

STATEMENT IN SUPPORT OF SB 337

STEVEN T. WAX APRIL 1, 2023

Dear Chair Prozanski, Vice Chair Thatcher, and members of the Committee,

I tried my first criminal case 50 years ago, served for 4 years as a prosecutor in Brooklyn, N.Y., four years as the Chief Public Defender in Broome County, N.Y. during which I served on the New York State Defenders Board of Directors, 31 years as the Federal Public Defender for Oregon, during which I served on the National Federal Defender Advisory Board, and have now served as the Legal and Co-Directors of the Oregon Innocence and FAIR Law Projects. In addition, I served on the Public Defense Services Commission for somewhat less than two years and have served on the Legislative Task Force from which SB 337 is derived.

In my jobs in Oregon since 1983, I have worked intimately with, and studied, the Oregon Criminal Justice system reviewing thousands of cases that have been prosecuted, defended, and appealed. I have studied the reports of the 6th Amendment Project and American Bar Association addressing the indigent defense situation in Oregon. Their assessment of the structural problems with the current indigent defense delivery system and suggestions for change are fully consistent with the observations I have made during my career. I believe that SB 337 addresses most of their concerns and that the structural changes that will be achieved by that bill will enhance the quality and availability of defense services in Oregon.

During the Legislative Task Force's work, that broad based group has heard repeatedly about the defects in our current system, including the inherent conflict in the current contracting and sub-contracting models and the inability to provide proper oversight, supervision, training, and retention. My service on the PDSC reinforced for me that a system that uses sub-contractors is not only opaque but also inherently violates state and federal constitutional requirements. To be sure, most of the people who work in indigent defense in Oregon are good lawyers who believe in the work they do. That is true of the public, non-profit, firm, and consortia. That is not the problem. The problem is, rather, structural.

I urge you to review the detailed comments I submitted to the Task Force and the reports of the 6th Amendment Center and the ABA. I will only address one specific

issue here—the impact on the system if the Consortium model is continued or if it is ended as is currently proposed in the legislation.

Addressing continuation is simple because that will perpetuate the constitutional violations and lack of oversight.

Those people who oppose ending the current system are raising worst case scenarios. I suggest that those are extremely unlikely to emerge. I have lived through several major changes in the provision of indigent defense services. Change is unsettling and each time people vigorously opposed the change. Each time, however, the changes were implemented smoothly and nearly all those who opposed the change continued with their work.

SB337 will require the new OPDC to interact with the judges and lawyers in each county in a different way than they do now. That will require building an infrastructure. In many counties, the same people will continue to serve their clients and the courts, just under a different name. In some, new people and new entities will need to be created. That has been done before and I see no reason why it cannot be done again.

The reality is that there will be some economic dislocations. Some people will lose money. The reality is also that many individual lawyers will see more money in their pockets, have more support, and better training and supervision.

We are currently dealing with a situation that is far more than a bump in the road. We can expect some bumps in a transition. I am confident that the new OPDC will be sensitive to the needs of both the clients and the courts and that several years from now the system will be running smoothly and constitutionally.

I am pleased to speak with any of the committee members who might want a more detailed account of the observations I have made during the past 40 years.