



Oregon District Attorneys Association, Inc.

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January 28, 2015

The Honorable Senator Richard Devlin, Co-Chair
The Honorable Representative Peter Buckley, Co-Chair
The Honorable Senator Chip shields, Co-Chair of Public Safety Sub-Committee
The Honorable Representative Jennifer Williamson, Co-Chair of Public Safety Sub-Committee
Joint Committee on Ways and Means
State Capitol
900 Court Street NE
Room H-178
Salem, OR 97310-4048

Dear Co-Chairpersons and Members of the Committee:

In addition to the base budget submitted to the 2015 Oregon Legislature by the Governor, the Oregon District Attorneys respectfully request favorable consideration of additional funding in four areas.

Summary of the Four Areas

1. Witness Fees.....\$ 930,000
2. Compensation Increase.....\$ 468,000
3. Contribution to Counties for Deputy District Attorney Salaries.....\$8,602,000
4. Attorney General Representation for District Attorneys.....\$ 200,000

1. WITNESS FEE REQUEST: \$930,000

Purpose

District Attorneys and County governments need help paying for witnesses. This request is for the State to fund witness fees in the amount of \$930,000 for the FY 15-17 biennium. Oregon district attorneys and their approximately 360 deputy district attorneys must subpoena thousands of witnesses to attend Grand Jury proceedings, trials, probation violation hearings, pre-trial hearings, etc. every year.

ORS 44.415(2) requires witnesses be paid \$5 per day plus mileage at 8 cents per mile. In addition to these non-expert witnesses, the district attorneys and their deputies must hire expert witnesses to prepare and testify in a variety of situations. A common example is the need to hire a psychiatrist or psychologist to testify about a defendant's mental condition. The cost per case often exceeds one thousand dollars and in significant violent and sex crime cases may easily exceed \$10,000. Another common example is the need to hire a doctor to testify in assault cases about whether the physical injury is a "serious physical injury" under Oregon law. Doctors often charge several hundred dollars per hour.

Currently the counties must pay these costs and they budget witness fees closely. Around the state district attorneys must make difficult decisions about subpoenaing or not subpoenaing witnesses or hiring expert witnesses or not hiring expert witnesses because their witness fee budgets are tight and sometimes insufficient. Even with making these difficult decisions not to bring witnesses in some cases, in a two year period the District Attorneys currently spend over \$1 million dollars on witness fees.

How Achieved

By way of background, the State of Oregon has shifted the cost of prosecuting state crimes almost exclusively to the County governments. According to the LFO analysis of the 2007-2009 Governor's budget (p. 152), "The state's share of funding for prosecution expenses of DA offices has fallen significantly over the past 25 years based on data collected as part of the Association of Oregon Counties (AOC), District Attorneys Association, and Department of Justice (DOJ) report to the 2001 Legislature." This report is referred to as the Senate Bill 6 Report. When this report was written in 2001 the state contributed \$584,000 to Counties for use by district attorneys to pay for witnesses. Today the state contributes \$0. 2001-2003 was the last biennium the state contributed to the payment of witness fees.

Prosecuting criminals is an essential part of the Oregon District Attorneys mission. The funding of witness fees as proposed will also allow the counties to better fund other parts of district attorney budgets which will be particularly helpful in the 18 "timber counties".

If the state appropriates witness fee money it will be distributed to the counties for use by the district attorneys on the same formula used in the 2001-2003 biennium. That is, each county will receive a flat amount of \$1000 per year to assure that the counties without deputies receive money plus the balance on the ratio of deputy DAs per county to total deputies. The District Attorneys are willing to work on a different distribution formula should the legislature so desire.

Staffing Impact

There is no direct staffing impact and no additional FTE needed at the state level. However, with the state contributing to paying witness fees, some of the District Attorney offices may be able to hire staff with county money that is no longer needed to pay for witnesses.

Quantifying Results

This is a difficult area because it is hard to quantify how many more witnesses will be subpoenaed or if the changes in the outcome of cases, which have many variables, are because of additional witnesses. What is certain is that the state will be a better financial partner with the counties in the prosecution of state crimes. What was said on page 18 of the 2001 Senate Bill 6 report still holds true today. (Exhibit references have been removed in the quote below.)

“With full regard for the challenges facing state budget writers for the 2001-03 biennium, the sponsors of this report (AOC, ODAA and DOJ) believe that increased state support of District Attorney finance should be among the priority goals as the legislature apportions public safety resources for the next biennium.

That belief is footed in certain important facts or judgments.

First, the dual nature of the work of District Attorneys as defined by the Oregon Constitution—"law officers of the State, and of the counties within their respective districts"-supports a financing responsibility shared by the state and counties. Further, if a shared responsibility is appropriate, no governmental reason exists for the burden to be proportionately different for the state and counties; and the state's long-term goal should be an equal sharing of District Attorney general budget costs by the state and counties.

Second, the state's aggregate resources are vastly superior to the non-dedicated resources of the counties, and the projected growth of those state resources will be far superior to that of the counties. Although PL 106-393/HR 2389 has given the counties temporary relief from the precipitous decline in national forest and O & C county receipts, Oregon's forest counties have sustained massive cumulative revenue losses. With the effects of eroded timber receipts have also come the effects of property tax limitations and HB 3349 relating to PERS.

In short, from the perspectives of both the nature of the office and comparative financial resources of the state and counties, progress toward a more equitable sharing of District Attorney costs between the state and counties deserves high priority attention by the Governor and legislature. The need for that attention is made urgent by the escalation of District Attorney prosecution costs as a claim on county resources and the effect of the current financing arrangement on the ability of District Attorneys to help hold lawbreakers justly accountable.”

2. COMPENSATION INCREASE FOR ELECTED DISTRICT ATTORNEYS: \$468,000

Purpose

To recruit and retain quality attorneys as elected district attorneys the state compensation of the 36 elected district attorneys needs to be increased. The compensation must keep pace with the compensation of similarly situated attorneys in the public and private sector. The Oregon District Attorneys propose a \$5,000 raise for each elected district attorney beginning July 1, 2015. The total cost of this compensation increase is \$468,000 for the FY 2015-2017 biennium.

In the February, 2014 session of the Oregon legislature the Oregon District Attorneys presented a \$10,000 compensation increase request that was phased in with two \$5,000 increments over time. This requested increase was designed to bring the state compensation of elected district attorneys closer to market value. The Oregon legislature provided one-half of the request and a \$5,000 increase begins July 1, 2015. This current request is for the second \$5,000 increase.

How Achieved

Raising the 36 elected district attorneys state salary by \$5,000 per year will bring their compensation closer to the market for similarly situated attorneys in public and private practice.

- **Prior to the February 2014 session of the legislature, Oregon's 36 elected district attorneys had not requested a state compensation increase since 2005.** In 2005 three compensation tiers were reorganized into the two tiers that are in place today. Seven district attorneys received a pay increase as a result of the 2005 reorganization and 29 did not. Currently, there are 10 counties with populations over 100,000. These are the "Tier I" district attorneys and the state salary is \$116,868. There are 26 counties with populations under 100,000. These are the "Tier II" district attorneys and the state salary is \$99,288.
- **District Attorney salaries are falling behind fair compensation** even with the \$5000 salary increase provided by the legislature in 2014, the adjustments provided management service employees and with county supplements.
- **Senior Assistant Attorney General's salary is significantly more than elected District Attorney state salaries.** There are 68 Senior Assistant Attorney Generals earning \$133,152 per year. These attorneys do important work but it is no more important than the work of the 36 elected district attorneys. The 10 "Tier 1" District Attorneys (counties over 100,000 in population) state salary is \$116, 868 which is **\$16,284 (12.2%) below** the Senior Assistant Attorney General's salary.

The 26 "Tier 2" District Attorneys (counties under 100,000 in population) state salary is \$99,288 which is **\$33,864 (25.4%) below** the Senior Assistant Attorney General's Salary.

Earlier information provided in 2014 was that over 91 Assistant Attorney Generals were making \$123,696. The more recent information provided above demonstrates that elected District Attorneys state compensation is falling even farther behind than earlier indicated and provides an even more compelling argument for providing them with the requested \$5000 per district attorney raise.

- **Department of Administrative Services 2013 Research on Attorney Salaries** demonstrates that Senior Assistant Attorney Generals and other experienced public sector attorneys are compensated at a higher rate than the state salary for Oregon District Attorneys.
- **The salary of the appointed U.S. Attorney for Oregon, as of 2012, is \$155,500.** This is 36% more than the state salary for a Tier II district attorney (\$99,288) and 25% more than the state salary for a Tier I district attorney (\$116,868).
- **Oregon District Attorneys have substantial legal experience which equates to value.** As of February, 2014, the average years as an attorney are 25; the average years as a prosecutor are 21; the average years as an elected district attorney are 9.
 - a) The Oregon State Bar 2012 Economic Survey shows that district attorneys are underpaid. The 2011 average compensation for all respondents was \$124,861.
 - b) The 2011 average compensation for attorneys with 21-30 years' experience was \$162,078. (District Attorneys average 25 years)
 - c) The 2011 average for Criminal-Private Bar was \$134,779.
 - d) The 2011 average compensation goes up from a one lawyer office making \$120,278 to an over 60 lawyer office making \$179,756.
- **Oregon District Attorneys are leaders in their communities and on a state wide basis. They participate in over 25 state wide task forces.** For example, the Washington County District Attorney, Bob Hermann, is a member of the Task Force on Public Safety. The Lane County District Attorney, Alex Gardner, is a member of the Justice Reinvestment Task Force. Klamath County District Attorney, Rob Patridge, is the Chairperson of the Oregon Liquor Control Commission. The truth is that Oregon District Attorneys help the state immensely in improving public safety.

- **Salary Supplements helpful but not a substitute for adequate state salaries.** Salary supplements paid by 26 counties are helpful in equalizing compensation and the law allowing them should continue. However, they are not a substitute for an adequate state salary for all district attorneys.

Currently 26 counties pay their district attorney a salary supplement and ten counties do not. The supplements range from -0- to about \$60,000 per year. Salary supplements are in the control of county commissioners and are inconsistent around the state. For example, Polk County has 76,625 residents and the district attorney receives -0- for a County paid supplement. There are 13 counties with smaller populations than Polk County and they all pay supplements ranging from \$10,000 to \$23,500. In short, as state salaries for district attorneys have not kept pace with other comparable groups, county supplements have helped some district attorneys and not others. Twenty-six counties pay supplements and ten do not. And the amount of the supplements varies widely. Again, these supplements are helpful in providing compensation equity for district attorneys and the law allowing them should continue but they are not a substitute for adequate state wide salaries for district attorneys.

Staffing Impact

There is no staffing impact and no additional FTE needed.

Quantifying results

This proposal is a compensation increase rather than a new proposal which needs to be evaluated.

3. DEPUTY DISTRICT ATTORNEY SUPPORT FOR COUNTIES: \$8,602,000

Purpose

As noted earlier under the Witness Fees title, the State of Oregon has stepped away from the funding of prosecution services. In the distant past, the state has contributed money to the counties to help pay the salary and benefits of deputy district attorneys. This help stopped by 2003. Three different reports all recommend the state contribute to prosecution services.

1. Attorney General Study per Senate Bill 6 recommended \$20 million in 1999.
2. Governor's Task Force on Federal Payment and County Services in 2009 recommended restoring State support for District Attorney Services.
3. Efficiency Task Force Study in 2010 (chaired by Rep. Nathanson) recommended restoring State support for District Attorney Services.

How Achieved

The money would come from the State General Fund. The 36 counties currently spend about \$47,154,000 on deputy district attorney salaries and benefits. If the State contributed the \$8,602,000 requested it would be contributing about 18% of the current cost to the counties. These funds would be particularly helpful to the so called 18 timber counties that are struggling financially.

Staffing Impact

These funds may allow district attorneys to add deputy district attorneys or hire other persons in critical shortage areas such as victim services.

4. ATTORNEY GENERAL REPRESENTATION FOR DISTRICT ATTORNEYS: \$200,000

Purpose

Oregon's elected District Attorneys and their deputies need state legal representation not covered by the Tort Claims Act at State Expense for work related activities.

How Achieved

By way of background, the Attorney General's office represents Oregon's elected District Attorneys and their deputies pursuant to the Tort Claims Act. The State pays the cost of representation. District Attorneys and their deputies need representation by the Attorney General's office for work related issues, just as other State agencies do, which are not covered by the Tort Claims Act. There is currently no State fund to pay for this representation. Currently, the District Attorney involved uses money from his/her county budget if available, asks the county commissioners for additional financial help or goes without representation. This representation involves the Attorney General's office providing expert legal advice/representation outside the criminal law area where District Attorneys are already experts so they don't need advice. For example, since 2007 District Attorneys have been given advice/representation for: Non-risk management employment claims, subpoena issues, public record requests, Pro Se (no lawyer) petitions, formal opinions, legal discovery issues and other miscellaneous advice.

Actual costs billed by the Attorney General to individual District Attorneys for the last 4 biennia:

- 2007-2009.....\$22,747
- 2009-2011..... \$20,152
- 2011-2013.....\$130,620
- 2013-2015.....\$2,603 (as of July 2014)

This advice/representation of District Attorneys is accomplished by a General Fund appropriation to the District Attorneys and Their Deputies in 2015-17 in the amount of \$200,000 for use in only the requested area after the Attorney General agrees to the representation in the particular instance.

The suggested solution could be modified or another solution put forward. The important thing is to provide a state funding source for representation when District Attorneys who are state officers need representation.

On behalf of the Oregon District Attorneys I am pleased to submit this request for an improved budget.

Sincerely,

A handwritten signature in blue ink that reads "F. Douglass Harclerod". The signature is written in a cursive style with a large, looping initial "F".

F. Douglass Harclerod
ODAA Executive Director