

# Youth, Rights & Justice

ATTORNEYS AT LAW

To: Members of the Joint Ways and Means Committee on Public Safety  
From: Youth, Rights & Justice  
Re: SB 5532: OPDS Budget-Effective Assistance of Counsel-Parent Child Representation Program  
Date: March 20, 2019

Dear Committee Members,

Youth, Rights & Justice supports the broad Public Defense Reform initiatives underway in response to the Sixth Amendment Center Report as well as the adequately funded expansion of the Parent Child Representation Program to Multnomah County and Statewide. As this Committee is sorely aware, inadequate funding for public defense services (hereinafter "PDS") in Oregon has been a chronic problem. The report from the Sixth Amendment Center (6AC) on the *Right to Counsel in Oregon* reached the independent conclusion that both the configuration of the Public Defense system with its exclusive use of trial level contracting entities and fixed fee contracts, and implicitly its funding levels, are unconstitutional<sup>1</sup>. This Legislature has the constitutional obligation to increase funding for PDS, which obligates the Legislature to increase revenues. Continued inadequate funding will have devastating life changing impacts on the clients YRJ serves and the ability to provide constitutionally effective assistance of counsel.

Youth, Rights & Justice (YRJ) contracts with Oregon Public Defense Services to provide legal representation to some of our most vulnerable youth and families caught up in the courts and child welfare system in Oregon. Dependency cases as a whole make up nearly a third of the statewide OPDS caseload and much of YRJ's public defense work. Few legal proceedings immediately affect an individual's rights more than a juvenile dependency case where children are removed from their parents and placed in out-of-home-care, an intervention with long-lasting effects on a child's well-being.

The terms of the OPDS contract with Youth, Rights and Justice is described on page sixty-three of the Sixth Amendment Report. YRJ is a nonprofit law firm devoted to representing youth and their families in pivotal times of great need. In a nutshell, YRJ currently undertakes a total of 5,988 juvenile delinquency felony and misdemeanor cases, dependency petitions, review and permanency hearings, and appeals over a two-year period. In addition, these cases include juvenile psychiatric review board proceedings, termination of parental rights cases, probation violations, and for representation of children who are runaways from other jurisdictions. YRJ's clients have a constitutional right to adequate counsel in many of these life-altering proceedings, including those funded through OPDS.

Not unlike our fellow PDS contractors in the State, YRJ has sustained an unprecedented 25% turnover in staff annually for the last three and a half years. Hiring qualified attorney and staff at YRJ is directly handicapped by inadequate State funding. The Multnomah County Deputy District Attorneys who faced off against YRJ's clients were paid between \$73,000-\$161,000 per year, while the Multnomah County Public Defenders ("PD's") representing clients similar to YRJ's clients were only paid between \$54,000-\$90,000 per year, a startling and outcome-changing inequality. And it is worse even for YRJ's clients: As a non-profit contracting entity, YRJ has been unable to even keep pace with the inadequate compensation of some of our peer public defense contractors. The constitutionally inadequate funding of legal representation for YRJ's clients is stark. It is chronic. It is a violation of the Legislature's mandate under ORS 151.216(1) to fund the PDSC adequately enough to: "Establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice."

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<sup>1</sup> Right to Counsel in Oregon, Sixth Amendment Center, January 2019.  
[http://sixthamendment.org/6AC/6AC\\_Oregon\\_report\\_2019\\_withappendix.pdf](http://sixthamendment.org/6AC/6AC_Oregon_report_2019_withappendix.pdf)

And as the independent Sixth Amendment Report concluded, it is unconstitutional. In America "All Men Are Equal Under the Law". This "standard" is really but an ideal, unfortunately. It is accepted that there are two American justice systems: One for the wealthy, and one for the rest of us. What is not as well recognized is that there is also great inequality before the law within Oregon public defense clientele, including YRJ's clients.

The Parent Child Representation Program (PCRP) is a proven model for delivering legal services to our dependency case clients. The program has been shown to reduce unnecessary removals, decrease time to reunification, decrease re-entry post-reunification and decrease time to other forms of permanency. As a *partial fix* to an unsustainable model of delivering public defense services in Oregon, YRJ strongly supports expansion of the (PCRP) to Multnomah County and an *adequately funded* PCRP which adopts a workload model and moves away from fixed fee contracts. The key to the success of the PCRP in Multnomah County and the ongoing health of the public defense system as a whole is adequate funding. Compensation to public defense attorneys and staff must be increased to slow the hemorrhaging of staff that is unprecedented. Staff must be stabilized, caseloads reduced, and compensation parity must be reached with our District Attorneys and Assistant Attorney Generals counterparts on these cases to meet our 6<sup>th</sup> and 14<sup>th</sup> Amendment obligations.

Only the Legislature can remedy this ongoing injustice. Only the Legislature can raise the revenues needed for statutory and constitutional compliance by the PDSC. Robbing funds from other necessary programs and services will never allow adequate funding. The Legislature must do its Constitutionally mandated job, and raise the revenue needed. The status quo cannot stand, the injustices cannot continue, and the courts would not allow it to.

YRJ looks forward to adequate funding of legal services for its clients, and to expanding the PCRP to Multnomah County, and throughout Oregon eventually. But this cannot happen without the Legislature establishing additional revenues to fund these constitutionally required improvements. Staff must be stabilized, caseloads reduced, and compensation parity must be reached with the District Attorneys and Assistant Attorney Generals to meet our 6<sup>th</sup> and 14<sup>th</sup> Amendment obligations.

Thank you for your consideration of YRJ's comments regarding Oregon's untenable, but salvageable Public Defense system.

Leslie Kay  
Interim Executive Director

Jeff Wihtol  
Youth Rights Justice Board Member