number of unrepresented misdemeanor cases continues to climb.

- As of 4/1/2024, there were 2,671 unrepresented individuals with 3,110 unrepresented cases:
 - 1,693 misdemeanors,
 - 1,305 felonies, and
 - 112 non-criminal cases.
- As of 5/1/2024, there were 2,747 unrepresented individuals with 3,184 unrepresented cases:
 - 1,769 misdemeanors,
 - 1,340 felonies, and
 - 75 non-criminal cases.
- As of 6/1/2024, there were 3,210 unrepresented individuals with 3,707 unrepresented cases:
 - 2,082 misdemeanors,
 - 1,552 felonies, and
 - 73 non-criminal cases.
- As of 7/1/2024, there were 3,097 unrepresented individuals with 3,685 unrepresented cases:
 - 2,217 misdemeanors,
 - 1,414 felonies, and
 - 54 non-criminal cases.

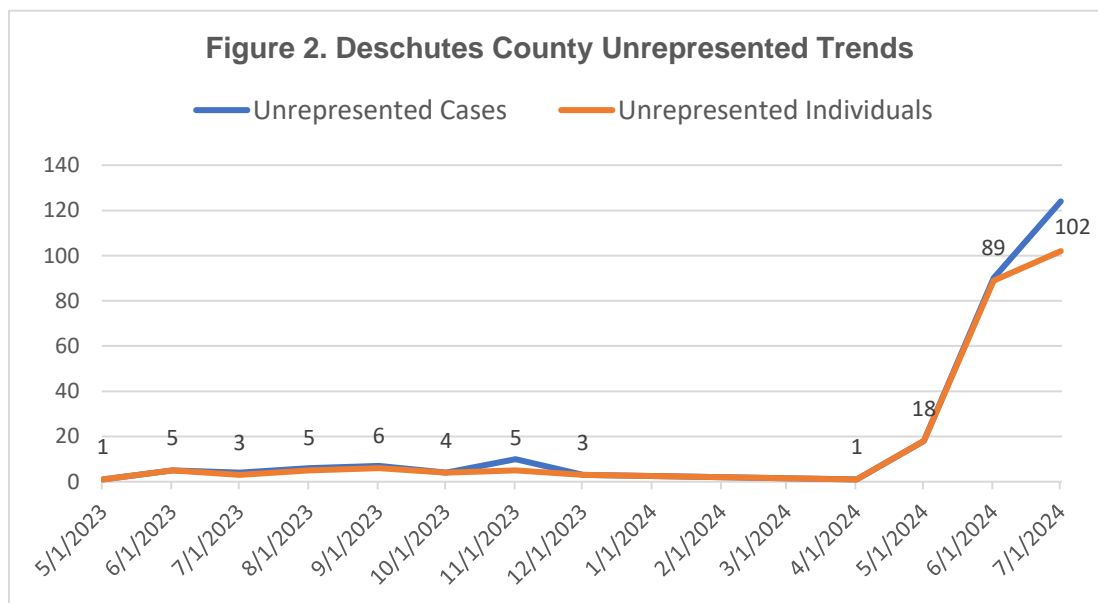


Source: OJD Odyssey Data (eCourt).

Deschutes County lost six public defense attorneys in May and now has a spike in its unrepresented population. Four of the vacant positions have since been filled; however, the new attorneys are only qualified to take misdemeanor cases.

As of 7/1/2024, Deschutes County had 102 unrepresented individuals with 124 unrepresented cases:

- 87 misdemeanors, and
- 37 felonies.

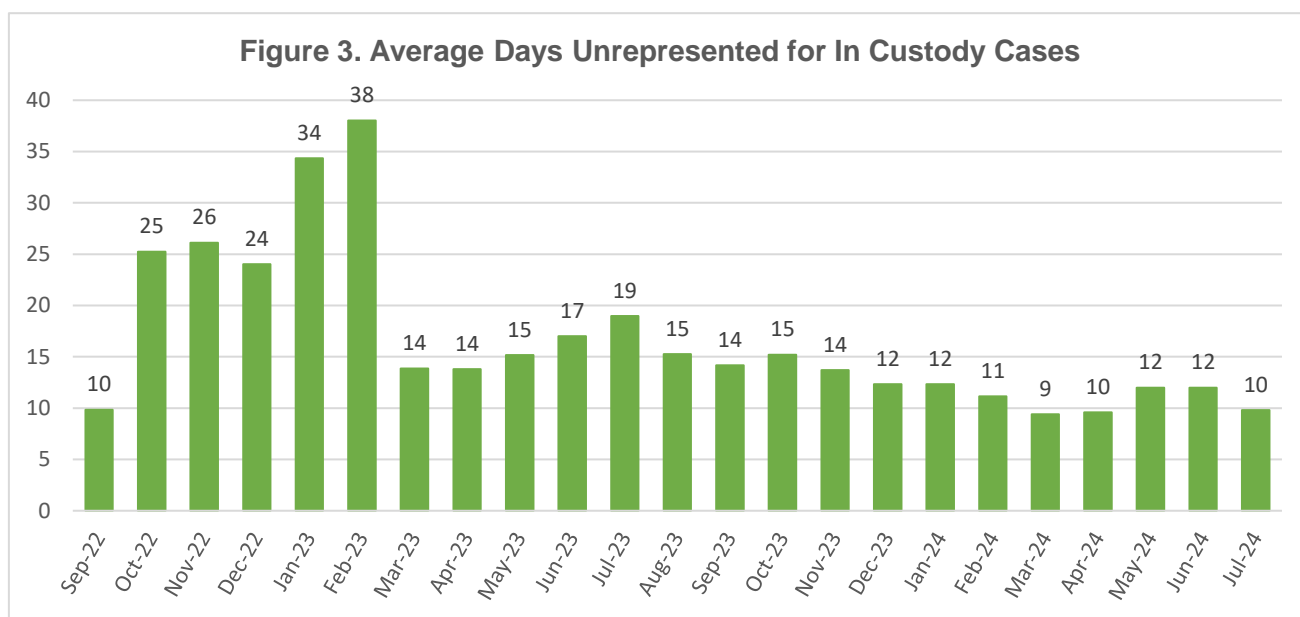


Source: OJD Odyssey Data (eCourt).

Average Time Unrepresented

People who are out of custody with felony cases are waiting an average of more than three months for an attorney. Out-of-custody people with misdemeanor cases are waiting an average of more than two months for an attorney. There are 94 cases that have been on the unrepresented list for at least six months and the defendant has not failed to appear in the case.

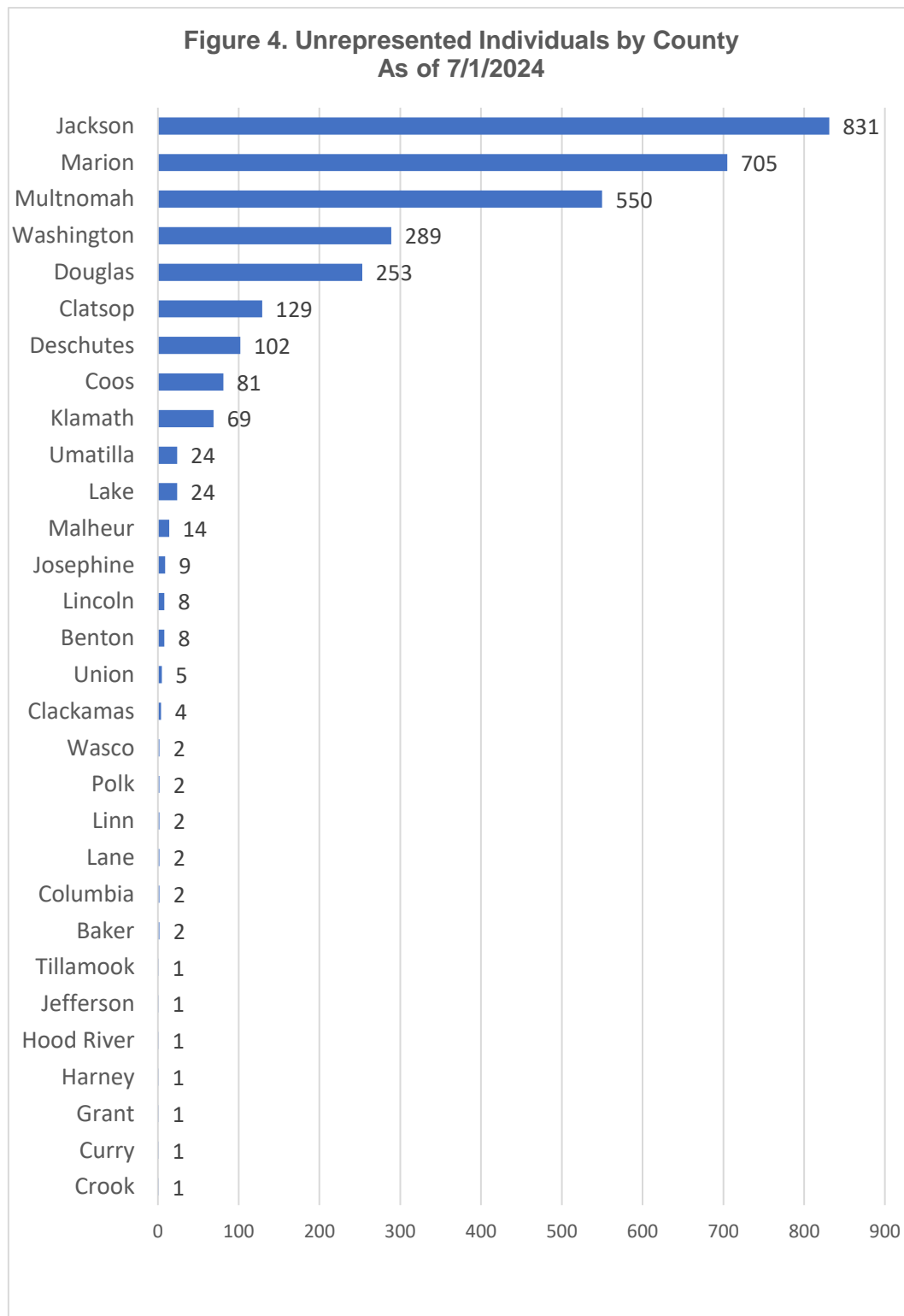
Figure 3 shows that the average time an unrepresented person has waited in custody before an attorney has been appointed has improved since February 2023. Because the *Betschart* order went into effect on June 24, 2024, it is too early to identify trends resulting from *Betschart* on the average time an unrepresented person waits in custody for counsel to be appointed.



Source: OJD Odyssey Data (eCourt).

Unrepresented by County

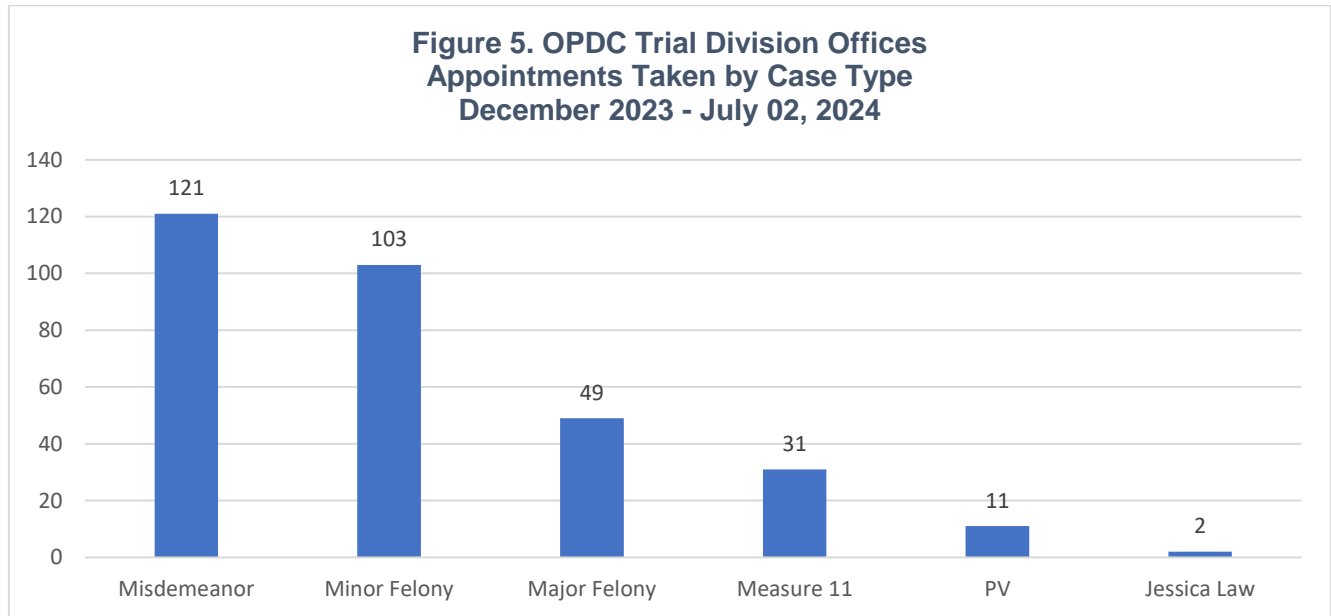
Figure 4 shows the number of unrepresented individuals by county. The OPDC regional trial division offices are primarily taking appointments in Jackson and Multnomah counties on misdemeanor and minor felony cases. While some counties have seen a decrease in the number of unrepresented persons since June 1, 2024, other counties have seen an increase. For example, Coos County had 36 unrepresented individuals on June 1, 2024, and as of July 1 has 81 unrepresented individuals. The Coos County public defender office recently lost four attorneys.



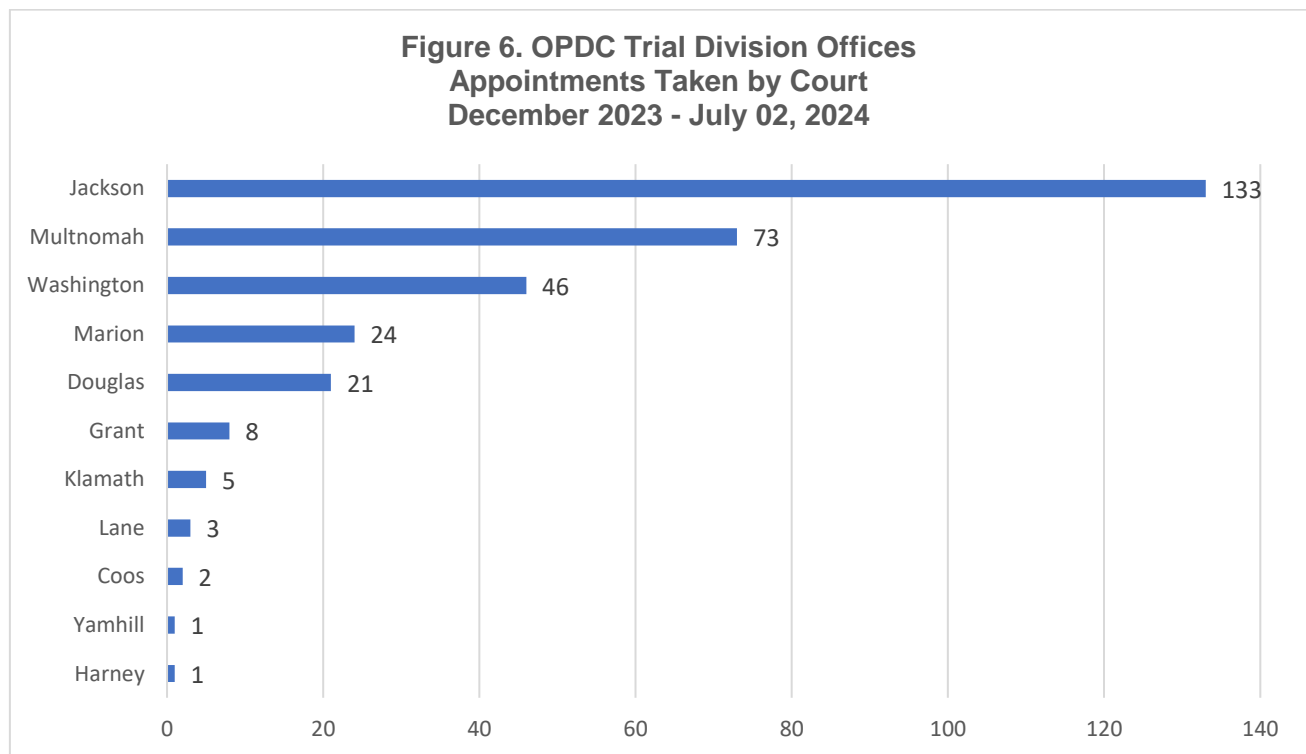
Source: OJD Odyssey Data (eCourt).

OPDC Trial Division Offices

Figure 5 and Figure 6 show the **268** new appointments taken since the first regional office opened in December 2023. The nine attorneys in the OPDC Trial Division regional offices service the Northwest and Southern Oregon regions, and Marion County. Trial division attorneys have also taken some cases outside of their regions, including cases subject to the *Betschart* order.



Source: OJD Odyssey Data (eCourt).



Source: OJD Odyssey Data (eCourt).

Data Share Update

In June 2024, OPDC transitioned from using OJD created dashboards for attorney appointments, unrepresented data, and public defense caseloads to directly accessing the data from the OJD Data Warehouse. OJD and OPDC continue to meet biweekly to collaborate on enhancing data quality and creating efficiencies.

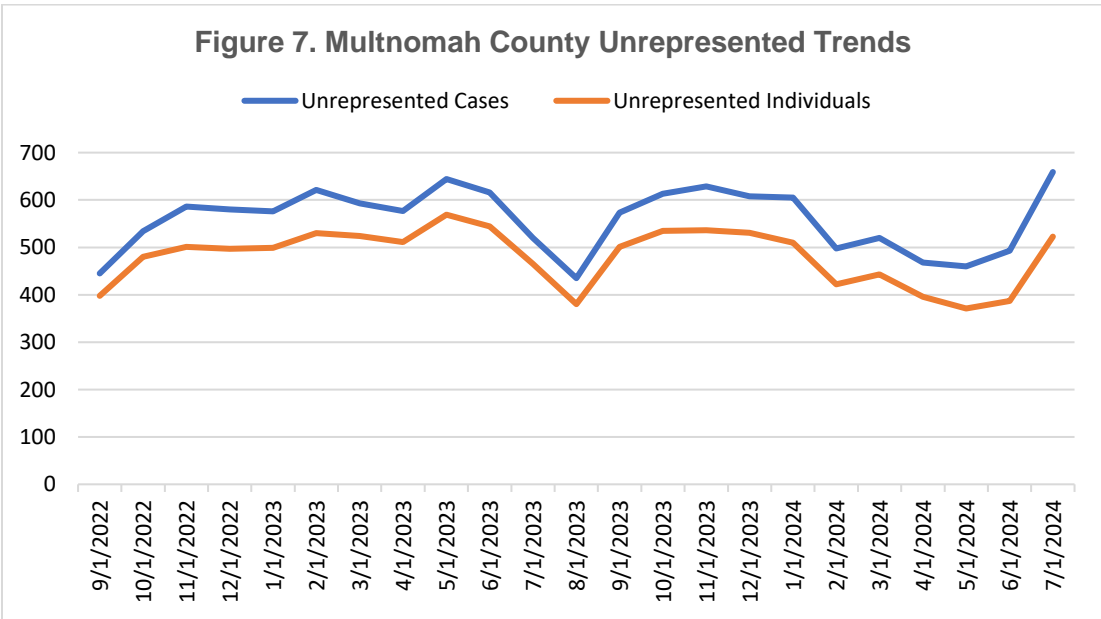
Local Court Spotlight

Multnomah Unrepresented Trends

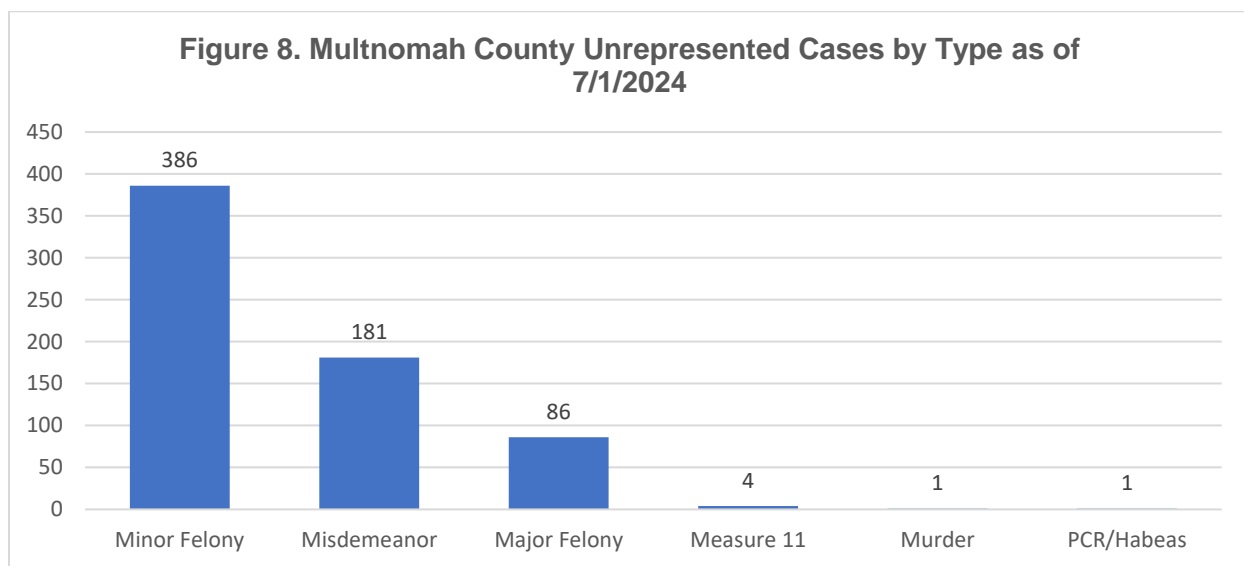
In January 2022, two public defense firms in Multnomah County announced they would temporarily cease taking appointments on felony cases. In April 2022, the firms also ceased taking misdemeanor appointments. At that time there were more than 600 unrepresented individuals. Since then, the court has taken numerous actions to address the crisis, including restructuring dockets, cross-training and adding new OJD staff, bringing in senior (retired) judges for settlement conferences, increasing the use of remote appearances, and expanding resolution dockets.

The court has dismissed some cases when an unrepresented individual has appeared numerous times with no attorney available to appoint. In many instances, the Multnomah County District Attorney's office brought those cases back to a grand jury, secured an indictment, and refiled criminal charges. A case may have come off the unrepresented list, and later be added back if charges are refiled and no attorney is available to be appointed.

As of 7/1/2024, Multnomah County had 523 unrepresented individuals with 659 unrepresented cases, consisting of 477 felonies, 181 misdemeanors, and 1 PCR/Habeas case. This contrasts with the statewide trend where most unrepresented cases are misdemeanors.

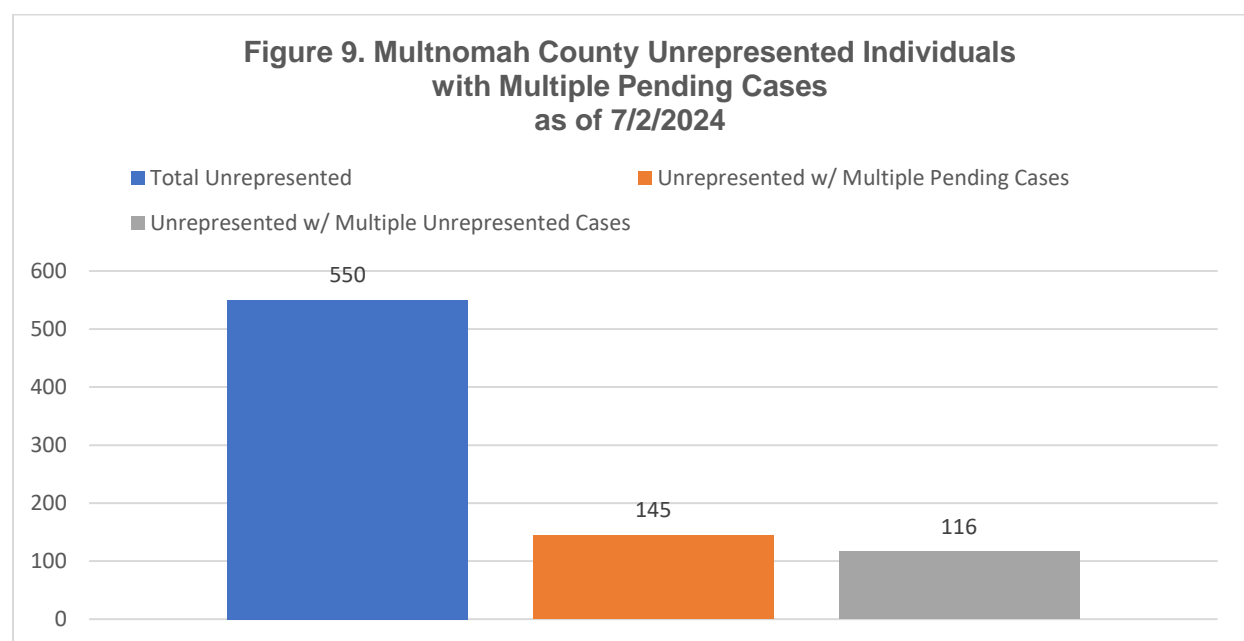


Source: OJD Odyssey Data (eCourt).



Source: OJD Odyssey Data (eCourt).

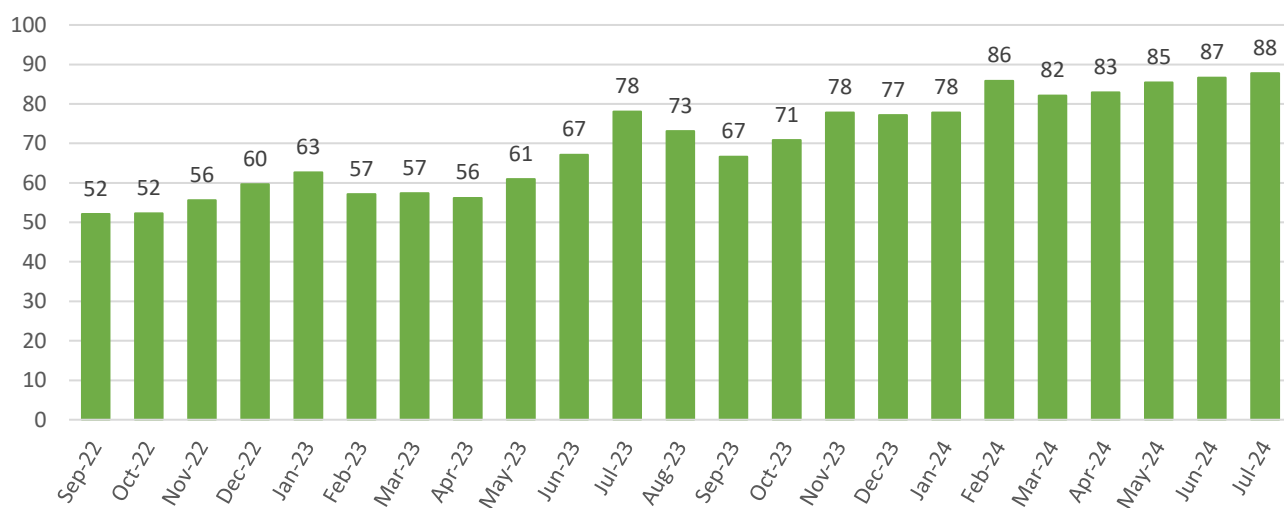
Figure 9 shows the number of unrepresented persons with multiple pending cases and the number of persons with multiple unrepresented cases. At times a defendant with multiple different case types will be represented on one case but not another. For instance, a defendant may have an attorney on a misdemeanor case but not on a separate minor felony case. The court also has noticed occasions when a defendant has multiple attorneys from the same office on different cases. For instance, one attorney will be assigned to a minor felony case and a different attorney will be assigned to a separate misdemeanor case for the same defendant.



Source: OJD Odyssey Data (eCourt).

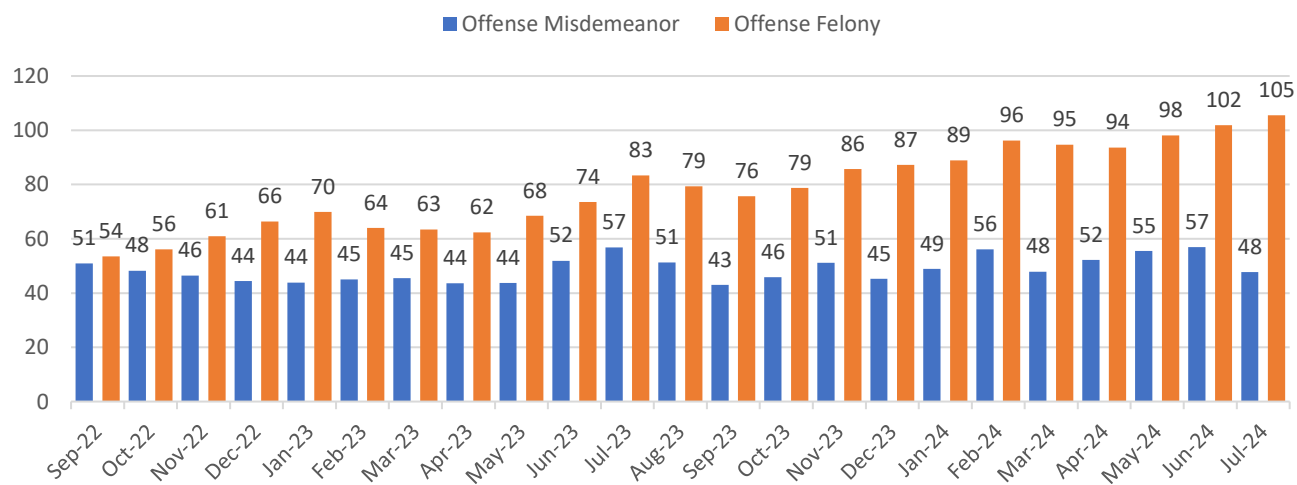
Figures 10 and 11 show the average time for an attorney to be assigned to an out-of-custody case in Multnomah County, excluding time in active warrant status. The average time for an out-of-custody felony case to be assigned an attorney has steadily increased since September 2022, and has more than doubled to a current average of three-and-a-half months before an attorney is assigned. The time for attorney appointments in misdemeanor cases has remained comparatively stable during the same period.

Figure 10. Multnomah County
Average Days Unrepresented for Out-of-Custody Cases
(Excludes days on active warrant)



Source: OJD Odyssey Data (eCourt).

Figure 11. Multnomah County
Average Days Unrepresented for Out-of-Custody Cases by Case Type
(Excludes days on active warrant)



Source: OJD Odyssey Data (eCourt).



Oregon Judicial Department

Unrepresented Crisis – August 2024 Update

Key Insights

[Unrepresented Trends](#)

The total number of unrepresented individuals has steadily increased since June 2024 ([Figure 2](#)) and is approaching the historic high. Daily updates are available at the [Unrepresented Dashboard](#) on the OJD website.

[Filings in Public Defense-Related Case Types](#)

Criminal and other case filings remain 18% below pre-pandemic levels but have been inching up for two consecutive years ([Figure 5](#)). Ten judicial districts saw an increase in those case filings in fiscal year 2024, and five had double-digit percentage increases ([Figure 6](#)).

[Unrepresented by County](#)

The crisis continues to be most severe in Jackson, Marion, Multnomah, Douglas, and Washington counties and is growing more severe in Clatsop, Deschutes, Coos, and Klamath counties ([Figure 7](#)).

[OPDC Trial Division Offices](#)

The OPDC Trial Division offices currently have nine attorneys who have taken 287 appointments since December 2023. They primarily have taken appointments for misdemeanor and minor felonies cases, although in recent months they have taken fewer misdemeanor cases ([Figure 8](#)).

[Data Share Update](#)

The OJD and OPDC data teams are meeting weekly to collaborate on enhancing data quality and creating efficiencies. OJD also is actively supporting OPDC's technology transition to the executive branch.

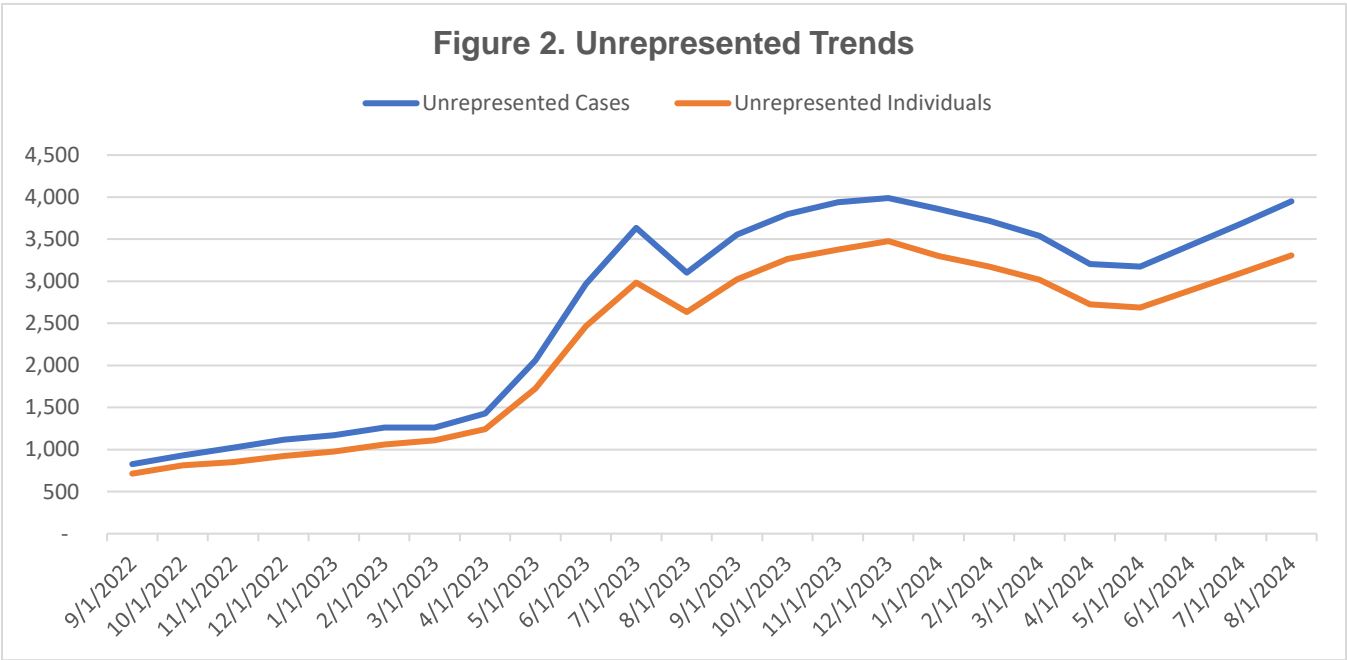
[Local Court Spotlights](#)

Washington County was one of the original counties to experience the unrepresented crisis over two years ago. The court continues to struggle with the number of out-of-custody unrepresented individuals, which has recently started to increase.

Unrepresented Trends

Table 1 shows the number of unrepresented persons, cases, and case types on the first of each month since April 2024. Figure 2 shows the number of unrepresented individuals is increasing again. On 8/1/2024, the total number of unrepresented cases was 3,952 and individuals was 3,306, nearly reaching the previous record from December 2023 when there were 4,186 unrepresented cases and 3,591 unrepresented individuals.

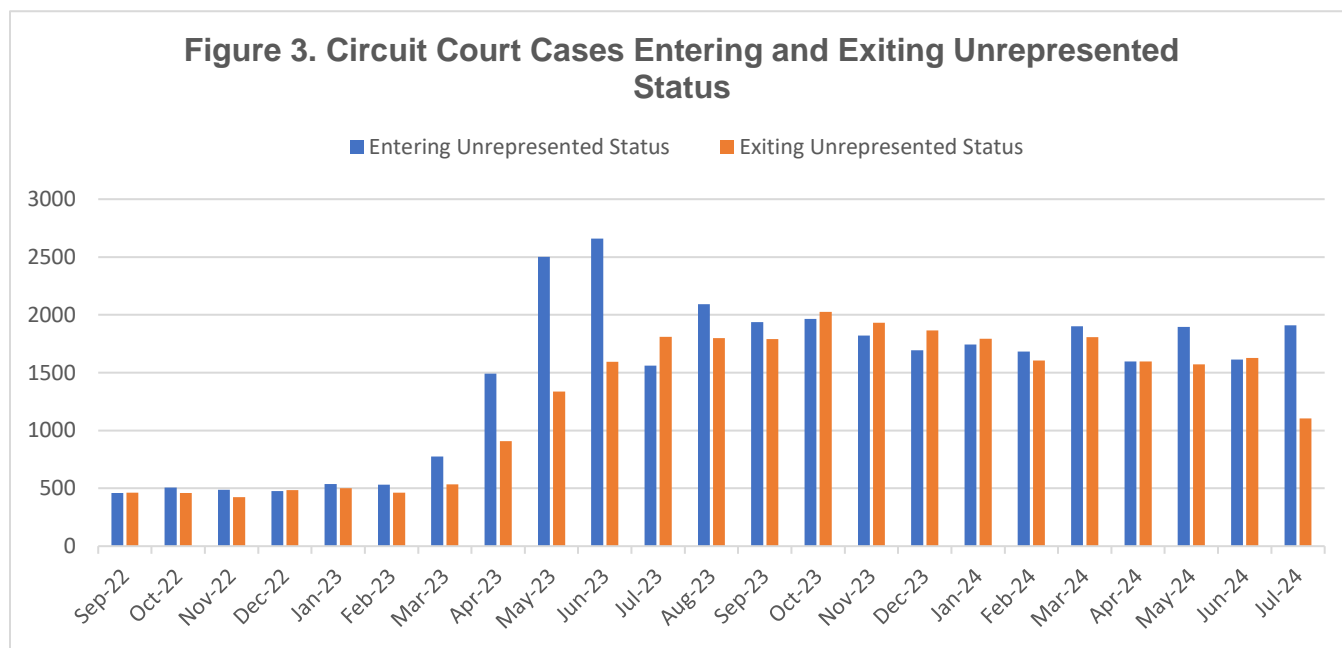
Table 1. Number of Unrepresented Persons and Cases on First of Each Month					
	04/01/24	05/01/24	06/01/24	07/01/24	08/01/24
Total Unrepresented persons	2,671	2,747	3,210	3,097	3,306
Total Unrepresented cases	3,110	3,184	3,707	3,685	3,952
Misdemeanors	1,693	1,769	2,082	2,217	2,282
Felonies	1,305	1,340	1,552	1,414	1,611
Non-criminal cases	112	75	73	54	59



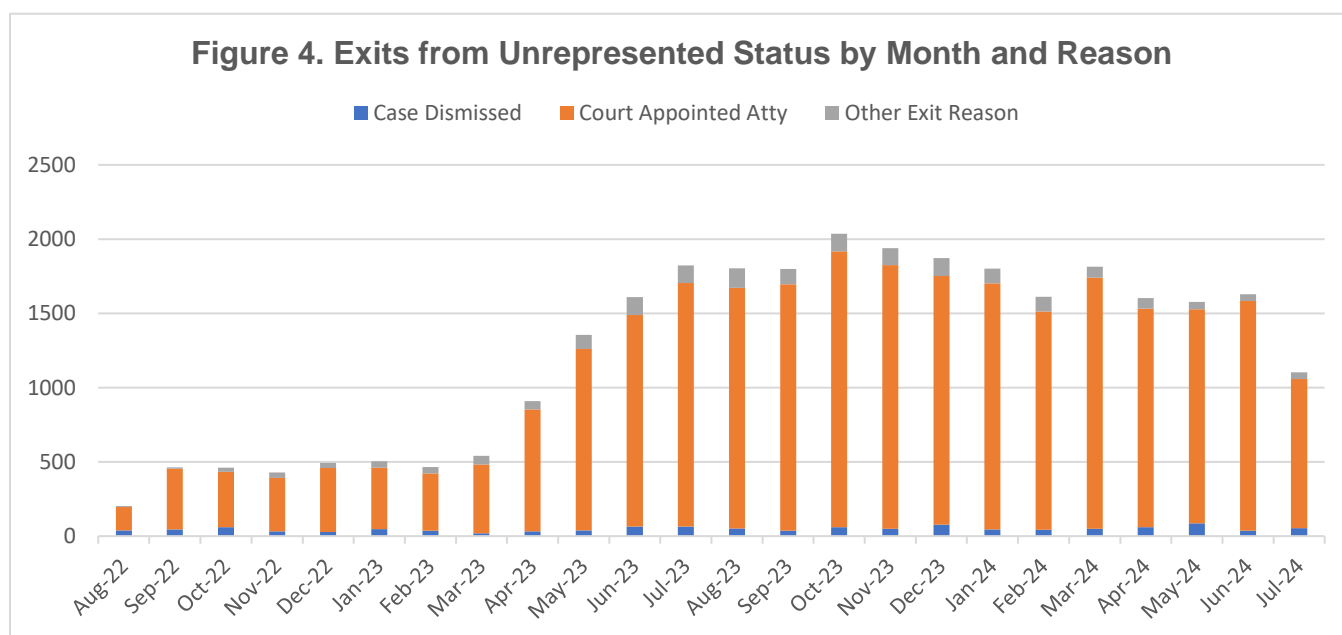
Source: OJD Odyssey Data (eCourt).

Figure 3 shows the number of unrepresented cases entering and exiting unrepresented status by month and year. The number of cases added to the unrepresented list often exceeds the number of cases exiting from the list. Figure 3 shows cases exit the unrepresented list primarily because an attorney was assigned to the case; however, there are some cases that exit the unrepresented list because they are dismissed or the case resolves. Since May 2023, the number of cases entering the unrepresented list and the number of cases exiting the unrepresented list has been in the thousands.

Large increases in the number of unrepresented cases seen in Figure 2 correspond with months where the number of cases being added to the unrepresented list significantly outpace the number of cases exiting (see May 2023; June 2023, and July 2024 in Figure 2). While the number of cases exiting the unrepresented list has at times been higher than the number of cases added, the difference has not been large enough to significantly impact the total number of unrepresented cases. Instead, it has resulted in the unrepresented numbers stabilizing.



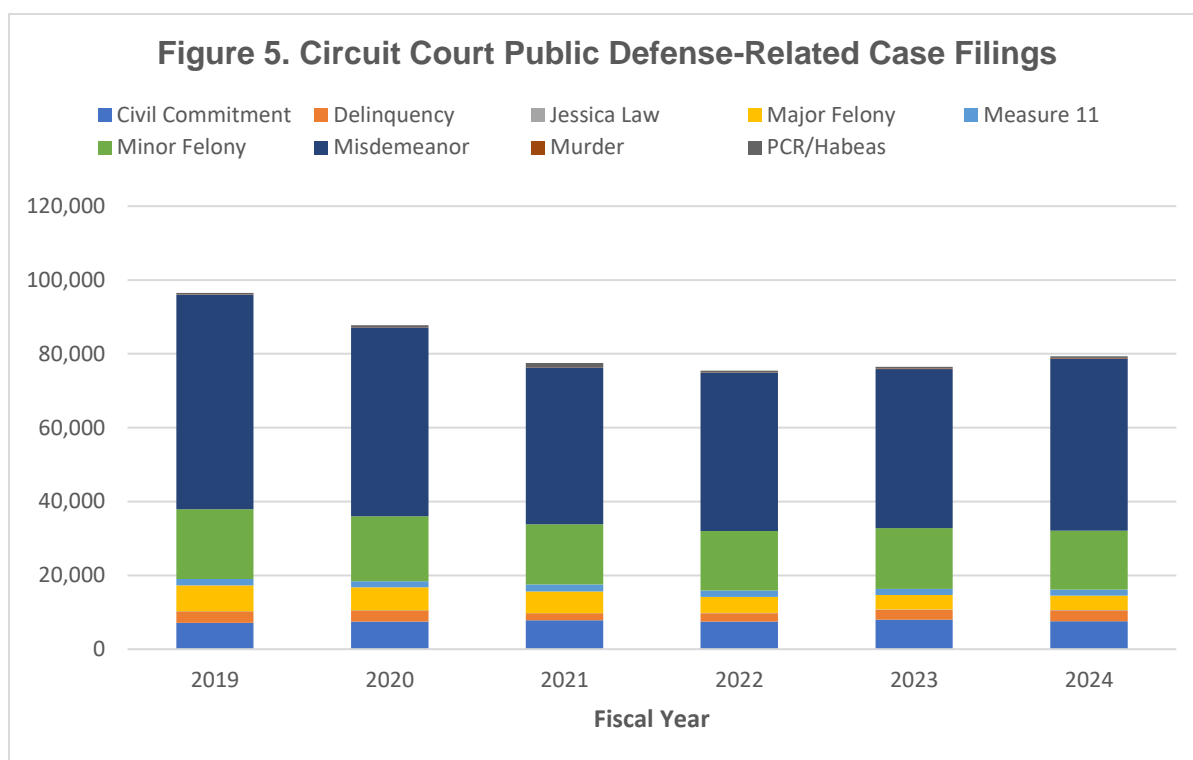
Source: OJD Odyssey Data (eCourt).



Source: OJD Odyssey Data (eCourt).

Public Defense-Related Case Filings

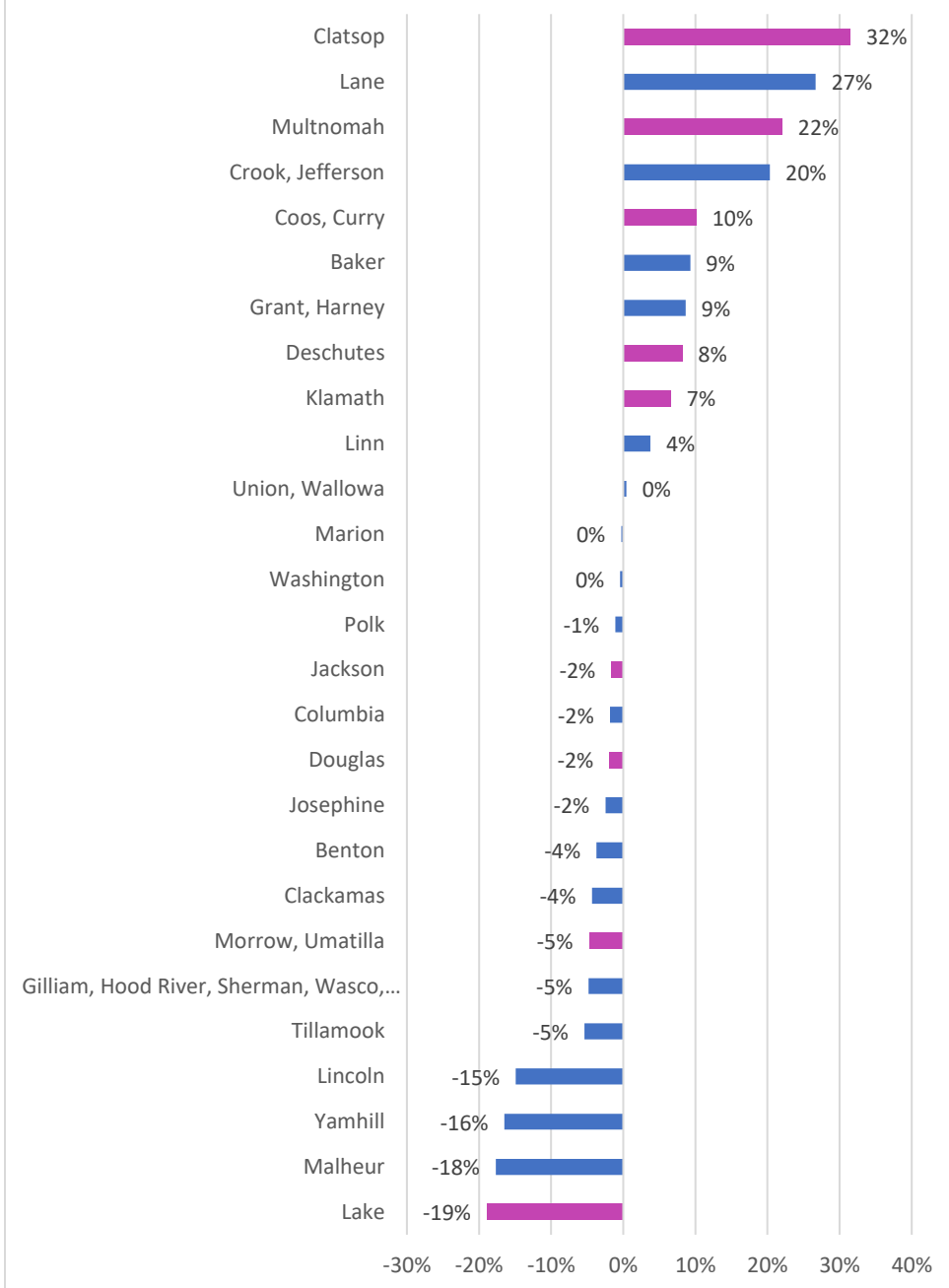
Figure 5 shows circuit court case filing trends for cases that typically involve a public defender. Filings remain below 2019 levels but have increased over the past two fiscal years. In fiscal year 2023 case filings increased statewide by 1.4% and in fiscal year 2024 increased another 3.7%. We project this trend will continue in fiscal year 2025. The overall increase is primarily due to an increase in misdemeanor filings with 3,577 additional filings in fiscal year 2024 compared to 2023. Other case types saw a decrease or small increase in filings.



Source: OJD Odyssey Data (eCourt).

Judicial districts have seen different increases or decreases in case filings. Figure 5 shows the one-year change in cases filed by judicial district from FY 2023 to FY 2024. Unrepresented “hot spots” (counties with recent increases in the number of unrepresented individuals) are highlighted in pink (Marion is not highlighted because there was no change in case filings from FY 2023 to FY 2024; however, they have had a recent increase in the number of unrepresented individuals). Some increases in filings are due to recent hires in district attorney offices that were previously short-staffed. Filings fluctuate in individual judicial districts from year to year – Multnomah and Linn counties are the only jurisdictions where filings increased in both years.

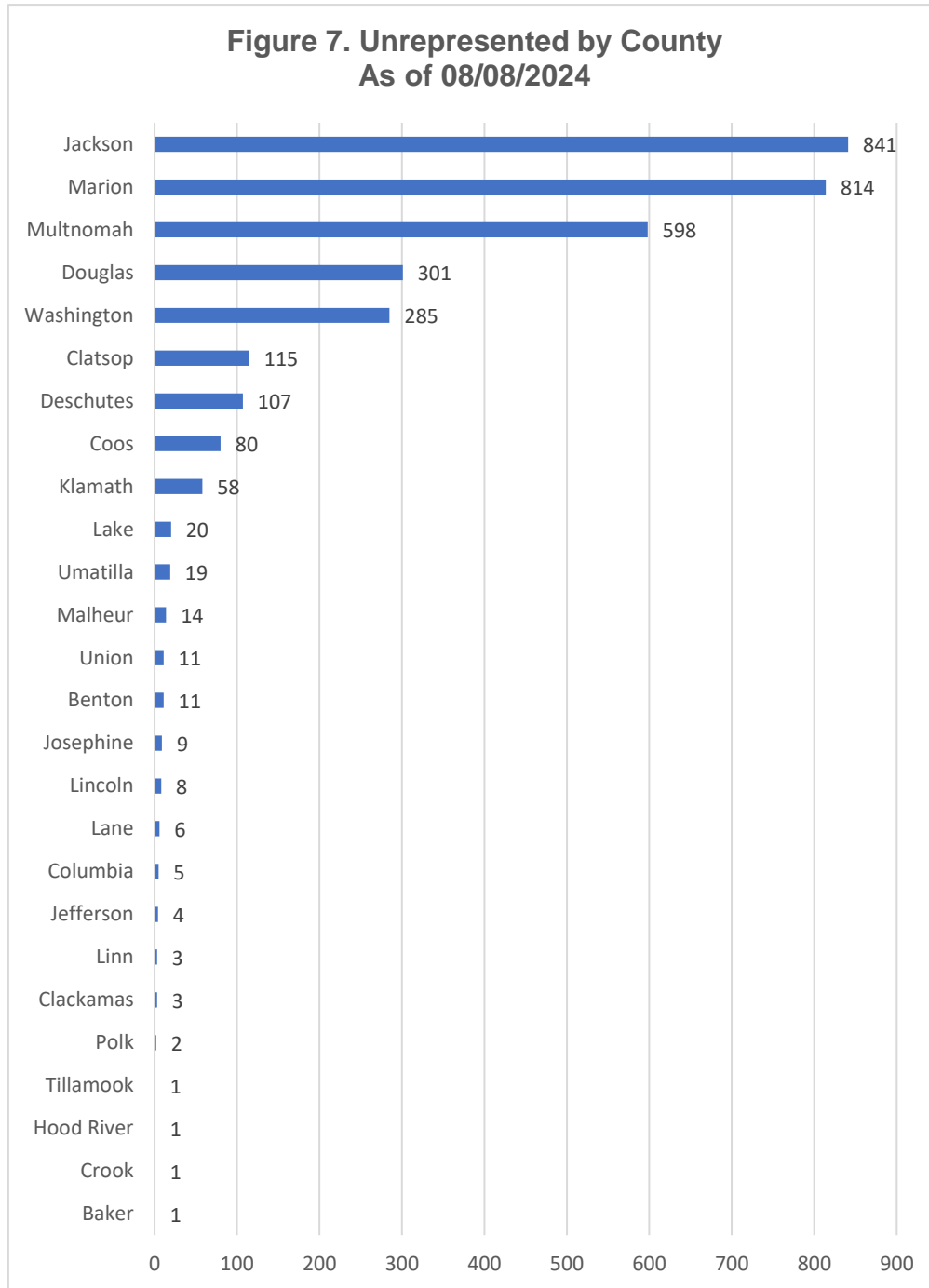
**Figure 6. One-Year Change in Public Defense-Related Cases Filed
FY 2023 to FY 2024 by Judicial District**



Source: OJD Odyssey Data (eCourt).

Unrepresented by County

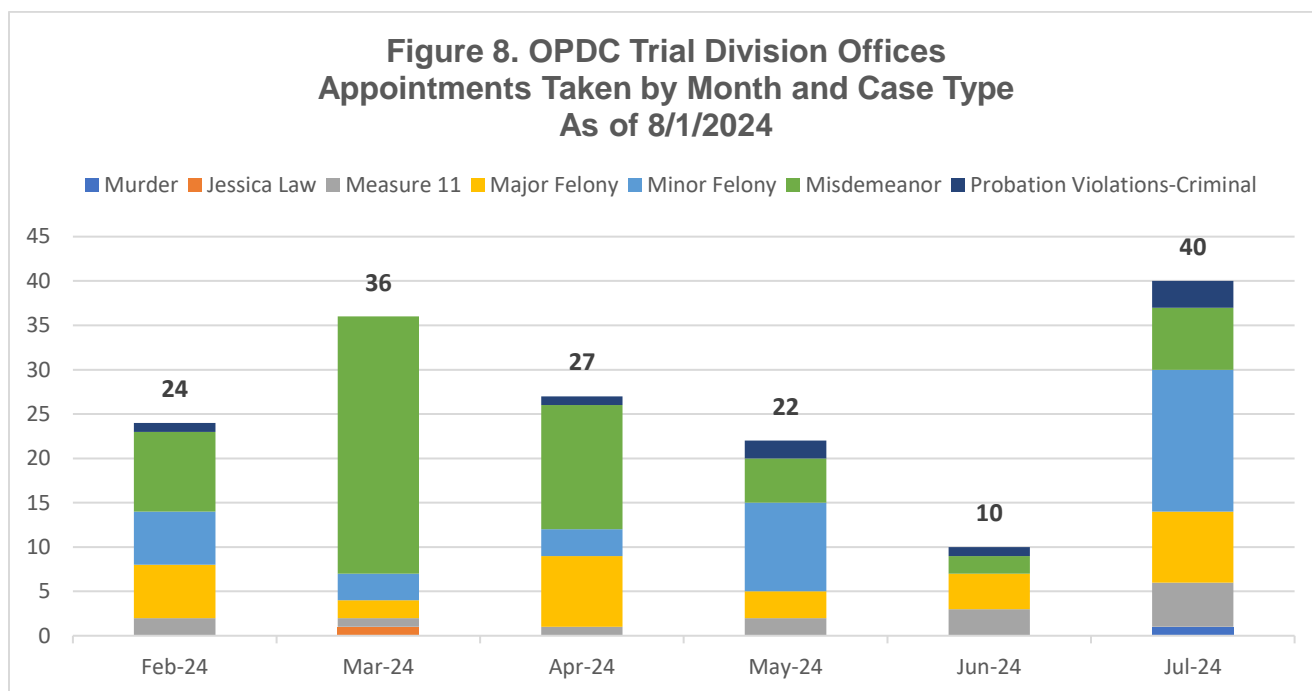
Figure 7 shows the number of unrepresented individuals by county. Jackson continues to have the highest number of unrepresented individuals. Marion has seen an increase in its unrepresented individuals by 275 since April 15, 2024. Josephine has had the same nine cases on the unrepresented list since November 2023.



Source: OJD Odyssey Data (eCourt).

OPDC Trial Division Offices

Figure 8 shows the **287** new appointments taken since the first OPDC Trial Division Office opened in December 2023, by case type. The trial division attorneys have primarily taken misdemeanor and minor felony cases. They have taken one murder case.



Source: OJD Odyssey Data (eCourt).

Data Share Update

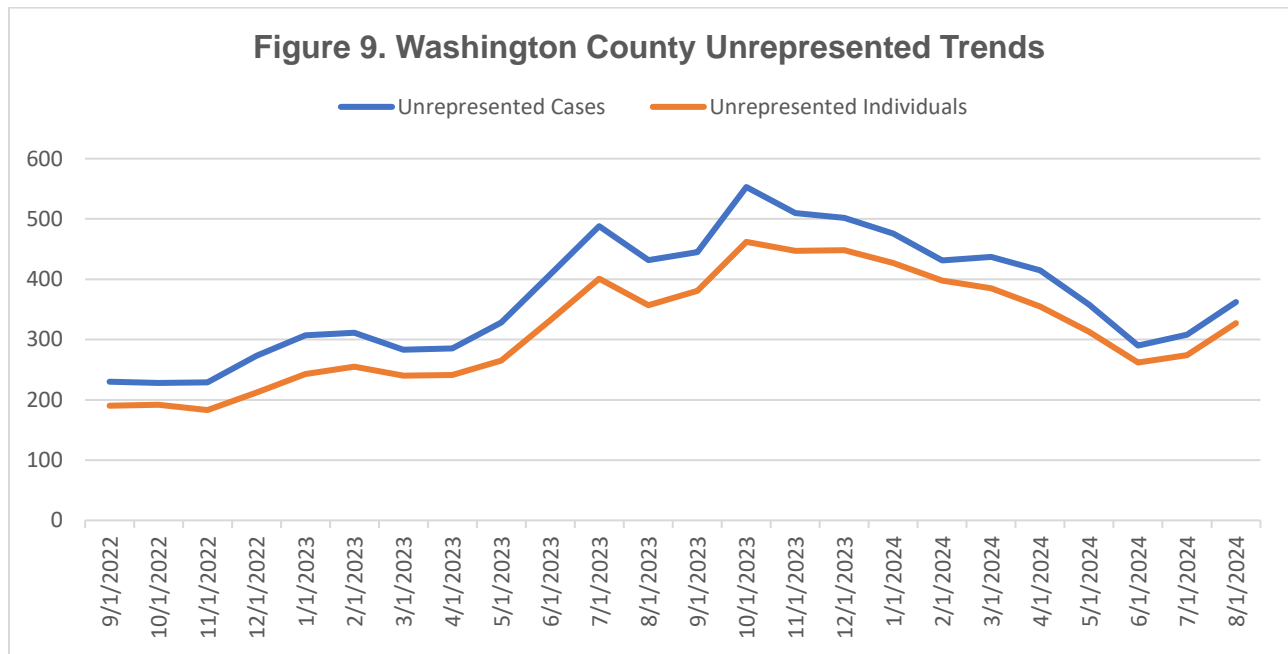
OJD and OPDC continue to meet weekly to collaborate on enhancing data quality and creating efficiencies. We have been able to create a new shared dashboard so courts can view where OPDC is in the process of assigning attorneys to unrepresented cases. OJD also is working with OPDC and the executive branch to assist in OPDC's technology transition to that branch.

Local Court Spotlight

Washington Unrepresented Trends

Washington County (along with Multnomah and Marion Counties) has been “ground zero” for Oregon’s Unrepresented Crisis for more than three years. Since the onset of the crisis, the court implemented several interventions to manage it prior to the SB 337 crisis plans. The local public defense service providers consist of Metropolitan Public Defender, Oregon Defense Attorney Consortium, and various private firms and individual attorney contractors. Some providers lost major-felony qualified attorneys in the past two years and have not been able to take as many major felony cases. Figure 9 shows the number of unrepresented cases in Washington declined steadily from October 2023 to May 2024. In June 2024, the number of unrepresented cases began to increase again.

The first federal court order in *Betschart et al. v. Garrett et al.*, No. 3:323-cv-01097-CL was issued on August 12, 2023 and applied only to Washington County. That order, combined with staffing issues at the Washington County jail, have resulted in fewer in-custody unrepresented defendants in Washington County. However, as seen in Figure 10, the decrease in in-custody unrepresented defendants corresponded with an increase in out-of-custody unrepresented defendants.



Source: OJD Odyssey Data (eCourt).

