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March 29, 2023

Sen. Floyd Prozanski

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Rep. Paul Evans

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Rep. Kim Wallan

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Sen. Dennis Linthicum

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Subject: Senate Bill 337

Dear Sen. Prozanski, Rep. Evans, Rep. Wallan, and Sen. Linthicum,

I am a full time public defender in Clackamas County. The events that have happened to the Clackamas County juvenile attorneys over the last few weeks are illustrative of the detrimental impact SB 337 would have on our communities at large.

#### **OPDS REQUIRED TWO ATTORNEYS TO TAKE A CASE TYPE THEY DON'T PRACTICE OR RESIGN**

Two weeks ago, OPDS told the Juvenile Advocates of Clackamas, who handle all the juvenile delinquency, juvenile dependency and civil commitment cases in the county, that either two of our attorneys would have to switch to adult criminal or we would need to drop two attorneys.

Both our attorneys decided their hearts are with juvenile law and opted not to switch to adult criminal. One of our attorneys decided to keep her juvenile cases and individually contract with OPDS to bill those cases on an hourly basis. She will also be expected to negotiate her own contract, interact directly with OPDS if there are problems and submit her own hourly billing. Our other attorney decided that he would pursue a juvenile public defense position in another county.

#### **AN AVERAGE CASELOAD OF 83 CASES IS NOT ENOUGH FOR OPDS**

The reason for this change? OPDS says we don't have enough cases to keep those two attorneys. Including those two attorneys, we have 8 juvenile attorneys in Clackamas County and some associates that take cases for those main 8. The average number of cases, if we count the way OPDS wants us to among the 8 of us, was 83 cases per attorney.

#### **83 CASES DOES NOT EQUAL 83 CASES**

Let's talk about what a case load of 83 juvenile matters looks like.

**Adult Criminal Case Counting.** OPDS has written their contracts to fit adult criminal defense. If you are appointed on a criminal case, you get a case credit. The case credit is weighted depending on the seriousness of the criminal charge.

**Juvenile Delinquency Case Counting.** This loosely translates to juvenile delinquency, but attorneys for juvenile delinquents get one case credit whether the charge is a low level misdemeanor or a high level felony. Additionally, we are expected to keep tabs on whether our youth are in school, following the

rules their parents put in place for them (this is a release condition and if you don't follow it, you can go to detention), stay off social media or any other condition the court puts in place. All of these things factor into the disposition (sentencing) at the end of the case. We are no longer just required to investigate and analyze the allegation that brought them to juvenile court in the first place, as you would in an adult criminal case.

**Juvenile Dependency Case Counting.** Now let's look at juvenile dependency. This is where OPDS' case credit system really starts to fall apart and they do not seem interested in hearing about it or fixing it. As a dependency attorney, I have a client who is involved with the foster care system. I get appointed, let's say to a child. The incident that gave rise to ODHS removing that child from their parents is only one tiny part of the whole case. Dependency cases are ongoing, sometimes for years. My oldest case, which I inherited from an attorney who retired, started in 2011. We are not looking at one isolated incident like an adult criminal attorney. As a child's attorney, I attend meetings with ODHS. I attend school meetings. I attend treatment meetings. I'm expected to be part of the solution in these meetings.

If I am assigned a dependency client, I get one case credit. Per OPDS' system, my client whose case started in 2011, is one case credit. Actually, it isn't even that, because we don't get to count old cases. I won't even get into the case counting for civil commitments because I hope you've gotten the point. There are some big hurdles to overcome if you are a public defender and you are not doing adult criminal.

#### **WE'RE DOWN TWO ATTORNEYS, NOW WHAT?**

We have a phenomenal attorney who is our administrator. It makes me sad that she now spends almost all her time arguing with OPDS about why we need eight attorneys and not six, instead of using her lawyer skills to help our clients.

She will now have to reassign approximately 83 cases to the remaining 6 attorneys. This is even more complicated than it sounds. In a dependency case, Mom gets an attorney, Dad gets an attorney, Child(ren) get an attorney and depending on the children's positions, we may need more than one child's attorney on a case. Reassigning all these cases will require a lot of conflict checking and a lot of time.

#### **GETTING RID OF CONSORTIA WILL DRASTICALLY INCREASE THE PUBLIC DEFENDER CRISIS**

In our Clackamas County microcosm, of the two attorneys that had to decide whether to directly contract with OPDS, the split was 50/50. We have never been more acutely aware of the distinct possibility of losing not only the amazing colleagues and camaraderie we have, but the support we have by being part of a consortium, the support of our administrator and the constant forward pressure we put on each other to become better and better advocates for our clients. We are more cohesive as a unit and are more effective together.

Personally, I cannot take on a full caseload as a public defender, while also having to take on dealing with OPDS on my own. I will very soon have 14 more cases on my caseload, which will take my case count into the 90s. I love the work that I do and the clients that I serve, but I would not be able to do it without the support my consortium provides me.

#### **WE ALL AGREE WE NEED A FIX TO THE PUBLIC DEFENDER CRISIS BUT SB 337 IS NOT IT.**

Sincerely,

/s/ Amanda J. Marshall  
Amanda J. Marshall