

Oregon Public Defense Commission

Public Safety Subcommittee

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Oregon Public Defense Commission: Unrepresented Crisis Report

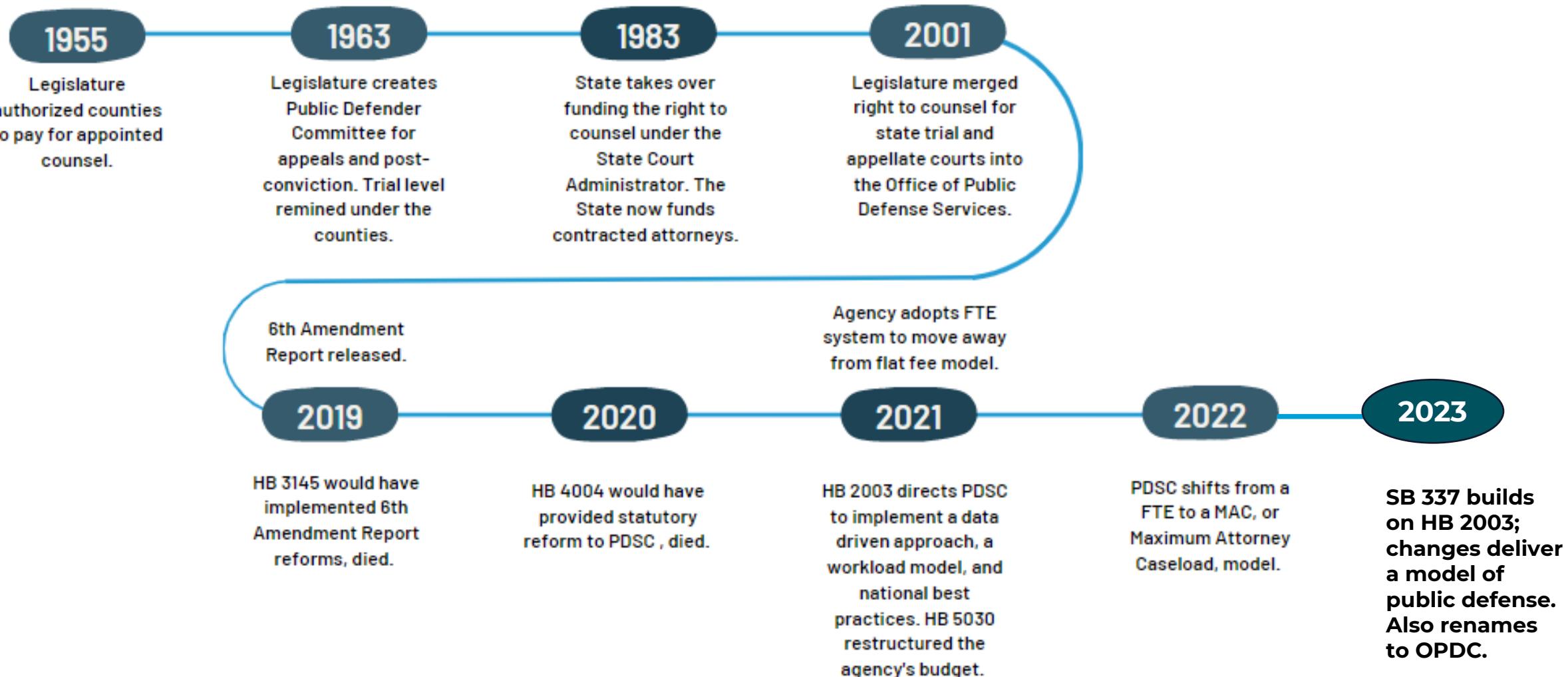


Unrepresented

- How did we get here?
- Budget
- By the Numbers
 - Current Status
 - Providers
- Short Term Plan
- Long Term Plan

How did we get here? Public Defense in Oregon

AGENCY OVERVIEW



6th Amendment Report

HB5201 (2018): "The Commission will work with the American Bar Association for a study to develop standards for the time attorneys need to adequately represent clients in various case types, and to develop associated workload/caseload standards. The Commission will also work with the Sixth Amendment Center to assess the status of public defense services in the state."

Findings:

1. The State has created a complex contracting bureaucracy to delivery public defense services, which lacks sufficient oversight and financial accountability.
2. The fixed-fee case credit model is a conflict of interest, in that it pits the financial self-interest of the attorney against the due process rights of their clients.
3. The composition of the PDSC does not adhere to national public defense standards.
4. The State has no oversight of the right to counsel in municipal, county, and justice courts.

Legislative Restructures

In 2021 the legislature passed two bills impacting agency operations.

- **HB5030**: Restructured agency's budget from 3 categories to 8 and required regular reporting.
- **HB2003**: Restructured the commission to require increased data collection, implement national best practices, and create a workload model.

In 2023, **SB337** passed, significantly reforming how public defense is and will be provided in Oregon.

Legislative Restructures

SB337 does three main things:

- Changes the makeup and appointment process for the Commission.
- Moves the Commission to the Executive branch of government.
- Changes the delivery model of public defense.
 - By July 1, 2027, public defenses in Oregon will be either A) State employees B) employed at a non-profit C) paid hourly as part of panel of qualified counsel.

What is MAC?

Maximum not a Mandate.

- If MAC were a mandate, it would be a flat fee model;
- Ethical standards of representation.

300 misdemeanors/year weighted.

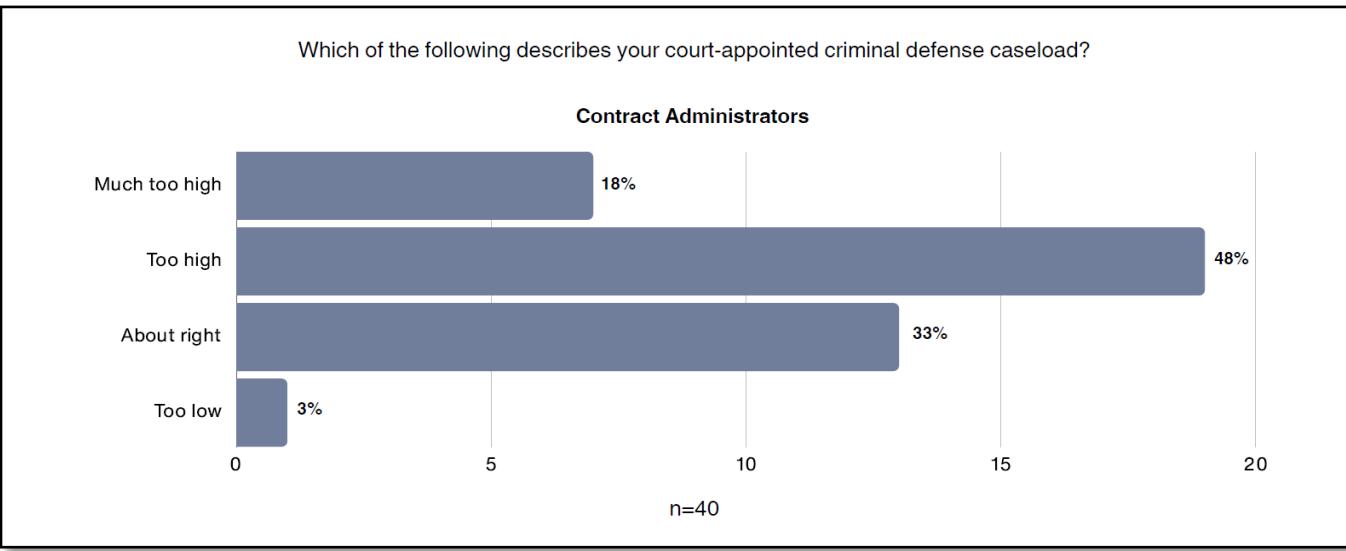
- Based on 2021 the Oregon Study + Washington's annual caseload limits;
- 2023 national Rand study recommends half current of MAC standards.

Individual MAC= (300 Weighted Cases x Percent FTE x Percent of Year under Contract)

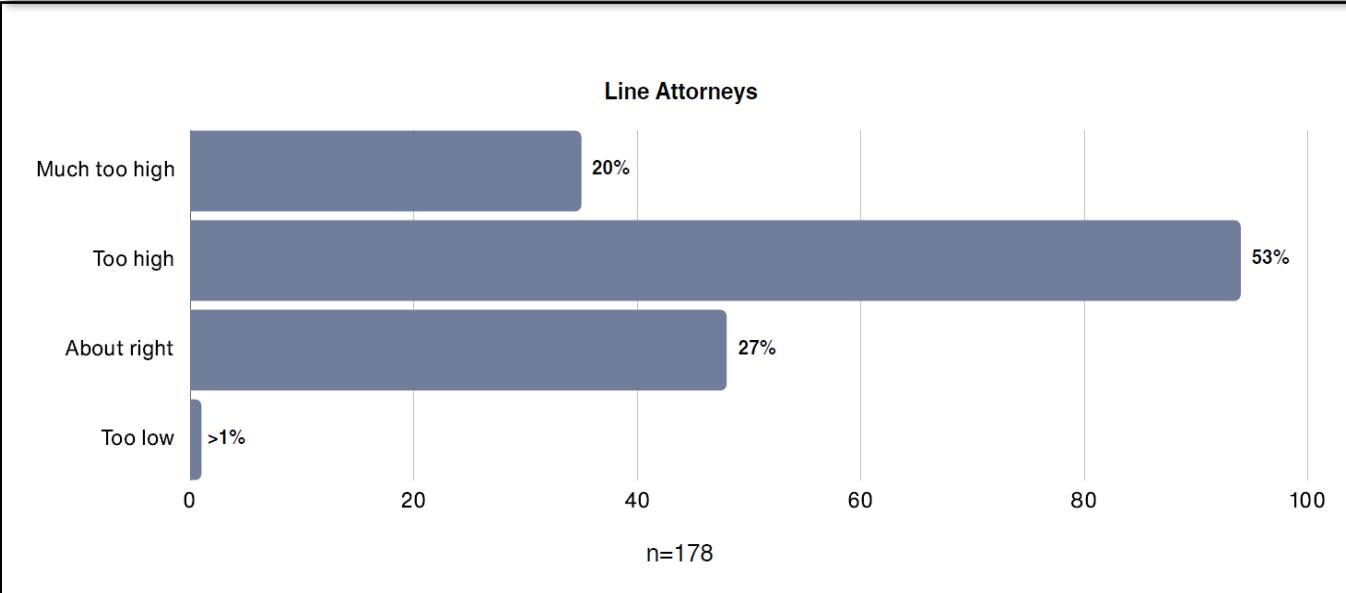
- An attorney who works full-time on public defense cases is considered a 1.0 MAC, but if that full-time public defender joins a contract halfway through a year, then they can only take 6 months of a MAC (150 weighted misdemeanors).

Maximum Attorney Caseload (MAC) is the maximum number of cases a public defender can take per year.

What do the Attorneys say about Caseloads?



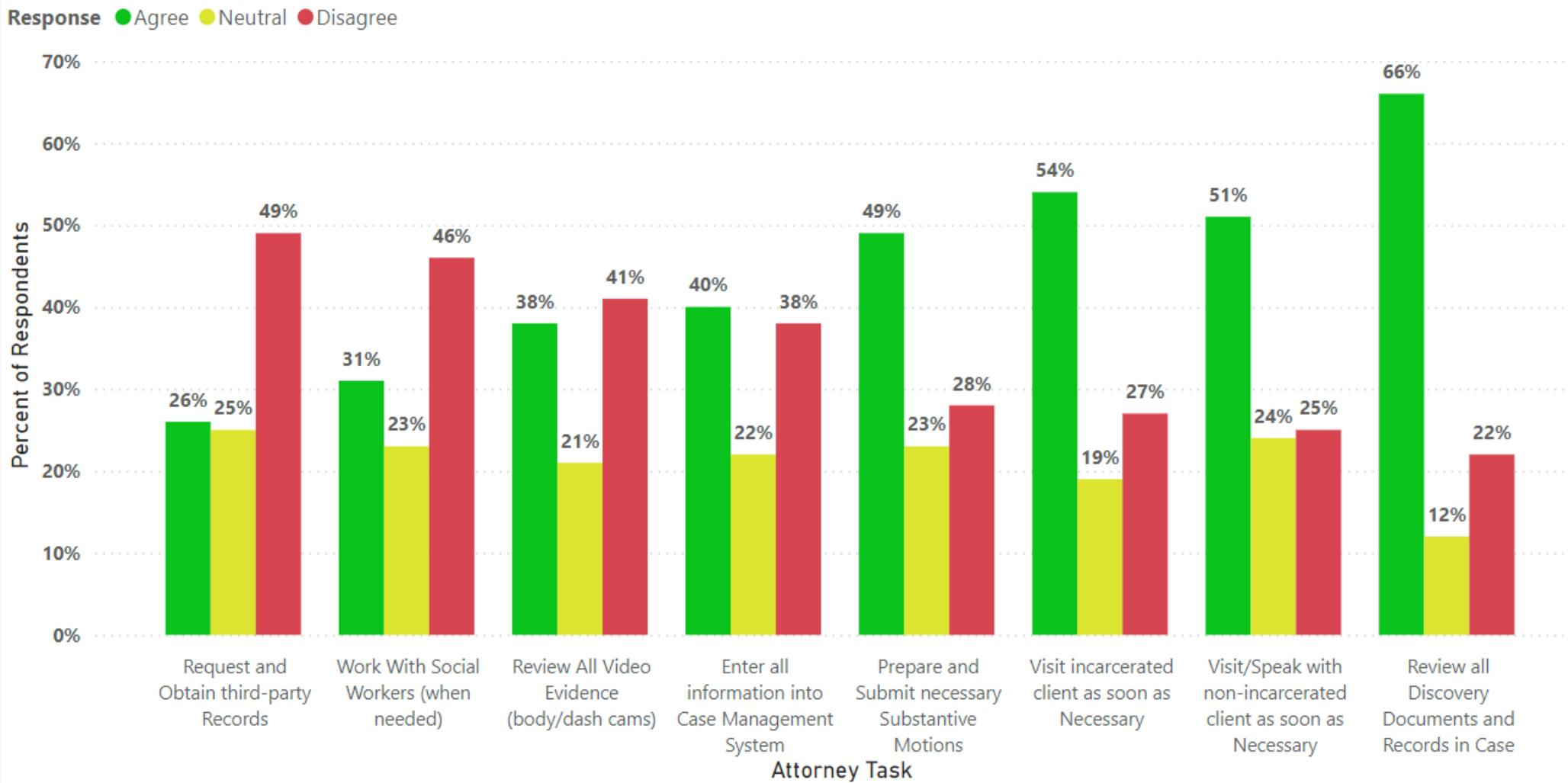
Contract Admins:
66% said "Too High"



Contract Attorneys:
73% said "Too High"

Impact of High Caseloads on the Work

"When representing a Client in a Case, I generally have enough time to..."



Sample: 252 Attorneys (40 Contract Admins, 178 Contract Attys, 34 Hourly Attorneys)

Definitions

Workload Model

SB 337 directs OPDS to adopt a statewide workload plan.

Different Models

Annual Caseload: Caseload maximum for all providers, MAC

Open Caseload: How many cases a provider has at a given time, PCRP

Workload Model: Controls the amount of work and attorney is doing, hourly.

"The **workload** of appointed counsel must be controlled to permit effective representation.... The commission may develop **workload** controls to enhance appointed counsel's ability to provide effective representation." **SB 337 Section 3(2)(b)**

Public Defense Nationally

Public defense systems nationwide are facing similar challenges of lack of attorneys and/or unrepresented persons.

[Staffing shortages, crushing workloads make public defenders' jobs 'impossible' \(tucson.com\)](#)

[WA's public defender system is breaking down, communities reeling | The Seattle Times](#)

[Colorado's public defenders say they need 200 more attorneys - The Colorado Sun](#)

[Maine is seeing an indigent defense crisis. Not enough attorneys. | newscentermaine.com](#)

Budget

Legislative Investments

Below is an accounting of resources the Legislature has allocated to the crisis for unrepresented specific programs. This does not include the funding of current service level MAC, Preauthorized Expenses (PAE), or Court Mandate Expenses (CME).

A breakdown of investments is provided in the full report.

	21-23 Biennium Legislative Budget	21-23 Biennium Actuals	23-25 Biennium Legislative Budget	23-25 Biennium Actuals
Totals	\$ 19,400,000	\$ 19,394,200	\$34,766,590	\$18,635,490

Results

The results of all programs cannot necessarily be counted by the number of cases taken. OPDC does try to measure both quantitative and qualitative metrics when possible. Below are programs that had a direct case count associated with them. See the report for a breakdown by all programs.

Program	Cases Taken	Notes
10 additional MAC	1696	Case estimate based on 13 C Felonies/MAC/Month for 10 MAC funded for 15 months. Includes an 87% utilization rate.
THIP	6774	As of Sept. 19, 2024. This case count represents the total of all THIP and some hourly investments.
State Trial Offices	539	As of Sept. 18, 2024.

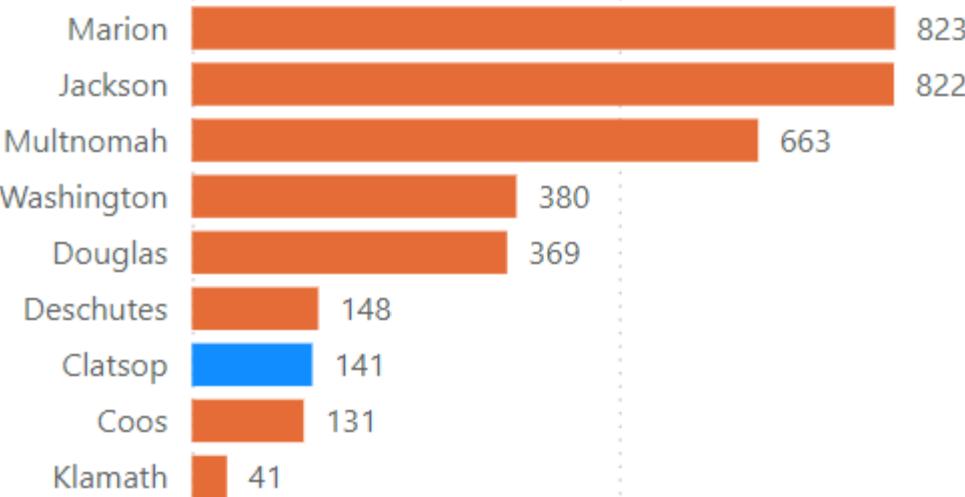
By the Numbers

Unrepresented

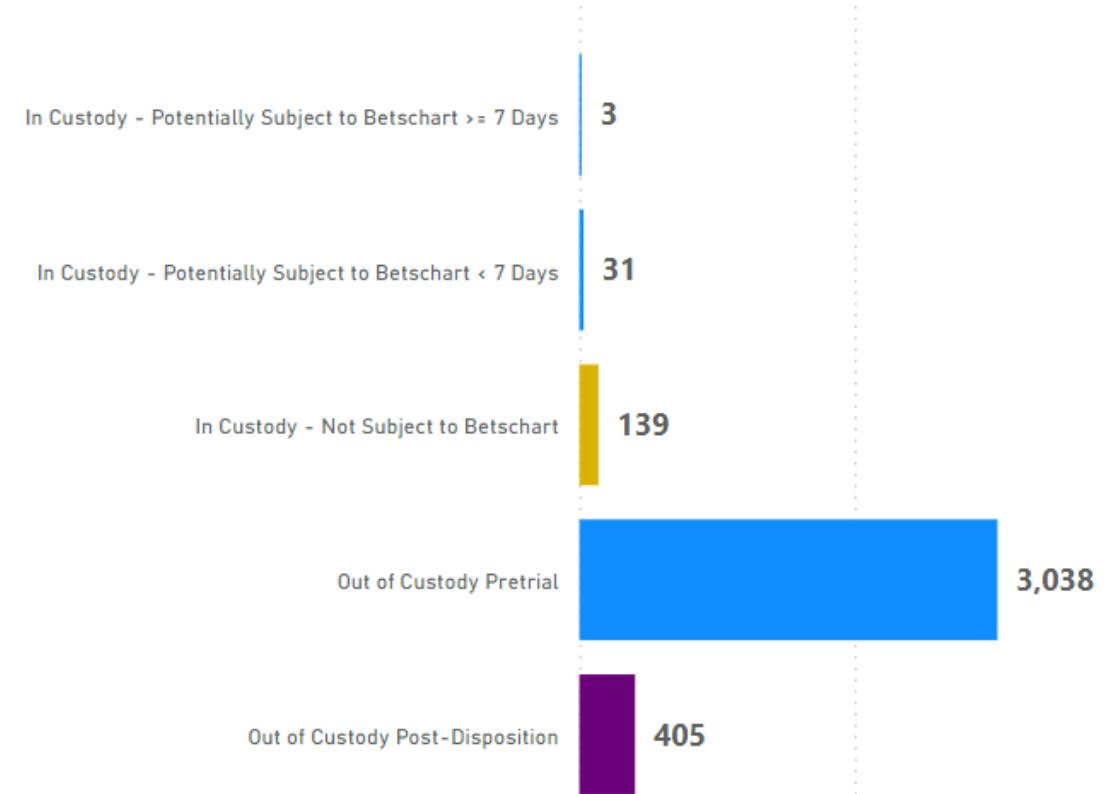
Unrepresented Statewide

Unrepresented By County

Orange Counties Required to Convene Crisis Teams (CJO 23-024)



Unrepresented By Category

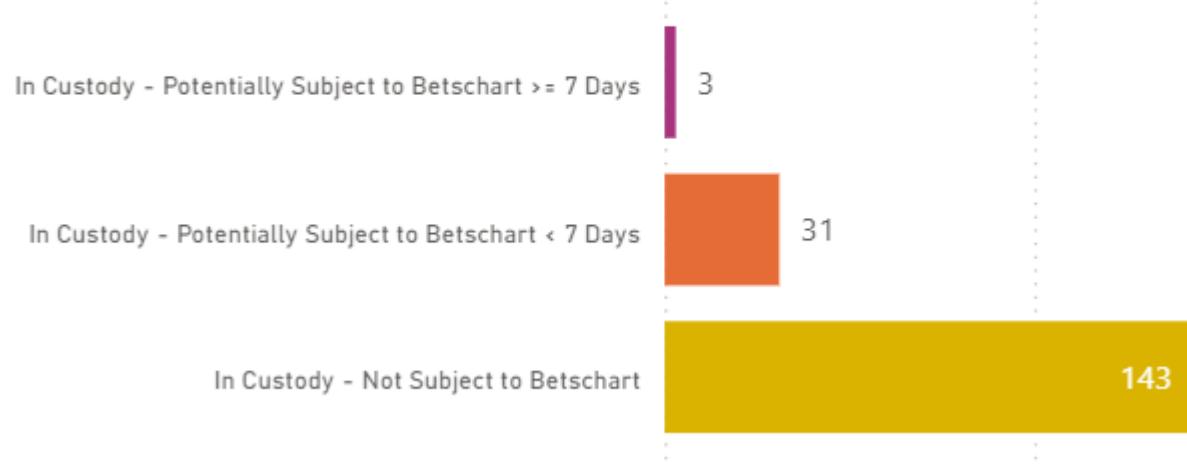


Data taken 9/19 from OJD's Public
Unrepresented Dashboard

Unrepresented

Unrepresented In-Custody Statewide

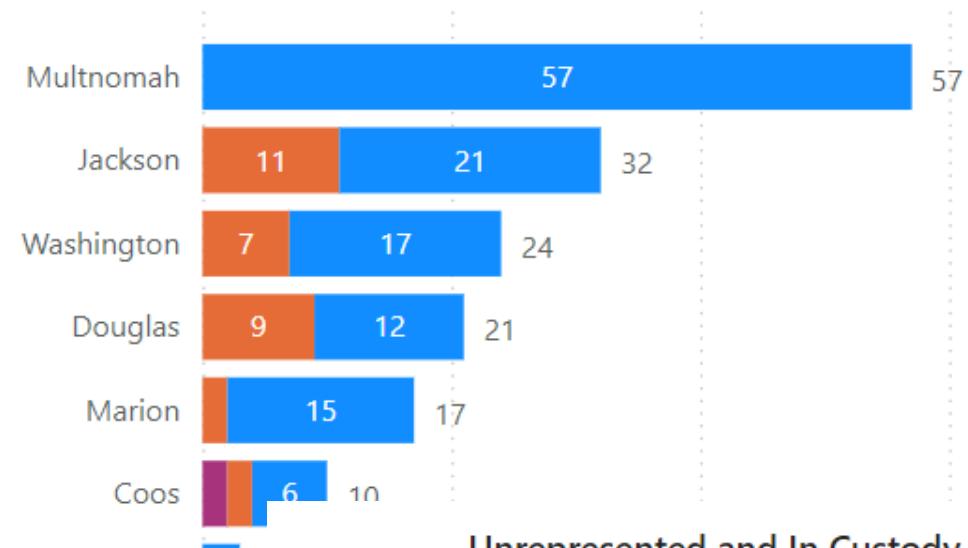
Unrepresented and In Custody



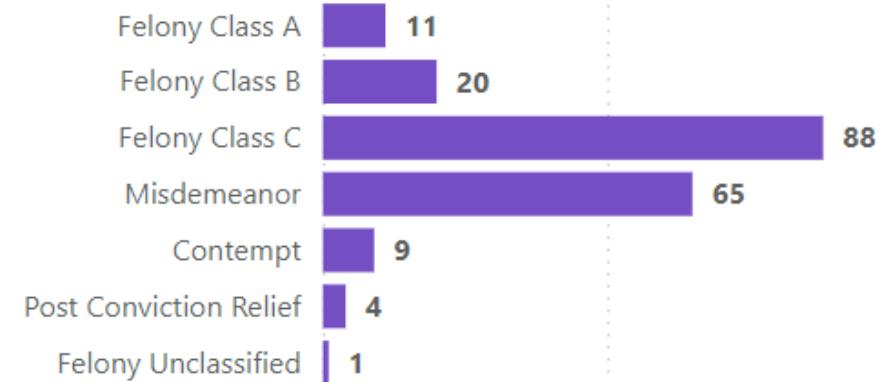
Data taken 9/19 from OJD's Public Unrepresented Dashboard

Unrepresented and In Custody By County

● In Custody - Potentially Subje... ● In Custody - Potentially ... ● In Custody - Not S...



Unrepresented and In Custody By Offense Group or Case Type

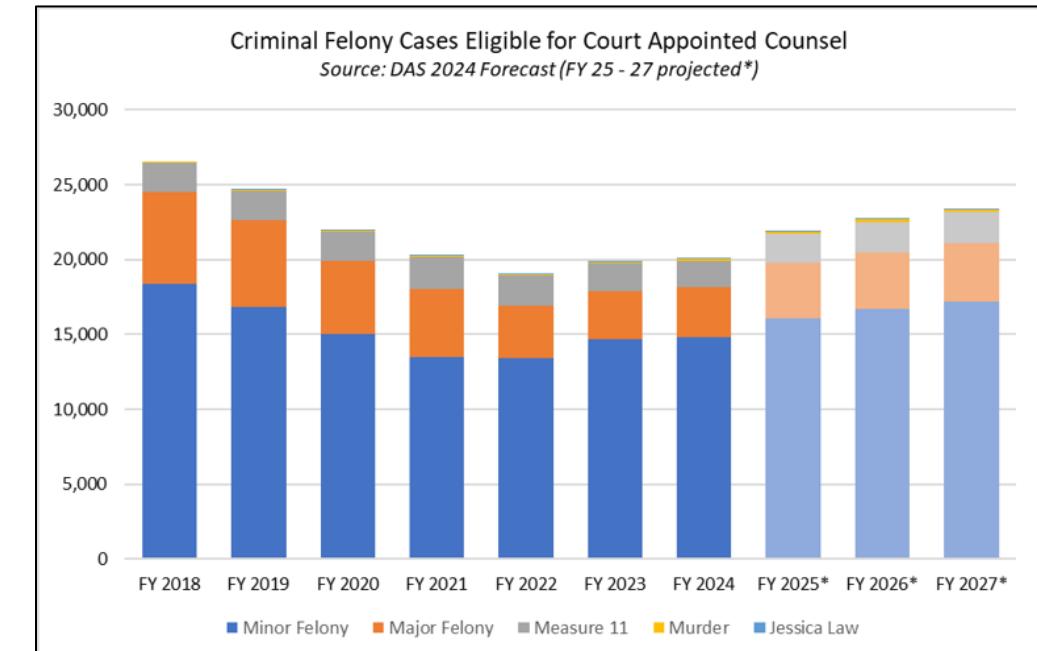
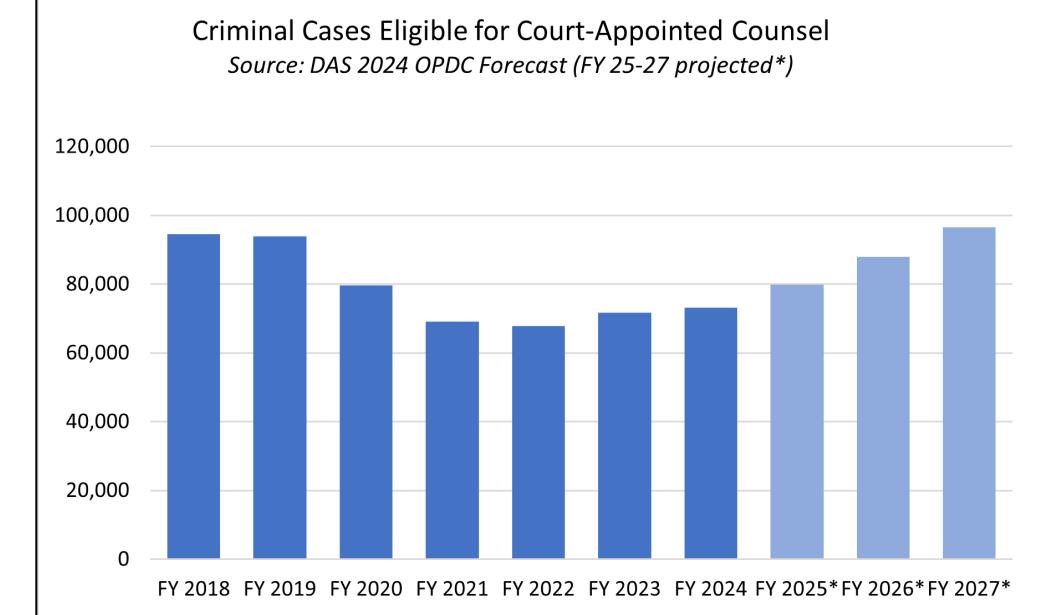


Background

Public Defense Criminal Caseloads

DAS Forecast

- Provides OPDC view of cases eligible for court-appointed counsel
- Forecast Shows Newly appointed cases (not open workload)
- Updated forecast coming in the next month

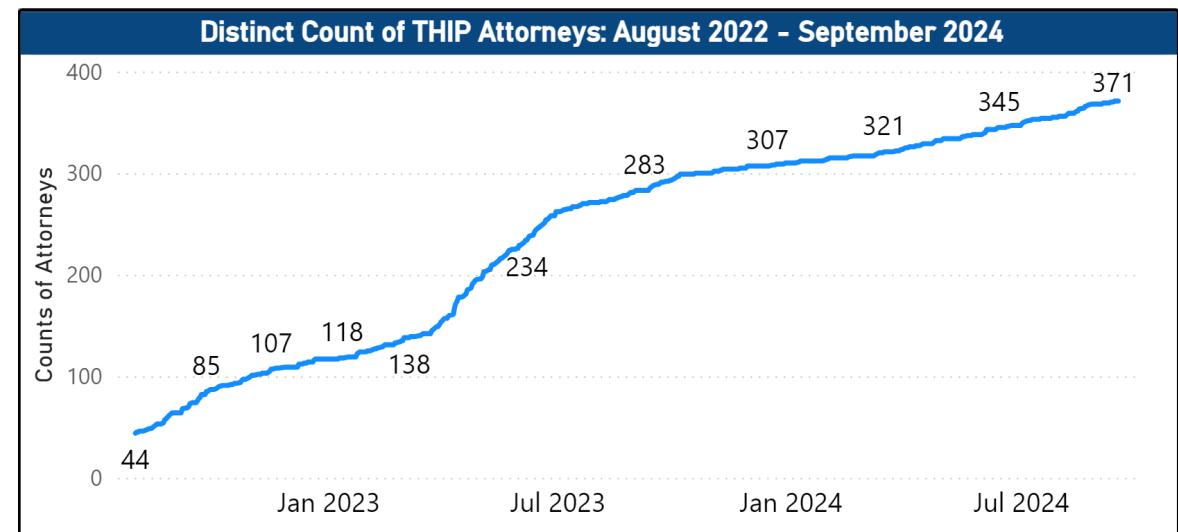
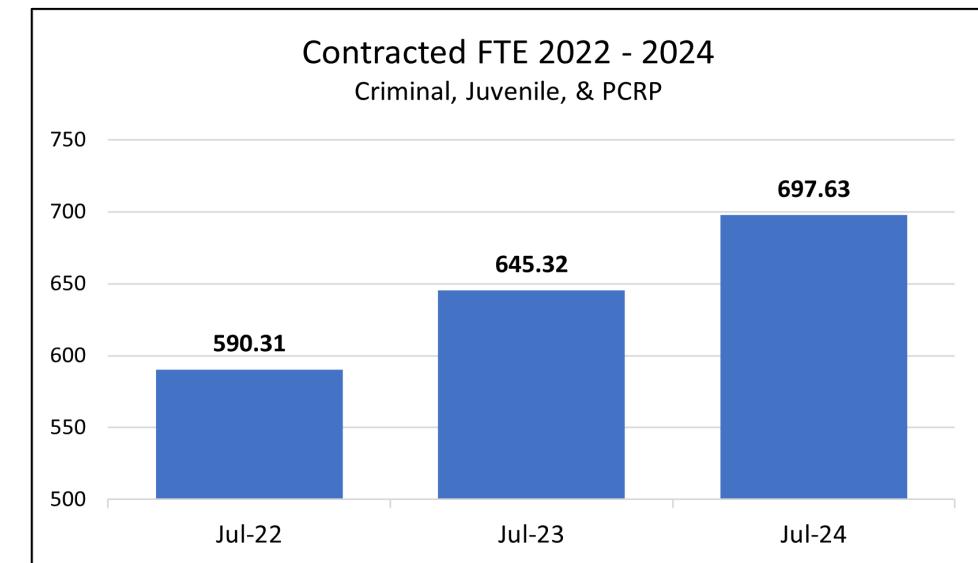


System Capacity

Public Defense Providers

- Contract Attorneys (FTE)*
- Hourly Attorneys*
- State Trial Division Attorneys

Trial Division Attorneys	
Contractor Name	Count
Central Valley Trial Division - OPDC Trial	6
Northwest Trial Division - OPDC Trial	4
Southern Trial Division - OPDC Trial	4
Total	14



*Attorneys can be both a contract provider and an hourly attorney

System Capacity

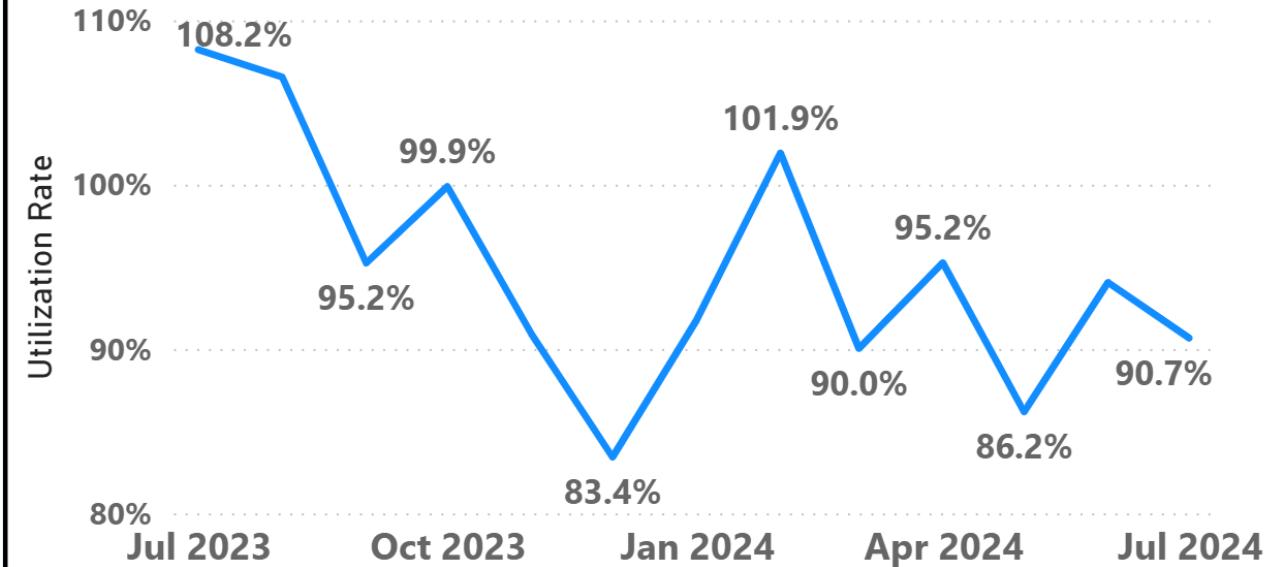
Contractor Utilization

- Reported MAC: July 2023 – July 2024
- Based on Self-reported contractor caseloads
- Only Appointments get calculated as "Reported MAC" (no open cases)
- Prorated MAC: Attorney capacity based on portion of FTE *devoted to client representation* (excludes Training, Supervision, and Spec. Courts), accounting for Attorney specific start and end dates
- Ex. "Attorney A" is 1 MAC for 6 months and switches to 0.5 MAC for 6 months. This equals a 0.75 Prorated MAC.

Criminal MAC Utilization OPDC Contract Data July 2023 - July 2024

ENTITY	Reported MAC	Prorated MAC	Utilization
Consortium	178.3	186.2	95.8%
Firm	52.9	54.5	97.0%
PD	163.0	198.0	82.3%
Sole Proprietorship	5.8	6.2	93.5%
Total	400.0	444.9	89.9%

Criminal MAC Utilization Rate (July 2023 - July 2024)



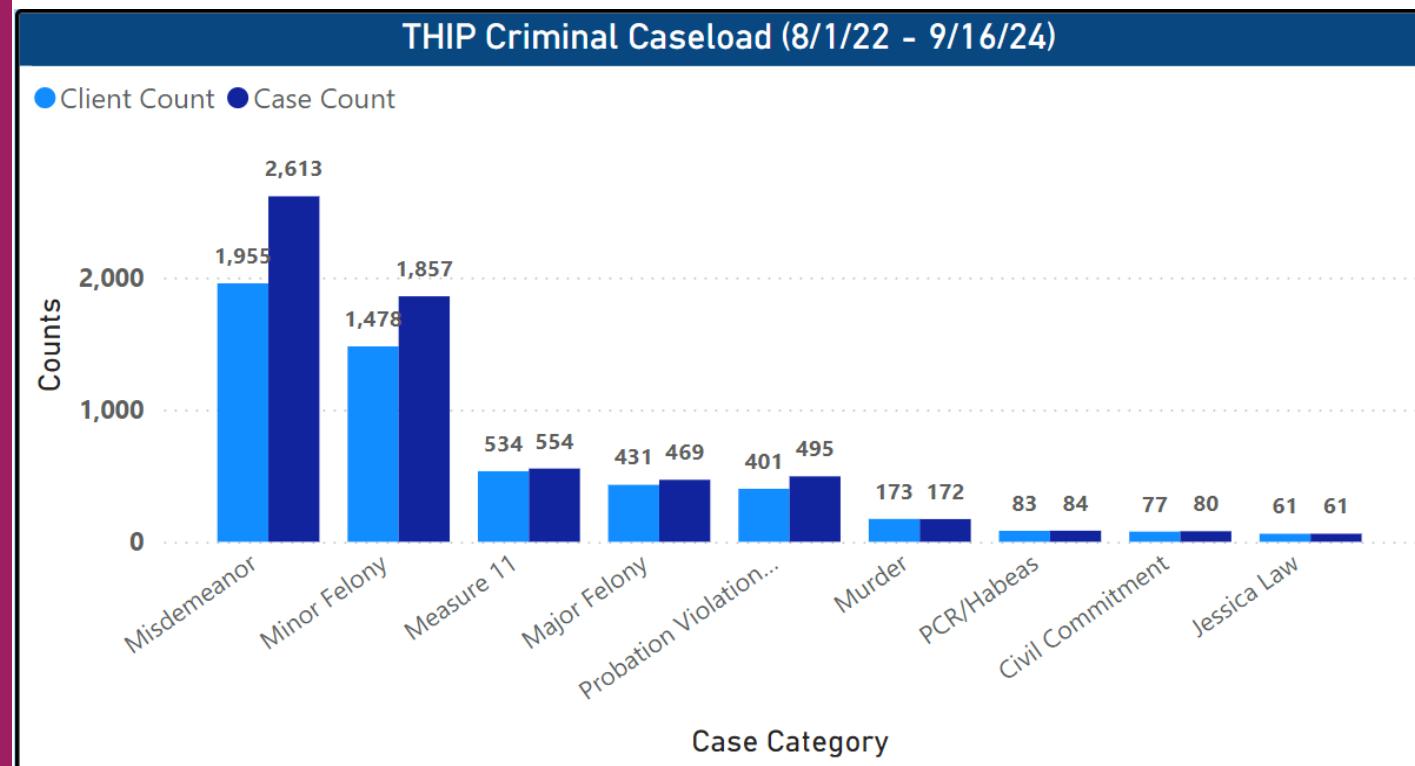
Excluding Statewide Contractors

System Capacity

THIP

- Temporary Hourly Increase Program
- Incentivize Private bar appointments to Unrepresented Cases

Hourly Rate	"Soft Cap"	Case Type
\$164	\$10,000 to \$50,000	Misdemeanor, contempt, and probation violation; Class C felony and felony drug possession; Class A and B felony, juvenile delinquency, juvenile probation violations, habeas corpus, post-conviction relief, civil commitment, and Psychiatric Security Review Board cases; waiver co-counsel; discretionary co-counsel; material witness representation; fugitive/extradition; appeals
\$175	\$50,000	Ballot Measure 11 and felony sex offense; Juvenile delinquency cases in which underlying charge is equivalent to BM11 or felony sex offense.
\$200	\$75,000	Murder and Jessica's Law (including mandatory co-counsel); capital appeals/PCR; cases subject to ORS 137.719 and ORS 137.690.
The investigation and mitigation rate on cases assigned under this program is \$75/hour.		



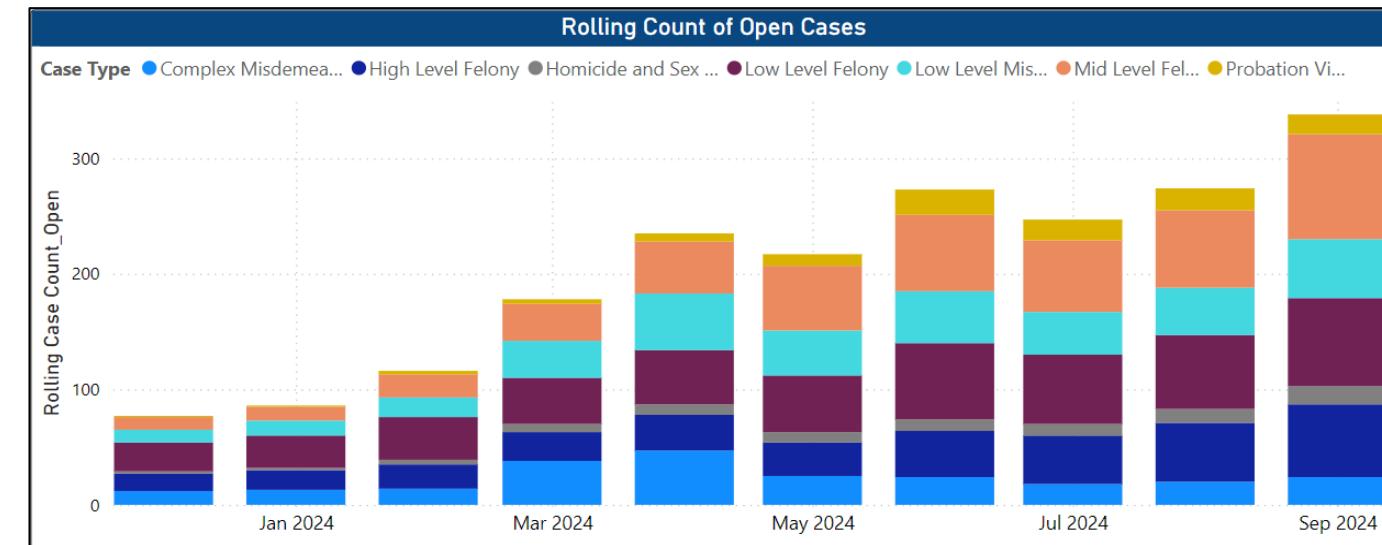
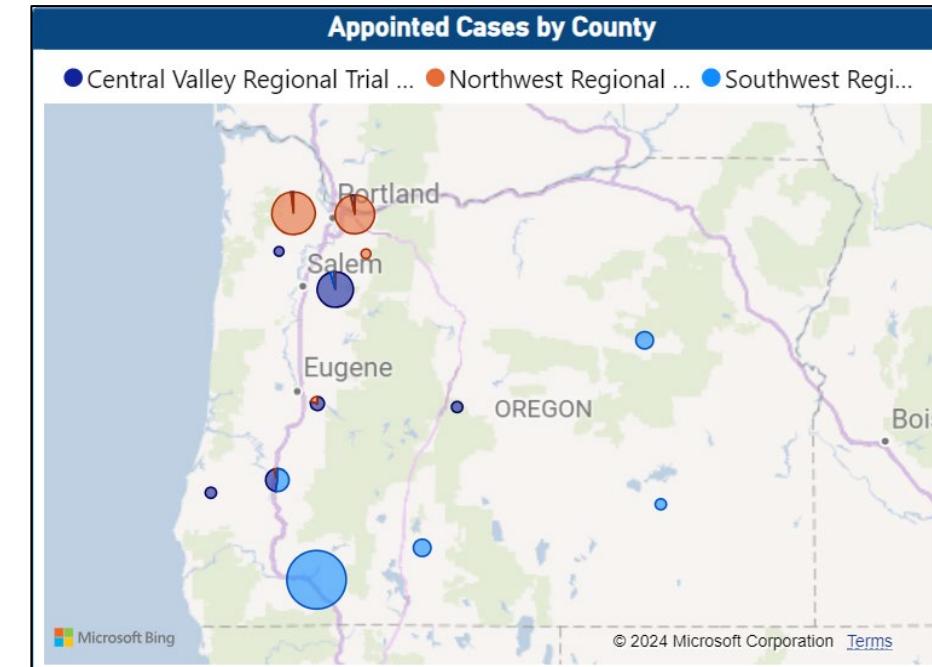
System Capacity

State Trial Offices

3 offices with a total of 14 attorneys

- Each office has support staff, investigators, and soon case managers

OPDC State Trial Office Cases		
Office Location	Open Cases	Closed Cases
Central Valley Regional Trial Division	84	12
Northwest Regional Trial Division	148	43
Southwest Regional Trial Division	127	125
Total	359	180



OPDC's Unrepresented Plan

OPDC's Plan

Unrepresented Plan

- 90-Days
- 25-27 Biennium
- 6-Year Plan

OPDC's objective is to eliminate the in-custody unrepresented list by the end of March 2025 and the out-of-custody list by the end of March 2026.

We believe we can accomplish this by implementing the initiatives in the plan.

See the full plan and attachments [here](#).

Unrepresented Plan

90-Days

Unrepresented Plan

- **90-Days**
- 25-27 Biennium
- 6-Year Plan

- **Utilize unused HB 4002 attorney capacity and discuss with partners the possibility of redirecting**
- **HB 4002 attorneys to prioritize unrepresented in-custody cases**
- **Work with public safety partners on case resolution dockets;**
- **Request funding from the Emergency Board to:**
 - **Extend the policy that pays an increased rate for attorneys representing persons in custody without counsel (THIP) through the end of the biennium;**
 - **Establish a state trial office serving the Southwest;**
 - **Add assignment coordination staff within OPDC to identify lawyers more quickly for in-custody defendants;**
 - **Add an additional 25 C-felony qualified Maximum Attorney Caseloads (MAC) positions to existing criminal contracts around the state.**

Unrepresented Plan

25-27 Biennium

Unrepresented Plan

- 90-Days
- **25-27 Biennium**
- 6-Year Plan

In the intermediate term, OPDC is requesting the following through Policy Option Packages (POP) for the 2025-2027 biennium:

- **Implement Phase 1 of OPDC's workload model for criminal and juvenile caseloads, including adding support staff to shift non-lawyer work away from lawyers;**
- **Additional accounts payable and preauthorized expenses staffing;**
- **Invest in recruitment and retention;**
- **Increase and stabilize the hourly panel attorney and investigator rates;**
- **Continue to expand the state trial office divisions to meet the SB 337 requirements.**

Unrepresented Plan

6-Year Plan

Unrepresented Plan

- 90-Days
- 25-27 Biennium
- **6-Year Plan**

OPDC has adopted a 6-year plan to build, stabilize, and maintain the public defense workforce as a long-term solution to these issues.

While this plan is focused on immediate and near-term solutions, addressing the underlying problems within Oregon's public defense system is the only way to fully resolve this crisis.

Without investments in long-term solutions, the interventions above will only be stopgap measures, and the cycle will continue.

OPDC's 6-Year Plan

Replaces current Maximum Attorney Caseload (MAC) model with National Public Defense Workload Study annual caseload;

Implements hourly time keeping for contracted public defenders;

Adds public defense lawyers;

Adds core staff to public defense contracts.

The 6-Year Plan will allow OPDC to implement the statutorily required workload model. See the full plan [here](#).

Thank you

