



August 17, 2023

Governor Kotek and Legislative Leaders on Public Defense Funding,

On behalf of the Oregon District Attorneys Association, we would like to draw your attention to an urgent matter that has an immediate and dire impact not only on public safety in our communities, but also on access to justice for victims and defendants.

As you are likely aware, on August 15, 2023, a federal judge issued a ruling in *Caleb Aionia, et al. v. Patrick Garrett, et al.*, (3:23-cv-01097-CL) requiring the Washington County Sheriff to release from jail unrepresented defendants facing criminal charges within 10 days. The broader habeas case, which will consider both in-custody and out-of-custody defendants without appointed counsel, will likely be heard later this fall and will certainly have statewide application. See **National ‘embarrassment’: Judge sets 10-day deadline to release people held in jail without lawyer** We have already learned that at least one other county (Jackson) will apply the recent federal court ruling in their jail. We expect other counties may follow.

We wholeheartedly agree that defendants, especially those who are in custody, have a constitutional right to representation. And we support efforts to ensure these rights are honored. However, a mandatory and blanket forced release rule for unrepresented in-custody defendants creates significant concerns. As you are aware, defendants who remain in-custody pending trial, especially after SB 48 (pre-trial release reform), represent a narrow scope of individuals facing significant public safety charges. We cannot stand by as defendants facing charges involving domestic violence, sexual assault, child abuse and prolific property crime are released into our communities.

We want to continue to work as partners with you in this effort to improve the indigent defense system. As you are aware, the PDSC is required by law to establish AND maintain a public defense system that ensures the provisions of public defense services consistent with constitutional requirements and standards of justice. See ORS 151.216(1). Additionally, the PDSC is required to establish the Office of Public Defense Services (OPDS) to ensure public defense services are available for indigent criminal defendants in Oregon. **It is clear that both the PDSC and OPDS have failed to meet these statutory obligations, and they continue to fail even after the 2023 Legislature allocated [historic funding levels](#) to public defense.**

District Attorneys across Oregon are committed to working toward a solution. To that end, we have worked in our communities to create greater efficiencies and we have participated in the Unrepresented Crisis Plan Team Meetings as directed by SB 337 and the Chief Justice’s Order. While we are encouraged by the attention the legislature has given this important issue, we

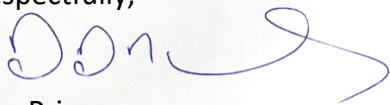
were alarmed to hear from OPDS representatives during recent Crisis Plan Team Meetings that OPDS believes none of the newly allocated \$100 million in funding may be used to hire additional defense attorneys. We hope that the OPDS interpretation is not accurate. If that is the case, we respectfully request that you clarify with both the PDSC and OPDS your expectations regarding the use of these funds.

Additionally, in the spirit of offering constructive ideas, we offer the following concepts. If these concepts are implemented without delay, we believe they would make the new federal court release order unnecessary.

1. **Raise and adjust the Maximum Attorney Caseload (MAC).** We have learned in our Crisis Plan Team meetings that the MAC number is arbitrary and often detached from the true ethical capacity of individual attorneys. The MAC problems are numerous and well-recognized by both practitioners and OPDS. We believe a change to the MAC will have an immediate and positive impact on defense attorney capacity.
2. **Raise the threshold for what qualifies for indigent defense services.** We frequently see examples of individuals in courtrooms throughout the state who are deemed eligible for a court appointed attorney, but their eligibility appears to defy common sense. We believe a reexamination of eligibility is warranted, along with a clear statewide standard that is uniformly applied. These changes will have an immediate and positive impact on defense attorney capacity. See [Attorney seeks probation for disgraced ex-judge who admitted possessing child sex abuse images](#).¹
3. **Hire more defense attorneys.** We strongly support the hiring of more defense attorneys and hope that the new resources you have allocated will be spent doing exactly that. Current contract consortia should be immediately given the authority to hire new attorneys. We have many examples in recent months where our local defense attorneys have been told 'NO' by OPDS when they have asked to bring attorneys on board. This is the opposite direction of where we should be headed. In addition, we support greater investment in serious and complex case appointments.

We appreciate your time and commitment to this important issue, and we look forward to continuing to partner with you to find solutions.

Respectfully,



Dan Primus
President, Oregon District Attorneys Association
District Attorney, Umatilla County

¹ "Taylor declined to answer questions about why Mann was appointed a defense attorney at taxpayer expense despite making \$167,000 a year before he was [removed from his post as chief judge for the state's administrative hearings office](#), which handles appeals to rulings made by state agencies."