

SB 1093 STAFF MEASURE SUMMARY

Joint Committee On Ways and Means

Prepared By: John Borden, Budget Analyst

Meeting Dates: 5/3

WHAT THE MEASURE DOES:

The measure relates to public defense whose purpose is to address the unrepresented defendant/persons crisis. The measure declares an emergency and is effective on passage. Provisions of the measure repeal on June 30, 2025.

The measure directs the presiding judge of each judicial district to develop and implement a coordinated public safety unrepresented defendant crisis plan and submit the plan to Oregon Criminal Justice Commission as soon as practicable, but no later than September 1, 2023. Presiding judges of judicial districts with a population over 100,000 shall convene a crisis team comprised of the presiding judge, district attorney(s), and the Executive Director of the Public Defense Services Commission (PDSC) or director's designee, to coordinate the development and implementation of a public safety unrepresented defendant crisis plan. The Chief Justice may issue orders related to resolving the unrepresented defendant crisis. Presiding judges may enter standing orders related to resolving the unrepresented defendant crisis that are consistent with the orders of the Chief Justice. The Criminal Justice Commission shall conduct a review of each judicial district's coordinated public safety unrepresented defendant crisis plan and report to the legislature by no later than October 1, 2023. PDSC shall promulgate and disseminate guidance related to the development of judicial district coordinated public safety unrepresented defendant crisis plans, by no later than August 1, 2023, and develop a training plan for public defense providers specific to the unrepresented defendant crisis, in consultation and cooperation with public defense provider associations and organizations, by no later than September 1, 2023. The measure includes a blank General Fund appropriation to PDSC for the purposes of funding public defense expenses related to implementing the crisis plans.

ISSUES DISCUSSED:

None

EFFECT OF AMENDMENT:

No amendment.

BACKGROUND:

There has always been, and will continue to be, a small percentage of unrepresented defendant/persons awaiting the appointment of counsel. The current crisis is different in terms of magnitude and duration, which means that the crisis has progressed to a level that could result in the active denial of counsel, which places the defendant/persons (and the state) in legal jeopardy and poses a threat to public safety. Active denial of counsel and a criminal defendant/person's right to speedy trial leads to the violation of the constitutional rights of a defendant/person under the Sixth and Fourteen Amendments to the United States Constitution.

In the fall of 2021, PDSC initially became aware of a growing issue with unrepresented defendant/persons. By the winter of 2022, after no intervening action taken by the Commission, a crisis developed that predominately impacted four counties (Lane, Marion, Multnomah, Washington) and has since spread to 20 or so additional counties. The crisis impacts defendants who are both in the physical custody of the local jurisdiction and defendants released, with conditions and on their own recognizance, at the direction of a circuit court judge.

Persons eligible for court-appointed counsel can be either adult or juvenile and fall under a slate of case-types, including: major and minor felonies, misdemeanors, contempt, civil commitment, habeas, post-conviction relief, delinquency, and dependency (i.e., there also have been a few unrepresented persons in non-criminal cases). Out-of-custody defendant/persons eligible for court-appointed counsel include both those on pre-trial release, probation violations, and non-criminal cases.

The unrepresented defendant/persons crisis is in part a derivative of the systemic crisis facing the state's public defense system. The current crisis is driven by a deficit in attorney capacity. The deficit can be largely explained by the backlog of caseloads arising from the pandemic adding to existing caseloads; however, other key factors also come into play such as: (1) increasing caseloads due to higher rates of crime for primarily serious crimes; (2) changes to PDSC contract delivery model that reduced attorney caseload requirements; (3) provider attorney compensation; and (4) increased complexity of cases (e.g., clients with acute behavior health issues; electronic discovery; body camera footage, etc.). To a lesser extent, contributors also include: changes in law; macroeconomic factors, such as increased inflation impacting provider's cost of business; and what has been a more competitive marketplace for legal services, which includes the hiring of a large number of public attorneys both within and outside the public defense system (e.g., PDSC administration staff, Parent Child Representation Program, Department of Justice - Child Advocacy, etc.). Combined, these factors have led to an inability of providers to recruit, hire, and retain public defense counsel to meet caseload demands.

Current reporting on the number of unrepresented defendant/persons reflects that that the crisis is far from being resolved and will likely extend into the (intermediate) future and may worsen due to unresolved or not fully resolved causation issues. The number of unrepresented defendant/persons has grown from 45 (January 2022) to now over 2,223 (May 3, 2022). Over this period, the number of in-custody defendants has increased from 22 to 219.

For the 2021-23 biennium, PDSC has been provided \$22.8 million in supplemental funding for the unrepresented defendant/persons crisis by the legislature (\$12.8 million) and the Emergency Board (\$10 million) and the agency has committed another \$20.4 million in savings from the agency's 2021-23 legislative approved budget for a total commitment to the crisis of \$43.3 million General Fund.