



March 30, 2023

Senate Committee on Judiciary

RE: Testimony in support of SB 337

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee

Thank you for the opportunity to share support for SB 337 on behalf of the American Civil Liberties Union of Oregon (ACLU of Oregon). The ACLU of Oregon, which is a nonpartisan, nonprofit organization dedicated to preserving and enhancing civil liberties and civil rights, with more than 28,000 members statewide.

The ACLU of OR supports SB 337 with the proposed -1 amendments, which would reform Oregon’s public defense system to help ensure indigent defendants have quality legal counsel, including:

- Establishing a commission where those most impacted have a voice in the system through the inclusion of community stakeholder participation;
- Transferring the Oregon Public Defense Commission from the Judicial to the Executive Branch and;
- Establishing a trial division within the commission who are trial-level public defense providers.

The ACLU believes these are necessary steps in the right direction.

The US constitution sets out the fundamental values of our democracy. A core constitutional value is the Sixth Amendment right to counsel in criminal cases. Before 1963, low-income people charged with crimes in state court were not necessarily provided with legal counsel. This was changed by Clarence Earl Gideon.-This year marks the 60th anniversary of the landmark U.S. Supreme Court decision of *Gideon v. Wainwright*, reminding us that 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 with low income and who are swept into an adversarial system where the State ultimately controls what happens on both sides of the table.

Currently, the State of Oregon is not upholding its constitutional responsibility. There are hundreds of Oregonians who have been charged with a crime who cannot afford legal counsel and have not been appointed one.

This is especially true for Black, Indigenous, and Latinx people who are disproportionately represented in Oregon’s criminal legal system and disproportionately impacted by poverty.

People of color continue to be inordinately harmed by the failures of Oregon's public defense system.

Multiple studies have found that Oregon's public defense system is a complex bureaucracy that has trouble executing basic functions like paying lawyers equitably and on time and needs an additional 1300 criminal defense lawyers to meet demand. The American Bar Association reports that Oregon's public defense system is severely understaffed, and needs an additional 1300 criminal defense lawyers to meet demand. As of March 30, 2023, far too many Oregonians with a right to counsel remain unrepresented:

- 108 people are currently in custody.
- 801 people are out of custody.
- An additional 85 people remain unrepresented in non-criminal matters who have a right to counsel.

However, these are only parts of a greater problem. Over-policing, overcriminalization, and mass incarceration have become the mainstays of the criminal legal system in the US, and Oregon is no exception. **If we continue the current path of over criminalizing non-violent crimes, there will never be enough money in Oregon to provide public defenders to all low-income people.**

Oregonian's right to counsel is an issue that warrants the utmost level of attention and seriousness. The policy before you today is not perfect, clearer language around several areas is needed, such as more clear language articulating the agency's authority to provide oversight, coordination, and monitoring of assignment of counsel and client services at the local level. SB 337 would be further strengthened by including more clear language in the commission composition to ensure historically marginalized communities are included.

We commend the work of stakeholders participating in the Tri-Branch work group with the goal of addressing deficiencies in our public defense system that have persisted for years.. **Although SB 337 is not perfect, it takes steps in the right direction that, if fully funded, helps address systemic deficiencies that prevent Oregon from providing constitutionally mandated representation to indigent defendants.** SB 337 moves us closer to the goal of providing equitable and quality representation and increasing transparency, oversight, and accountability in the public defense system.

The ACLU of Oregon respectfully urges you to support on SB 337

Thank you,

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ACLU of Oregon