

To: Joint Committee on Ways and Means Public Safety Subcommittee  
From: Jessica Kampfe, Executive Director Public Defense Services Commission  
Date: March 3, 2023  
RE: SB 1093 Support

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

My name is Jessica Kampfe, I'm the Executive Director of the Public Defense Services Commission. PDSC is the Commission responsible for ensuring that eligible individuals have timely access to legal services, consistent with Oregon and national standards of justice.

The PDSC is supportive of SB 1093, with further legislative clarification, and we welcome the opportunity for a formalized effort to address the unrepresented crisis. Today there are 217 people in custody without a lawyer across the state of Oregon. The agency does recognize the urgent need to be able to serve those people and I appreciate this committees and looking at ways to problem-solving and creative the new ways around getting resources to those people as quickly as possible.

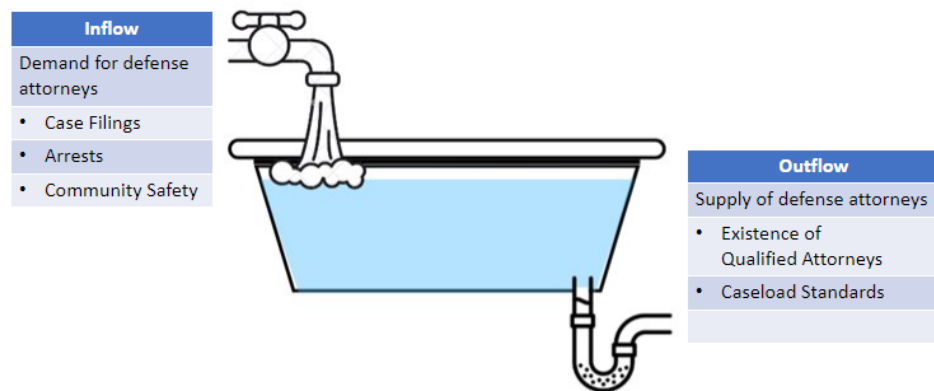
### Unrepresented Crisis

We've heard from this Committee that the Unrepresented Crisis is like an overflowing bathtub. In thinking through that analogy, there is the spigot, with is the demand for public defense services.

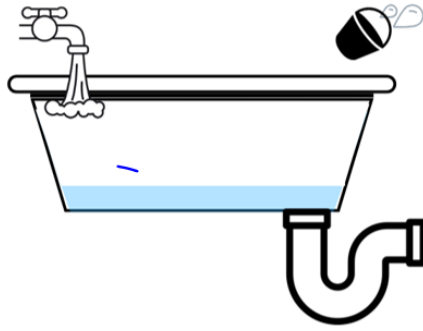
That spigot, that

inflow of water, is driven by things like community safety needs, arrests, and case filing made by district attorneys. On the other end of the bathtub, we have the outflow, which is the supply of public defenders that are available. We are really talking about the supply of qualified public defenders in each jurisdiction as well as the caseloads of those public defenders.

In thinking of ways to address the water that is accumulating in the bathtub there are steps that could be taken to slowdown that inpouring of water. Things like prioritization of charging decisions, sentencing reform and decriminalization, and diversion programs are ways to immediately slow that faucet. There are also steps that can be taken by the Public Defense Services Commission to increase the outflow of people through the pipe. Things like retaining our current workforce, recruiting new lawyers into the system, and eventually replacing the piping all together through measures like a SB 337 as well as strategic planning by the agency.



Inflow
Reduce Demand
<ul style="list-style-type: none"> <li>• Prioritize Charging decisions</li> </ul>
<ul style="list-style-type: none"> <li>• Sentencing Reform/Decriminalization</li> </ul>
<ul style="list-style-type: none"> <li>• Diversion Programs</li> </ul>



External Outflow
Support Services
OJD Data Sharing
Early Resolution Dockets
CJAC/Case Processing
Oregon State Bar
Pretrial Justice

Outflow
Increase Supply
<ul style="list-style-type: none"> <li>• Retain Current</li> <li>• Recruit New</li> </ul>
Fix the Pipe
<ul style="list-style-type: none"> <li>• SB 337</li> <li>• Strategic Planning</li> </ul>

In the meantime, we can think about external outflow opportunities, or ways to bail out the bathtub. These often look like cooperative agreements between the agency and other public safety partners, like our data sharing agreement with

Oregon Judicial Department to better see and analyze the crisis; or early resolution dockets, such as the Wingspan program, and efforts that the courts are making through the Criminal Justice Advisory Committee to improve case processing times. We also have seen programs like what the State Bar has done in order to make it easier for lawyers from outside of Oregon to move to Oregon and become public defenders, or pretrial justice reform efforts that started with the implementation of SB 48 from 2022.

The Public Defense Services Commission has received significant funding to address the unrepresented crisis, and we have seen some gains from those expenditures. Since July 2022 the agency has increased the number of people that are contracted to do public defense work by 11% across the state. However, 47% of those gains were in misdemeanor

Increase in Criminal MAC since July 2022			
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Murder	146.3	153.32	5%
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qualified lawyers. This presents a mismatch in where we can grow the workforce, and where the crisis lies. 60% of unrepresented persons are facing felony charges, 84% of those in custody are facing a felony charge. This is part of the reason that we continue to see this crisis grow. In addition to recruiting new people to be public defenders we've also been able to hire ad hoc lawyers to take cases directly off the unrepresented list through our tired hourly payment program. Through this program we have found or lawyers for approximately 450 individuals who were unrepresented.

We recognize that these are short term initiatives that the commission has been able to implement and that a broader approach is needed. While the ultimate way to address the unrepresented crisis is to stabilize the workforce and be able to recruit and retain lawyers, the agency recognizes the desire for a quick solution to alleviate some of the pressure in the system. We welcome the opportunity to have other public safety stakeholders join us in finding solutions.

We believe that SB 1093 supports many of the initiatives that the Commission has already undertaken around increasing the number of lawyers accepting appointment of public defense cases, incentivizing public defenders to qualify to represent people on the most serious cases, supporting public defense lawyers by increasing access to training, supervision, and investigation, retaining public defenders by incentivizing them to continue practicing public defense in their current jurisdiction, and collaborating with justice system partners to share data and ideas about how to reduce the number of unrepresented persons in Oregon. This bill is an opportunity for us to expand these efforts and to do it in a more collaborative fashion moving forward.

The Commission recognizes that the timelines in this bill are very fast and that feels a little intimidating given the amount of work that we are already charged with. The agency is still working on implementing HB 2003 from 2019, as well as the potential for new changes from SB 337, which could include standing up new state employee trial level lawyers, along with the strategic planning that needs to happen withing the agency.

As for the specifics of the bill, section 2.2 creates a crisis team, and we appreciate the idea of these teams. The agency has engaged in similar programs in the past, specifically the former Chief Justice convened a similar crisis team in Multnomah and Washington County last year. In Multnomah the crisis team was able to use Plan B judges to help move forward with settlement conferences and pretrial motion hearings. In Washington County the crisis team is where the Wingspan 3 program were born.

In addition to those more formal crisis teams, the Public Defense Services Commission has been traveling across the state of Oregon and doing this work on an informal basis. We have been inviting public defenders, judges, trial court administrators, and district attorneys to join us in the communities that are most heavily impacted by the unrepresented person crisis to discuss how we can manage the crisis at the local level. By the end of this month, we will have visited 9 of the top 10 counties where the crisis is worse in Oregon.

We recognize that we could use some statutory support and in making those efforts more impactful because while we have been able to bring people together, we haven't had the ability to require that people make changes or implement new programs. While it has been an opportunity for a discussion, that that next step of follow-through has been missing. We're hoping that this bill can help to provide some of that impetus.

We would add that as the crisis is moving to smaller, less populated counties, the 100,000 person threshold may not make sense. It may be important to bring together these kinds of groups in smaller communities. We would also add that it may be helpful to have public defense providers from those communities participate, in addition to the people that are listed, as well as individuals from impacted communities.

Section 3.1 directs the agency to "promulgate and disseminate guidance". We would appreciate further clarification of what sort of guidance the legislature envisions the agency providing to these judicial districts. We have thought about this question, and it could be a guidance around unrepresented persons numbers, around the provider community and capacity, information about programs that are available to address the crisis, or even recommendations for what to include in a crisis plan.

Section 3.2 directs the agency to develop a training plan. It is the commission's goal to be able to use a data informed approach to identify training needs across the defense community and to verify compliance with those standards. This is a long-term goal and is part of our Compliance, Audits, and Performance section that we are currently building. We do see this as potentially fitting with that long term goal. However, we would like clarification on level of training this body wants to see. Is this building a plan for training, is it to have the plan implemented by the deadline, is it to provide the training? Is this training on public defense overall, or specific to the unrepresented crisis? Is this the same sort of training you will find in POP 102's request for training and supervision dollars?

These clarifications will be essential for the agency to appropriately provide a fiscal for this bill.

Ultimately, the Public Defense Services mission is to ensure constitutionally competent legal representation to all people who qualify for a public defender. Currently, the lack of qualified lawyers is a barrier to the state's ability to fulfill this mission. We hope that this legislation will bring all public safety partners together to discuss ways in which we can work together to problem solve. As we approach that collaborative process it is important to consider:

- Independence of Public Defense is a core component of the 6<sup>th</sup> amendment right to counsel and must be maintained;
- A county-by-county approach could create jurisdictional disparity in access to justice;
- Public safety partners potential inability to comply with judge's orders if those orders conflict with their resources or ethical rules;
- Public Defense Services Commission is restructuring to meet our statutory mandates and this legislation could add a large volume of work with tight timelines to an already under resourced agency;
- The bill requires presiding judges to create plans that the Public Defense Services Commission would fund, however it is difficult for the agency to price a plan that has not yet been created;
- Finally, to best serve the people who qualify for court appointed attorneys, the crisis teams would benefit from the addition of local defense representation as well as impacted communities.

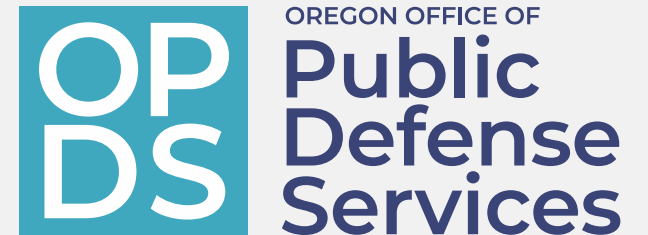
Thank you for your dedication to ending the public safety crisis in Oregon and prioritizing access to justice for all Oregonians.

# Public Defense Service Commission

**SB 1093 and the  
Unrepresented  
Crisis**

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

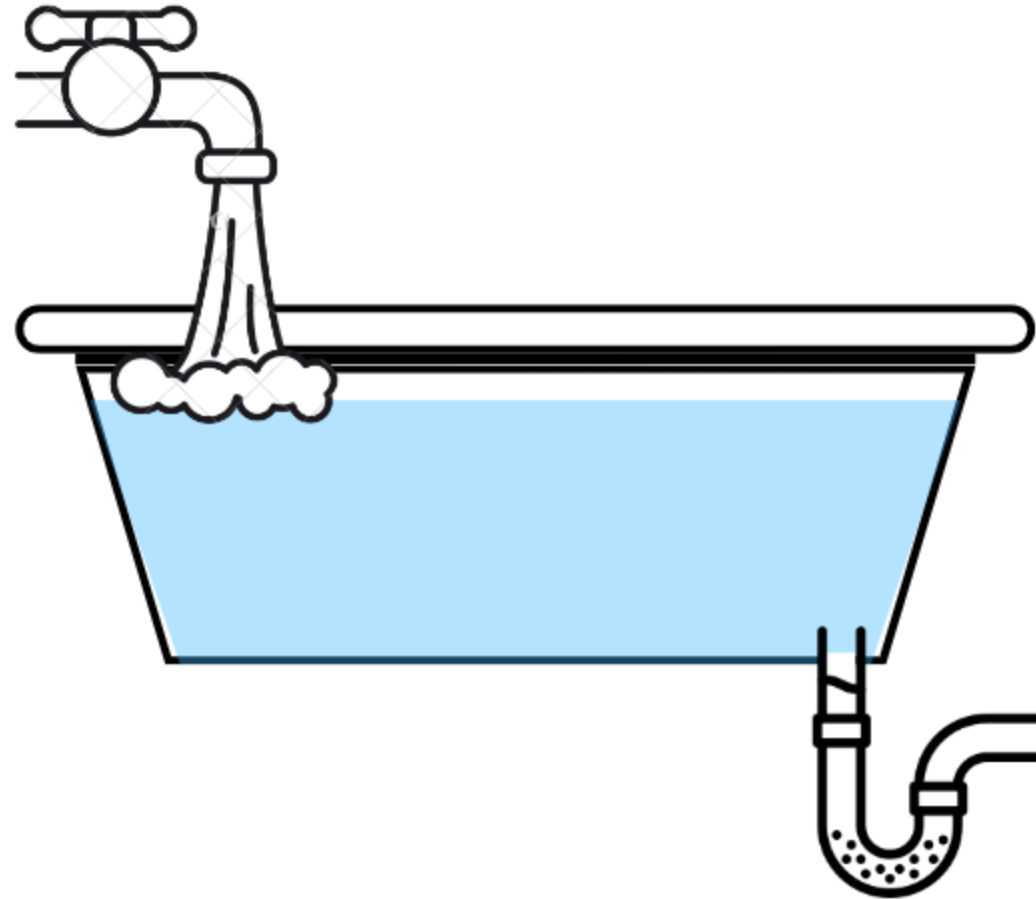
May 3, 2023



## Inflow

Demand for defense attorneys

- Case Filings
- Arrests
- Community Safety



## Outflow

Supply of defense attorneys

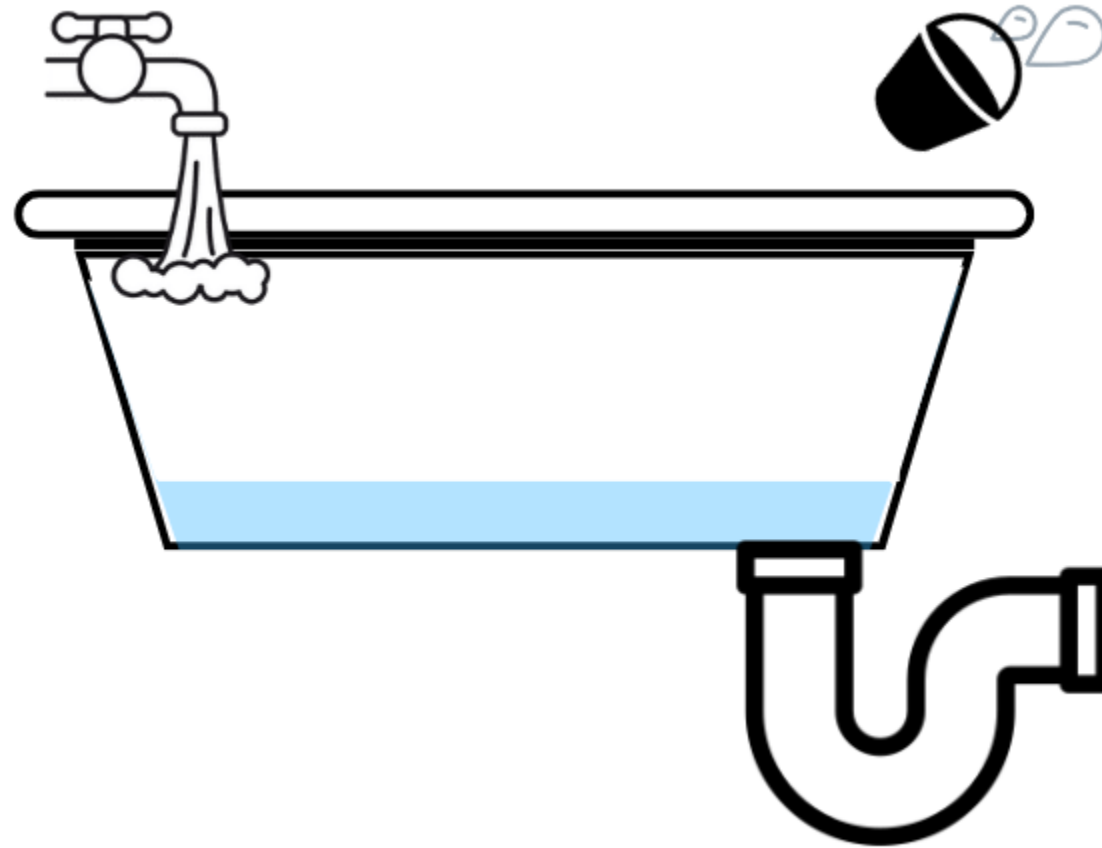
- Existence of Qualified Attorneys
- Caseload Standards

The Unrepresented Crisis is a supply/demand problem.

## Inflow

### Reduce Demand

- Prioritize Charging decisions
- Sentencing Reform/Decriminalization
- Diversion Programs



## External Outflow

- Support Services
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- Early Resolution Dockets
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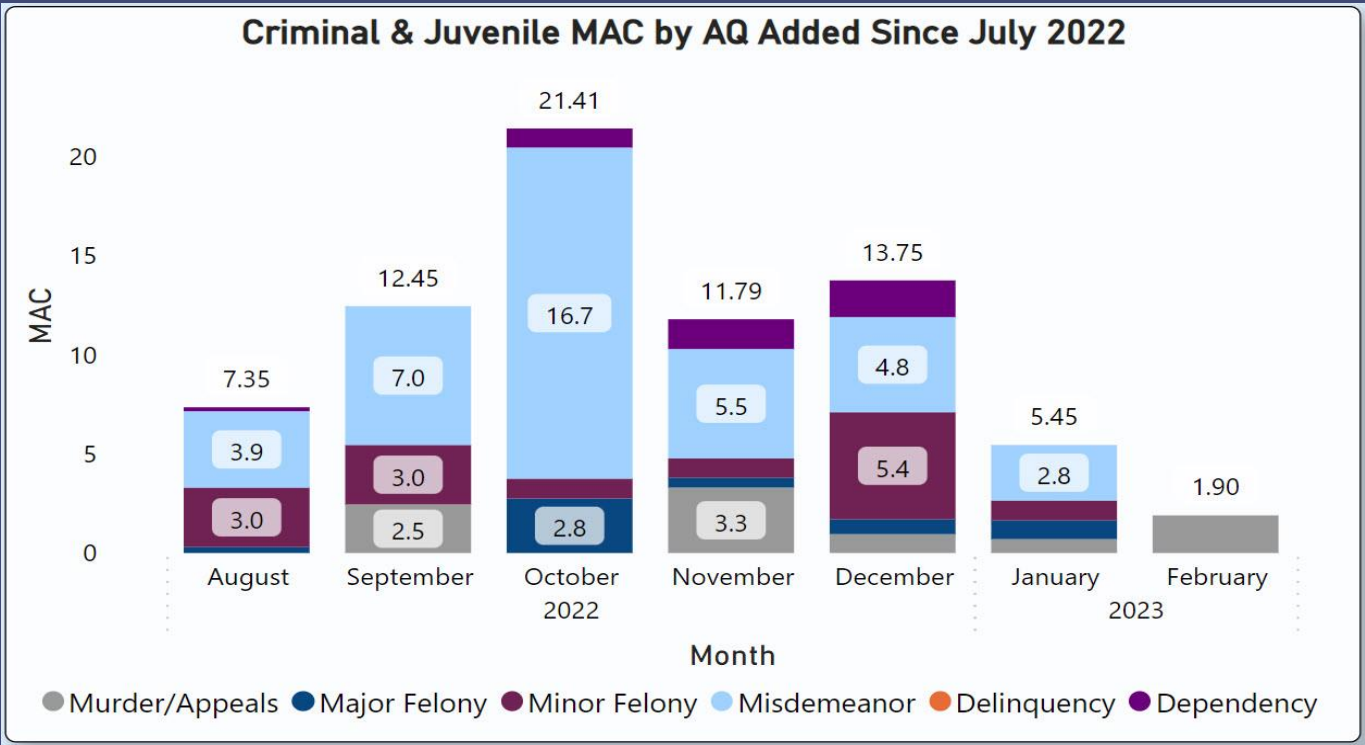
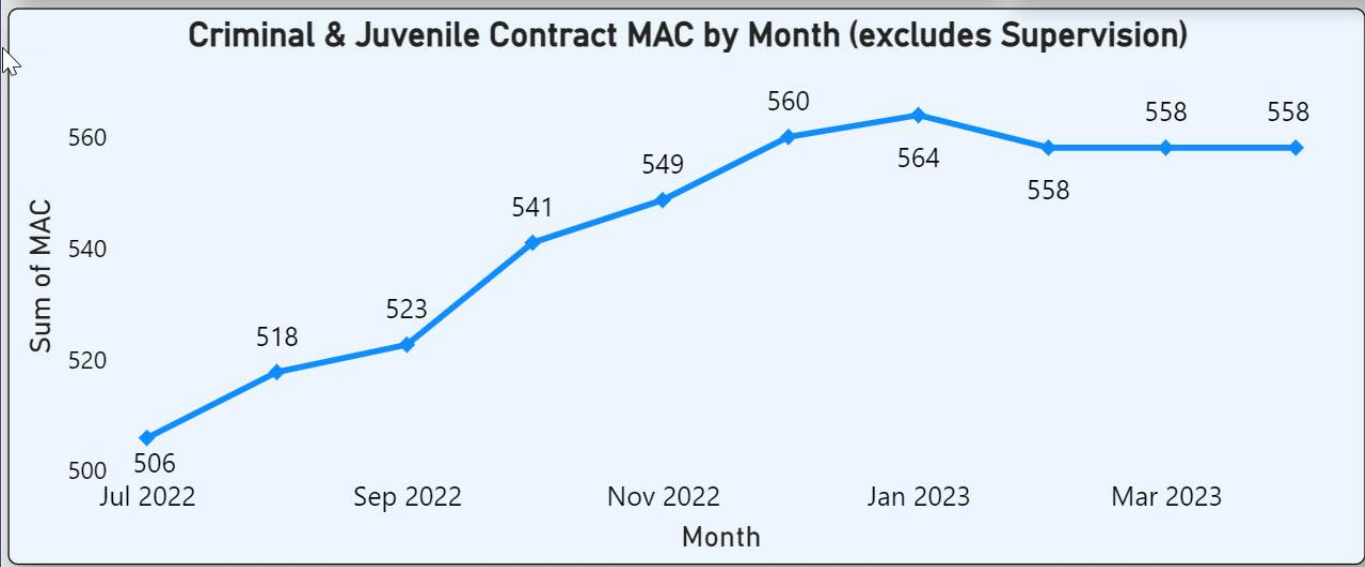
## Outflow

- Increase Supply
  - Retain Current
  - Recruit New
- Fix the Pipe
  - SB 337
  - Strategic Planning

## Increase in Criminal MAC since July 2022

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## EFFORTS SO FAR

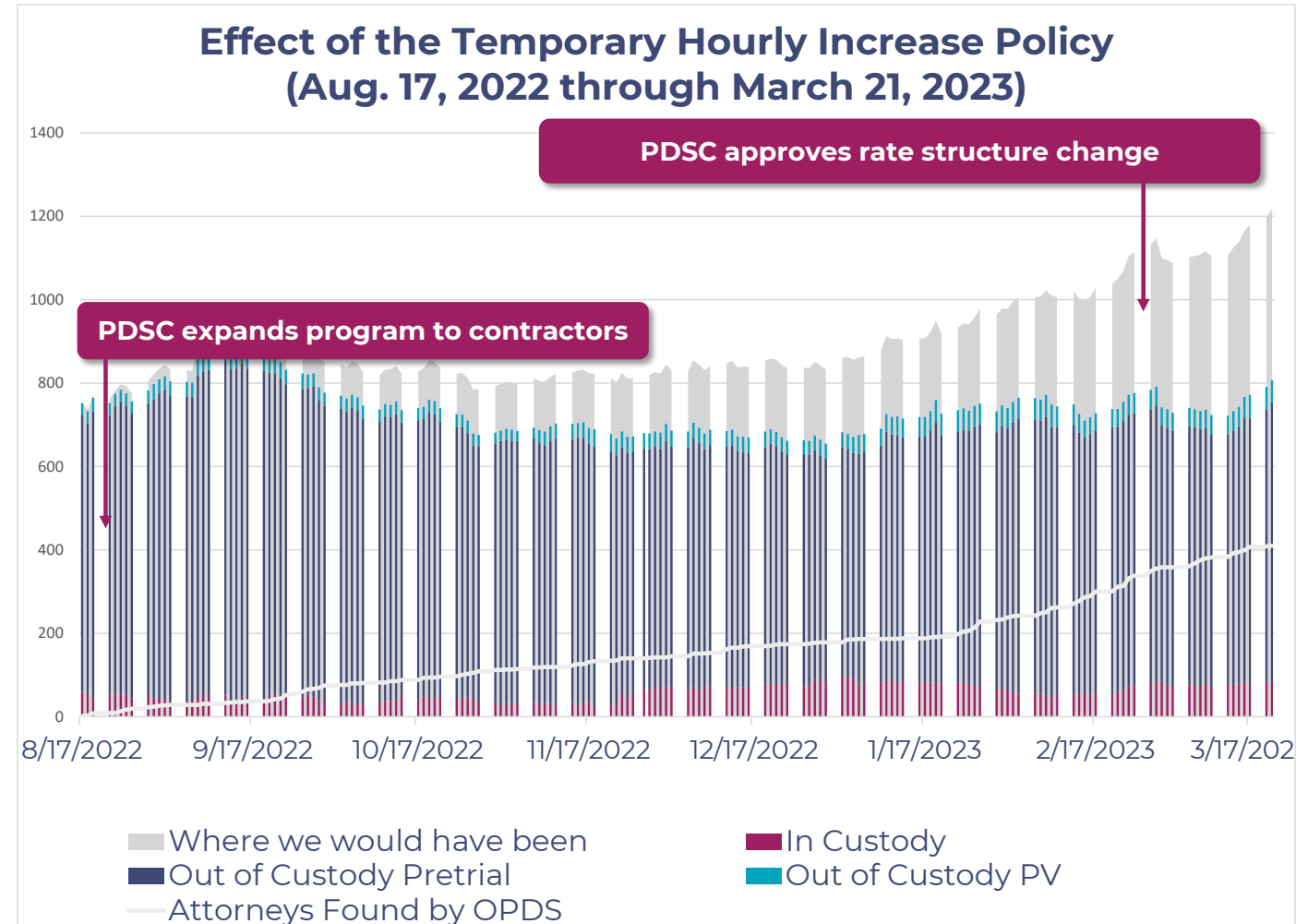
# Hourly Rate Program

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

**665**

**427**

- **\$1,138,489 million**



**SB 1093: Overflow Valve**

# 1093 Supports 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.

# SB 1093

- **Immediately:** Presiding judges develop and implement a coordinated public safety unrepresented defendant crisis plan;
- **By August 15, 2023:** PDSC promulgate and disseminate guidance for the judicial district coordinated public safety unrepresented defendant crisis plans;
- **By September 1, 2023:** Presiding Judges submit coordinated public safety unrepresented defendant crisis plan to CJC;
- **By September 1, 2023:** PDSC will 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;
- **October 1, 2023:** PDSC reports to the Legislature on the commission's progress in "promulgate and disseminate guidance" and "develop a training plan for public defense providers specific to the unrepresented defendant crisis";
- **October 1, 2023:** CJC conduct a review of each judicial district's coordinated public safety unrepresented defendant crisis plan and report to the legislature;
- **June 30, 2025:** Section 1-5 repealed.

# Crisis Team

- Section 2(2): The presiding judge of a judicial district with a total population of over 100,000 shall immediately convene a crisis team to assist in the development of the plan and to coordinate the implementation of the plan described in subsection (1) of this section. The team shall be composed of at least the following persons:
  - (c) The public defense services executive director, or the director's designee.

# Promulgate and Disseminate Guidance

- **Section 3(1) By August 15, 2023:** PDSC promulgate and disseminate guidance for the judicial district coordinated public safety unrepresented defendant crisis plans

# Develop a Training Plan

- **Section 3(2) By September 1, 2023:** PDSC will 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;



# Reports to Legislature

- **Section 3(3) October 1, 2023:** PDSC reports to the Legislature on the commission's progress in “promulgate and disseminate guidance” and “develop a training plan for public defense providers specific to the unrepresented defendant crisis”;

# Appropriation

- SECTION 6. In addition to and not in lieu of any other appropriation, there is appropriated to the Public Defense Services Commission, for the biennium beginning July 1, 2023, out of the General Fund, the amount of \$\_\_\_\_\_, for the purposes of funding public defense expenses related to implementing the crisis plans described in section 2 of this 2023 Act.

# Considerations

- Create jurisdictional disparity within the Public Defense System.
- Independence of Public Defense.
- Could add confusion to Public Defense discussion.
- Tight deadlines.
- Adds to the workload.
- Pricing plans that have not been created.
- Crisis teams would benefit from local defense representation as well as impacted communities.
- Public safety partners potential inability to comply with orders.

# Tentatively Supportive

Supportive of a system wide solution engaging all public safety partners, however we don't need just another band-aid that hides the underlying problems in public defense.

This bill must be part of a larger solution to fix the underlying causes of the unrepresented crisis.

**Thank you**

