

ODAA Presentation on Indigent Defense to Ways and Means Public Safety subcommittee

Introduction:

Co-Chair Evans, Co-Chair Sollman and Members of the Committee:

My name is Dan Primus, I am the Umatilla County District Attorney and the President of the Oregon District Attorneys Association (ODAA). I would like to thank the subcommittee for the opportunity to share information from the perspective of prosecutors as it relates to the public defense crisis – this issue effects our daily efforts and is an area we want to be supportive partners on, but as you’ll hear we have limited triggers without jeopardizing public safety. Prosecutors recognize and agree that when someone does not have access to defense counsel that is a grave concern for our system of justice and it has a detrimental impact on community safety and victims’ rights. Just as prosecutors know the hard work we put into our difficult cases, we know the defense bar is equally as committed.

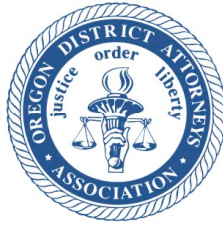
Oregon is at a pivotal moment for public safety, facing systemwide problems that require systemwide solutions. We believe that together, an accountable and well-functioning defense, prosecution and judiciary uphold the justice system. It’s impossible to expand or reduce one arm of the system and maintain balance with the others. As demand for all public sector attorneys has grown, Oregon has injected important funding into public defense services and we understand more is needed to address concerns of some attorneys who provide public defense representation.

How do Oregon’s Prosecutor’s Experience Public Defense Shortages:

1. The public defense shortage is not experienced uniformly across the state. The Oregon Judicial Department’s real time data dashboard demonstrates that in 15 of the 25 counties reporting unrepresented individuals the number of unrepresented defendants is less than 6.¹
2. Even a geographic region with multiple DAs offices sharing that region experience the shortage differently. For example, until recently Clackamas County had reported almost no unrepresented defendants while Washington and Multnomah County had consistently reported unrepresented defendants. And I think its important to note here

1

<https://app.powerbigov.us/view?r=eyJrIjo1NDQ2NmMwYWVMtNzhiZi00MWMJhLWE3MjgtMjg2ZTRhNmNmMjdmlwi dCI6IjYxMzNIYzg5LWU1MWMtNGExYy04YjY4LTE1ZTg2ZGU3MmWY4ZiJ9>



that those counties also have different models – meaning Clackamas, without a public defender office, is the only county in the metro area without an unrepresented in-custody problem – the consortia has been able to successfully address the need.

3. When we polled our members, prosecutors shared that they also believe it is important to note that while the number of unrepresented defendants has increased significantly in recent years the number of criminal cases being charged has not been similarly increasing – if anything COVID saw a decline both in cases filed and total volume of criminal cases.²

Approaches Prosecutors have taken to work collaboratively to address the shortages

1. Some counties report informal resolution processes where the Court, Defense Bar and DA come together to resolve cases when there is a need to resolve a current case backlog.
2. One county, Washington County, instituted a formal resolution process called “wingspan 3”. You will hear more about this program from DA Barton in a minute.
3. Some counties have attempted to have their courts intervene more directly by filing motions to require the court to appoint counsel.

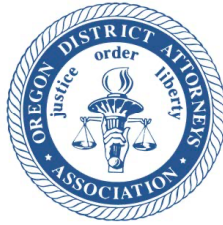
Additional Efforts to Help Resolve Issues:

1. I think it is important to note that there are only so many “levers” prosecutors can pull on to affect this system. None of them appear to be long-term solutions to this issue.
2. We continue to be an engaged stakeholder and work with partners and DA Schmidt and myself are members of the public defense workgroup convened by Co-Chair Evans and Co-Chair Prozanski

Other Recommendations that came from our members include:

1. Support for your efforts to address any legitimate compensation issues raised by the providers of public defense.
2. Flags from Prosecutors in counties that are either not experiencing shortages or very low numbers of unrepresented defendants hope to be able to continue with a system

² <https://www.courts.oregon.gov/about/Pages/reports-measures.aspx>



that is working for their counties and are concerned about recent discussions to dissolve consortia models.

3. Advocate for more consistent understanding of public defense case caps. In some instances the caps seem hard, but in others it seems if provider can attest to sufficient capacity they can be exceeded. More transparency on these caps will provide better informed conversations at the local level as well as in Legislature.

DA Barton

Co-Chair Evans, Co-Chair Sollman and Members of the Committee:

For the record, I am Kevin Barton the DA for Washington County. I wanted to take a couple of minutes to talk with you about the wingspan program:

- a. The program aimed to resolve the cases of out of custody defendants who did not have an attorney due to the shortage.
- b. Program built on two previous ones which were used to reduce pandemic backlogs.
- c. Collaborative effort between DA, Oregon Defense Attorney Consortium and Washington County Circuit Court.
- d. 100 cases on the docket seen over a 6 week time span. Consortium defense lawyer appointed, at a higher compensation rate, solely for representation for the “wingspan” program.
- e. 62 cases resolved.³

³ See attached data for “Wingspan 3” outcomes.

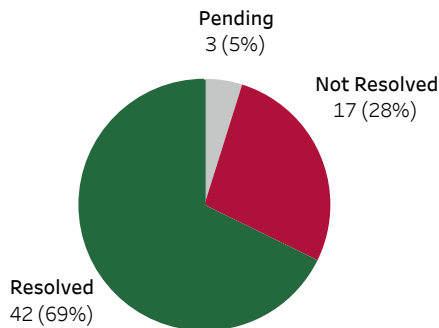


KEVIN BARTON
WASHINGTON COUNTY DISTRICT ATTORNEY

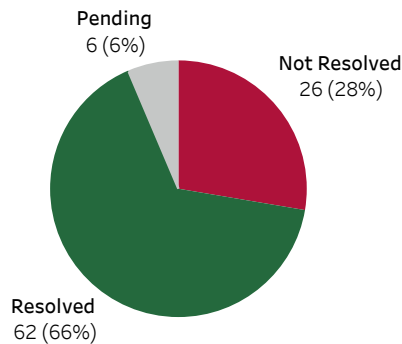
150 North First Avenue, Suite 300, MS 40, Hillsboro, Oregon 97124-3002
 (503) 846-8671 / (503) 846-3407 (fax)
 www.WashingtonCountyDA.org

RE: WINGSPAN 3 RESULTS

OUTCOMES BY DEFENDANT



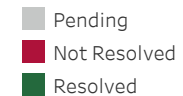
OUTCOMES BY CASE



Defendant Appeared at WSP



Current Status



OUTCOME DETAILS

		Person #	Person %	Cases #	Cases %
Resolved	Convicted	37	60.7%	39	41.5%
	Dismissed	7	11.5%	11	11.7%
	Probation Continued	4	6.6%	4	4.3%
	Probation Extended	1	1.6%	1	1.1%
	Probation Revoked	2	3.3%	2	2.1%
	Probation Terminated	4	6.6%	5	5.3%
Pending	Set Over	3	4.9%	6	6.4%
Not Resolved	Rejected WSP Offer	10	16.4%	17	18.1%
	Removed from WSP	7	11.5%	9	9.6%

NOTES

Data includes all cases on the WSP 3.0 docket (scheduled for 2/13, 2/21, 2/27, 3/6, and 3/13/2023).

Cases 'Not Resolved' at WSP include cases where the defendant:

- * Was removed from WSP
- * Rejected the WSP Offer

Defendants may be double counted in Outcome Details table if the defendant had different outcomes on multiple cases.

Filter for defendant appeared at WSP indicates the defendant appeared at one more WSP hearings. Defendants that FTA'd for one hearing but appeared at a different hearing will be included in the filtered results.

Data as of 4/3/2023 9:27:38 AM

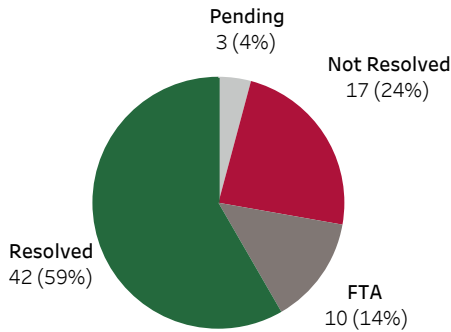


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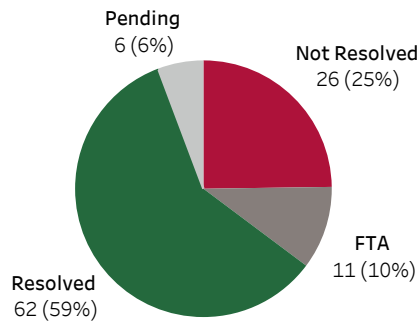
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RE: WINGSPAN 3 RESULTS

OUTCOMES BY DEFENDANT



OUTCOMES BY CASE



Defendant Appeared at WSP
 All

Current Status
 Pending
 Not Resolved
 FTA
 Resolved

OUTCOME DETAILS

		Person #	Person %	Cases #	Cases %
Resolved	Convicted	37	52.1%	39	37.1%
	Dismissed	7	9.9%	11	10.5%
	Probation Continued	4	5.6%	4	3.8%
	Probation Extended	1	1.4%	1	1.0%
	Probation Revoked	2	2.8%	2	1.9%
	Probation Terminated	4	5.6%	5	4.8%
Pending	Set Over	3	4.2%	6	5.7%
Not Resolved	FTA	10	14.1%	11	10.5%
	Rejected WSP Offer	10	14.1%	17	16.2%
	Removed from WSP	7	9.9%	9	8.6%

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