

Implementing Judicial District Unrepresented Defendant Crisis Plans

**Presented to the Joint Emergency Board Interim Subcommittee on
Public Safety**



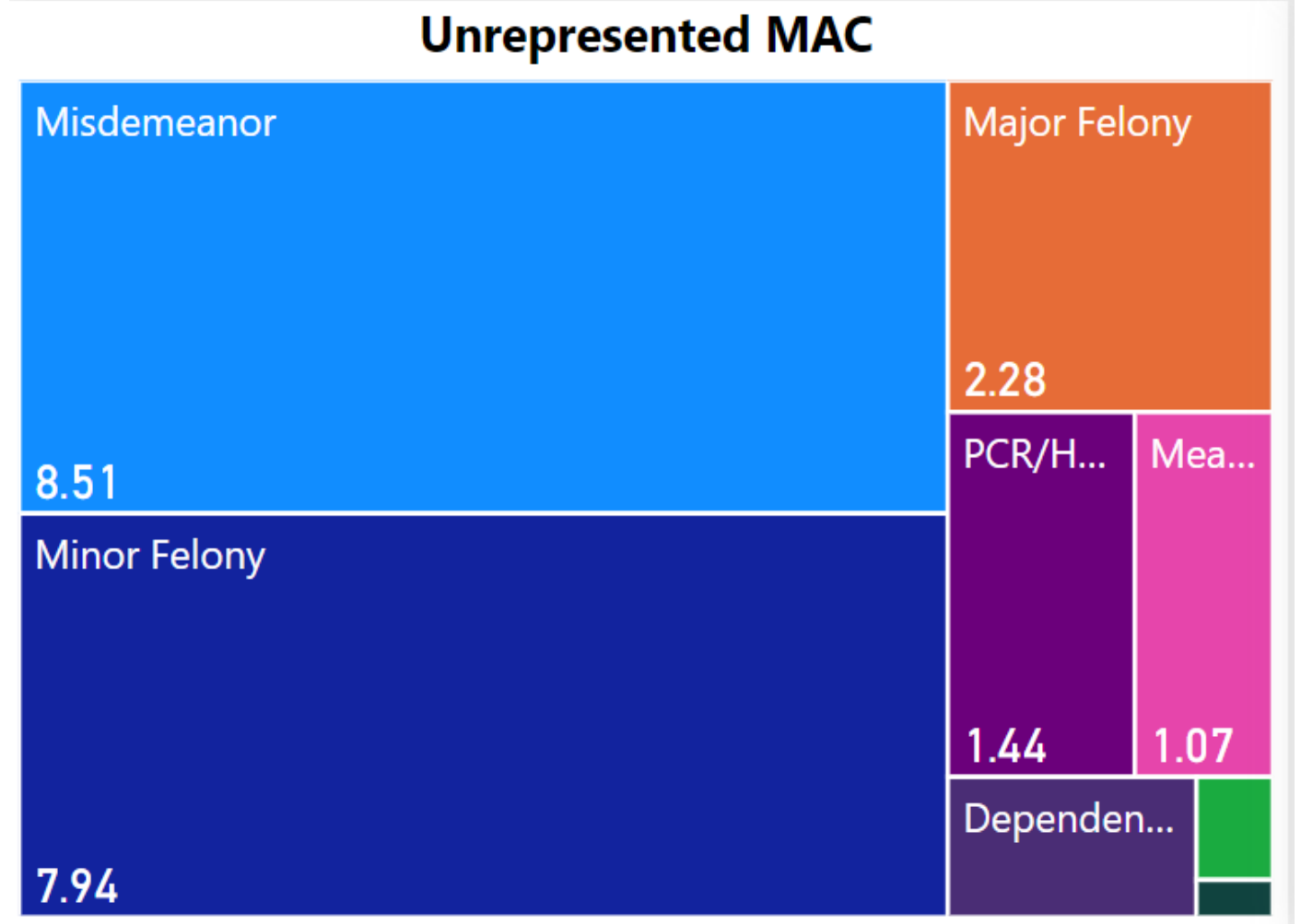
September 23, 2024

Background & Current Status

- SB 337 (2023) directed presiding judges in counties with a population over 100,000 to develop and implement crisis plans.
- Chief Justice Order (CJO) 23-024 launched the process, adding counties with populations below 100,000 that had unrepresented individuals.
- The number of unrepresented individuals continues to grow.
- Courts continue to hear that defenders cannot take cases because attorneys are already “at their MAC” limit or are not prepared to take an additional case due to ethical considerations.

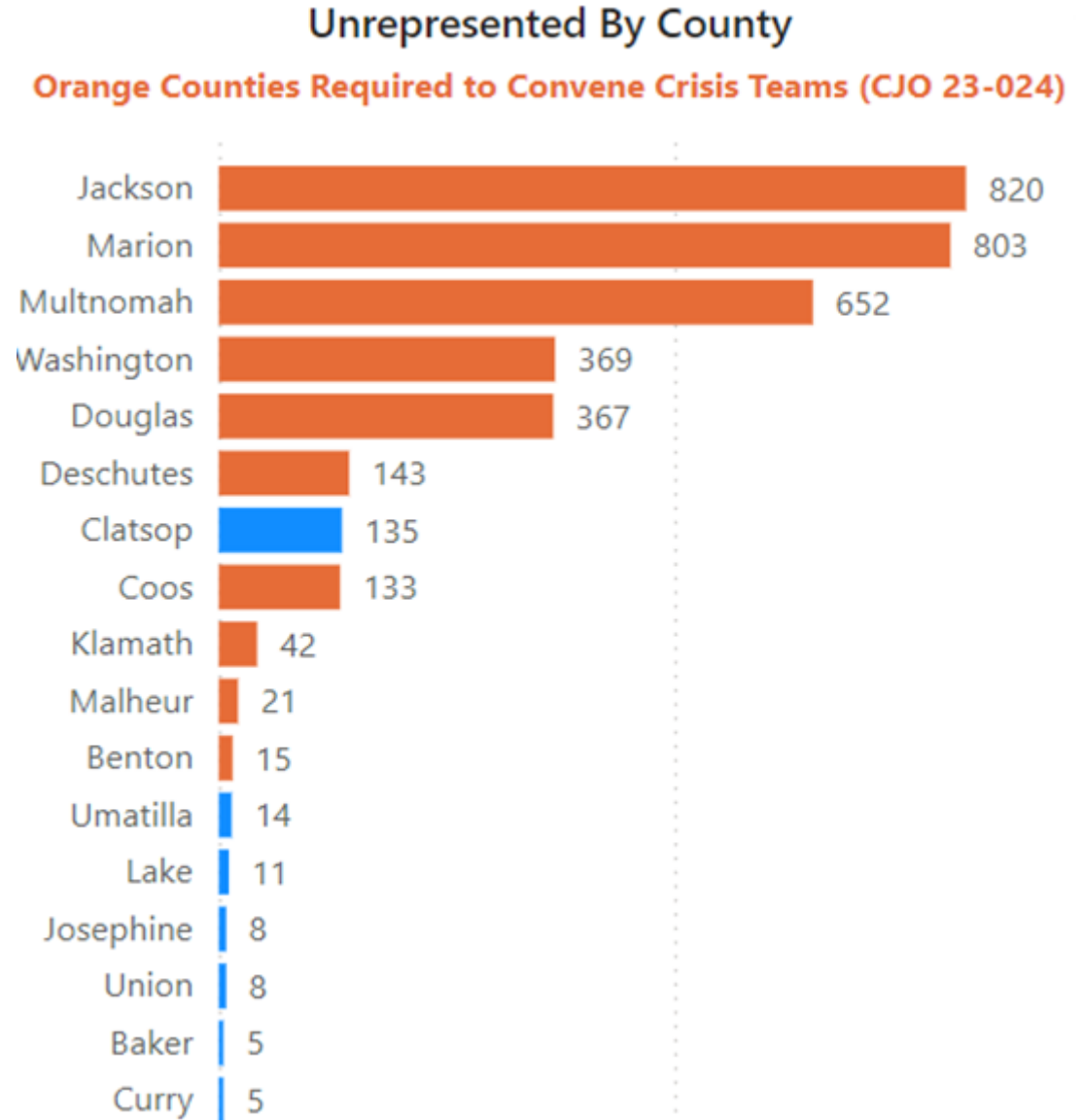
Plans Requested OPDC Action

- 27 plans.
- Most recommendations required action by the Oregon Public Defense Commission (OPDC).
- Courts have limited authority to mitigate the crisis.

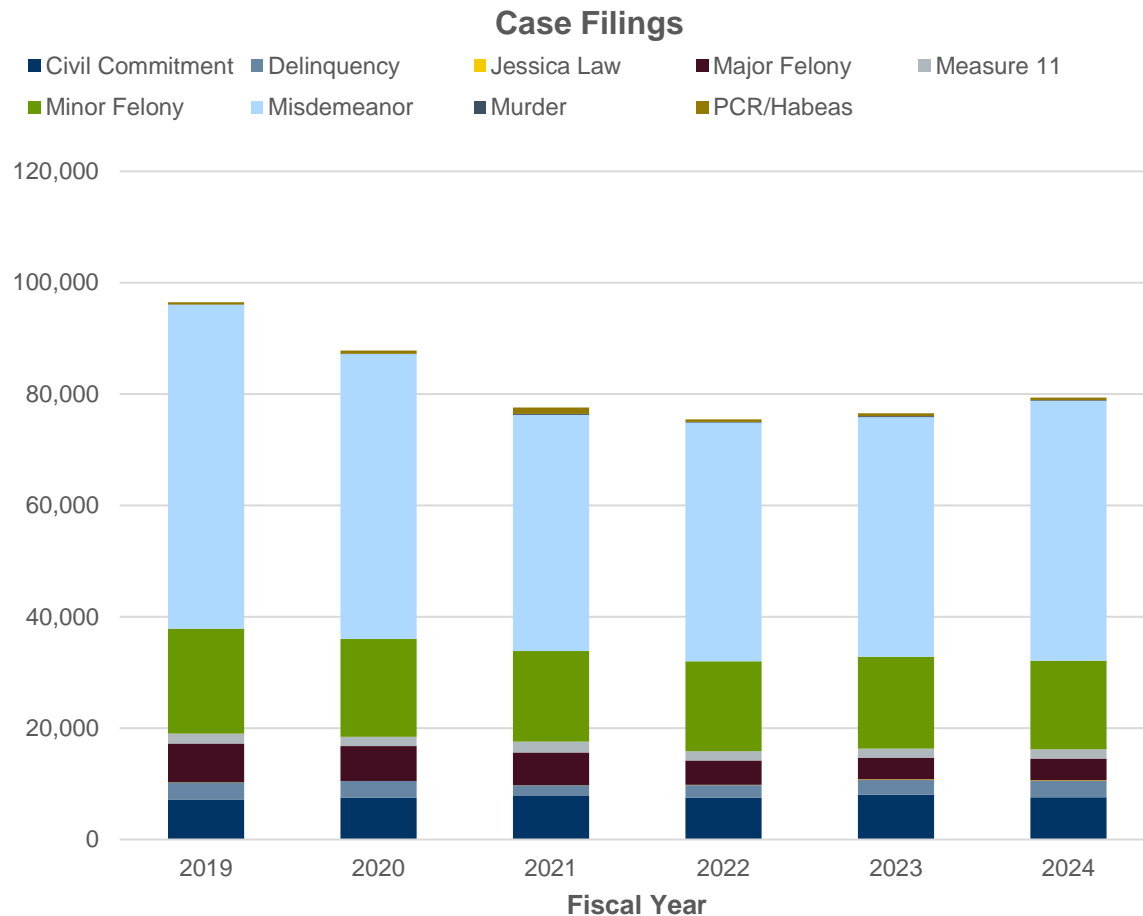


September 2024 Update

- Record numbers of unrepresented individuals
- Federal injunction in *Betschart* has increased pressure



September 2024 Update



- Slight increase in filings of case types eligible for public defense.
- Courts continue to offer remote appearances, settlement conferences, and special docket time to resolve cases efficiently.

Common Recommendations & Outcomes

Recommendation	Outcome
Remove appointed attorneys from cases on warrant status	While this had some benefit in addressing immediate attorney capacity, it did not impact the overall use of MAC.
Provide expedited resolution dockets	One-time, short-term benefit; only works when all system partners support and provide necessary resources.
Prioritize attorney appointments for certain case types	Promotes public safety by addressing the most serious cases first but does not reduce the overall number of unrepresented individuals.

Specific Examples of Court Actions

- Lane County developed a formal process with system partners to improve communication, discovery, and behavioral health case processes.
- Malheur County worked with the district attorney (DA) and defense providers to improve efficiency in pre-trial case management.
- Coos County worked with the local jail and provided technology to support remote attorney-client contact.
- Marion County conducts attorney-specific settlement dockets. This provides attorneys with an opportunity to resolve cases efficiently and creates ethical capacity.



Lessons Learned



- Courts often find attorneys faster than OPDC.
- Courts need OPDC to quickly approve attorney appointments.
- Staff to coordinate attorney appointments is critical.
 - Limited-duration court staff have helped in jurisdictions with those positions, but more courts need this assistance.
- OPDC should provide this function if it can do so consistently, quickly, and reliably.



Real World Impacts

- Courts repeatedly see individuals who, while out of custody and without the advice of counsel, are committing more - and often more serious – crimes, eventually facing more severe penalties.
- Crime victims see justice delayed and, in some cases, denied.
- Witnesses remain obligated to cases, called repeatedly for hearings that don't happen, while memories fade and cases deteriorate.
- Communities are increasingly dissatisfied with Oregon's justice system.

Suggestions for Slowing the Tide of Unrepresented Individuals

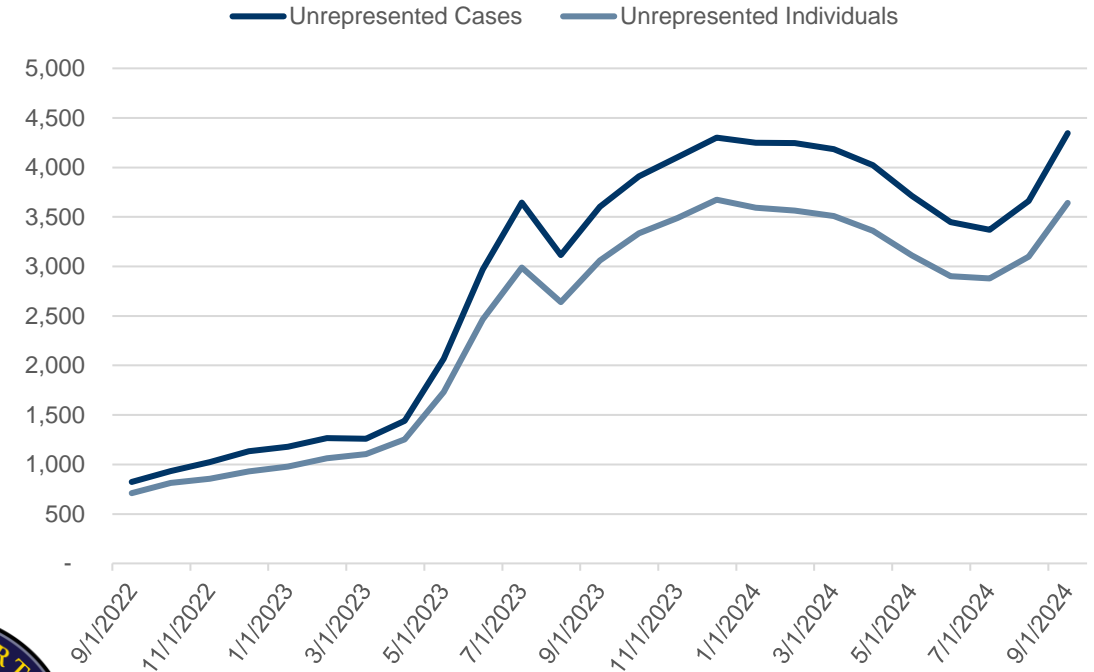
- Compensate representation for special dockets (EDP, diversion, PV) separate from MAC.
- Reduce reliance on hourly attorneys.
 - Contract for anticipated caseload.
 - Expedite OPDC approval when attorneys have capacity.
- Pay providers promptly.
- Add court staff to coordinate attorney appointments where needed.

Potential Longer-Term Solutions

- Modify contract approach.
 - Define “caseload;” compensate attorneys based upon work performed so attorneys aren’t taking more than they can ethically handle, but there is predictability in what work will be performed.
 - Move to open-caseload model with clear time-to-disposition standards.
 - Include clear performance metrics (e.g., trial rate, use of experts, motions filed, sentencing).

Questions?

Unrepresented Trends



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