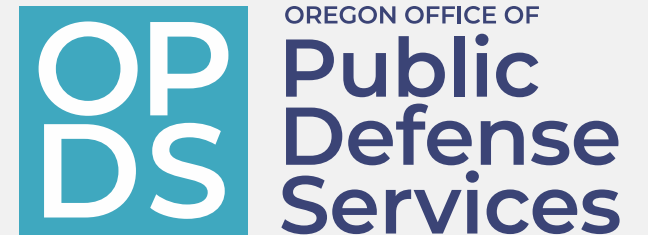


Public Defense Service Commission

**Unrepresented
Crisis**

Jessica Kampfe, Executive Director
Jessica.Kampfe@opds.state.or.us

April 20, 2023



- 1. What is the current state of the crisis from the perspective of the Commission?**
- 2. What efforts have the Commission undertaken to help resolve the crisis? What efforts have been successful and what have not been successful?**
- 3. What additional efforts could the Commission undertake to help resolve the crisis?**
- 4. What other actions or collaborative efforts would the Commission recommend need to be undertaken by the public safety system or the legislature to resolve the crisis?**

What is the current state of the crisis from the perspective of the Commission?

Long term crisis with immediate need

Unrepresented crisis is a symptom of a larger problem.

- Oregon has been constructively denying counsel for years.
- Today's actual denial of counsel is the visible result of changing our unconstitutional fee for case model.
- This has been a long time coming, and it won't be fixed overnight.

At the core, this crisis is due to not having an adequate supply of attorneys to meet the demand of case filing.

- In the near term, the unrepresented list will grow.
- Contractors are beginning to shut off, for contractual and ethical reasons.
- We are continuing to see attorney attrition due to low pay and high caseloads.
- This is a workforce that has been under supported for decades and will take time and focus to rebuild.

What efforts have the Commission undertaken to help resolve the crisis? What efforts have been successful and what have not been successful?

Commission's Goals

1. **Increasing** the number of lawyers accepting appointment of public defense cases.
2. **Incentivizing** public defenders to qualify to represent people on the most serious cases.
3. **Supporting** public defense lawyers by increasing access to training, supervision, and investigation.
4. **Retaining** public defenders by incentivizing them to continue practicing public defense in their current jurisdiction.
5. **Collaborating** with justice system partners to share data and ideas about how to reduce the number of unrepresented persons in Oregon.

Programs to Increase Capacity

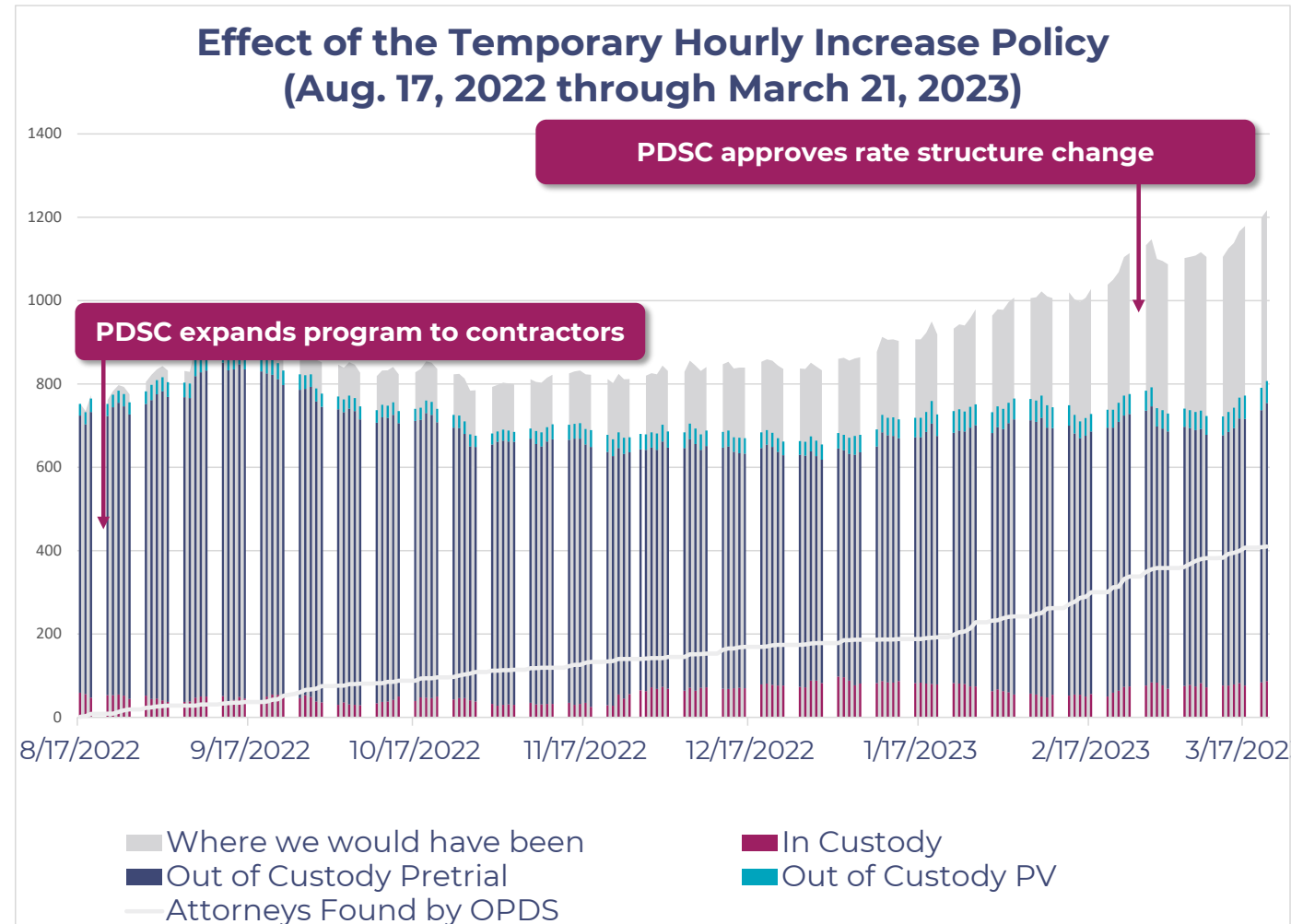
- SB 5202 (2022) provided \$12.8 million to target counties with an emerging Unrepresented problem;
 - Lane, Marion, Multnomah, and Washington;
 - \$6.99 million added 31.5 MAC.
- Hiring incentives;
 - Two \$20k payments one in March, one in June;
 - \$919,400 in incentive payments for 26.26 MAC (16.19 weighted).
- Increased Hourly Rate;
 - \$158 Program became the Tired Hourly Program.

EFFORTS SO FAR

Hourly Rate Program

- Lawyers found for unrepresented cases: **665**
- Unrepresented individuals provided a lawyer: **427**

• **\$1,138,489 million**



Incentive Increasing Qualification

- July 2022 contracts included tiered contracting. Attorneys were paid more for higher qualifications, and contractors were incentivized to up-qualify their attorneys.
- Attorneys were also required to take the highest cases they qualified for.

Pros and Cons

- Pros: We saw a significant number of attorneys up-qualifying.
- Cons: Administratively burdensome, attorney burnout, negatively incentivizes recruiting recently licensed lawyers.

The 23-25 contracts will use a two-tier system. This will provide increased compensation to more experienced lawyers while reducing administrative burden.

Training and Supervision Support

- Training, supervision, and increased investigator funding for non-profit public defender offices;
 - \$7.5 million, provided funding for a previously unfunded mandate;
 - Workforce development;
 - Well received, looking to expand through POP 102.
- Increased hourly rate for investigators accepting cases off the unrepresented list;
 - \$135k so far;
 - Vital to the success of the increased hourly rate, asking to continue it in POP 114.
- Supervised Civil Attorney Program;
 - Minimal cost, minimal impact.

Retention of Current Providers

- Training and Supervision dollars are also essential to retention.
- **Retention bonus**: \$15k weighted to MAC, 50% released monthly February-May '23, and 50% paid in June.
 - \$2.5 million;
 - Keeping existing public defenders;
 - Retaining lawyers barred in 2022 until they become felony qualified in July of 2023;
 - Reducing churn caused by public defenders moving from one contract to another;
 - Increasing data collection compliance by tying payments to monthly caseload reports;
 - Providers reporting on progress in May.

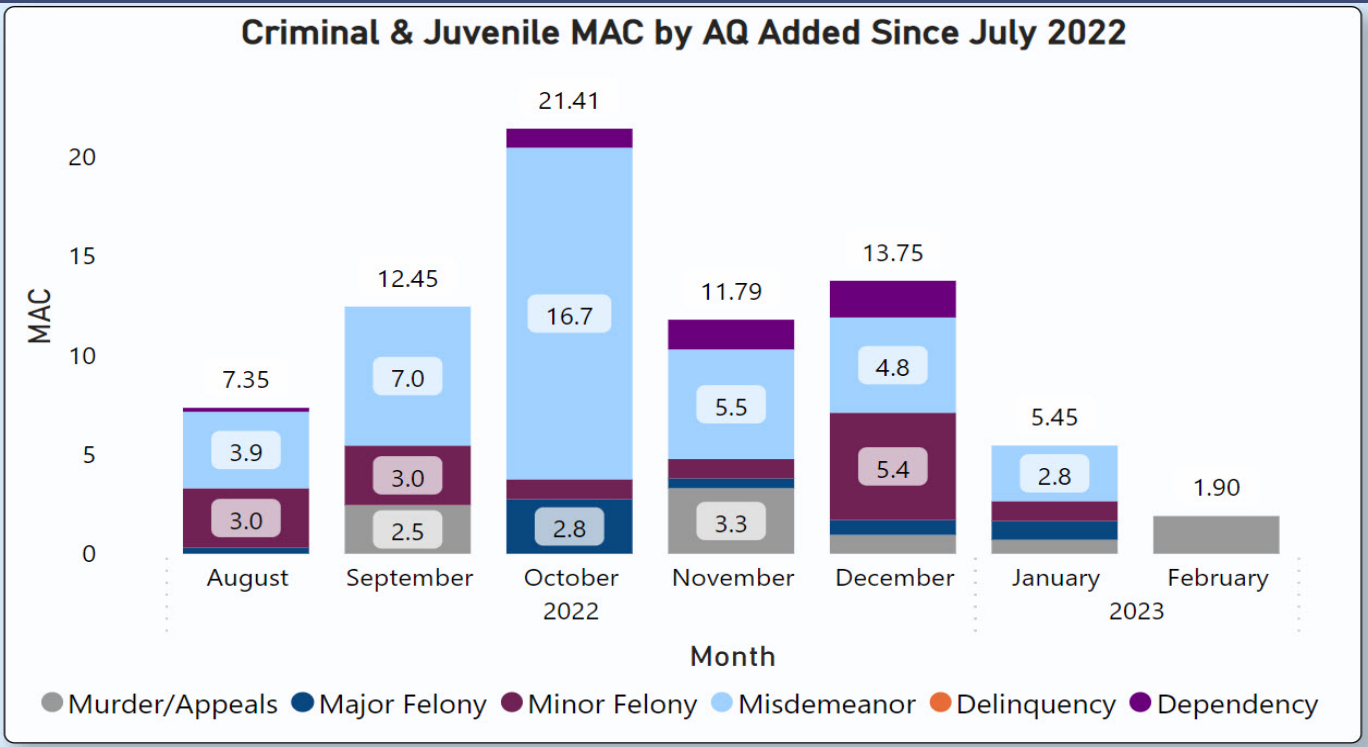
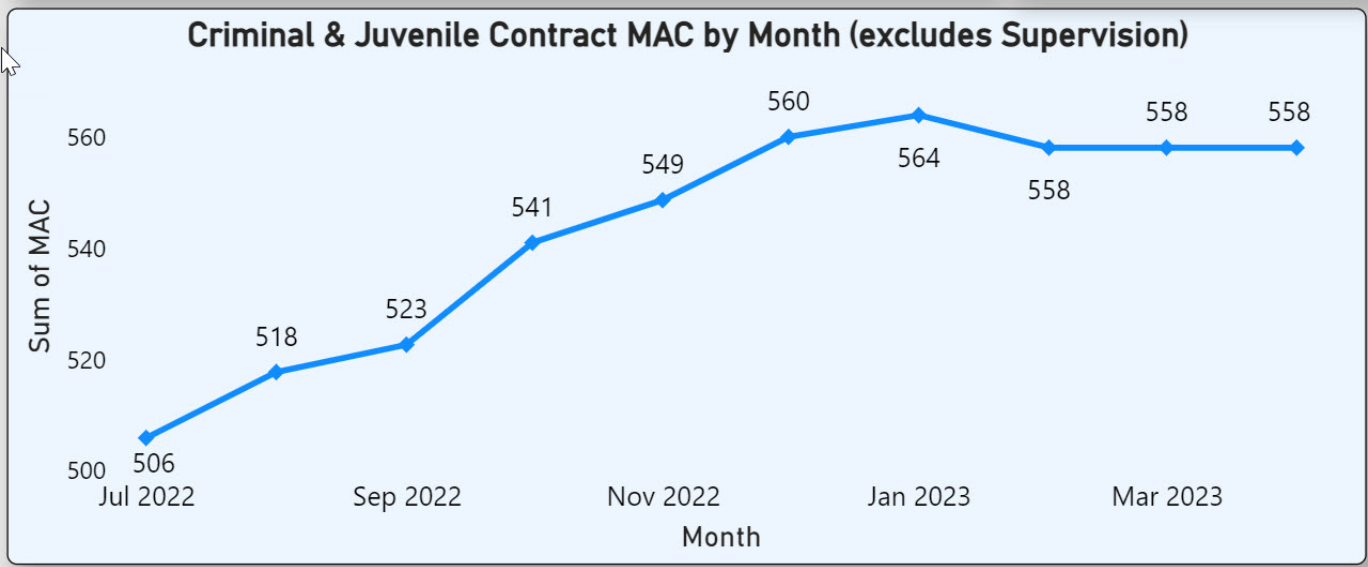
The agency is still awaiting a report back on the attrition components, and monthly caseload reporting has improved.

Collaborating with Partners

- **Tribranch Workgroup.**
- **Oregon Judicial Department;**
 - Data sharing.
- **Courts;**
 - Chief Justice's Criminal Justice Advisory Committee;
 - Uniform Trial Court Rules Committee.
- **Local Jurisdictions;**
 - Roadshow;
 - Wingspan III: \$56,765 agency funds for 62 resolved cases;
 - Early Resolution Dockets.
- **Oregon State Bar;**
 - Temporary practice licenses for out of state attorneys.

Increase in Criminal MAC since July 2022

Qualification	July 22	Current	% Increase
Misdemeanor	47.15	69.18	47%
Minor Felony	66.76	76.89	15%
Major Felony	150.97	157.89	5%
Murder	146.3	153.32	5%
Total	411.18	457.28	11%



What additional efforts could the Commission undertake to help resolve the crisis?

ADDITIONAL EFFORTS

Address the Cause

- Stabilize the workforce;
 - POP 101, 102, 114.
- Tribranch Bill.
- Strategic Planning.
- 6 Amendment Center Report.

Next Steps

- Strengthen Partnerships.
- Improve Data;
 - Tracking class of Oct 2022;
 - OJD;
 - FCMS.
- Contracting;
 - Pilot Hourly Project;
 - Prorated by month;
 - 15% differential.
- Bring on state employees at the trial level;
 - Similar to Appellate.
- Workforce Development;
 - Rural communities;
 - Law schools.
- Move to a Workload Model;
 - PCR.P.

What other actions or collaborative efforts would the Commission recommend need to be undertaken by the public safety system or the legislature to resolve the crisis?

Not Just a Defense Issue

Public Safety Community

- Reduce Demand;
 - Prioritize charging decisions.
- Support public defenders;
 - Case processing;
 - Court efficiency.
- Early Resolution Dockets;
 - Protecting defendants' rights.

Legislature

- Invest in housing, mental health and early childhood.
- Consider the defense when making new crimes or increasing severity.
- Statewide management, while recognizing regional differences.
- Adopt uniform criminal code.
- Adopt plan similar to New Mexico's 5-year plan.

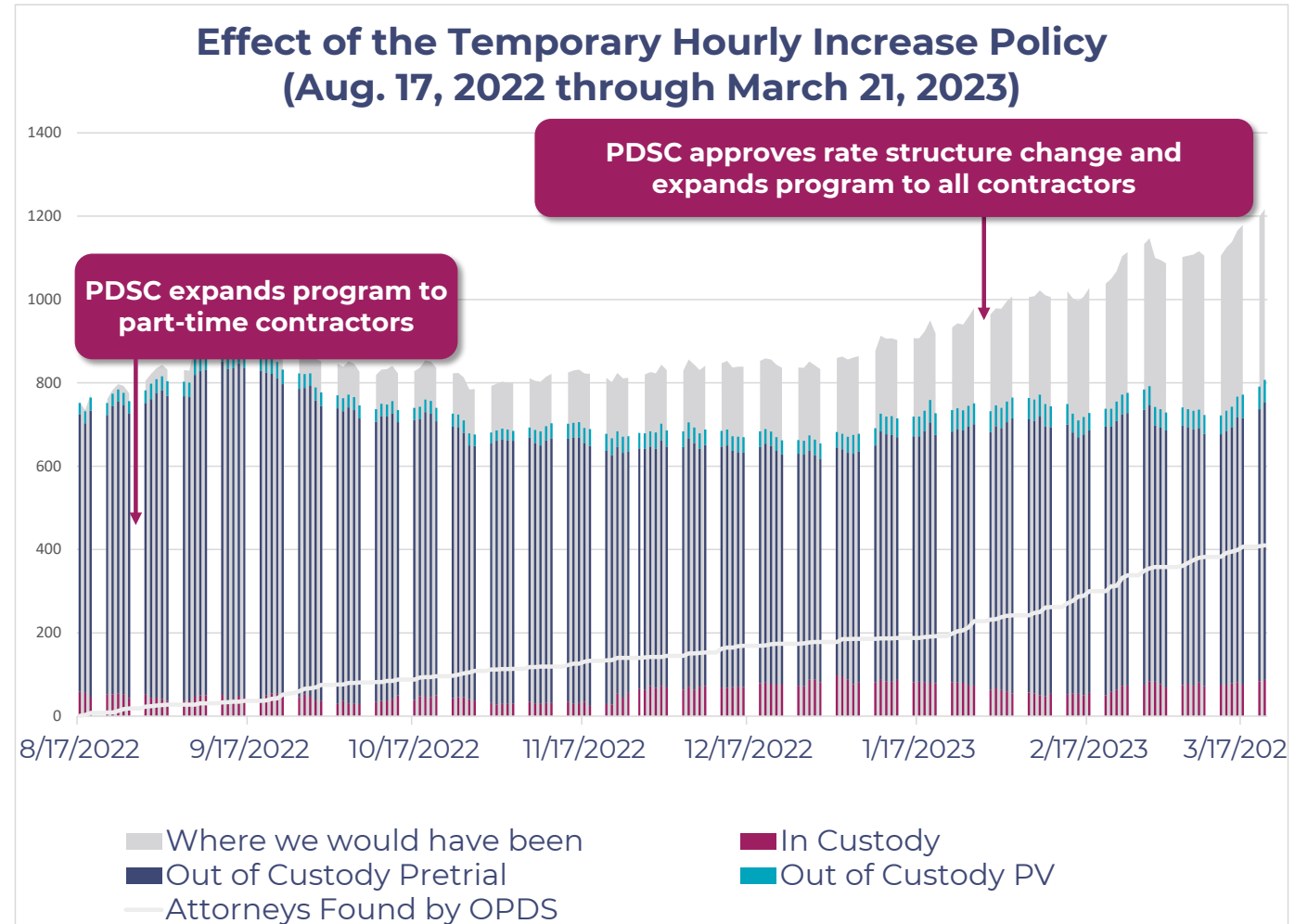
Thank you



Appendix Crisis by County

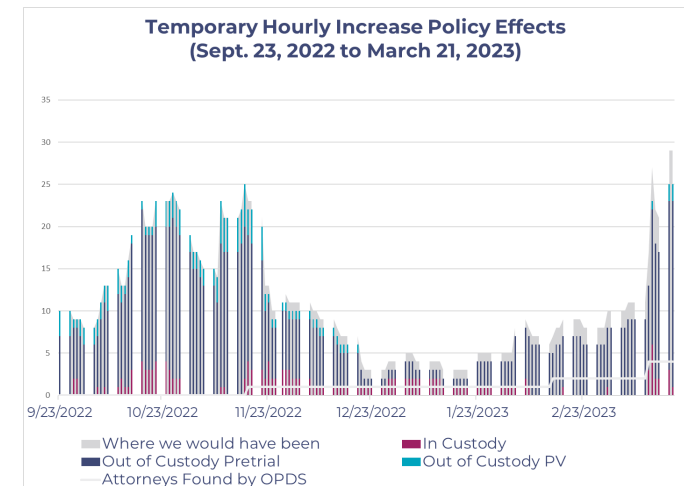
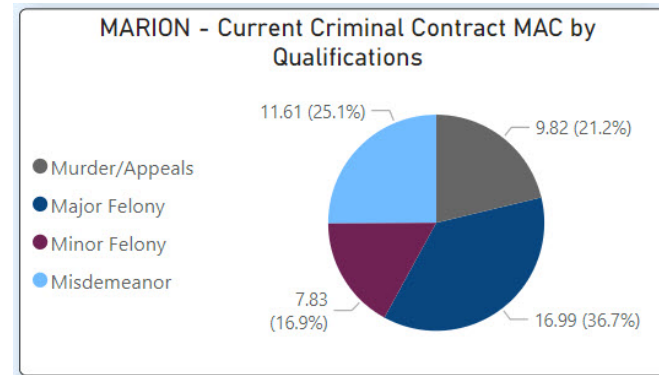
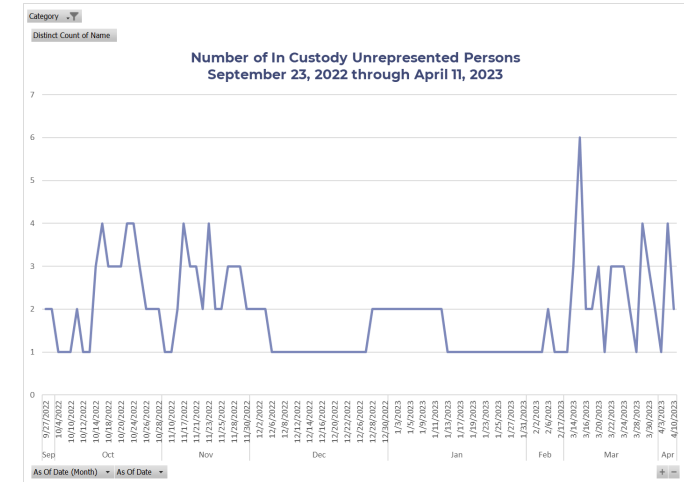
UNREPRESENTED DATA

Statewide



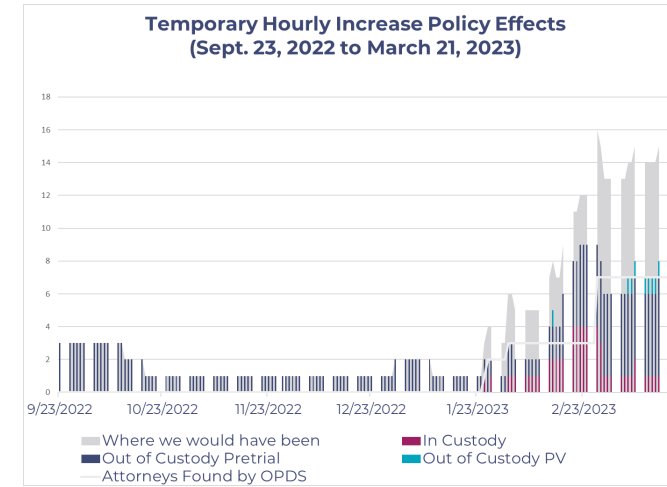
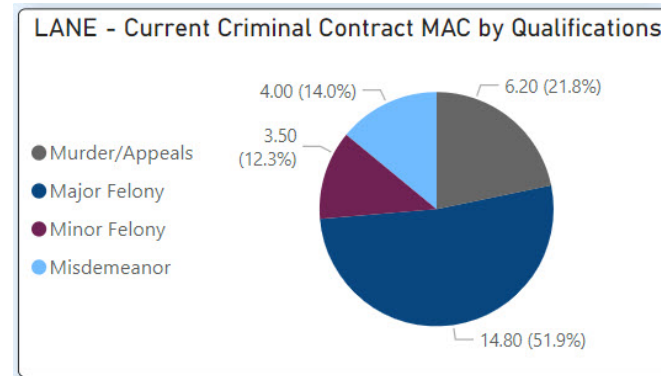
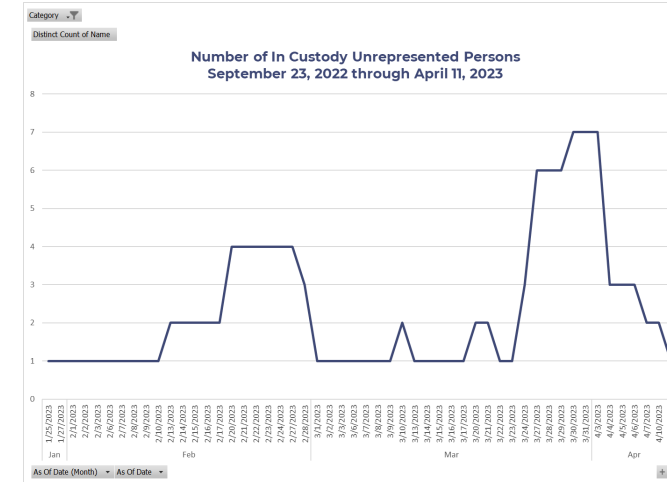
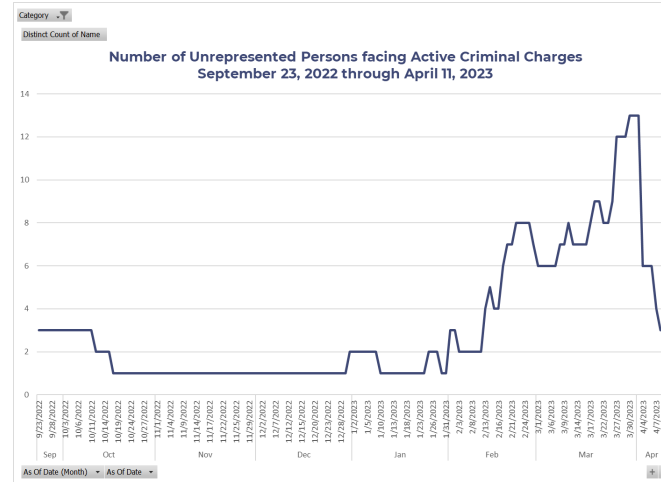
UNREPRESENTED DATA

Marion County



UNREPRESENTED DATA

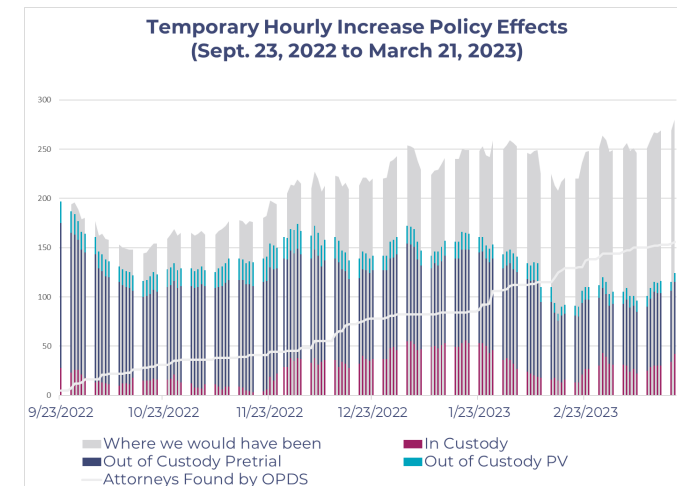
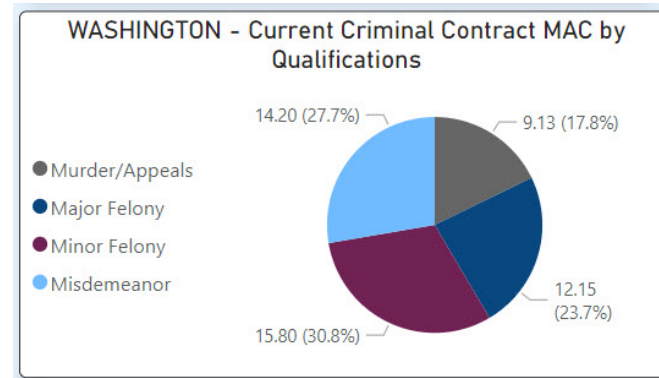
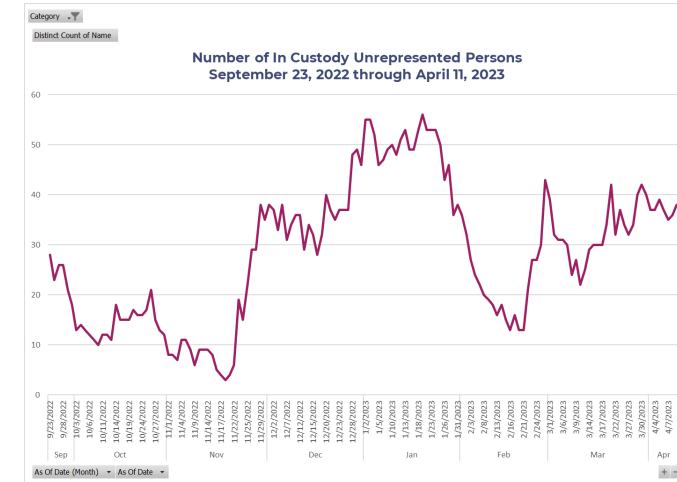
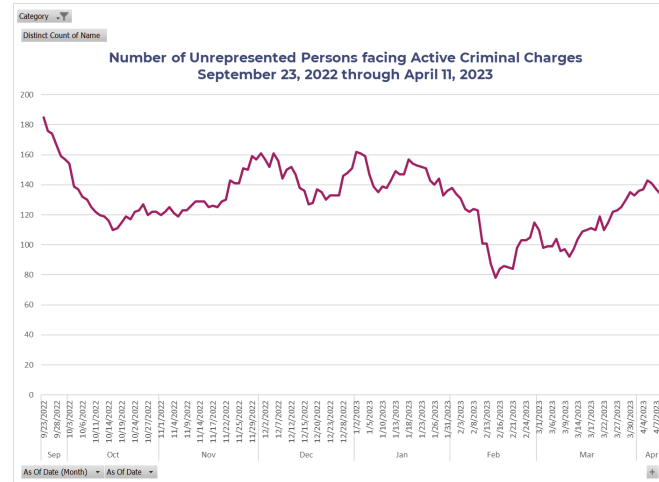
Lane County



UNREPRESENTED DATA

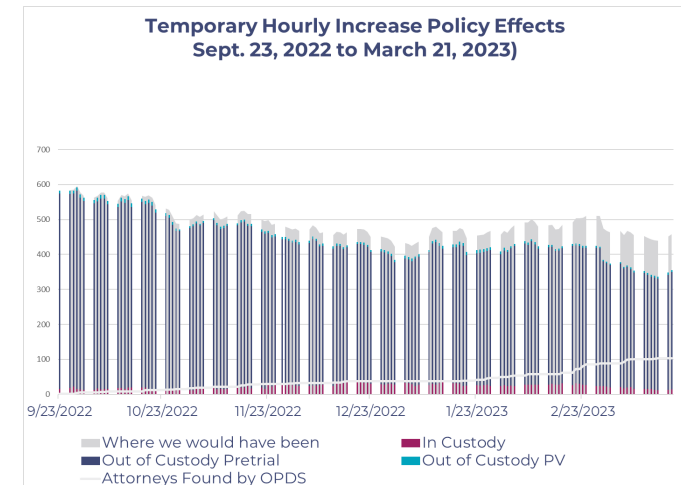
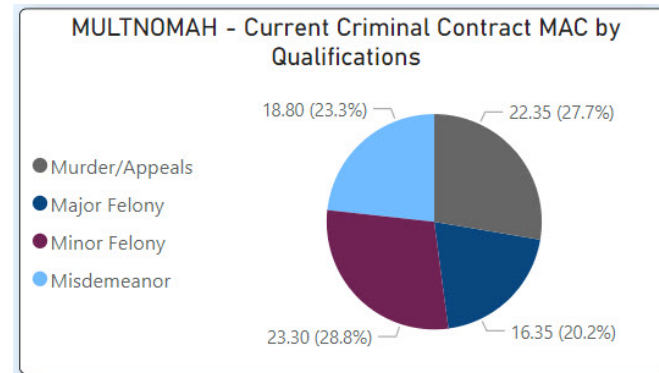
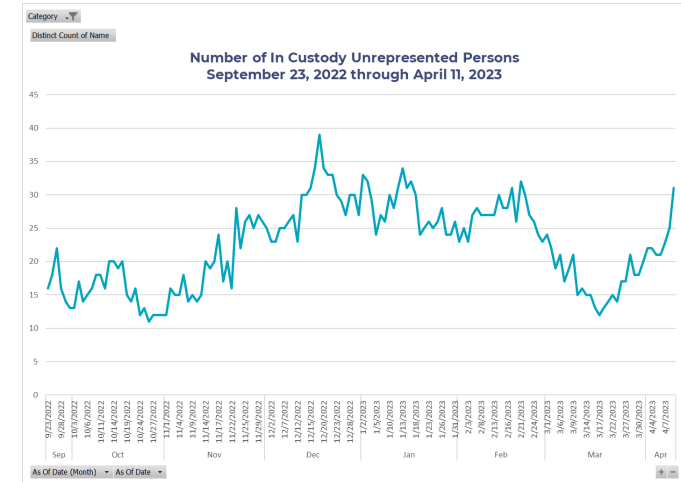
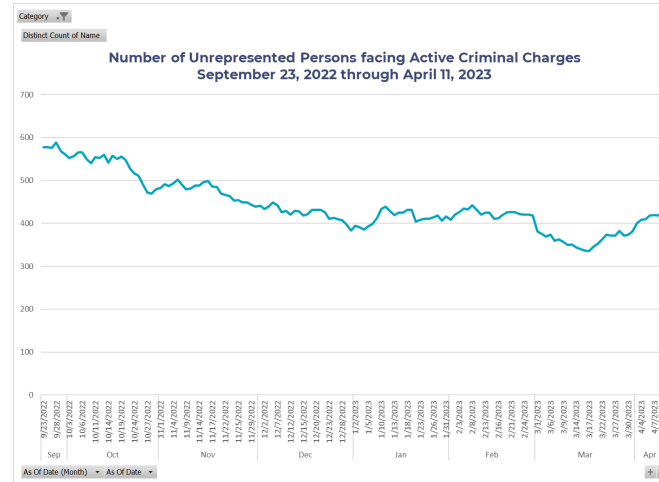
Washington County

- Wingspan III was able to resolve a significant number of cases over a five-week period in February and March
- Contracted providers in Washington County metered their pickup schedules each month to reserve contract capacity, then accepted additional hourly appointments



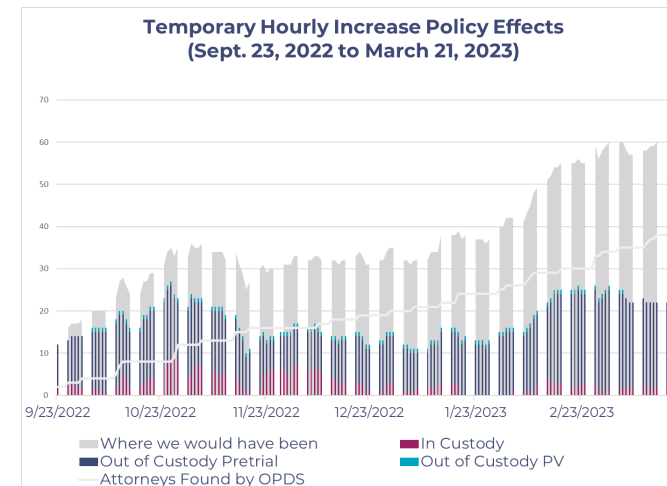
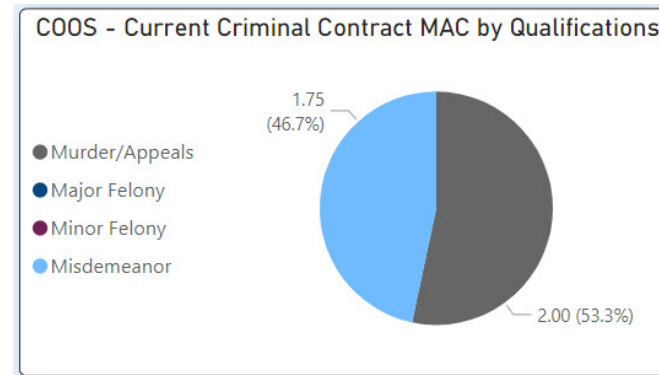
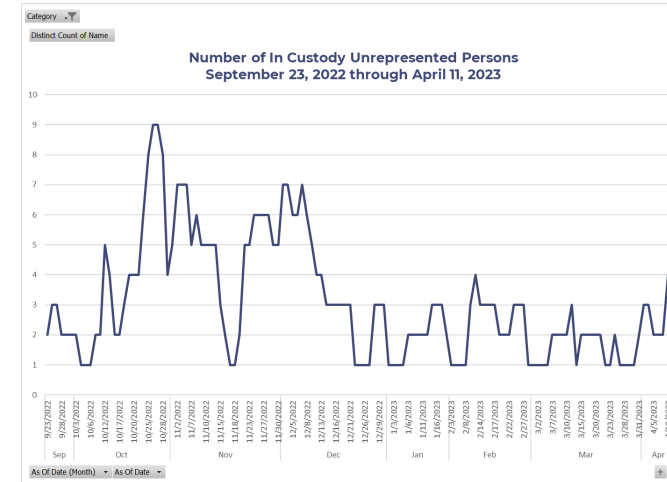
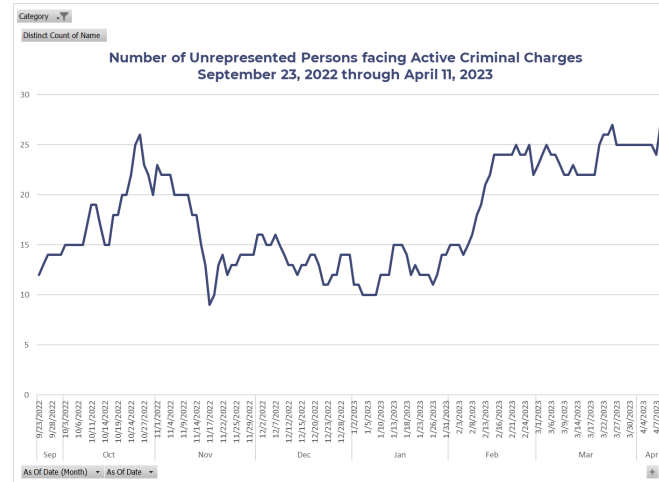
UNREPRESENTED DATA

Multnomah County



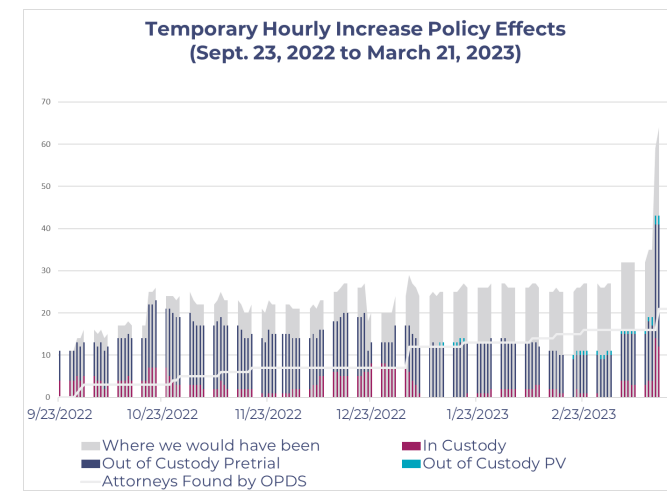
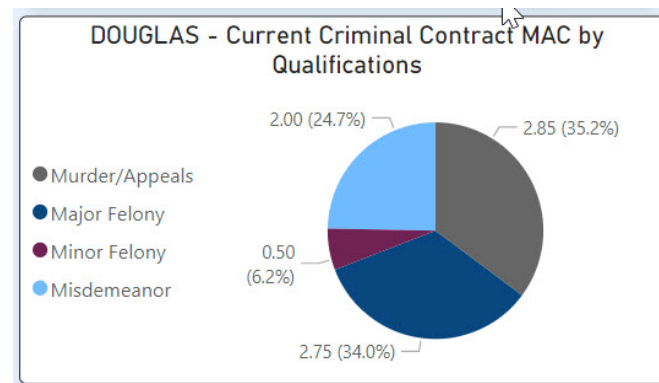
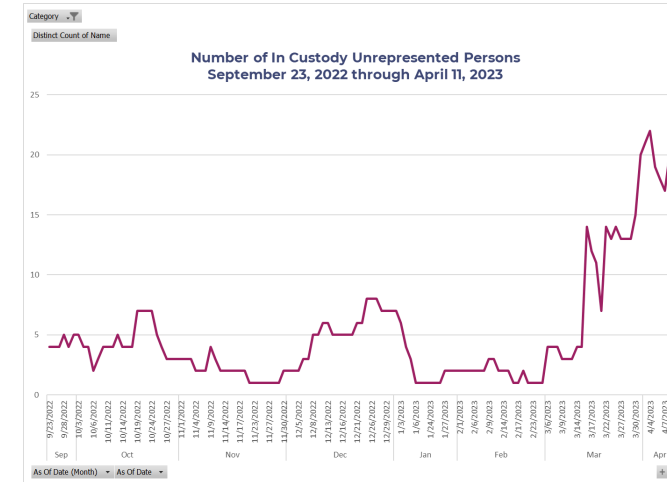
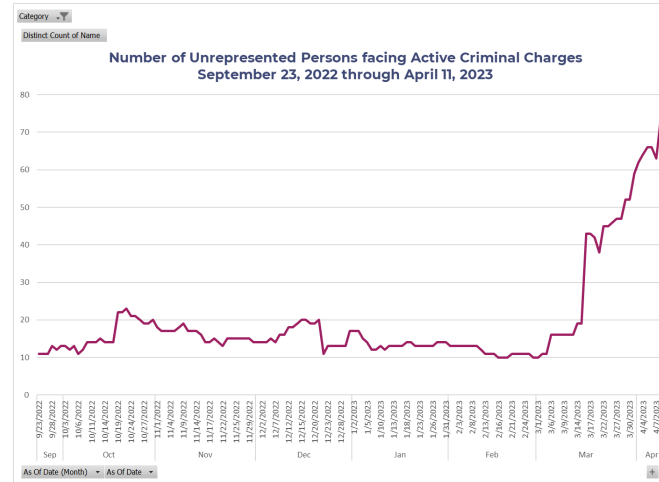
UNREPRESENTED DATA

Coos County



UNREPRESENTED DATA

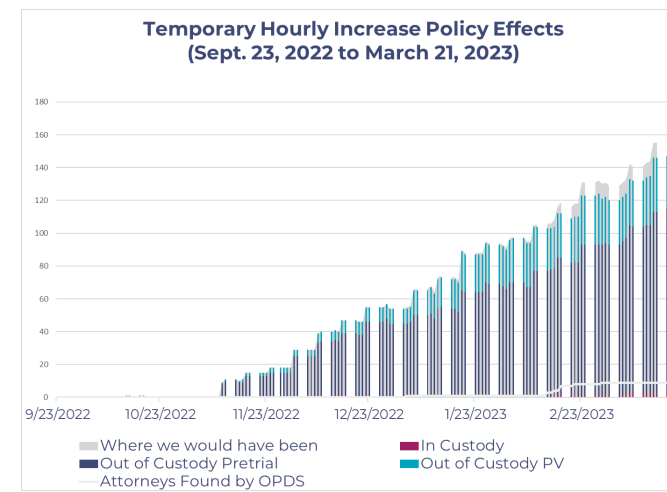
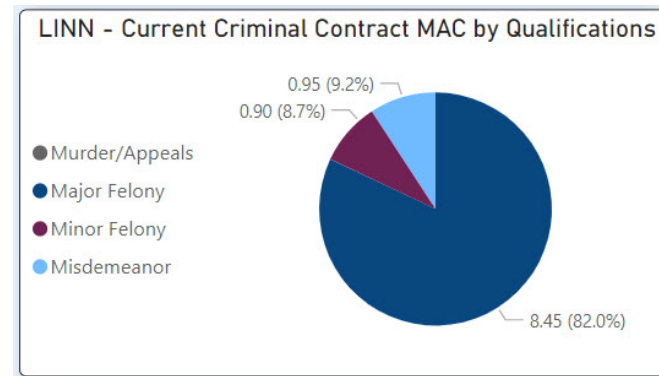
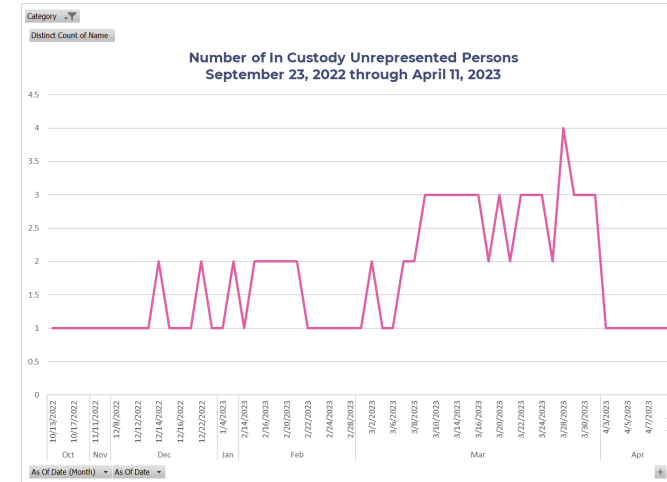
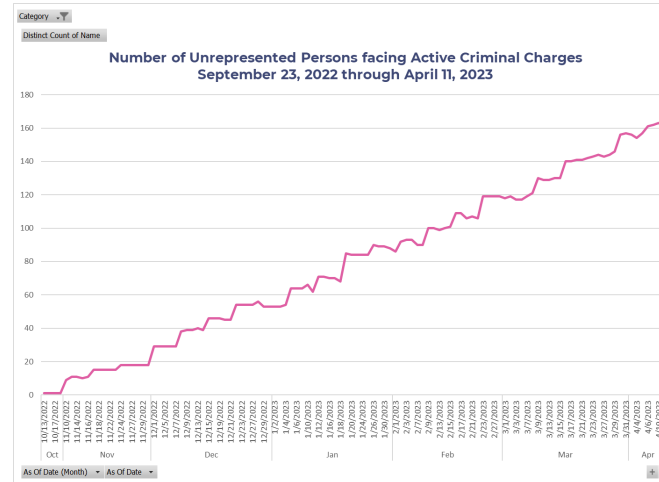
Douglas County



UNREPRESENTED DATA

Linn County

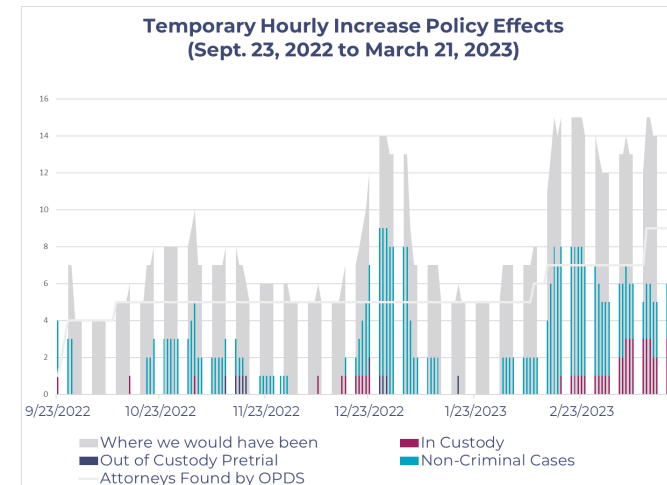
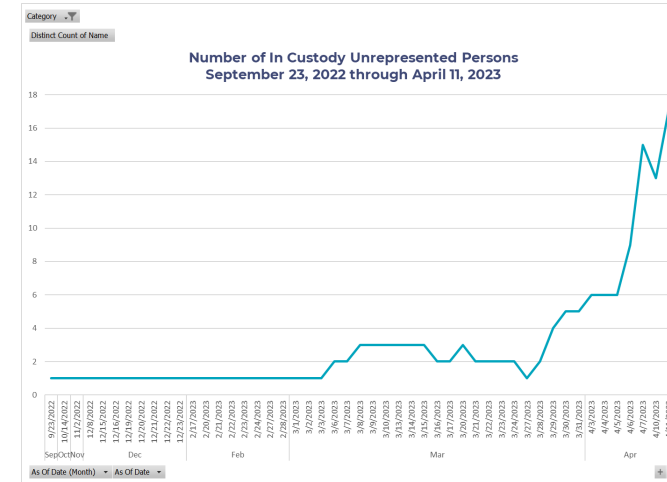
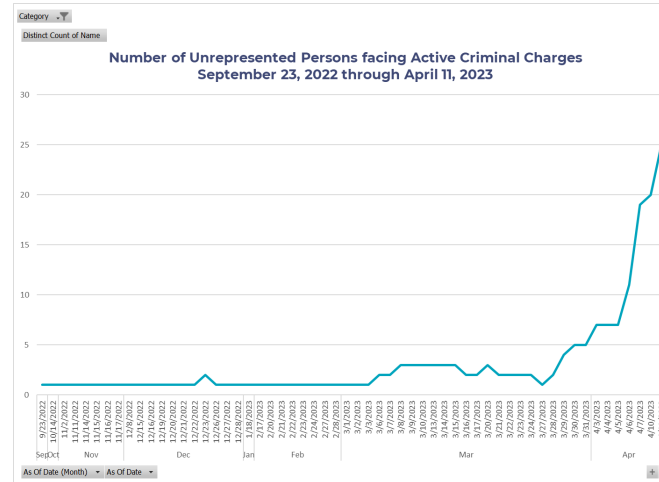
- Contractors recognized their capacity limits early and metered pickup to prioritize in-custody clients.



UNREPRESENTED DATA

Jackson County

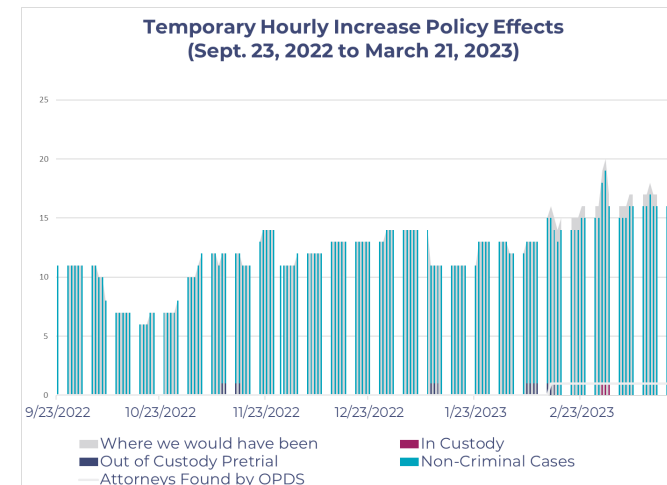
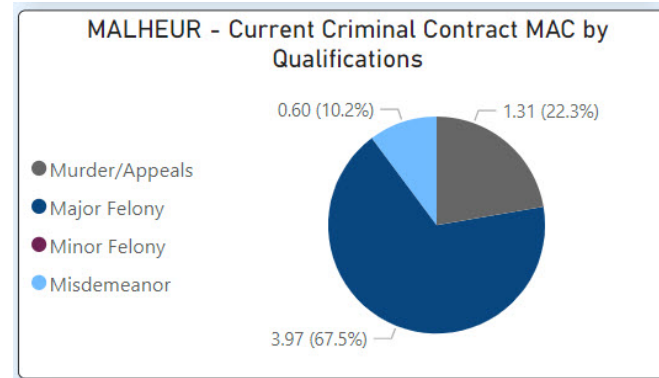
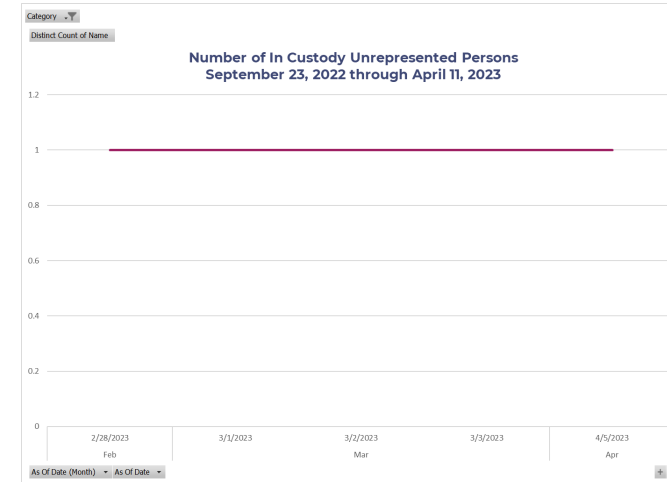
- Reported cases with Unrepresented Persons have primarily been Juvenile cases until April
- Criminal contractors took all cases until meeting capacity limits



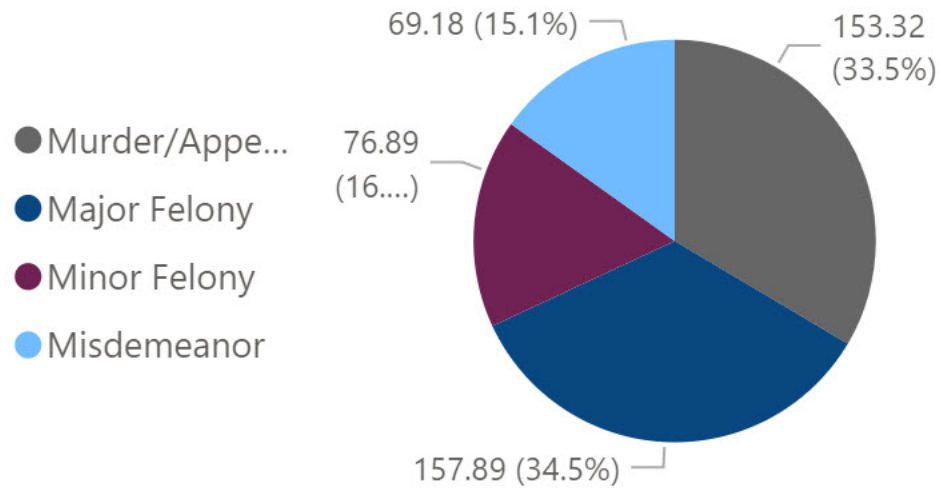
UNREPRESENTED DATA

Malheur County

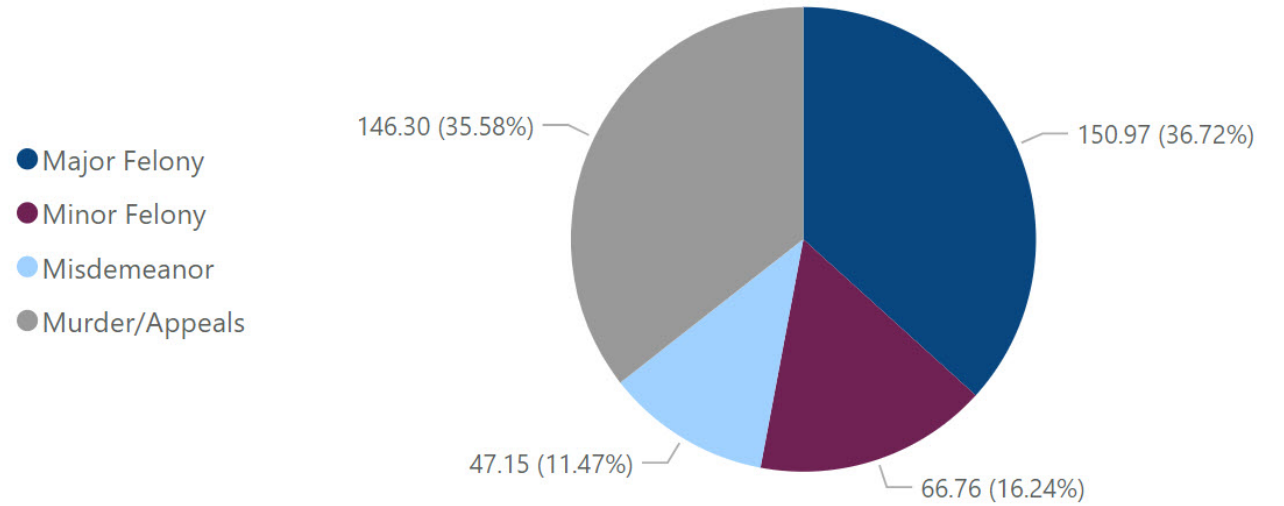
- Reported cases with Unrepresented Persons have primarily been Juvenile cases until April
- Criminal contractors took all cases until meeting capacity limits



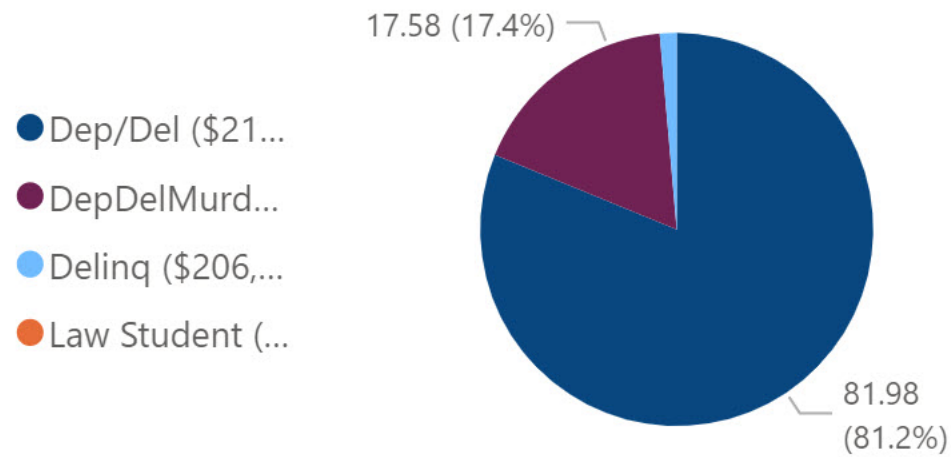
Current Criminal Contract MAC by Qualifications



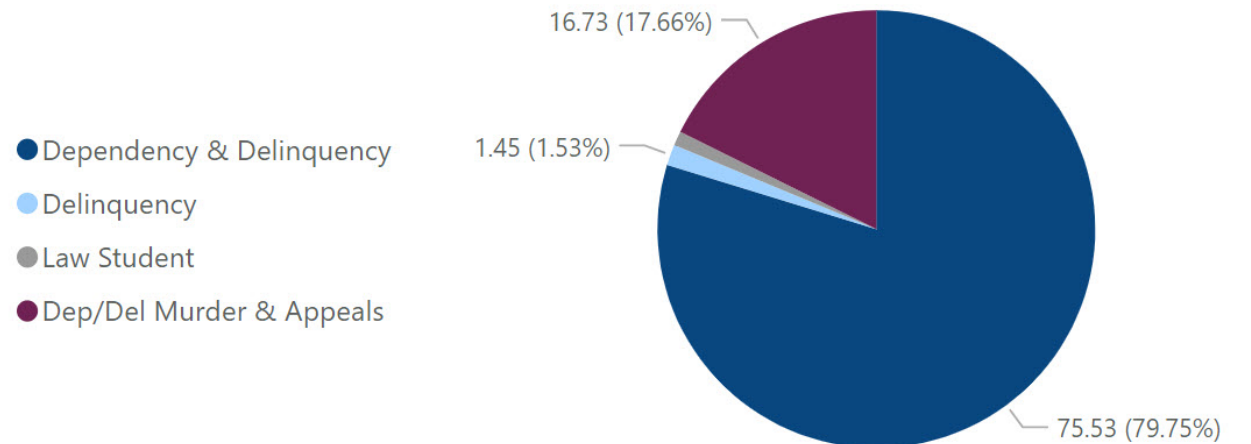
July 2022 Contracted Criminal MAC by Qualification



Current Juvenile Contract MAC by Qualifications

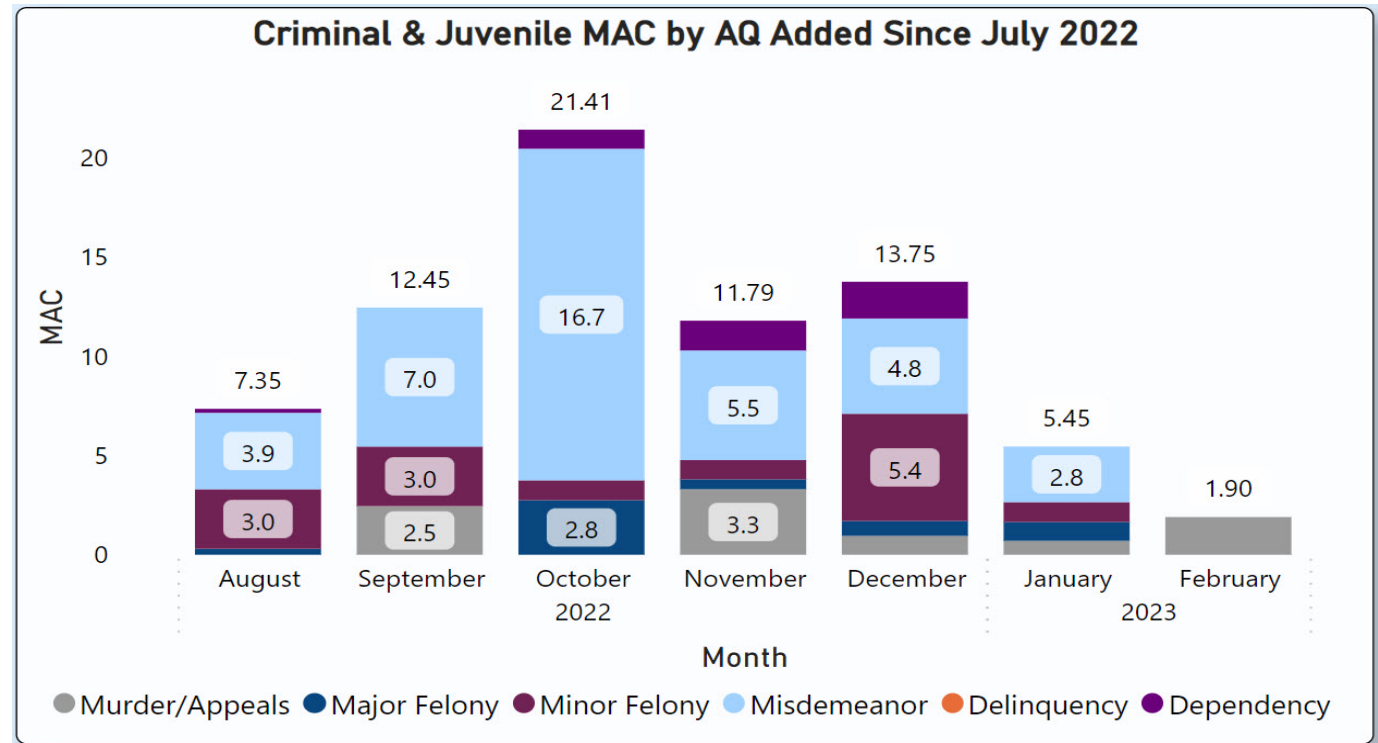
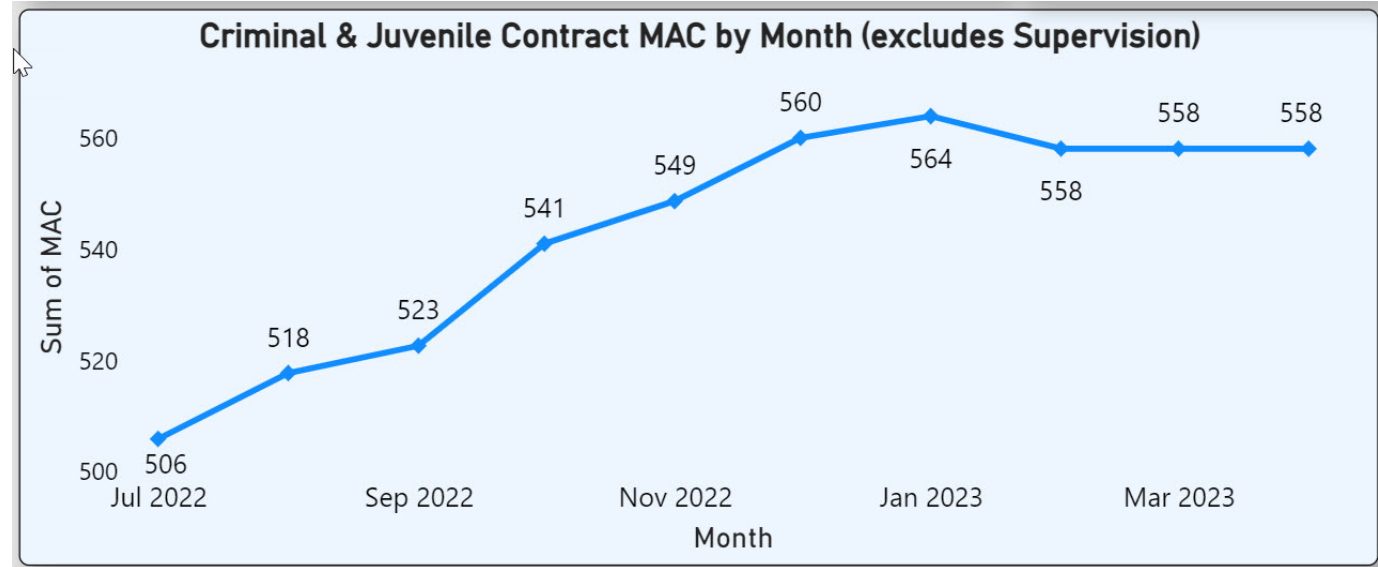


July 2022 Contracted Juvenile MAC by Qualification



UNREPRESENTED DATA

MAC Increases



Reports and Studies

Reports and Studies

6th Amendment Report (Jan 2019): [6AC Oregon report 2019.pdf \(sixthamendment.org\)](#)

American Bar Association Study (Jan 2022): [The Oregon Project: An Analysis of the Oregon Public Defense System and Attorney Workloads Standards \(americanbar.org\)](#)

New Mexico Public Defense System 5 Year Plan (Jan 2022): [Final-Draft-LOPD-5-Year-Plan.pdf \(lopdnm.us\)](#)

HR 1408 Equal Defense Act (2021): [H.R.1408 - 117th Congress \(2021-2022\): EQUAL Defense Act of 2021 | Congress.gov | Library of Congress](#)