

Oregon Public Defense Commission

**Joint Senate and
House Judiciary**

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Oregon Public Defense Commission: Unrepresented and Executive Move



Unrepresented

- How did we get here?
- By the Numbers
- Short Term Plan
- Long Term Plan

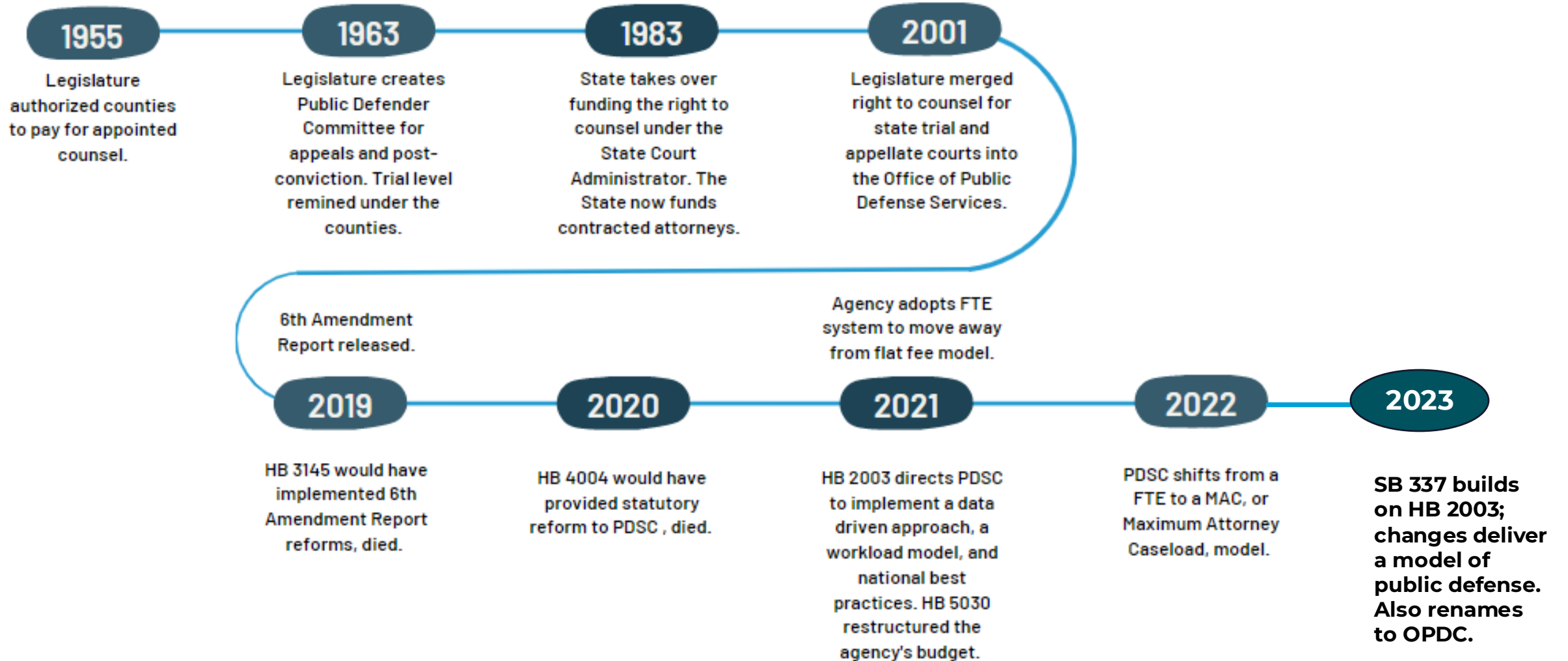


Executive Move

- Overview
- Project Management
- Risks

How did we get here?
Public Defense in Oregon

AGENCY OVERVIEW



SYSTEM STUDIES

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.
-

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, PCRCP

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)**

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.

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

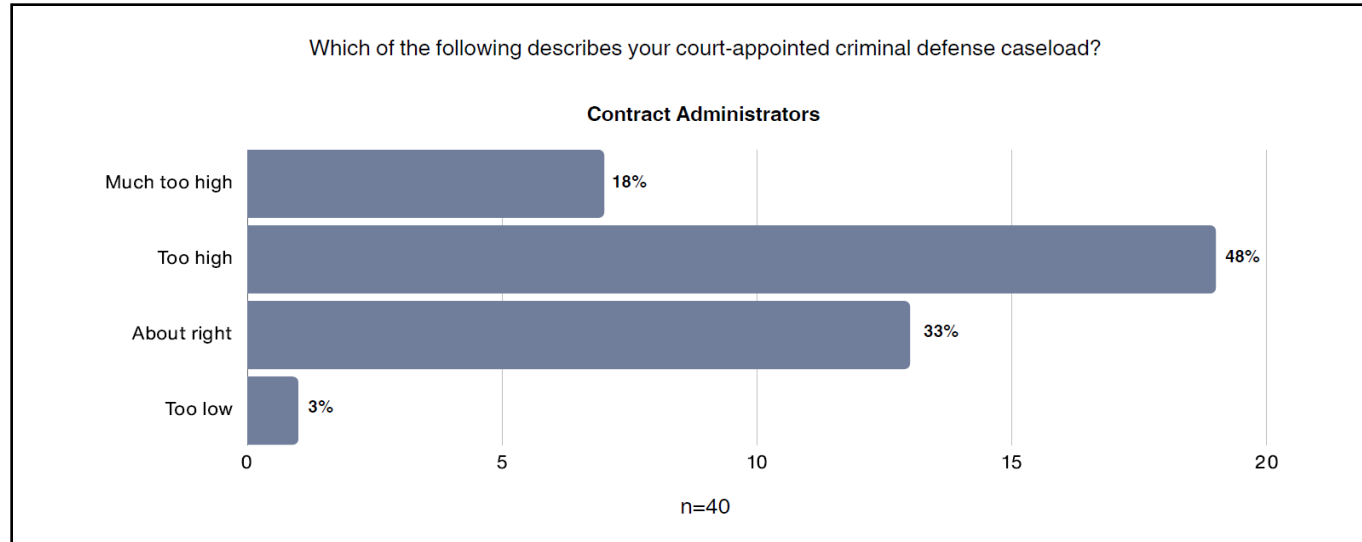
What is MAC?

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

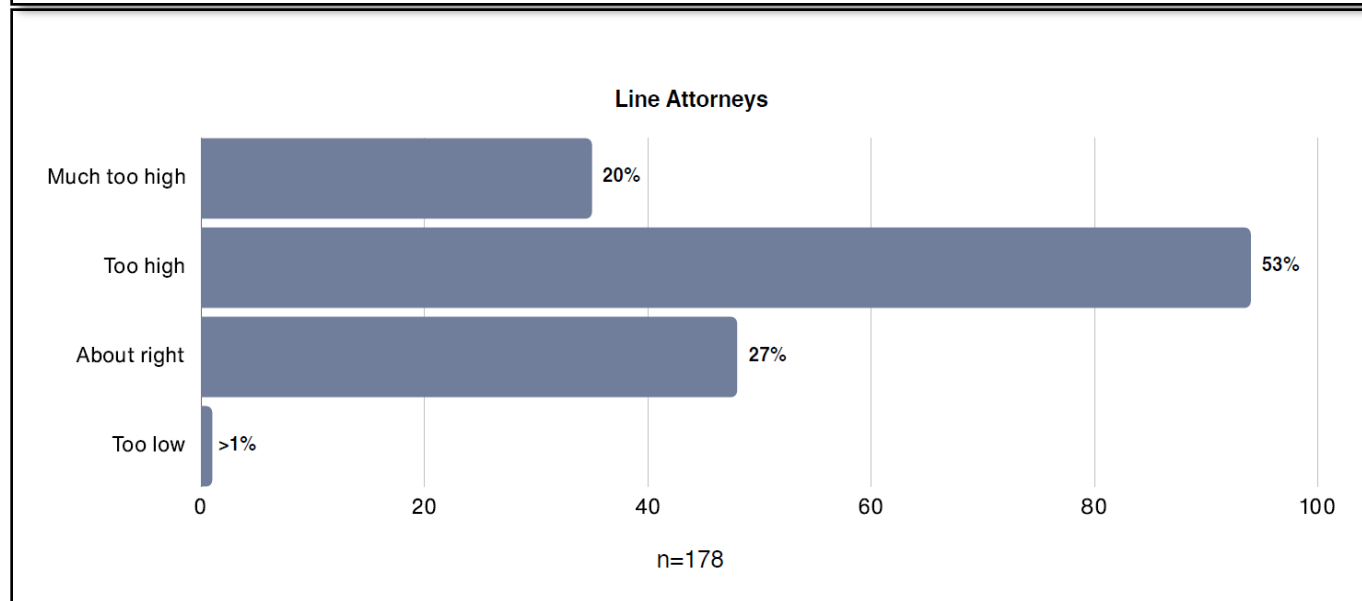
An attorney who works full-time on public defense cases is considered a 1.0 MAC, but if that full-time public defender joins a contract halfway through a year, then they can only take 6 months of a MAC (150 weighted misdemeanors).

FTE is an attorney and their time, MAC is the caseload limit that they can take associated with that time.

What do the Attorneys say about Caseloads?

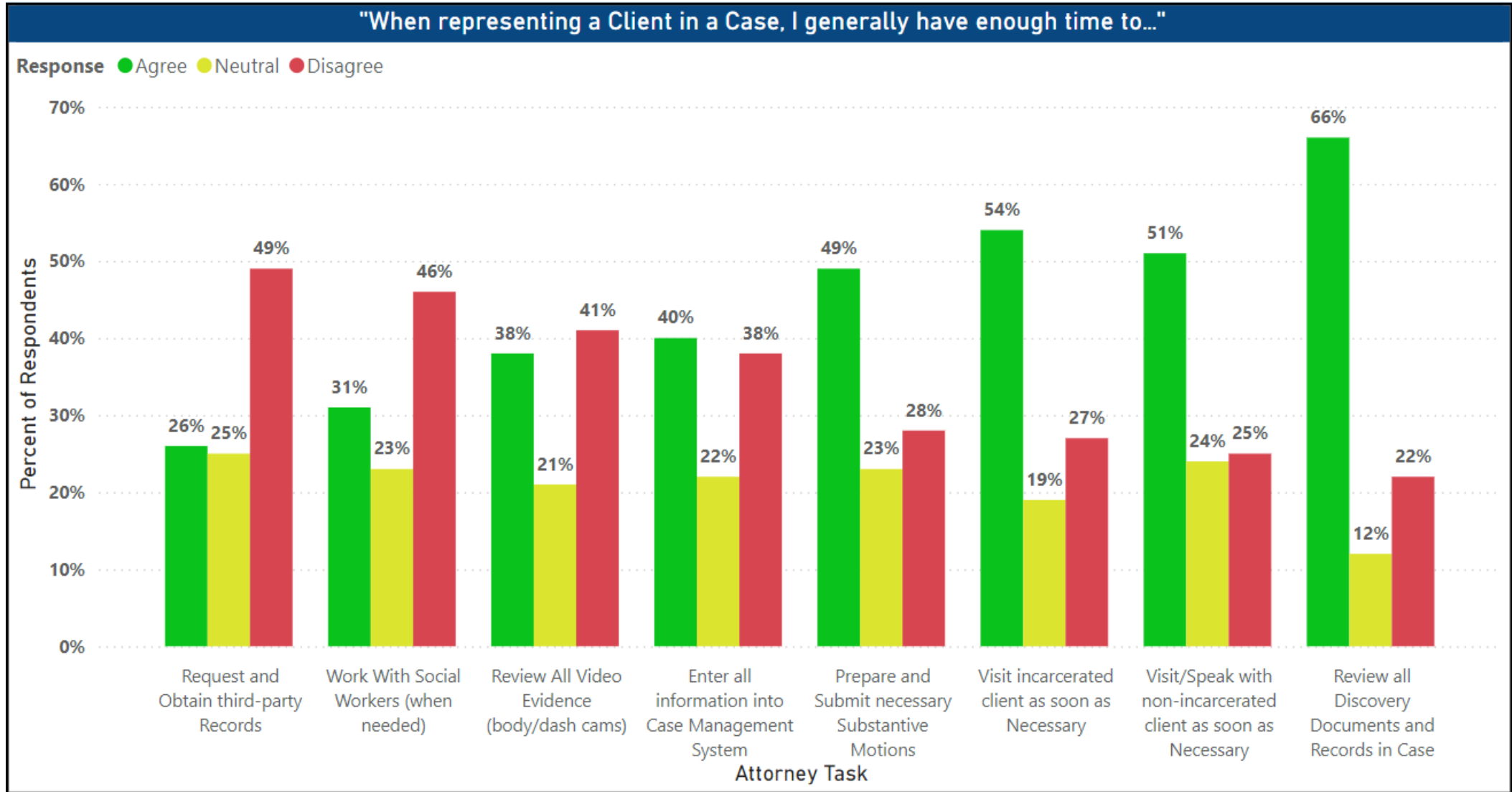


Contract Admins:
66% said "Too High"



Contract Attorneys:
73% said "Too High"

Impact of High Caseloads on the Work



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

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](#)

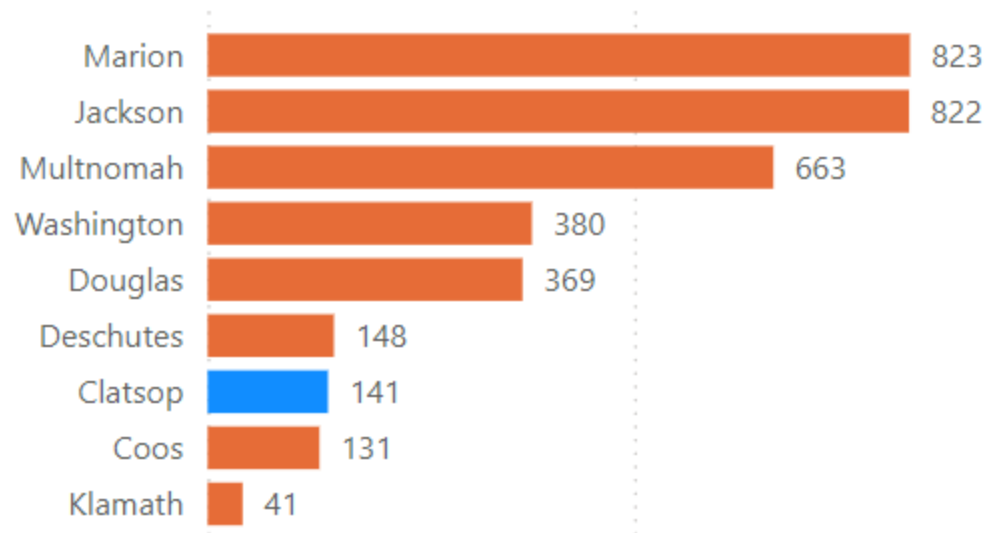
By the Numbers

Unrepresented

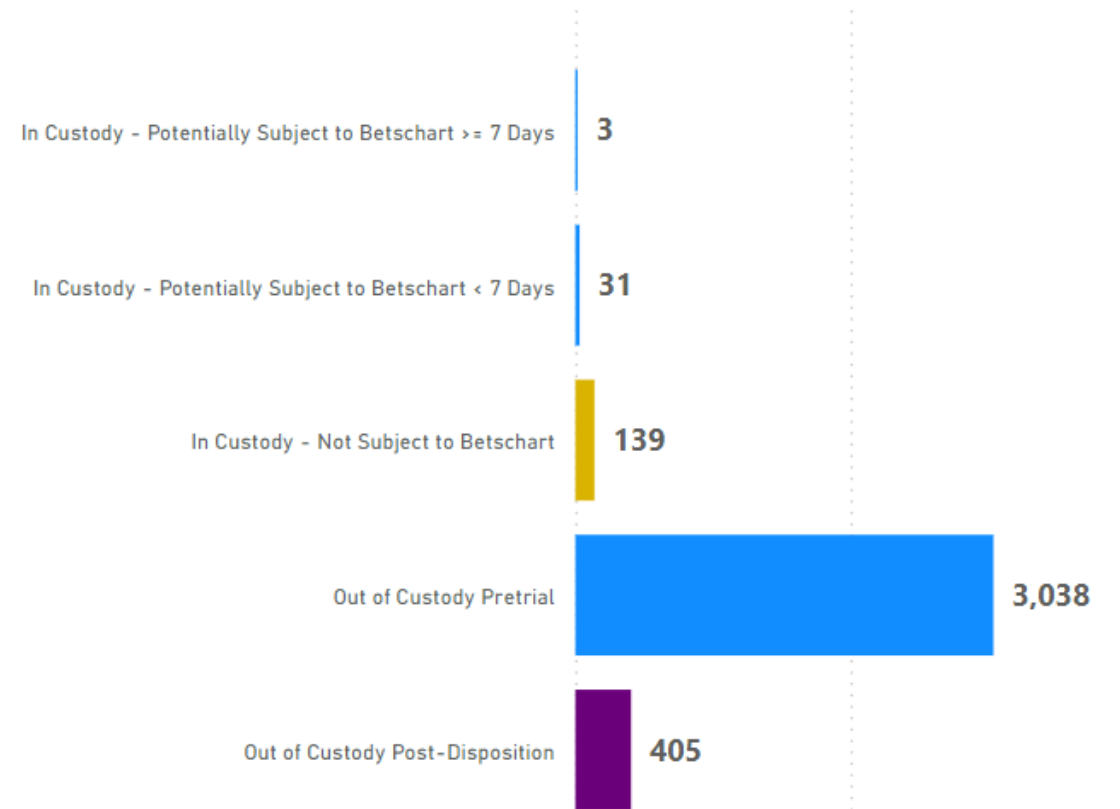
Unrepresented Statewide

Unrepresented By County

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



Unrepresented By Category

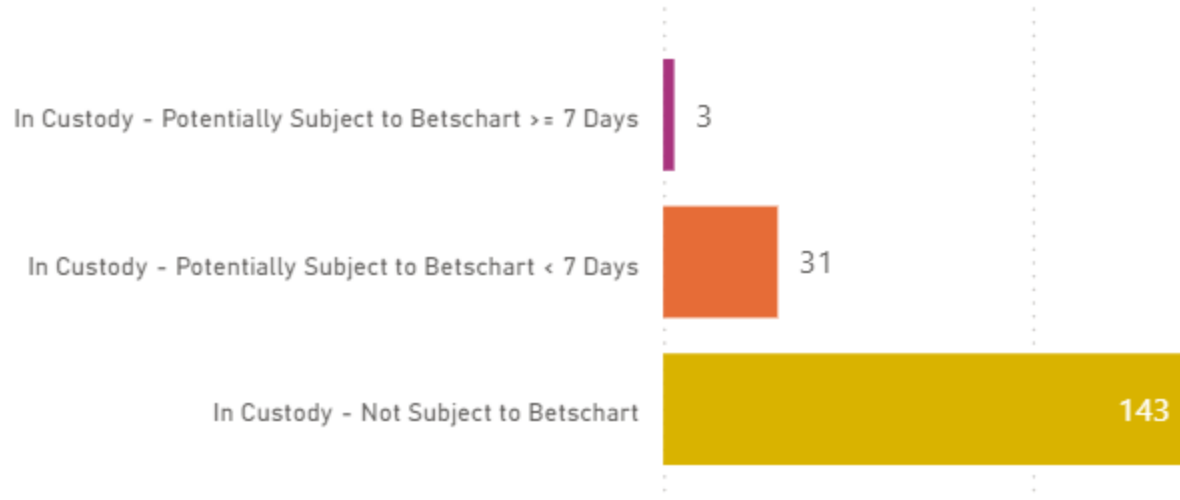


Data taken 9/19 from OJD's Public Unrepresented Dashboard

Unrepresented

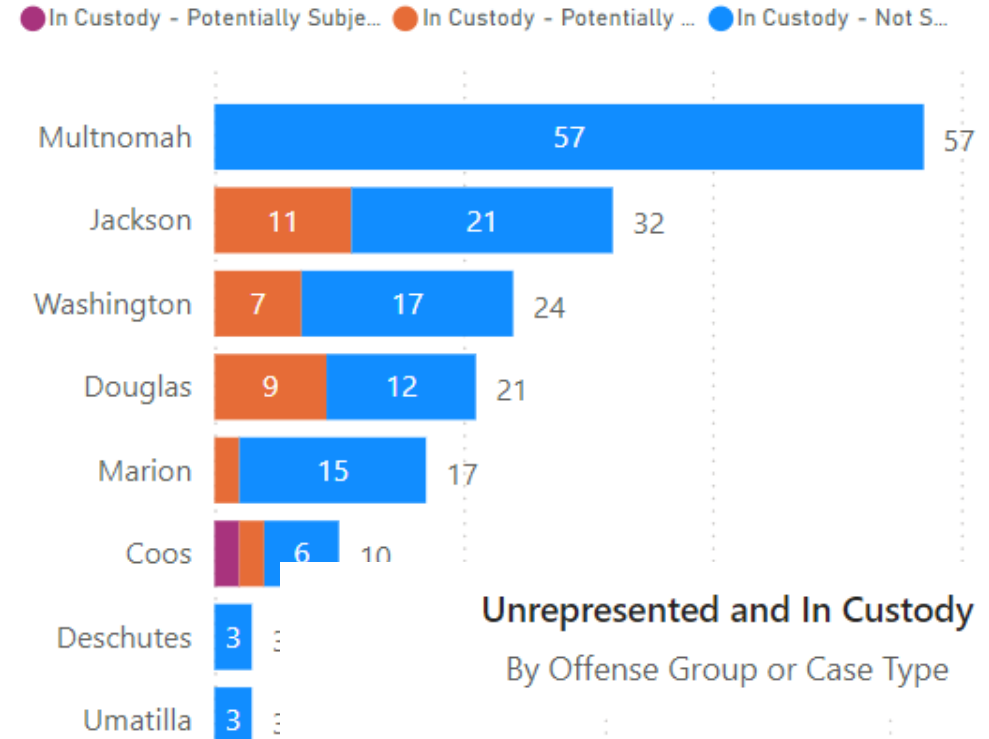
Unrepresented In-Custody Statewide

Unrepresented and In Custody

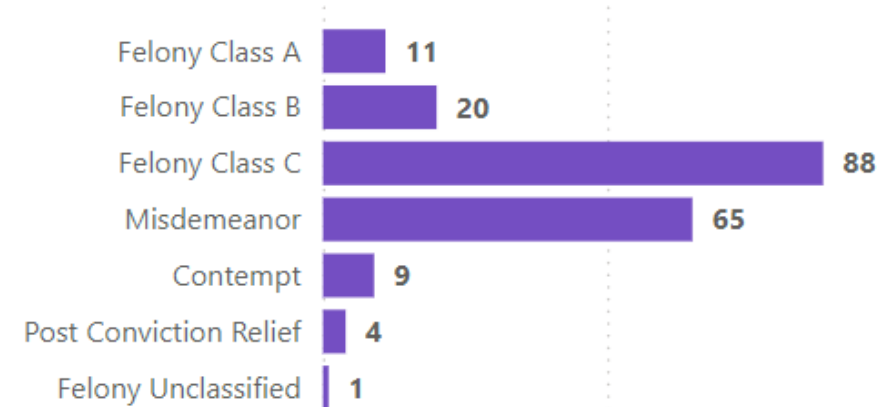


Data taken 9/19 from OJD's Public Unrepresented Dashboard

Unrepresented and In Custody By County



Unrepresented and In Custody By Offense Group or Case Type

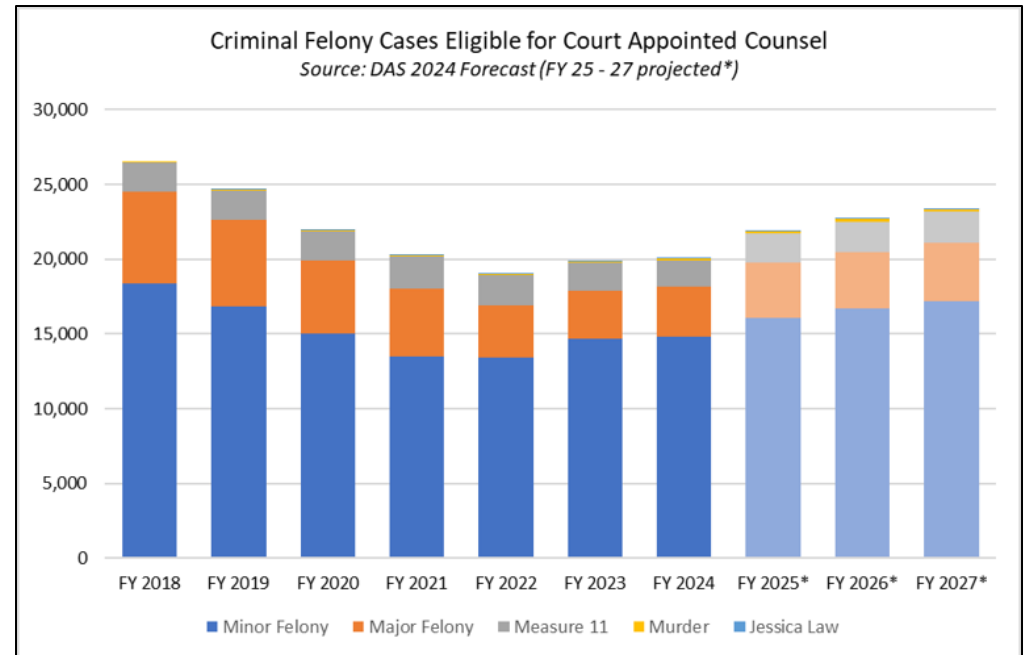
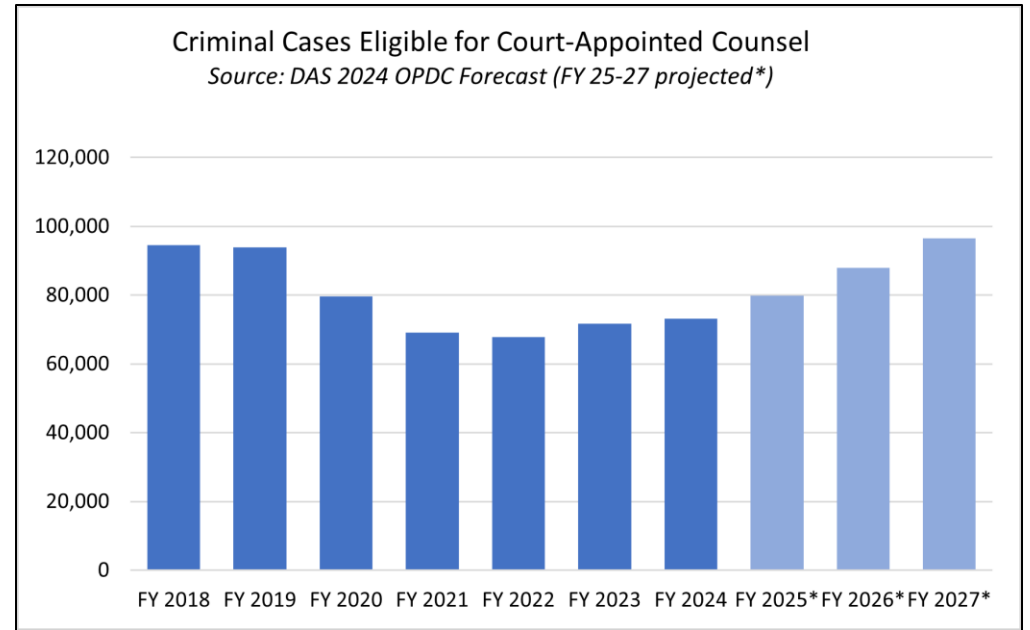


Background

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

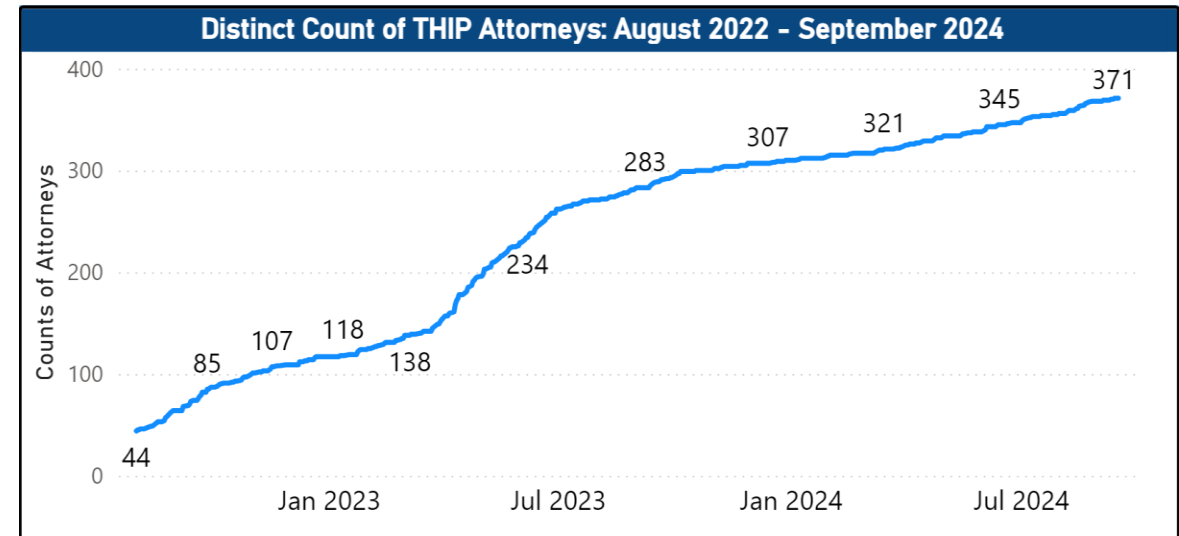
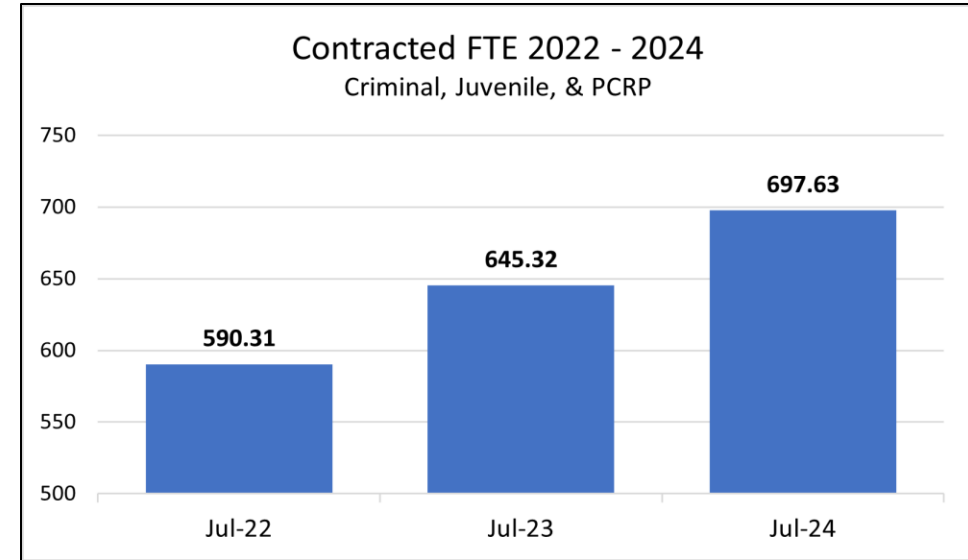


System Capacity

Public Defense Providers

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

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



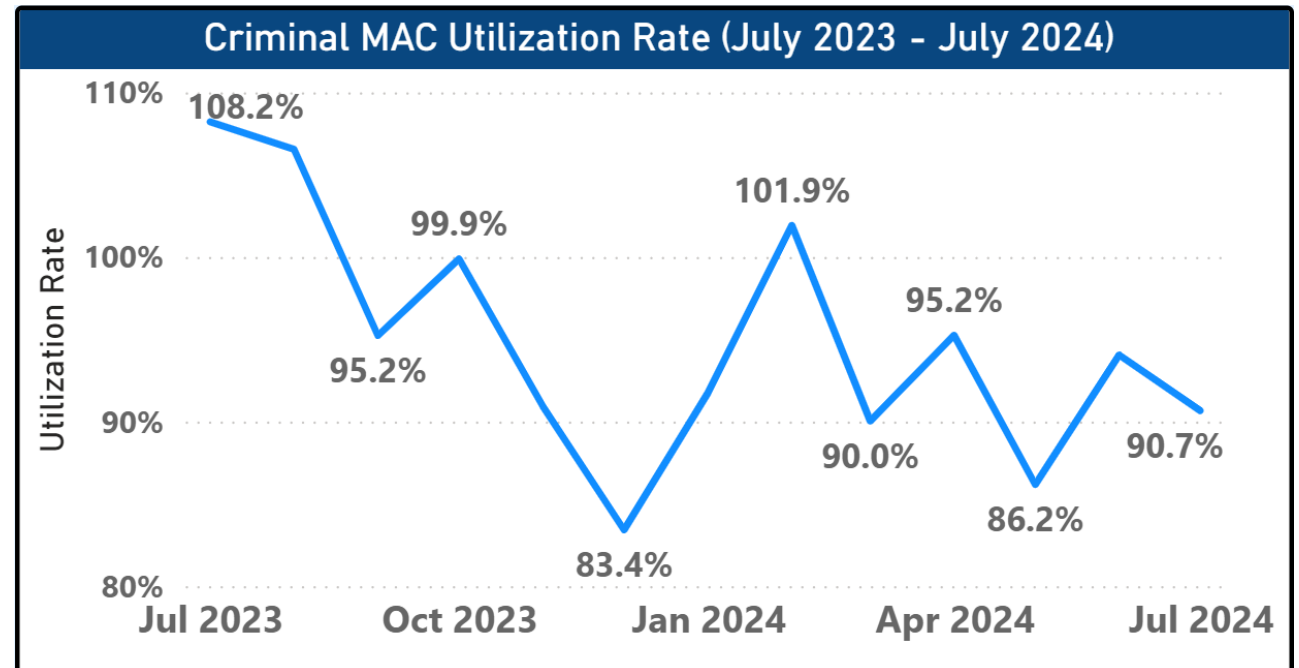
*Attorneys can be both a contract provider and an hourly attorney

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%



Excluding Statewide Contractors

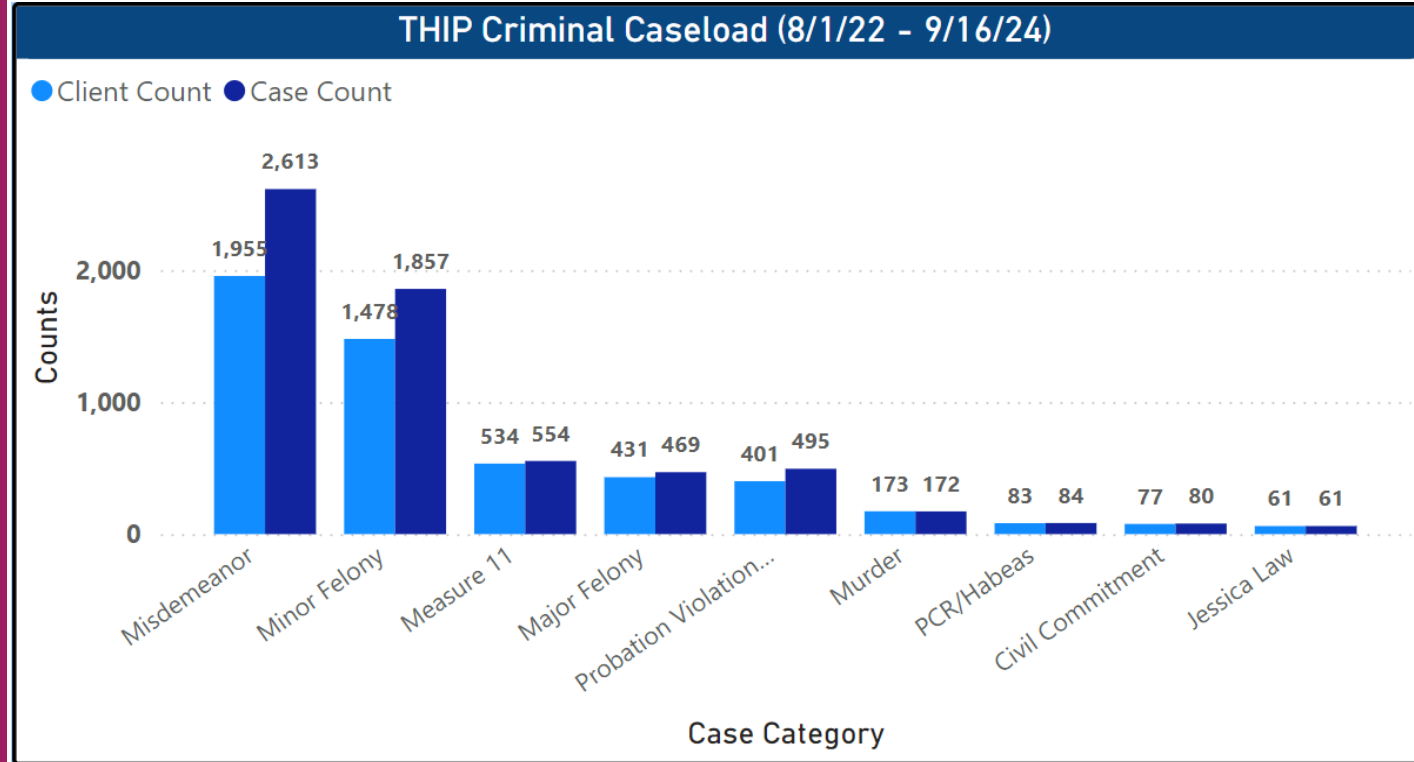
System Capacity

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.



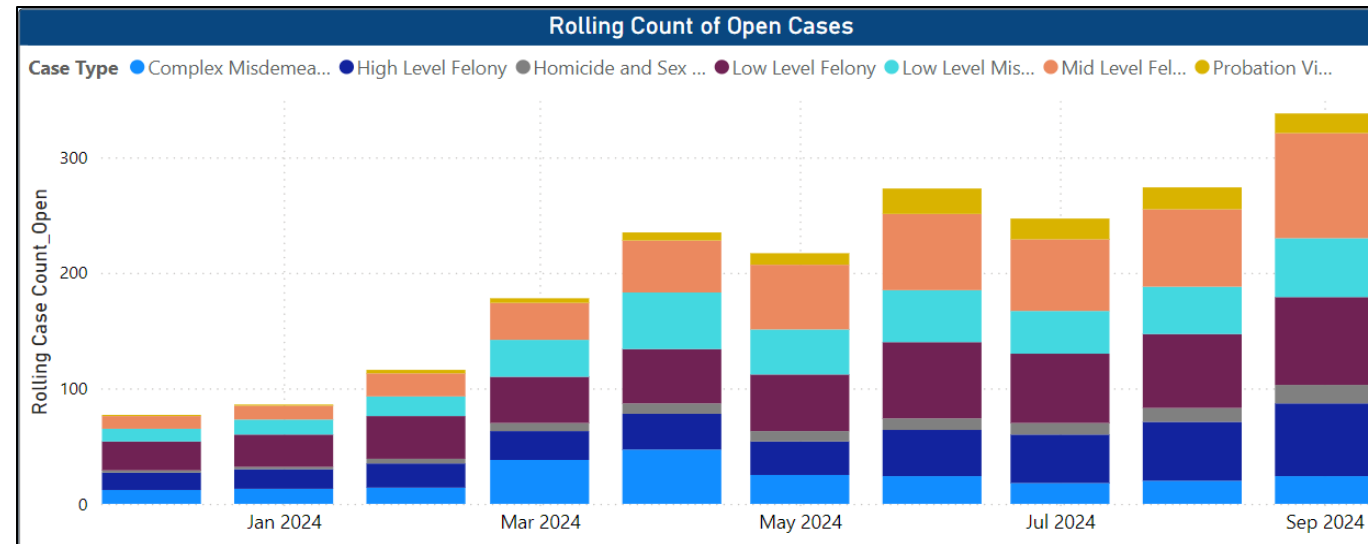
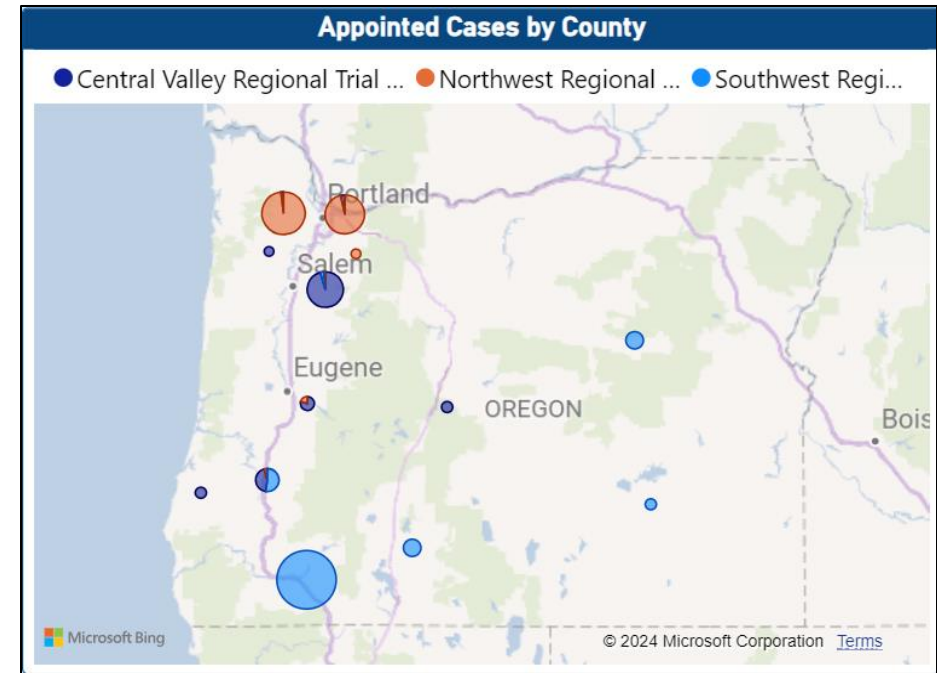
System Capacity

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

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](#).

Executive Move

Scope, Schedule, Budget

Scope: The transition project encompasses many tasks, including policy review, strategic planning, staffing assessment, and IT integration. Each task is crucial to the successful alignment of OPDC with Executive Branch standards and expectations, as guided by the Governor's directives.

Schedule: A detailed timeline outlines critical milestones, such as initial conversations with the Executive Branch, policy review, strategic planning, and staff assessment. Using the Moss Adams Transition Plan, OPDC can quickly review tasks and see if they are on schedule.

Budget: A \$5 million special purpose appropriation (SPA) supports the transition, and OPDC is well within the SPA allocation.

Project Management

Transition Teams: OPDC has established specialized work teams focusing on administration, information technology, human resources, procurement, finance, and facilities. Each team aligns policies and procedures with Executive Branch standards and addresses the Governor's expectations.

Transition Work: Using a project management tool, the Transition Teams can monitor tasks and report on their progress.

Work Group Progress Overview

369 tasks have been identified as part of the transition: 71 have been completed, 88 are in progress, and 206 are upcoming. 79.6% of tasks are on track, with 19.8% being at risk (mainly in procurement and IT), and less than 1% are off track.

Work Group	Number of Tasks	Upcoming Tasks	In Progress Tasks	Completed Tasks	% Complete	On Track	At Risk	Off Track
Administration	109	42	29	36	33%	107	0	2
Facilities	10	0	8	2	20%	10	0	0
Finance	10	0	5	4	40%	10	0	0
Human Resources	74	32	22	20	27%	74	0	0
IT	134	113	17	3	2%	85	49	0
Procurement	32	19	7	6	19%	8	24	0
Total	369	206	88	71	19%	294	73	2

Risks

Information technology (IT) and procurement remain the highest risk areas for this transition.

IT: High-level discussions and planning are underway with Enterprise Information Services (EIS), Data Center Services (DCS), and Microsoft. Weekly status meetings include key stakeholders such as executive and IT leadership from OPDC, OJD, EIS, Legislative, and the Governor's Office. These meetings aim to communicate plans, progress, and risks.

Procurement: OPDC has contacted the State Procurement Office in DAS to discuss the next steps towards assimilating the state procurement standards into the Commission's procurement standards and practices. OPDC is working with DOJ to develop provider contracts for the 2025-2027 biennium contract cycle to ensure compliance with state contracting standards and requirements. OPDC has also reorganized to utilize its procurement positions for procurement analyst work and is currently recruiting for a Procurement Analyst.

Thank you

