



**TO: Oregon Senate Judiciary Committee**  
**FROM: Kathleen Dunn JD, OCDLA Board President**  
Owner, Strawberry Mountain Law, P.C. (Baker)  
Executive Director, Elkhorn Public Defender (Union, Wallowa)  
President, Eagle Cap Defenders Inc., a Consortium (Malheur)  
**DATE: March 31, 2023**  
**RE: Testimony on SB 337-1 Public Defense**

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Chair Prozanski, Vice Chair Thatcher, Members of the Committee:

My name is Kati Dunn and I am testifying today on behalf of the Oregon Criminal Defense Lawyers Association Public Defense Reform Task Force. OCDLA is the professional association representing criminal defense lawyers, investigators, experts, law libraries, support staff and law students. We provide education, training and advocacy for our 1,200+ members who live and work in every corner of the state. I am an attorney in Eastern Oregon and I oversee all three types of service delivery models for public defense: a law firm, a consortium and a nonprofit.

We want to thank the Tri-branch work group for all its hard work and also for its efforts last night to clarify portions of SB 337-1 regarding the make-up of the Commission. We recognize SB 337-1 seeks a variety of changes to the public defense system in addition to restructuring the make-up of the Commission: moving the agency to the Executive Branch, changing the training and education of lawyers as well as changing the delivery system. We all recognize and support the need to modernize and improve the public defense system in Oregon. We all value greater transparency and accountability of this important state service. However, I am concerned that there will be unintended consequences if the legislature were to adopt the SB 337-1 amendments as written.

#### **Changes to Commission**

OCDLA appreciates the efforts made last night to tighten up and ensure commission members have "criminal law" experience coming from a defense perspective, and juvenile experience was broadened to include dependency and not just delinquency. I would like to see further adjustments to establish criteria or possibly a designated seat for someone living/working in not just a rural, but in a frontier, county. These changes will better ensure broader and more relevant experience for commission members.

#### **Changes to Training/Education**

We also appreciate that the Tri-branch workgroup recognizes that a change to a "centralized" training structure will still include OCDLA's existing training and education programs and support of Oregon's criminal and juvenile defense lawyers, investigators and others for over 40 years. OCDLA offers trial skills trainings and practical skills as well as in person and webinar training and education on substantive areas of criminal and juvenile law, all meeting the Oregon State Bar's mandatory continuing legal education credit



requirements (CLEs). Additionally, OCDLA distributes written and online publications and forms essential to criminal and juvenile defense practice and supports a “Library of Defense. We believe OPDS should continue to collaborate with us to provide joint training and education and partner with OCDLA to support and fund OCDLA’s separate training and education programs so those can be offered at low or no cost to public defense providers, which helps support retention of current providers and quality representation. This partnership also supports high school, college and law student recruitment toward public defense.

### **Changes to Delivery Model**

SB 377-1 proposes to drastically change the service delivery model for public defense. Currently, it is a combination of non-profit public defense offices, consortia, law firms and limited hourly attorneys. The bill would change that to build out a state trial division, retain the non-profit public defense offices, and shift to a direct appointment/assigned counsel. This model eliminates consortia and law firms, which currently provide 60% of public defense in Oregon.

The amendments proposing to transition from consortia to a direct appointment/assigned counsel panel were released just this past Friday. OCDLA has been trying to ascertain what the workforce impacts would be over the last few days. OCDLA sent out a short survey and initial results indicate almost 80 practitioners say they anticipate they would stop doing public defense work if the consortia model went away. If even just half this number: 40 quit taking public defense cases and each of those 40 had just ten cases (likely they have ten times that number) that would be 400 more unrepresented individuals added to the current crisis. Passage of this portion of the bill (Section 83) would exacerbate Oregon’s crisis in access to justice and deepen the already critical need for additional lawyers for the hundreds of unrepresented cases we face now.

Given the incredibly short time frame to respond to the SB 337-1 amendments, there are too many unanswered questions that need time and analysis:

(1) OCDLA strongly supports our non-profit public defenders, however, it seems like it would be more appropriate to have OPDS set criteria that tracks the way nonprofit offices function and allow any entity that meets those criteria to participate similarly, regardless of whether they are a law firm or a nonprofit...corporate structure should not matter.

(2) Neither the agency nor the Tri-branch work group did an assessment to see what portion of consortia attorneys would opt to contract directly with OPDS, seek employment at the trial division, seek employment at a non-profit, or would stop doing public defense work entirely. Stakeholder involvement should occur before such a significant change. Moreover, consortia providers have served Oregon for decades and now provide 60% of public defense representation. One of the reasons consortia providers have been willing to do so is because of salary certainty; SB 337-1 is now causing anxiety to those providers that there will be no more salary certainty, but rather more delays in payment (please see comments from the OCDLA consortia survey attached), payment uncertainty and loss of



local involvement and control. OPDS should address these concerns with providers before major change to the service delivery model occurs.

(3) Additionally, there has been no discussion of the cost of building out the agency infrastructure to oversee such a significant increase in direct contracting caseload on an individual attorney basis. We are concerned the cost would be prohibitive and result in a tradeoff between expanding the agency infrastructure (e.g. software for tracking time keeping, increasing staff to pay every individually contracted attorney) to the detriment of attorney recruitment, retention, compensation and caseload considerations. Especially if the agency is standing up a trial division and at the same time it moves to this new contracting model.

### **Where to go from here**

More analysis, planning and data are needed before the proposed radical changes to Oregon's service delivery model for public defense is enacted as contemplated by Section 83 of SB 337-1. The changes contemplated in the rest of SB 337-1 are significant, wide reaching and will require significant agency time and focus. In conjunction with those changes (e.g. move to executive branch, change in commission structure), OPDS should develop a framework for service delivery changes that includes stakeholders, with a focus on geographical and urban/rural particularities and needs, among other things. Once a framework is developed service delivery can be revisited. I appreciate this opportunity to testify and would like to address the unique challenges faced in the area I come from.

### **The Unique Challenges of Eastern Oregon and Frontier Counties**

In Eastern Oregon, we desperately need more attorneys in public defense. In Grant County, our firm is the only law firm. Period. We are also the primary provider for PDSC. There are 4 attorneys available for hire (attorneys who are not judges nor prosecutors, because they are not available for hire) in a county with 7,226 people in a vast area spanning 4,529 square miles. Three of those are in my law firm.

On our retained side, this mostly is divorces, wills, demand letters, landlord-tenant issues, and drafting business and land-use documents for small Eastern Oregon businesses.

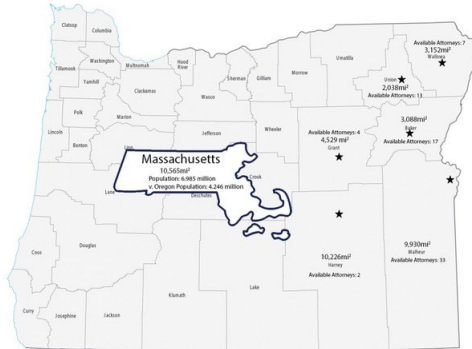
If Strawberry Mountain Law loses its contract with PDSC, the revenue from helping our community members is not sufficient to keep our doors open. (This is what you will hear from many consortium members too, by the way, even highly successful ones, due to the cyclical nature of retained work). We need our PDSC contract, and our community needs us.

If Salem takes Grant, Harney, Baker, Union, Wallowa, and Malheur attorneys away, this will add fuel to the fire of the notion that the government in Salem disregards all things Eastern Oregon. Salem will be dealing a blow to small businesses, ranchers, farmers in Eastern Oregon who will have to turn to Bend or the Valley to draft their contracts and give advice on water and land use rights issues. Lawyers in Bend and the Valley who don't understand how important land use, water rights, and cattle brands are. The Oregon State Bar Bulletin recently ran a cover story article on Eastern Oregon and lack of Access to Justice. If the



contracts are no longer available to law firms, the effects on access to justice will be devastating.

I understand that the proposed model is based upon the Massachusetts model. I've attached a graphic that illustrates the incredible difference by size and population density of the two states. If you flip Massachusetts on its side, it would fit into Harney County.



A key difference in the Federal Panel approach for appointed counsel is how much closer the Federal courthouses are to Salem, which provides some oversight. You can drive in a reasonable time to Portland, to Eugene, even to Roseburg or Pendleton.

There is absolutely no practical way for an administrative agency in Salem to observe court, to interact frequently with judges and prosecutors to ensure quality service to indigent clients. Oversight would be challenging and expensive. To drive to my office from Salem it takes about six hours. Oversight is one of the reasons I am out here. Recruitment, training, retention, all of those reasons as well.

Law firms need to be kept as providers, especially in rural areas, especially Eastern Oregon; because small, rural firms in small populations may not be financially viable without OPDS contracts.

Often the population is so small that a private law office would not be sustainable without a State Contract. If law firms are forced to dissolve due to loss of an OPDS contract, this will result in a critical access to justice problem.

When I represent a person charged with a crime in a trial in front of a Grant County jury, I am the lawyer who helped their grandmother, their niece, their neighbor. I'm a lawyer representing a member of their community. If I turn away their grandmother, their niece, their neighbor, I'll just be "the mouthpiece of a meth-head who stole their nephew's power tools" – that is the only time they will see me or interact with me as a professional. This WILL hurt indigent clients.

Law firms, particularly in rural areas, are the only way to provide access to justice. In rural areas, particularly Eastern Oregon, a law firm will be the only law office for close to 100 miles or more. Community members, including elderly and victims of exploitation or



wrongful eviction, need an attorney and do not have the means to travel to distant locations such as Bend (if coming from Eastern Oregon).

In other words, to provide access to justice, there MUST be a firm in a huge region that can have a general law practice.

**Retained work is a critical facet of recruitment to rural areas**

A big draw for new attorneys to a law firm that has a public defense contract is the opportunity to do public defense work as well as retained work. A number of attorneys I have hired have cited this opportunity as a reason to relocate to a remote location in Eastern Oregon.

**A law firm provides training and supervision that a sole practitioner does not have available**

In my law firm, we have hired attorneys straight out of law school and trained them into very good defenders. Without training and mentorship, developing into a minor and major felony qualified, juvenile dependency, and ultimately murder-qualified attorney is impossible.

**Conclusion**

I urge the Committee to undertake a more robust assessment of the impacts and costs to the proposed service delivery model before adopting the SB 337-1 amendments, particularly Section 83 that dissolves consortia. Providers have a lot of questions about how all this will work and a lot of concerns. Even though there has been a work group meeting since last year, the seismic shift of eliminating the consortia has only been public for a week. The back log of unrepresented individuals and the shortage of lawyers exacerbating it represents a crisis in access to justice in Oregon. We need to have a public defense delivery system that encourages attorneys to continue to do this work and keeps the most experienced lawyers in the system. Thank you for the opportunity to testify.

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