

April 9, 2013

The Honorable Jeff Barker, Co-Chair
The Honorable Chris Garrett, Vice-Chair
The Honorable Wayne Krieger, Vice-Chair
House Judiciary Committee, Members

RE: House Bill 3463

Dear Chair Barker, Vice-Chairs and Members,

I am writing in support of House Bill 3463, relating to the compensation of Public Defenders. A legislative fix addressing the pay disparity between Deputy District Attorneys and Public Defenders is long overdue.

Fifty years ago, Clarence Gideon was arrested for stealing bottles of beer and vending machine coins from a Florida bar. Too poor to hire an attorney, he asked the judge to appoint one, but was denied. He was then tried and convicted without the assistance of an attorney and given a five-year sentence. After his conviction, he wrote an appeal to the Supreme Court, using a pencil and prison-issued paper, arguing that the U.S. Constitution guaranteed him the right to an attorney. The Supreme Court agreed and unanimously reversed his conviction, declaring that poor defendants in criminal cases have a constitutional right to legal counsel even if they cannot afford one. The Supreme Court put the responsibility of funding the defense of the poor on the individual states.

In the fifty years since that decision, Oregon has fallen short of providing effective assistance of counsel to the poor by drastically underfunding the public defense system. The salaries of trial level Public Defenders are extremely disproportionate when compared to their counterparts in District Attorney offices. The current disparity in funding and salary makes it impossible for Public Defender offices to compete with District Attorney offices for talented attorneys who are committed to the office long-term. What routinely happens is that lawyers in a Public Defender office put in a couple years of work, love their job, but realize they cannot survive financially and leave for private practice.

In Multnomah County, new attorneys in the Metropolitan Public Defender office start off at approximately \$45,000. New attorneys in the District Attorney office begin at approximately \$70,000. A smart young attorney fresh out of law school, with an average of \$100,000 in school loans, has an easy career choice if given the option of one or the other. Over the next 20 years of this attorney's career, the gap widens further. If the attorney took a job as a Public Defender, his or her salary would max out at \$69,500 (this is the highest salary a Deputy Public Defender can make at Metropolitan Public Defender). In other words, a career Public Defender will never earn a higher salary than a District Attorney does in the very first year. If the young attorney in this example took the job with the District Attorney's office, his or her salary would max out at \$148,000. In Washington County, second in the state in annual criminal prosecutions, the pay disparity is even wider. It is impossible for Public Defender offices to attract and keep talented attorneys when competing with the compensation offered by District Attorney offices. In short, becoming a District Attorney is a career, becoming a Public Defender is a brief pit stop.

In the past year, our Washington County office has experienced an approximately 80% turnover in attorneys. The result is that brand new attorneys with minimal experience are going to trial on major

felony cases against career prosecutors with 20+ years of experience. In just the past month, our Multnomah County office has seen three felony attorneys leave, all because of financial issues.

The result of this uneven balance of funding, and thus talent and experience, between Public Defender offices and District Attorney offices is unfortunate. When young and inexperienced Public Defenders are forced to advocate against well-funded and experienced District Attorneys, it is truly a David vs. Goliath situation. Lack of experience leads to more mistakes and wrongful convictions, thus more state money is spent on appeals, post-conviction relief, and incarceration. Lack of experienced advocacy during plea negotiations, trial, and sentencing, also leads to more incarceration and longer sentences. By not fully investing in the public defense system, Oregon is choosing incarceration over justice, leading to increased costs now and in the future. With Oregon struggling with the financial cost of incarceration, the need to address the chronic crisis of public defense funding is as great as ever.

Take the case of Mr. Gideon as a prime example of what happens when the poor are given competent and experienced counsel. After his initial conviction was reversed and sent back to the trial court, he faced trial again, this time with the services of an attorney. The attorney appointed was an experienced advocate who had been trying cases for 15 years. He picked apart the testimony of the prosecutor's key witness. He then called other witnesses to testify who established that the prosecution's key witness had actually been a look-out for the real culprits. Almost immediately after closing arguments, the jury returned with a Not Guilty verdict. Nothing demonstrates more clearly the value of having a competent attorney.

Since graduating law school in 2008, I have been a public defender in both Washington County and Multnomah County. I am passionate about my job and look forward to coming to work each morning. Clarence Gideon and the Supreme Court have given me a huge responsibility – making sure the poor and the underprivileged receive the same constitutional guarantees that the rich and the privileged receive.

I would like to do this work the rest of my career, but financially that is not an option. I live a very frugal existence, but still live paycheck to paycheck. Having anything leftover to stash away for a rainy day is a fantasy. If this bill does not pass, I'll be forced to leave this job for something with better pay.

I understand that poor people accused of crimes and the people appointed to represent them have little, if any, political power. Some legislators may see no political advantage to providing competent attorneys to poor defendants or giving Public defenders the resources to do their jobs in a proper and constitutional manner. This needs to change.

Regards,

Casey Kovacic, Attorney
Metropolitan Public Defender
Portland, Oregon