



CIRCUIT COURT OF THE STATE OF OREGON
FOURTH JUDICIAL DISTRICT
MULTNOMAH COUNTY COURTHOUSE
1200 SW FIRST AVENUE
PORTLAND, OR 97204-3201

April 16, 2024

Jennifer Nash, Chair
Oregon Public Defense Commission

Via email only

Dear Chairperson Nash,

Please consider this public comment for submission to the Oregon Public Defense Commission (OPDC) at its meeting on April 17, 2024.

We were pleased to see that the OPDC held a public meeting in Portland last month, including a presentation on the current state of public defense in Multnomah County. We would have appreciated the opportunity for the Multnomah County Circuit Court to participate in providing information on that critical topic, but instead are providing these comments. Chief Criminal Judge Michael Greenlick and Trial Court Administrator Barbara Marcille did attend the meeting.

Given the duration and severity of the public defense representation shortage here in Multnomah County, we anticipated that their discussion with the Commission would focus on the eligible defendants who are not being appointed counsel on a timely basis and the hundreds of defendants who are currently awaiting the appointment of counsel for their pending criminal charges. Because the public defense panel discussion did not address those issues, the court felt it important to ensure you hear the court's perspectives on what we feel is the most pressing and critical issue facing public defense in our county – the continued lack of adequate public defense capacity to take appointments for all eligible defendants.

In Multnomah County, we first started to experience a public defense shortage in fall 2021. This was as the pandemic was subsiding and the court was resuming typical case processing activities. We know that the increased demand combined with high vacancy rates in the public defense offices contributed to the problem. In January 2022, we had 41 unrepresented cases in Multnomah County, and by the end of June 2022 we had 622 unrepresented cases.

Since 2022, public defense offices in Multnomah County report substantially less turnover, far fewer vacancies, and additional attorney FTE being added. While criminal case filings are increasing in Multnomah County (a 9% increase in FY 2023 and another 24% increase projected in FY 2024), they are

still substantially below pre-pandemic filings. With fewer cases to manage overall, less turnover in the firms, and expanded attorney capacity, we would expect the public defense shortage to be improving.

However, the number of out-of-custody unrepresented individuals eligible for public defense counsel is as almost as high as it has ever been here. Each week in Multnomah County, we have dozens of cases where the defendants appear on new criminal charges and are eligible for public defense representation but there are no attorneys available to appoint for them. On September 15, 2022 (almost 18 months ago) we had 569 people on the Multnomah County "unrepresented list", and as of March 7, 2024, we had 587 people on the Multnomah County unrepresented list.

These are out-of-custody defendants who were arraigned with the benefit of counsel but have been awaiting appointment of counsel on their case(s) since that time. Typically in Multnomah County, defendants are scheduled to re-appear several weeks out to determine if counsel is available to be appointed, and often defendants re-appear multiple times in this manner without receiving an appointed lawyer. To be clear, the same individuals have not been awaiting appointment of counsel for multiple years; some defendants might be appointed counsel on a subsequent appearance or perhaps will have their case dismissed if they have reappeared 3 or more times without counsel appointed. If their case is dismissed, the Multnomah County District Attorney's Office often reinitiates prosecution by obtaining an indictment, but reinitiating the case still does not guarantee the availability of counsel. Every day for the last two years, defendants arraigned on new charges are added to our unrepresented list. Currently, 24% of the unrepresented defendants in Multnomah County are charged with misdemeanor crimes, 65% are charged with Class C felonies, and 11% are charged with Class B felonies.

In their panel, the public defense leadership emphasized their heavy workloads and the impact of defendants with high needs for resources. Our court is engaged with state, city, county, and community leadership in an ongoing attempt to find resources for the problems of homelessness, mental illness, and addiction. We meet regularly with Metropolitan Public Defender, Multnomah Defenders, Inc., the Portland Defense Consortium, the Multnomah County DA's Office, and the Multnomah County Sheriff's Office to identify pinch points and to implement policy, procedural, and docket structure changes to help cases move more efficiently through our system. These mitigation efforts have kept the situation here from becoming far worse, but will not resolve the underlying problem.

We understand that OPDC is working on developing a 6-year plan to address restructuring the indigent defense system. But there seems to be a complete lack of urgency for solving the crisis we face every day in our arraignment courts. For the defense crisis to be resolved, we believe that the OPDC needs to better estimate the public defense capacity required to handle the case demand, track actual attorney workload, and structure compensation in a way that will incentivize taking the necessary caseload to meet contractual requirements.

We would welcome the opportunity to discuss these issues with the Commission directly or answer your questions, but otherwise hope this gives you useful information as you continue your efforts to develop a competent and effective public defense system for Oregon.

Sincerely,



Judith H. Matarazzo