



Testimony in Support of House Bill 4004

Submitted by Courtney Helstein on behalf of the ACLU of Oregon
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Chair Prozanski and Members of the Committee:

The American Civil Liberties Union of Oregon¹ supports HB 4004 which would reform Oregon's public defense system to ensure indigent defendants are treated fairly. As the U.S. Supreme Court reminded us more than 50 years ago in *Gideon v. Wainwright*, the right to counsel is "fundamental and essential to fair trials." It is the constitutional duty of the State of Oregon to ensure fairness to everyone in the criminal legal system, especially those who are poor and swept into an adversarial system where the state ultimately controls what happens on both sides of the table.

The ACLU of Oregon believes that public defense reform should continue to a priority of the legislature. Oregonian's right to counsel is an issue that warrants the utmost level of attention and seriousness. The 2020 public defense bill is a good first step to give certainty to Oregon's public defense contractors in what they can expect in contracting with the Office of Public Defense Services for the foreseeable future. It also sets us up for the much-needed conversations on broader reforms that were pointed out in the 2019 Sixth Amendment Center report.²

In their report, the Sixth Amendment Center highlighted the urgency needed to address the crisis within our public defense system. Uncovered in their findings was a PDSC/OPDS **complex bureaucracy that still results in a stunning lack of oversight and a fixed fee contract system that pits appointed lawyers' financial self-interest against the due process rights of their clients; and is prohibited by national public defense standards.**

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

² ["The Right to Counsel in Oregon: Evaluation of Trial Level Public Defense Representation Provided Through the Office of Public Defense Services."](#)



Oregon's current use of flat fee payment structure undermines how much time an attorney may spend on a case. This scheme can lead to a practice that focuses on handling as many cases as possible regardless of the outcome. HB 4004 calls for best practices in payment structure and moves our state towards explicitly prohibiting the use of flat fee compensation or any mechanism that may similarly operate as a flat fee structure. HB 4004 will ensure future policy includes:

- Building caseload and workload models that take regional needs and best practices into consideration.
- Considerations of costs accrued by contractors such as licensing, training, office space and other overhead costs.
- Enhances transparency and accountability for contractors and Oregon Public Defense Services.

HB 4004 also adds two new positions on the Public Defense Services Commission, with one of the positions filled by a person who has been represented by a public defense services provider. Having a person who has been represented by a public defense services provider will provide an essential perspective of lived experience to help us better understand and address the impacts on those served.

The absence of strong, well-resourced indigent defense systems offends the Constitution, leads to deeply unfair results, and contributes to our overburdened and wasteful jail and prison systems.³ **HB 4004 is a crucial first step to ensuring access to justice for all Oregonians. For these reasons, the ACLU of Oregon urges you to support HB 4004.**

³ [ACLU – Indigent Defense](#)