



Oregon Judicial Department

Unrepresented Crisis Plans – March 2024 Update

Key Insights

[Unrepresented Trends](#)

- The number of unrepresented individuals continues to increase, although the rate of growth has stabilized ([Figure 1](#)).

[Lever 1 – Add Attorneys](#)

- Although attorneys have been added to existing contracts ([Figure 2](#)), the total appointments taken under contract has decreased ([Figure 5](#)).
- The OPDC Trial Division opened two regional offices ([Figure 6](#)). As contract attorneys are hired into OPDC regional trial division offices, a transition plan with the court and local public defense providers would benefit the clients OPDC serves.

[Lever 2 – Attorney Capacity](#)

- Courts continue to see the lack of standardized, objective contract MAC expectations resulting in variation in the caseload that individual attorneys can manage. This makes it difficult to predict whether the number of contracted attorneys in a district is adequate to keep up with case filings.

[Lever 3 – Decrease Filings](#)

- Criminal case filings remain more than 20% below pre-pandemic levels but they have been on the rise for two consecutive years ([Figure 8](#)).

[Lever 4 – Increase Dispositions](#)

- More cases are being filed than are closed each month ([Figure 11](#)).
- People with out of custody felony and misdemeanor cases are waiting longer for an attorney which delays resolution of their cases ([Figure 12](#)).

[Local Court Spotlights](#)

- Clatsop, Multnomah, and Washington County Circuit Courts shared their local experiences with the unrepresented crisis.

[Data-Driven Decision Making](#)

- Statewide, there are systemic gaps in data collection that prevent OPDC from tracking attorney availability, attorney qualification, and attorney capacity.
- OJD and OPDC are sharing data and have created dashboards on public defense caseloads, but more work needs to be done to address the systemic gaps in data collection.

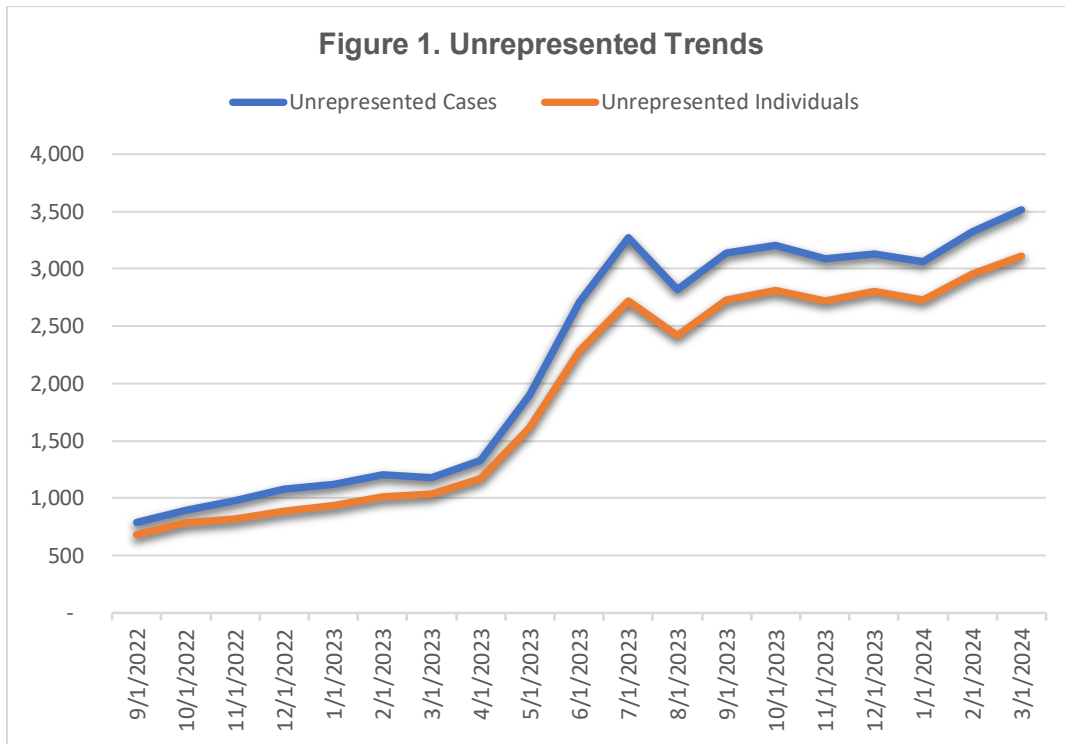
Unrepresented Trends

Figure 1 shows the unrepresented trendline since OJD began tracking the crisis 18 months ago. For daily updates, you can access the [Unrepresented Dashboard](#) on the OJD website.

- Even as the number of criminal case filings remains more than 20% below pre-pandemic levels and the number of contracted attorneys has increased since July 2023, the number of unrepresented individuals continues to increase.
- Overall, the rate of growth has slowed but continues to increase even as new attorneys are added, this looks to be due to a decrease in appointments taken over the last few months.
- Some attorneys have reported to the courts that the monthly and annual contracts limits prohibit them from taking new appointments when they have the capacity to take additional appointments.



Judges continue to hear from attorneys that removing administrative barriers to taking appointments at the hourly rate could increase participation in the program.



Source: OJD Odyssey Data (eCourt).

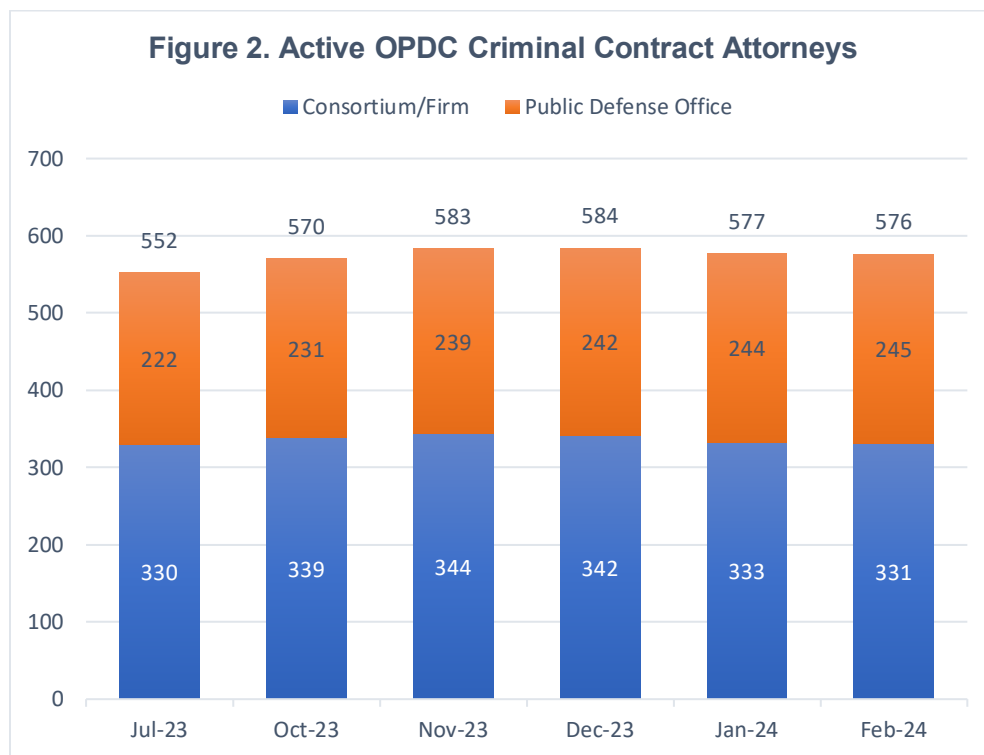
Unrepresented Crisis Plans – The Four Levers

The unrepresented crisis plans focused on the four levers that could impact the crisis. Many of these “levers” are not within the court’s authority but require action from other stakeholders. While specific entities hold different kinds of authority, each crisis plan assumes that system change - and progress - requires a shared vision, shared goals, and a group effort.

Lever 1 - Add Attorneys

Figure 2 shows the number of active attorneys on criminal contract in July 2023, and then monthly from October 2023 through February 2024.

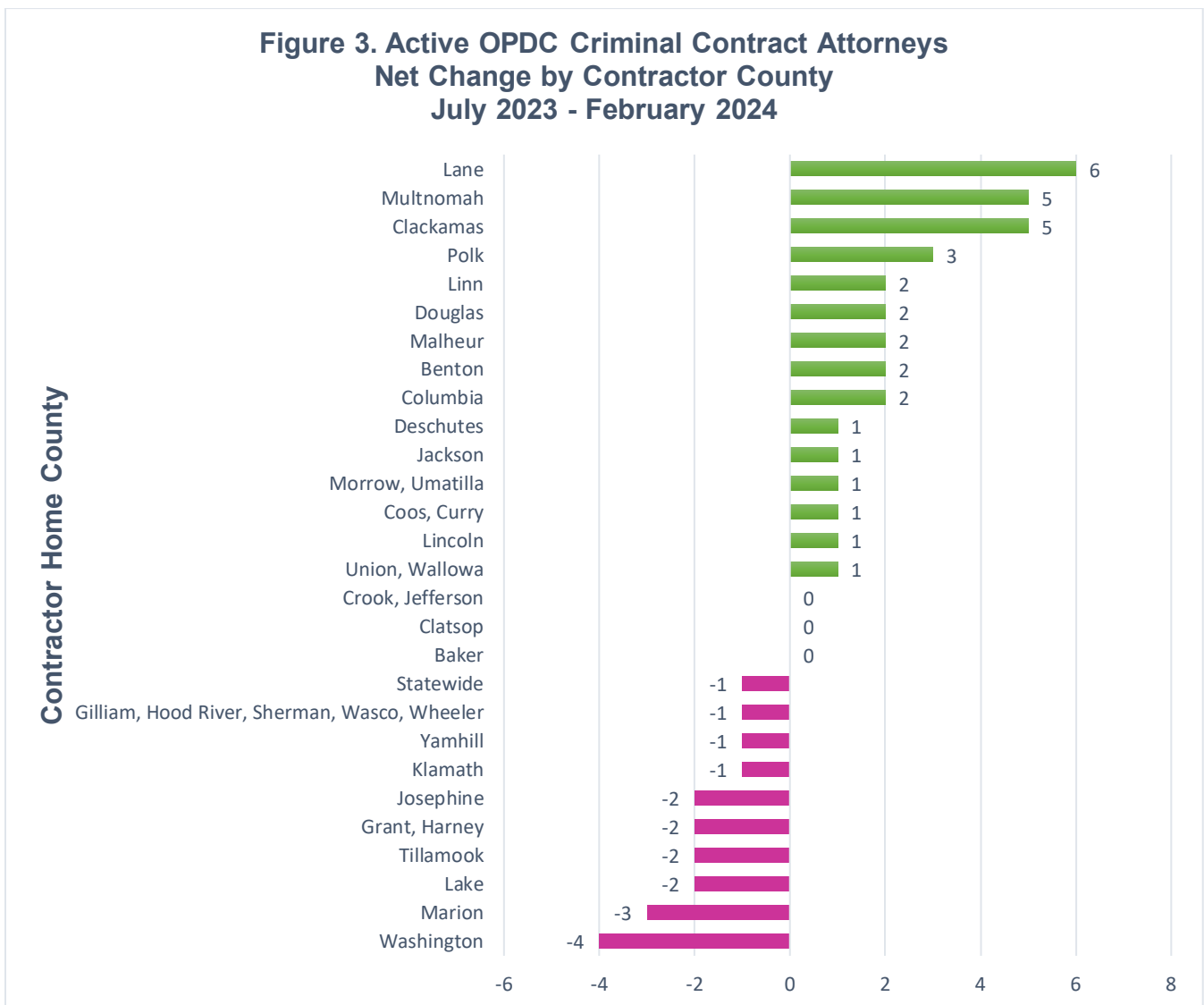
- There has been a net increase of 24 attorneys added to criminal contracts between July 2023 and February 2024.
- Consortia gained one attorney and public defense offices gained 23 attorneys.



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

Figure 3 shows the net change in contract attorneys by county since July 2023.

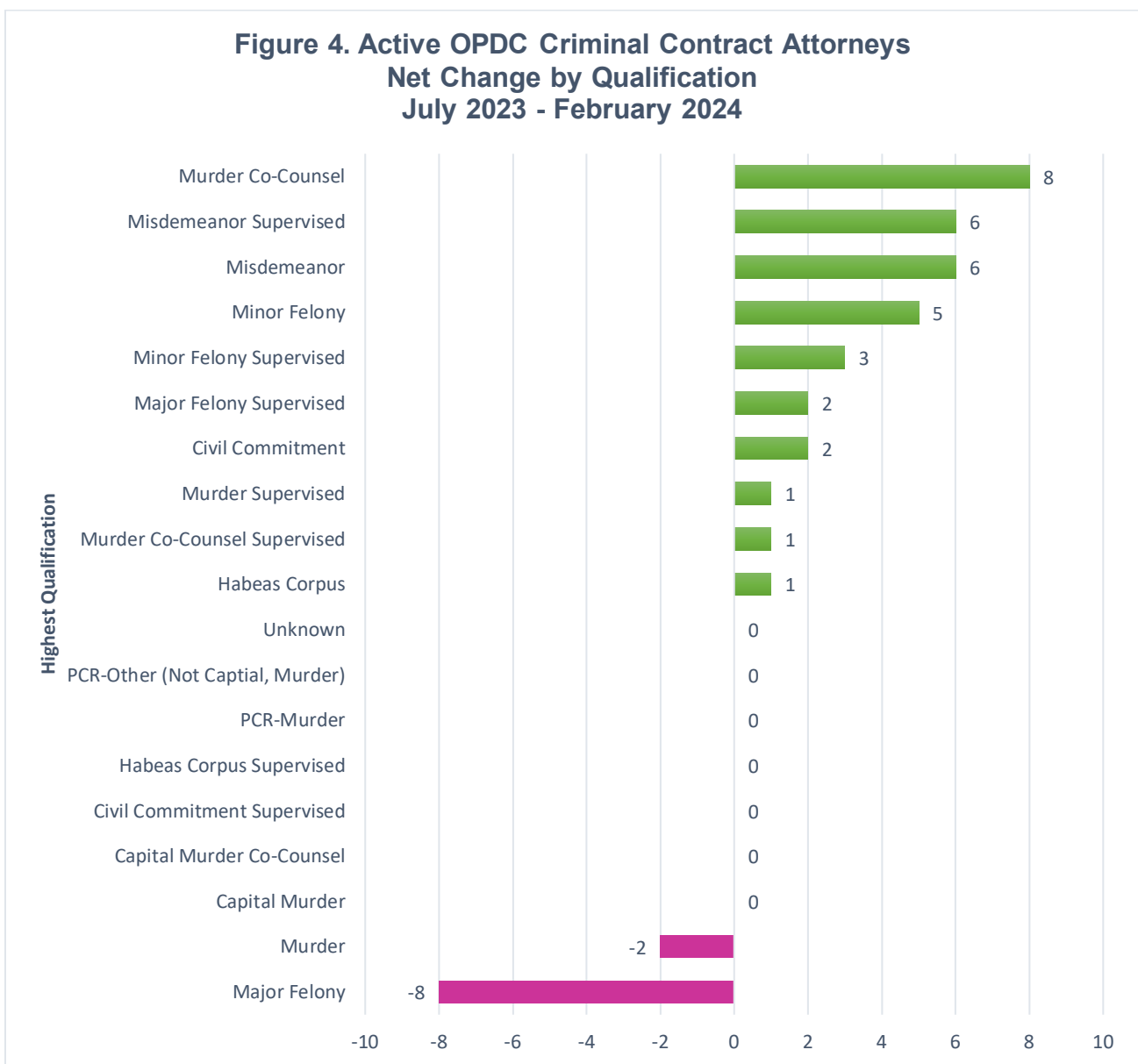
- Attorneys have been added in 15 judicial districts, including in three unrepresented hotspots (Douglas, Jackson, and Multnomah).
- In 3 judicial districts there has been no change in the number of attorneys (although there could have been changes in their contract MAC over this time).
- There was also a net loss of attorneys in 10 judicial districts, particularly in the unrepresented hotspots of Marion and Washington and in smaller counties where losing attorneys can create a crisis overnight, which happened in Clatsop County when they lost an attorney in August.
- Some new hires in the OPDC regional trial division offices were losses to contract attorneys in Marion (2) and Grant/Harney (1).



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

In Figure 4, the net change in contract attorneys is listed by attorney qualification.

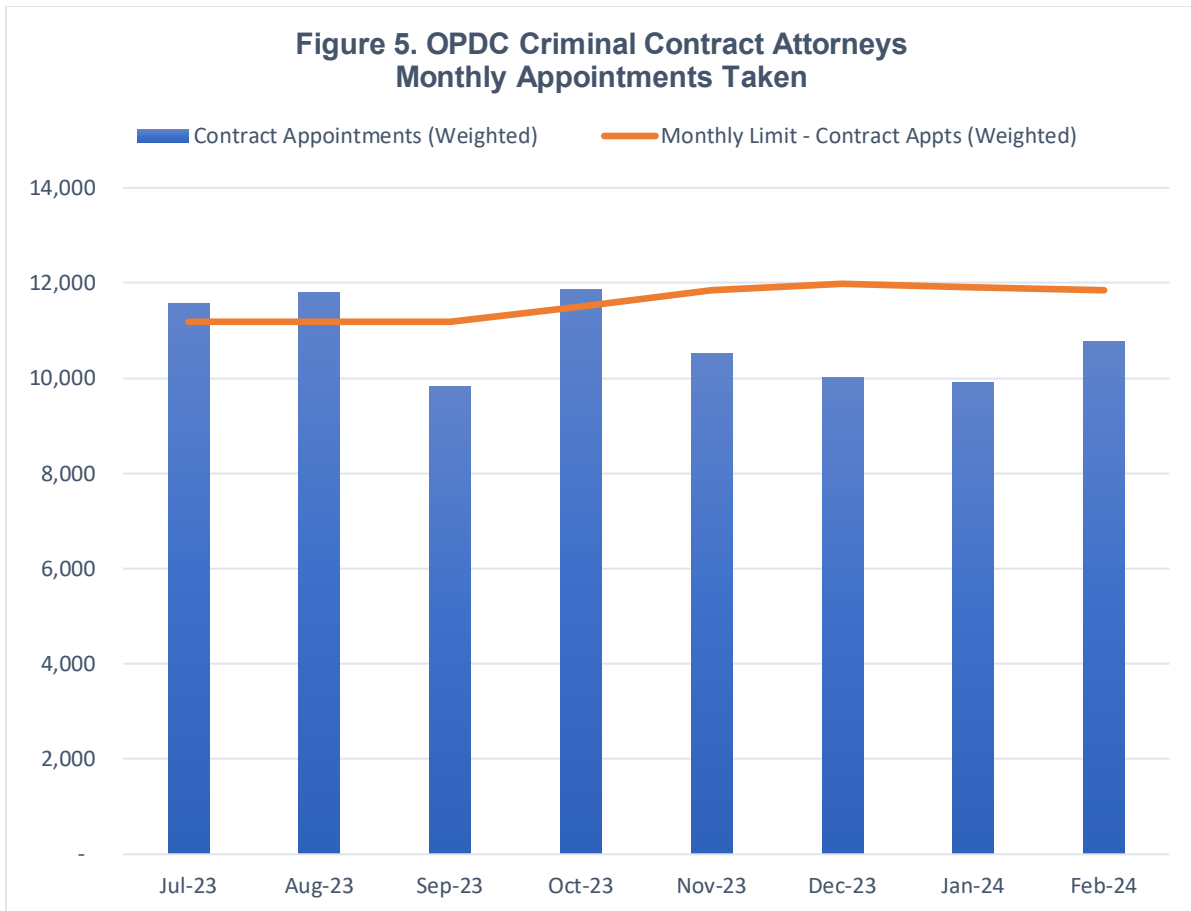
- Most new attorneys added since July 2023 have been misdemeanor qualified, and they are most likely newer attorneys who may not be able to take their full MAC (maximum caseload).
- There was also a net decrease of 8 major felony qualified attorneys between July 2023 and February 2024.
- Courts are concerned about a lack of attorneys qualified to represent persons accused of a felony, as well as the time it takes for less-experienced attorneys to be qualified by OPDC for certain case types.



Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024. Does not include attorneys on hourly contracts only.

Figure 5 shows the number of monthly appointments taken under contract this fiscal year for contract attorneys in each month compared to their monthly contract limits (1/12 of annual maximum attorney caseload).

- Although attorneys have been added to existing contracts, the total appointments taken under contract has decreased.



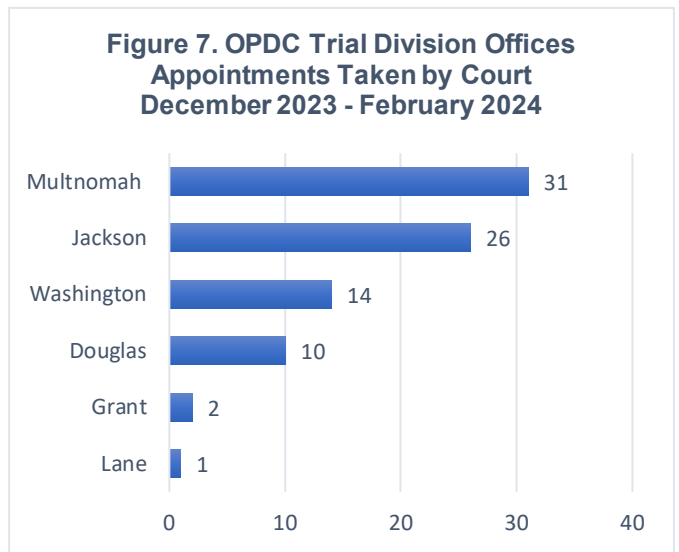
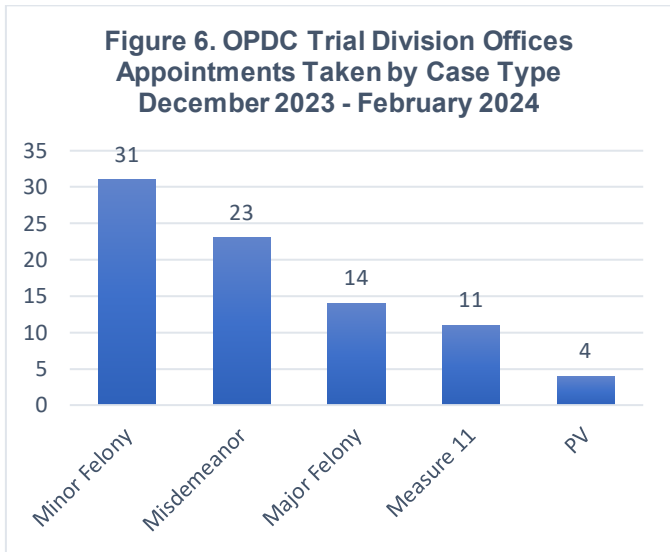
Source: Snapshots of OPDC Provider Contract Data as of 7/18/2023, 10/1/2023, 11/14/2023, 12/21/2023, 1/16/2024, 2/16/2024 and OJD Odyssey Data (eCourt).

Figure 6 and Figure 7 show the new appointments taken by the OPDC Trial Division regional offices servicing the Northwest and Southern Oregon regions.

- Eight new attorneys took 84 new appointments from December 2023 through February 2024.
- Three new hires in the OPDC regional trial division offices were losses to contract attorneys in Marion County (2) and Grant/Harney Counties (1).
- In Grant and Harney Counties, the loss of the local consortium attorney left the small jurisdiction’s remaining public defense providers on the brink of collapse and sixteen children were left without representation in their dependency cases.



As contract attorneys are hired into OPDC regional trial division offices, a transition plan with the court and local public defense providers would benefit the clients OPDC serves.



Source: OJD Odyssey Data (eCourt).

Lever 2 - Attorney Capacity

Increased attorney capacity could be gained through prioritizing the assignment of cases to use attorney MAC more efficiently (e.g., ensuring felony-qualified attorneys are appointed on felonies before misdemeanors), as well as ways to reclaim attorney time (e.g., better administrative methods for payment and qualifications).

Many unrepresented crisis plans recommended OPDC move away from the MAC model to an open caseload, or workload model that would allow a more accurate reflection of an attorney’s workload at any given time. The current MAC contract model only weights new appointments taken during the contract period, but attorneys carry open caseloads from prior contract periods which could, in part, explain why less appointments are taken each month as more attorneys are added to the contract.

- As of March 1, 2024, about 18% of open caseloads are from the prior contract period and are not reflected in the current contract MAC (and some of that open caseload from the prior contract period are cases in warrant status).
- The number of open appointments in warrant status is decreasing but still make up about 17% of open caseloads as of March 6, 2024.
- There are about 1,800 appointments in warrant status for more than 180 days, the contract requires attorneys withdraw from those cases in warrant status for more than 180 days, but those appointments remain open.

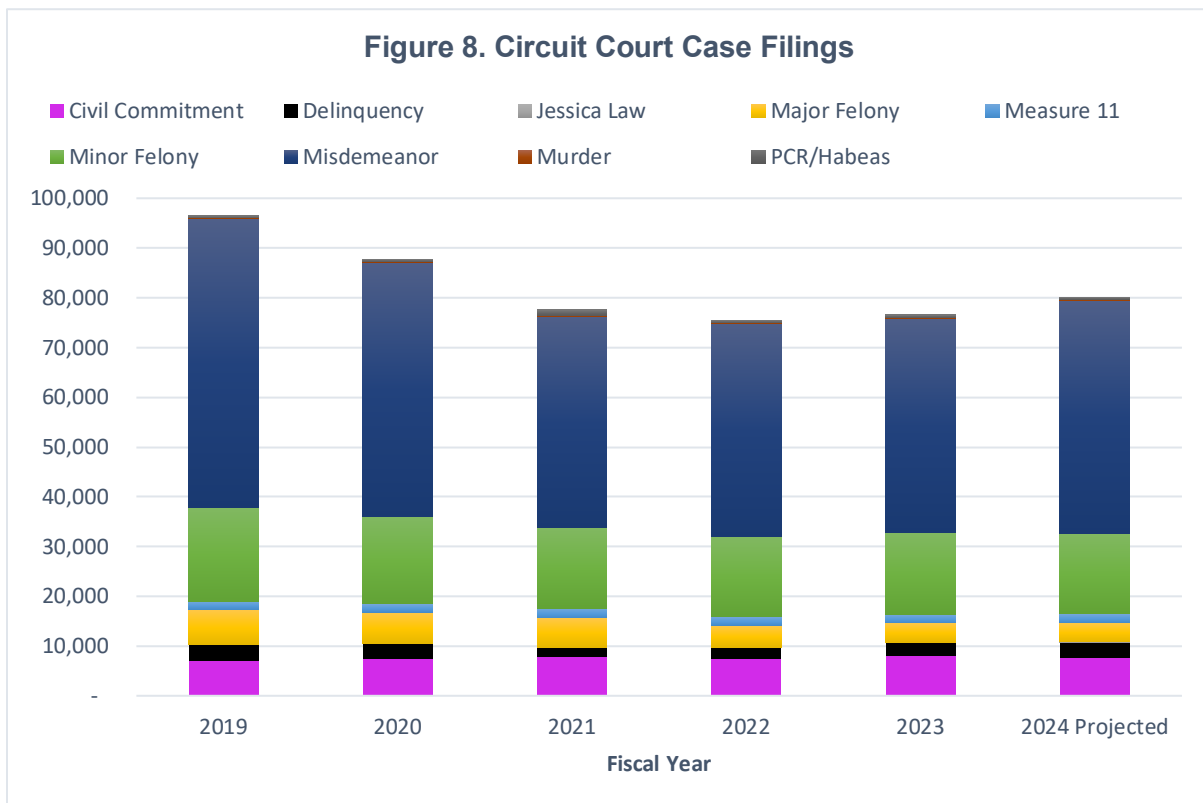


Ideally, OPDC would have a way to track and monitor open caseloads to determine attorney capacity and to enforce contract provisions.

Lever 3 - Decrease Filings

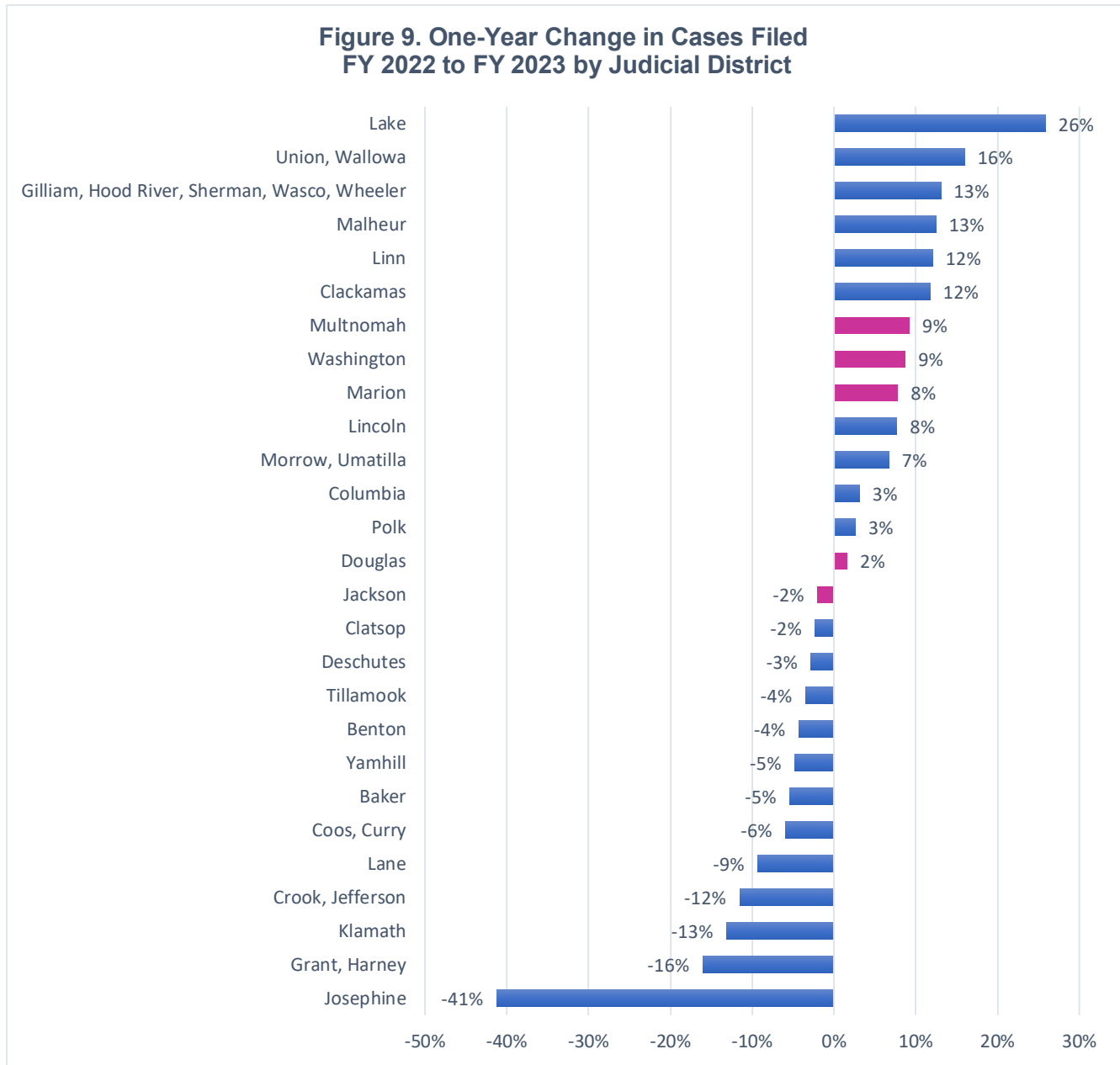
Figure 8 shows circuit court case filing trends.

- Filings remain more than 20% below 2019 levels but have started to increase in fiscal year 2023.
- In fiscal year 2023, case filings increased statewide by 1.4% over the prior year and in fiscal year 2024 case filings are projected to increase by another 5%.



Source: OJD Odyssey Data (eCourt).

Figure 9 shows the one-year change in cases filed by judicial district, the unrepresented hot spots are highlighted in pink.



Source: OJD Odyssey Data (eCourt).

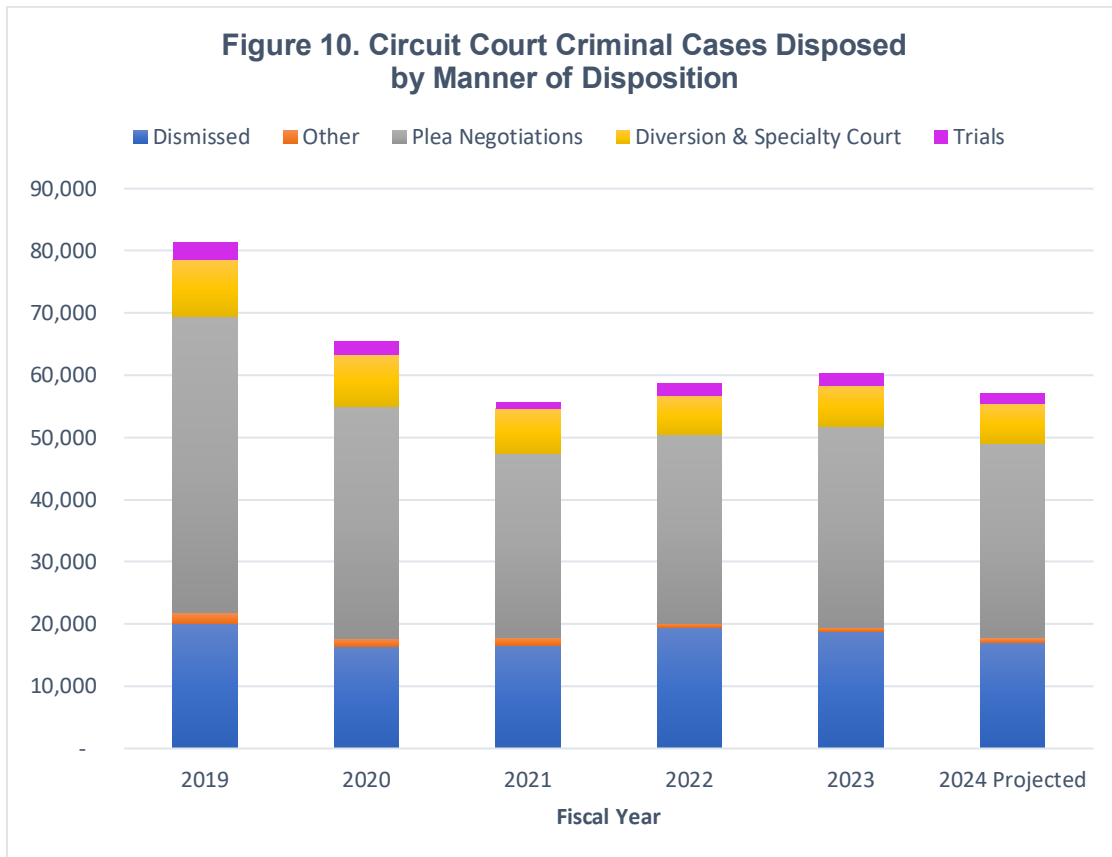
Lever 4 - Increase Dispositions

Figure 10 shows case dispositions since fiscal year 2019 by the manner of disposition.

- Like filings, case dispositions are well below 2019 levels.
- Case dispositions increased by almost 3% in fiscal year 2023 over the prior year.
- In fiscal year 2024 case dispositions are projected to decrease by 5% due to delays caused by the unrepresented crisis.
- Case dismissals are increasing while plea agreements are declining. Trial rates, diversions, and treatment court programs remained unchanged compared to 2019.



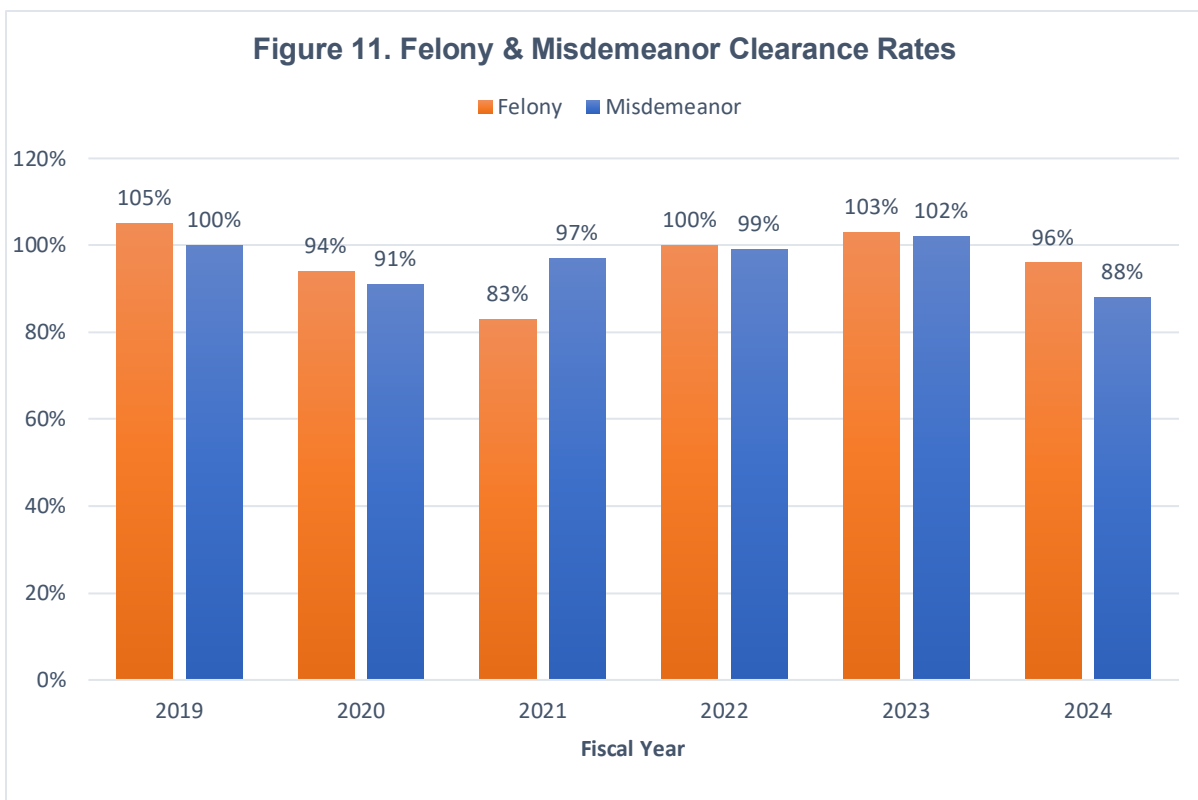
Courts across Oregon have increased their use of remote appearances to increase efficiencies with case resolutions and many courts are increasing their use of settlement conferences to increase early disposition of cases, to expedite plea negotiations and avoid a trial.



Source: OJD Odyssey Data (eCourt).

Figure 11 shows the statewide clearance rates for criminal cases since fiscal year 2019 through March 6, 2024.

- Clearance rates measure whether courts are keeping up with incoming caseload (cases closed divided by cases filed).
- When clearance rates are at or above 100%, open caseloads decrease and when clearance rates are below 100%, open caseloads increase.
- As the unrepresented crisis continues it will impact the courts' ability to resolve cases.
- In fiscal year 2024 to date, clearance rates have fallen below 100% for both felony and misdemeanor cases.



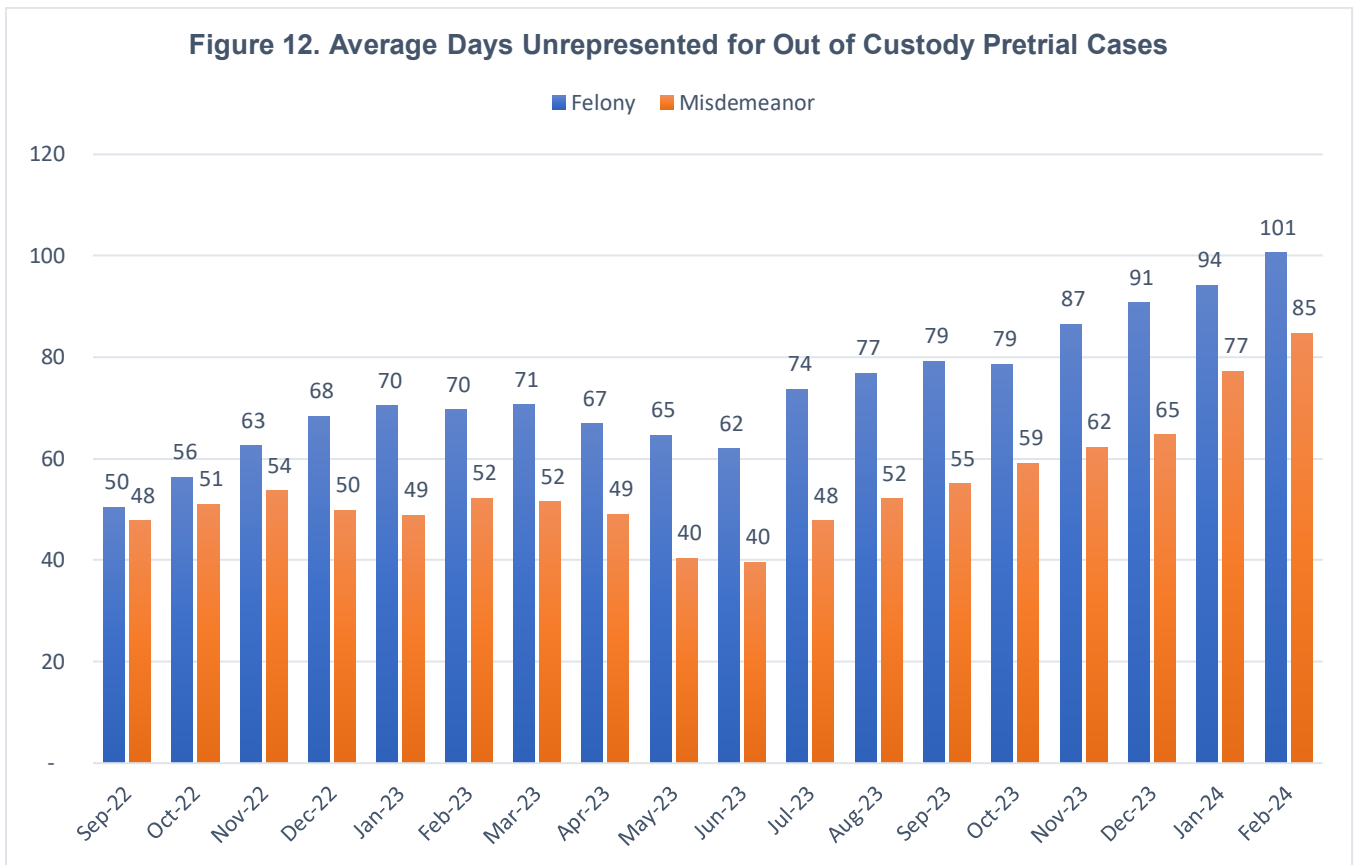
Source: OJD Odyssey Data (eCourt).

Figure 12 shows that people with out of custody felony and misdemeanor cases are waiting longer for an attorney which delays resolution of their cases.

- People with felony cases are unrepresented longer, on average, than people with misdemeanor cases.



Multiple providers expressed frustration about the difficulty accessing clients who are in custody. Improvements to the jail access, prosecutors reducing the time in providing discovery, and data sharing were all mentioned in unrepresented crisis plans as ways to improve system efficiency.



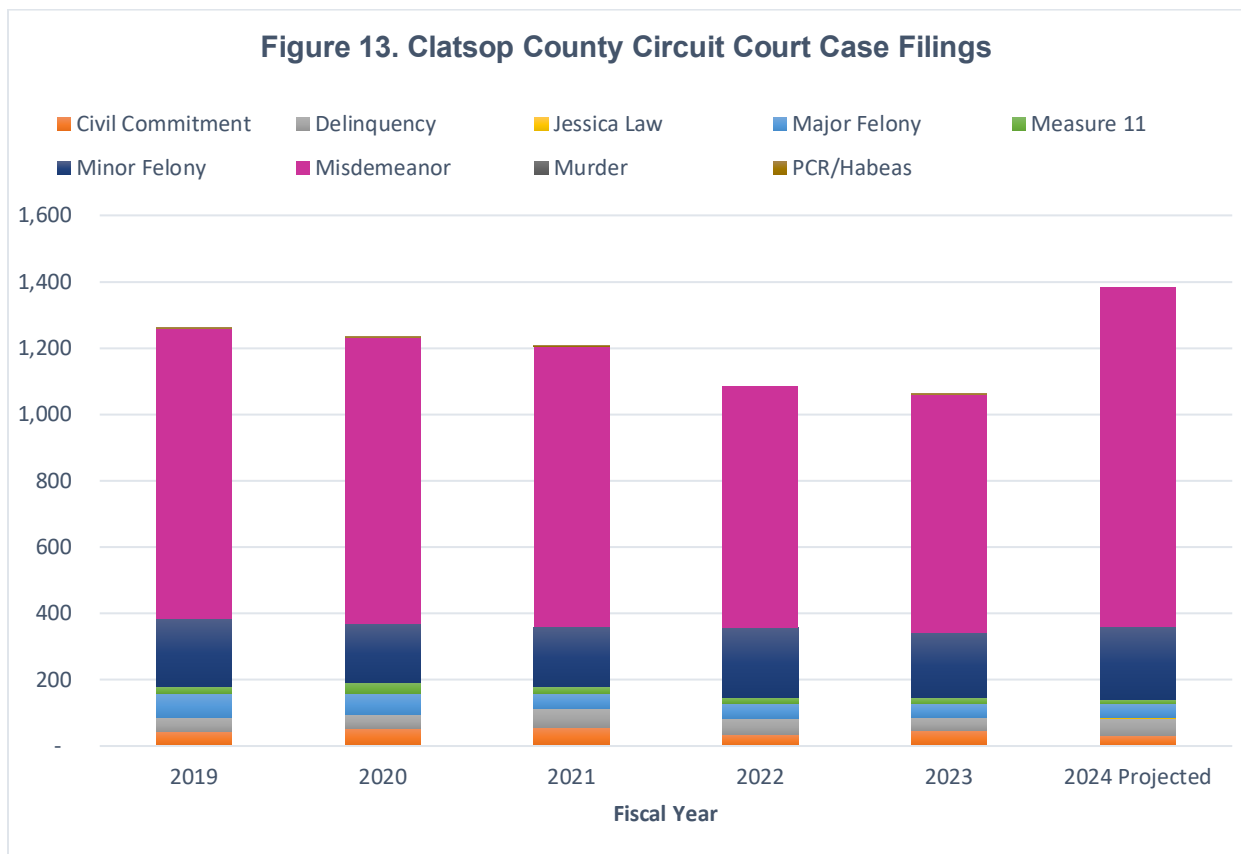
Source: OJD Odyssey Data (eCourt).

Local Court Spotlights

Clatsop County Circuit Court

Figure 13 shows filings by fiscal year since 2019 in Clatsop County Circuit Court.

- Filings for fiscal year 2024 are projected to be 31% more than fiscal year 2023, driven by an increase in misdemeanor filings. Unrepresented cases in Clatsop account for 14% of the court’s open criminal caseload.
- The court has been operating with about two fewer attorneys than are needed and one attorney has recently taken leave for a serious health issue; the court is now struggling to find representation for the attorney’s open caseload, approximately 50 more unrepresented cases.



Source: OJD Odyssey Data (eCourt).

To ensure that the most serious cases are receiving attorneys the court has been prioritizing in custody individuals. This has led to a concentration of more serious matters for public defense attorneys, more 60-day trial issues, and a serious and substantial risk of attorney burnout in the county.

Even on cases that have counsel, requests for investigative expenses and experts are taking several weeks to get approved which creates delays in the docket and adds time, and frustration to an already overburdened system.



The court is attempting to build a resolution docket to resolve the backlog of unrepresented and out of custody cases. OPDC was able to confirm funding of the soon to be retired defense lawyer that is willing to handle docket.

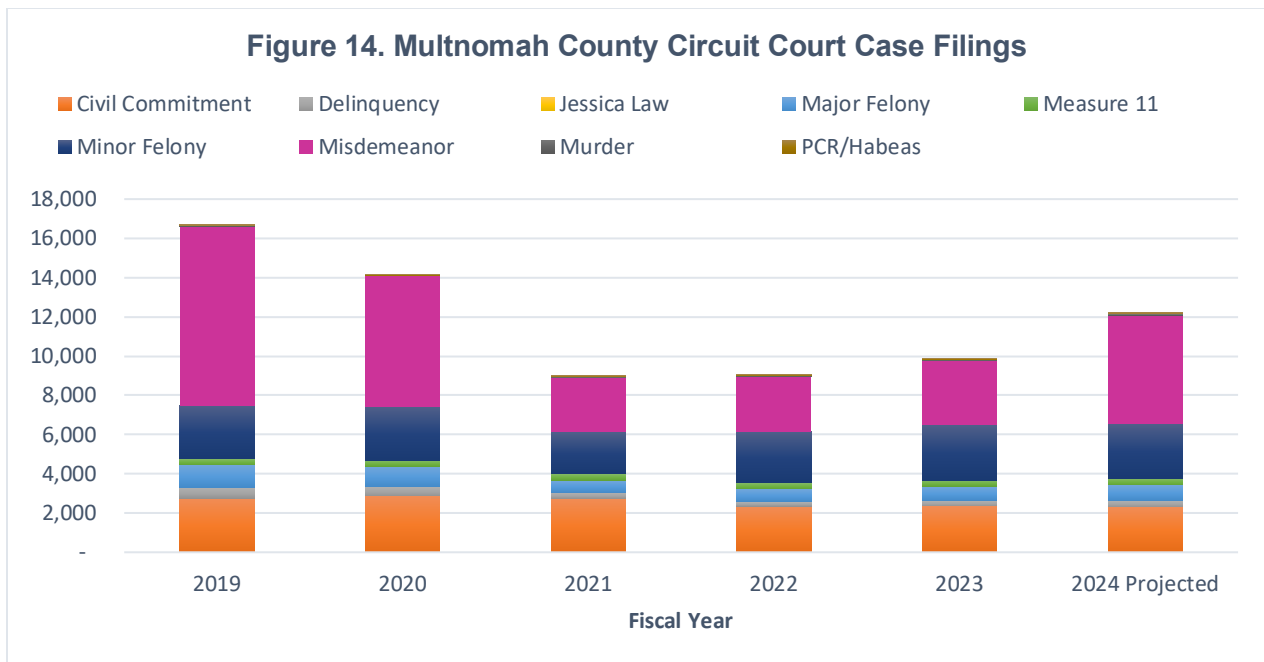
Managing unrepresented cases requires substantial staff time to monitor, track, and prioritize the unrepresented caseload, identify attorneys who can take new appointments, appoint the attorneys, and reschedule hearings when multiple appearances are required before an attorney can be appointed.

The court cannot move these cases forward without attorneys to appoint, as a result, time to disposition and clearance rates are being impacted by the delays created by the unrepresented crisis.

Multnomah County Circuit Court

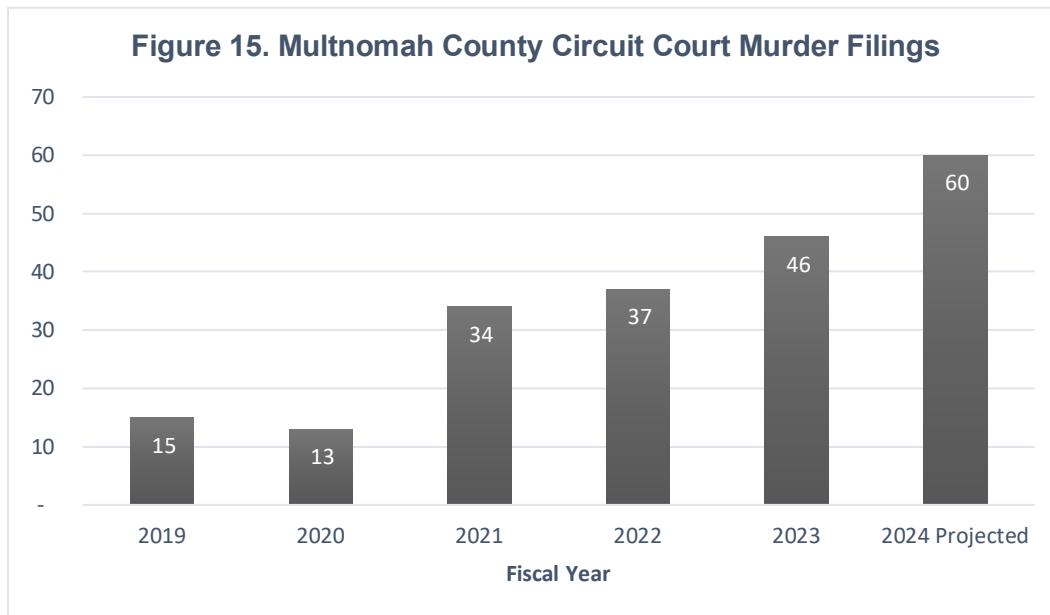
Figure 14 shows filings by fiscal year in Multnomah County Circuit Court.

- Criminal filings are down substantially compared to 2019 but they are increasing (9% increase in FY 2023 and another 24% increase projected in FY 2024).



Source: OJD Odyssey Data (eCourt).

Figure 15 shows Murder charges are historically high in recent years.



Source: OJD Odyssey Data (eCourt).

The court is particularly concerned about increasing levels of Murder charges and the projected impact of the passage of HB 4002 (2024) exacerbating the unrepresented crisis in Multnomah.

Since 2022, turnover has improved substantially in the public defense offices, vacancies are lower, and 5 attorneys have been added in Multnomah County.

- The number of out of custody unrepresented individuals eligible for public defense counsel is as high as it has ever been - 569 on 9/15/22 (almost 18 months ago) and 587 on 3/7/24.
- Public defense offices are consistently below the contractual MAC while consortium attorneys are consistently at or above their monthly MAC and continue to meet specialized and critical needs for representation of major felonies.
- The court supports maintaining the structure and funding for the Portland Defense Consortium (PDC) if possible. PDC attorneys work collaboratively with the court to resolve minor felonies and all criminal cases through representation in the early resolution docket and other specialized programs.
- The District Attorney's office should be staffed at a level suitable for a jurisdiction the size of Multnomah County and to accommodate timely discovery, timely communication with opposing counsel, timely settlement offers, and adequate levels of staffing for docket appearances to resolve cases efficiently.

The court recommends a new open caseload/workload contracting model be developed.

- Development of objective criteria to determine when contracting lawyers and law firms have reached their ethical limits will improve the OPDC's ability to project public defense need in each jurisdiction.
- Tracking and monitoring open caseloads (and workload) per attorney would allow OPDC to know how many cases each attorney is managing and to what extent their open caseload includes cases that are in bench warrant status.
- An additional recommendation is for OPDC to consider innovative ways to free up attorney time such as providing funding for trained case managers and social workers who can effectively and efficiently provide critical services currently provided by attorneys and paralegals.



Considerations for evaluating public defense workload and capacity should include the number of clients in-custody versus out-of-custody (jail access issues), discovery needs including lab reports and body camera video that can impact timeframes, and time to disposition standards to keep cases moving towards disposition.

Washington County Circuit Court

Washington County Circuit Court has had several successful interventions to the public defense crisis including:

- Continued Arraignment docket shaped the Wingspan 2.0 – Settlement Resolution Docket.
 - Wingspan 2.0 Settlement Resolution Dockets resolved approximately 686 out of 1,210 eligible cases. In cases where the defendant did appear, resolution rate was about 77%.
 - Wingspan 3.0 resolved another 62 unrepresented cases.
- Hired analyst to analyze data, communicate with partner agencies, perform research assignments, and provide recommendations for prioritization of appointments.
- Steady and sustained decline of in-custody and unrepresented since August 2023.
- Increased efficiency and timeliness when processing orders appointing counsel, improving defense firms' ability to track cases and meet with clients.
- Increased collaboration with Multnomah and Clackamas for global resolutions.



Automated check-in or telephonic check-in process for people with unrepresented cases waiting on appointment of counsel, has reduced docket time and FTAs while increasing convenience and accessibility for the participants.

The court has also experienced several challenges implementing local crisis plans including:

- Unable to accurately calculate and view attorney availability and workload.
- Difficulty finding attorneys willing to take out of custody cases above the C Felony level, especially Jessica's Law and sex abuse cases.
- Attorneys are taking newer cases over older cases, and engagement with provider staff is mixed.
- There are not enough experienced attorneys.
- The court needs more proactive engagement from OPDC.
- Early Case Resolution (ECR) cases have increased by approximately 30% since 2022 and there are not enough attorneys to accommodate the increase, which means fewer cases settling. The cases are set over, which increases risk of FTA and overloads the docket.
- Capacity issues at the jail create delays for attorneys to meet with clients.
- Wingspan type settlement dockets need buy-in from DA, Defense, and Judges.

The court will focus on the following goals in the next few months to continue implementation of their crisis plan:

- Increase clearance rates and reduce FTAs.
- Establish regular meetings with community partners.
- Continue efforts to analyze unrepresented data to determine the best course of action to prioritize appointment of counsel, increase efficiency, and clear the unrepresented out of custody caseload.



The court found that a quarterly docket to address driving/motor vehicle offenses would reduce out of custody unrepresented cases by 26%. This type of specialized docket would be an excellent use of a CLS or newer attorney.

Eligible persons who may have a single, stand-alone offense and have not reoffended may be eligible for a quicker resolution based on the DA's approval and recommendation.

Data-Driven Decision Making

OJD continues to work closely with OPDC to provide data to identify in-custody and out-of-custody unrepresented individuals, manage efficient appointment of counsel, and improve contract oversight by OPDC. Statewide, there are systemic gaps that prevent OPDC from tracking attorney availability, attorney qualification, and representation capacity.

The public defense system is severely compromised, with a growing number of individuals who have a right to counsel but remain unrepresented across the state. The need for accurate and reliable data continues and is necessary to make data-informed decisions to address the current crisis and ensure representation in the future. OJD is committed to continuing its efforts to work efficiently at the local level and to working with OPDC and providers to develop comprehensive data sets that provide real-time data to better understand current capacity, produce accurate forecasts, and ensure that each person entitled to court appointed counsel has representation as required by law.