



Oregon

Office of Public Defense Services

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The Honorable Jennifer Williamson, Chair
House Committee on the Judiciary, Members

RE: House Bill 3145

The Office of Public Defense Services appreciates this committee hearing House Bill 3145, and it urges this committee to pass the measure with amendment language that is being finalized.

Public defense is in a crisis in Oregon. In 2018, the Oregon legislature funded two projects in response to that crisis – a needs assessment by the Sixth Amendment Center and a caseload study by the American Bar Association.

The Sixth Amendment Center (6AC) issued its report in January 2019 with multiple findings regarding deficiencies in our system:

- (1) OPDS bureaucracy provides insufficient oversight and financial accountability;
- (2) The flat fee service delivery model pits appointed attorneys' financial self-interest against the due process rights of the their clients;
- (3) The composition of the Public Defense Services Commission (PDSC) does not adhere to national standards, as all appointments are from one branch of government;
- (4) The state of Oregon has insufficient systems in place to ensure the right to counsel is being met in Oregon's municipal courts.

In February 2019, the PDSC, which oversees public defense in Oregon, unanimously adopted a resolution regarding the constitutional deficiencies of the current service delivery model. It also directed the agency to pursue the service delivery model proposed by HB 3145.

HB 3145, with amendment language similar to the (-1), is responsive to the 6AC and PDSC findings, and it provides the agency with the structural changes needed to address the constitutional deficiencies that currently exist.

New Service Delivery Model – The bill prohibits “flat fee contracting” and authorizes the creation of a state trial division. OPDS has developed a model that includes 60% of the cases being assigned to the trial division and 40% of the cases going to the private bar, which is consistent with ABA best practices.

Caseload/Workload Standards – Currently, OPDS has not adopted caseload standards for public defense representation. The Oregon State Bar has adopted caseload standards for defense counsel, but OPDS has never enforced those, as its current service delivery model precludes the agency from knowing the number of cases assigned to public defense counsel.

Data-Informed Budgeting – Historically, OPDS works to project the number of cases for a biennium, and the legislature decides how much funding it can appropriate to the agency. OPDS then decides how much it can pay per flat fee case rate.

This budgeting model is reactive and not data-informed. OPDS has never determined how many attorneys are needed to cover the statewide caseload. With caseload standards, OPDS can inform the legislature of the agency’s true needs.

Commission Structure – The PDSC is a seven member commission that provides oversight to OPDS, and all seven commission members are appointed by the Chief Justice. This bill aligns the agency with national best practices by providing appointments to all three branches of government. In doing so, it increases the PDSC to eleven members.

The bill also removes the PDSC from the judicial branch of government and places it in the executive branch. With the move, the PDSC and OPDS will retain full autonomy and independence with respect to the selection, funding, and payment of public defense counsel, as is required by the American Bar Association’s Ten Principles of a Public Defense Delivery System.

Quality Assurance and Oversight – OPDS has limited resources for quality assurance and oversight. HB 3145 directs OPDS to adopt new performance measures, as well as specific standards for investigation, review, and auditing of public defense attorneys. It also requires ongoing training and continued legal education to handle more complex case types.

Transparency in Contracting – OPDS will continue to contract with public defense providers. Currently, we have little-to-no information regarding attorney caseloads and compensation, as our knowledge point ends with the contracting entity. HB 3145 requires transparency in contracts and information sharing so that OPDS can gather necessary data and provide quality assurance.

Foundational Training – There is no foundational training provided to new public defense attorneys in Oregon, which is critical for new attorneys entering the field to provide constitutional and effective representation. HB 3145 directs OPDS to develop a foundational training program.

Task Force on Municipal Courts – HB 3145 creates a task force on the right to counsel in municipal courts statewide with specific data collection and reporting obligations.

Time is of the essence. The PDSC has directed OPDS to provide public defense services in a different way. All public defense contracts must be approved by the PDSC, and the commission has committed to no longer authorizing flat fee contracts, as it has in the past. OPDS needs the statutory tools in this bill, as well as additional financial resources, to ensure OPDS can perform its statutory mandate and ensure all eligible Oregonians receive the legal services that they are constitutionally guaranteed.

Respectfully submitted,

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