

IN THE MATTER OF:	)	
	)	
Washington County Circuit Court	)	CORRECTED
UNREPRESENTED PERSONS	)	PRESIDING JUDGE
	)	ORDER 331
	)	
	)	DIRECTING THE PRIORITY OF
	)	APPOINTMENTS OF DEFENSE
	)	ATTORNEYS IN WASHINGTON
	)	COUNTY
	)	
	)	
	)	
	)	

On March 16, 2022, I signed Presiding Judge Order (PJO) No. 320 implementing a temporary plan to continue the arraignments of adult criminal defendants in Washington County who qualified for court appointed counsel, but for whom no defense attorney was available to appoint.

On the date of this Order, there are approximately eighty adults in custody at the Washington County Jail without attorney representation. Of these, twenty-one have been in custody without attorney representation for thirty days or more. There are more two hundred and fifty defendants

1 out of custody waiting for attorneys with approximately thirty of these being probation violation
2 matters including Measure 11 matters and domestic violence.

3 Currently, due to the lack of criminal defense attorneys, additional dockets have been created
4 to check in with defendants who do not have lawyers and assure they are completing applications
5 for court appointed counsel. These hearings are time consuming to the parties and the court's
6 docket, but have been implemented to maintain contact with defendants, keep them informed of
7 their appointment status, and assure that once an attorney is appointed to them the attorney has
8 the information necessary to contact them.

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10 As Presiding Judge, I have had frequent discussions with OPDS staff over the past year and
11 several months about the ongoing unrepresented persons crisis in Washington County and have
12 been involved with recommending priorities for appointment. There have been several local
13 criminal justice system stake holder meetings and many smaller meetings to come up with ways
14 to maximize the available resources. The court had two settlement dockets (aka Wingspan 2 and
15 3) to facilitate settlement of cases. I have presided weekly over an ever-increasing Office of
16 Public Defense Services (OPDS) Case Management Conference (CMC) Docket comprised of
17 unrepresented defendants both in custody and out of custody.

18
19 The unrepresented defendant crisis has not diminished, to the contrary our unrepresented
20 cases have continued to increase.

21 I have attempted to informally prioritize the appointment of criminal defense attorneys to
22 adults who are in custody. However, the current informal priority process for the appointment of
23 attorneys is not working in a way that provides for the fair allocation of attorney resources. In
24 custody defendants must be given attorney appointment priority over people who are out of
25 custody facing similar charges. After prioritizing defendants who are in custody, those who are
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1 not in custody should receive attorneys based on an understandable system that prioritizes
2 domestic violence, probation violations and those suffering from serious mental health issues
3 that may need to be evaluated pursuant to ORS Chapter 161.

4 2.

5 Washington County does not have attorneys under contract pursuant to ORS
6 151.010.

7 3.

8 It is the duty of the Public Defense Services Commission (PDSC)¹ to establish and
9 maintain a public defense system that ensures the provision of public defense services in the
10 most cost-efficient manner consistent with the Oregon Constitution, the United States
11 Constitution and Oregon and national standards of justice. ORS 151.216 (1)(a).

12 4.

13 Currently Metropolitan Public Defenders (MPD) – Washington County, assists OPDS with
14 gathering conflict information from the various criminal defense firms and contracted lawyers in
15 Washington County. Based on the information they receive, they then relay to the Washington
16 County Circuit Court Indigent Defense Verifiers Office the names of those attorneys who are
17 available to accept appointment of cases as they come in for initial arraignment. If an attorney is
18 not available for appointment at the initial arraignment, the person is “appointed” OPDS. OPDS
19 is not the lawyer but is a placeholder in the court’s computer system used by the Office of State
20 Court Administrator (OSCA) to determine how many people are eligible for and in need of a
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25 ¹ SB 337 changes the name of the commission to Oregon Public Defense
26 Commission (OPDC).

1 court appointed attorney. This is consistent with the statewide business process that was
2 established by OSCA on August 11, 2022.

3 Once the person is appointed OPDS, the current process is for MPD – Washington County,
4 and OPDS to continue to seek available and qualified attorneys, as attorneys become available to
5 take additional appointments for these cases. Attorneys are not required to take specific cases but
6 are allowed to pick from the list.

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8 5.

9 This PJO is in response to the unrepresented person's crisis. It includes procedures regarding
10 the administration of the appointment of attorneys in Washington County and is not intended to
11 conflict with any policies, procedures, standards, and guidelines adopted by PDSC and
12 establishes priorities for the appointment of lawyers. ORS 151.216(2).

13
14 6.

15 In Washington County, lawyers shall be appointed to the oldest matter where the defendant is
16 in custody that the lawyer is qualified to handle, and where they do not have a conflict pursuant
17 to the Oregon Rules of Professional Conduct (ORPC), before receiving an appointment on a
18 matter where the defendant is not in custody. If a lawyer is not qualified to handle any of the
19 matters where the defendant is currently in custody, then the lawyer may be appointed to a
20 matter where the defendant is not in custody and for which they are qualified and they do not
21 otherwise have a conflict. Matters where the defendant is not in custody shall be prioritized as
22 follows:

- 23 1) M11 offenses;
24 2) Pretrial domestic violence felonies;
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- 3) Probation violation (PV) matters involving domestic violence, or where revocation of probation or jail is being recommended, and PVs on downward departure cases;
- 4) Cases where the court has reason to suspect mental health issues that may need to be evaluated pursuant to ORS Chapter 161;
- 5) Other matters where the defendant is not in custody - oldest arraignment date first.

7.

The Presiding Judge may order the appointment of a lawyer in other matters upon a finding of good cause.

8.

Judicial appointments not consistent with this PJO may be vacated by the appointing judge or the Presiding Judge.

9.

A defendant has the right to have counsel appointed if indigent. Defendants who wish to have court appointed counsel shall complete an application for court appointed counsel prior to the appointment of counsel. The application is available online here: IN THE CIRCUIT COURT OF THE STATE OF OREGON. Defendants may also submit paper applications at the Washington County Law Enforcement Center (LEC). The requirement for the completion of an application may be waived for good cause by the court.

10.

Cases where the defendant is in custody shall receive priority for appointment of an attorney. No attorney shall be appointed to an out of custody defendant if that attorney is qualified to take a matter where the defendant is in custody case. The court may forgo the

1 appointment of attorneys to out of custody defendants if there remain unrepresented defendants
2 who have been in custody without a lawyer for thirty days or more.

3 11.

4 Adult defendants who are in custody and who have been appointed OPDS shall have an
5 appearance in court every two weeks, but no more than three weeks absent good cause, on the
6 OPDS CMC docket. Defendants who are out of custody shall have a hearing approximately
7 every six to eight weeks on the OPDS CMC docket. The purpose of these hearings is for the
8 court to confirm the defendant's custody, attorney representation status, set future dates, and
9 consider other matters as may be brought by either party at that time.
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11 12.

12 Except in cases where the matter is assigned to a specific judge, attorney motions and
13 notices to withdraw shall be heard by the Presiding Judge or a judge designated by the Presiding
14 Judge to hear the matter.

15 13.

16 Attorney appearance by telephone regarding attorney withdrawal motions may be requested
17 via email at least one day ahead of time to the Presiding Judge's staff email and to the
18 calendaring department.
19

20 14.

21 The 2023 Legislative Assembly has enacted Senate Bill (SB) 337, which, among other
22 provisions relating to Oregon's public defense system, establishes requirements concerning a
23 present crisis involving persons accused of crimes in state court who qualify for court-appointed
24 counsel but are not represented. The bill becomes effective on passage. The bill requires each
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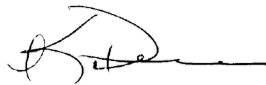
1 judicial district with a total population of more than 100,000 to convene a crisis team to assist in
2 the development of the judicial district's plan to coordinate and implement the plan

3 Consistent with this Order, SB 337 prioritizes the resolution of cases of unrepresented
4 defendants who are in custody and then to those who are out of custody.

5 A crisis team will be convened in Washington County to consider ways to resolve the
6 unrepresented person crisis. This Order may be amended, if necessary, based on strategies
7 arising from the crisis team.

8 This Order is effective immediately.

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10 July 13, 2023

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13 Circuit Court Judge, Kathleen Proctor
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(This order corrects the previous order dated July 11, 2023.)