

Oregon Defense Consortium Association

990 NW Brooks Street, Suite 1
Bend, Oregon 97701

Message in support of HB 3145

The ODCA was formed to represent members of the private bar consortia in advocating for legal, ethical and responsible funding for Oregon public defense.

The ODCA supports the full and fair resourcing of all public defenders, whether they are private attorneys or members of non-profit law firms.

Nearly two-thirds of public defenders in Oregon are private attorneys providing indigent defense services through contracts with the state. Like all attorneys in Oregon, they are presently paid using a system based on a flat-fee per case. Public defenders are not eligible for PERS or government employee health care.

With the recent proposals before the Judiciary Committees, it is understandable to ask:

If the legislature establishes and funds a statewide office of public defense, why will we still need private attorneys paid by the hour?

No single funding model can exclusively meet the needs of indigent defense. Under Oregon's Rules of Professional Conduct, a firm cannot represent someone whose interests may conflict with the interests of a present or former client. Practically, it means that a firm cannot represent more than one defendant in a case. Similarly, a firm cannot represent both parents or a parent and a child in a child welfare case. Cases where there are such conflicts of interest must be assigned to other counsel outside the firm. Even in a system where the state employees comprise the 'firm,' provisions must be made for conflict of interest cases.

The ODCA supports the continued funding of a robust private defense bar in addition to the proposed state public defense office.

How do we assure individual lawyers are providing quality legal service to their clients?

Many states, and the Federal Public Defense system pay contract attorneys by the hours. Attorneys would be required by contract, and by their ethical cannons, to provide zealous and appropriate representation to their clients for a reasonable and customary fee. The Office of Public Defense Service will insure quality and monitor the reasonableness of hourly charges.

Most attorneys pursue careers in public defense because they care deeply about the issues facing their clients and communities. As lawyers, we believe in the rule of law, and in the importance

of keeping government overreach in check by vigorously putting the state's evidence to the test. In order to do our jobs, we require a great deal of independence, understanding this creates a natural tension – the need of the legislature to assure that they are good stewards of public money, versus the need for public defenders to assess and defend the needs of their clients without limitation or interference by the government.

Trust us, but verify?

Over the years, eroding case payments and increasing costs have forced public defenders to triage cases. Attorneys are forced every day to choose the cases to dig into deeply, while also choosing to attend with less scrutiny to some cases. These are often agonizing choices that no attorney wants to make, but attorneys can't manufacture is TIME. We need time to carefully study, evaluate, research, investigate, and interview every case. Under the current system, none of us have that time because there are just too many cases. We shy away from admitting that we can't always fulfill our obligations to our clients. We sometimes let clients down because we simply run out of day before we run out of work to do in that day. We are professionals, with contractual and ethical obligations to our state, our clients and our communities, but we are also mothers, fathers, children of aging parents, husbands and wives with life obligations too.

Improve the quality of public defense lawyers and you vastly improve the lives of those they serve. When a lawyer feels he or she has the time to delve deeply into a case, the client receives a better outcome. In addition to fully investigating and examining the facts of a case and the applicable law, lawyers have time to research alternatives to incarceration, such as deferred sentencing programs, and treatment programs. That means better outcomes for clients. Attorneys have the time to follow up with clients even after their cases are resolved to assist clients with important help that reintegrates prison inmates back into society, such as expunctions, second-look hearings and sex offender registration.

Overhauling our delivery and compensation models, to improve the way we provide and pay for public defense is critical and must be done right away.

Access to competent, zealous representation is not a luxury. It is a constitutional necessity. Access to justice should not be a partisan issue. And getting a fair trial should not turn on whether you can afford representation.

The Oregon Defense Consortia Association looks forward to working with all the agencies involved to create the best network of public defense service providers available anywhere.

Lori A.G. Hellis, President
Jonathn Prithard, Secretary/Treasurer
Bruce Liebowitz, Vice president
Bruce Tarbox, Member at Large
John Weiner, Member at Large

