



TO: Joint Committee On Ways and Means Subcommittee On Public Safety
FROM: Shaun McCrea, Oregon Criminal Defense Lawyers Association
DATE: May 3, 2023
RE: SB 1093

Co-Chairs Sollman and Evans, and Members of the Committee:

My name is Shaun McCrea. I am the Executive Director of the Oregon Criminal Defense Lawyers Association (OCDLA), a 44-year-old statewide nonprofit professional association providing education and advocacy for attorneys, experts, investigators, and others working to achieve the highest level of effective counsel in providing criminal and juvenile defense legal services in Oregon.

It is our understanding that the goal of SB 1093 is to support efforts to reduce the backlog in unrepresented cases. I want to talk about two ways that would help with shorter term solutions to the crisis in access to justice - system efficiencies and training up lawyers through OCDLA's training and education programming.

System Efficiencies

OCDLA recognizes that courts, prosecutors, and defense attorneys all play key roles in the system of justice and that it is our collective responsibility to come together to resolve this crisis. One way OCDLA has sought to help is by proposing methods to improve efficiencies in the justice system to the Tri-Branch Workgroup's Subcommittee on System Efficiencies and to the judicial branch's Uniform Trial Court Rules Committee. The efficiencies proposed are solutions to issues raised directly by public defense providers to OCDLA. Implementation of such proposed efficiencies would move public defense cases along, save lawyer and court time and thus better serve current clients or to expand lawyer capacity to take on additional clients. We hope SB 1093 will create another chance to implement proposed efficiencies and that the SB 1093 crisis teams will keep in mind these system-wide changes when developing their plans.

For example, expedited release of "discovery" (e.g. police reports and other evidence against an accused) from the prosecution to the defense, is essential for a defense lawyer to fulfill important ethical obligations to their client and to facilitate either a trial or settlement. Incomplete discovery necessitates defense time to request missing information, often on a repeated basis, taking away from time the lawyer could be spending investigating or analyzing the case. Late discovery also leads to time wasted and delayed justice. The American Bar Association encourages jurisdictions to adopt discovery time limits; based on that best practice, OCDLA proposed timelines for the disclosure of discovery to the legislative branch for the 2021 legislative session and in 2022 to the judicial branch. Oregon still has not adopted discovery time limits.

Another example is the difficulty of jail visitation. A defense attorney has an ethical obligation to communicate with their client and to, as necessary, preserve attorney-client privilege during that communication (i.e. in a private setting). Visitation with a client detained in jail requires significant attorney time and even more so when there are limited jail visitation hours. Additionally, not every jail allows defense attorneys to call in to speak with their clients. There is no one solution to this problem. All stakeholders must come together in a good faith effort to find solutions, but first, with the recognition that examination of the problem and solutions that support and expand defense attorney jail visitation will promote increased public defender capacity.

OCDLA has many more system efficiency proposals: from plea offers to remote hearings to streamlining court “check-in appearances.

Training and Education

Oregon’s backlog of unrepresented people (both in and out of custody) can be reduced by ramping up training capacity for new lawyers and by expanding training for more experienced lawyers ready to move toward taking more complex cases.

OCDLA provides high-quality trial skills training and education on an array of topics practitioners need for all aspects of criminal and juvenile defense. We present approximately 12 seminars a year plus webinars, distribute publications on topics of interest and need to practitioners, and host the Library of Defense - an online library that is a cost-efficient resource to provide support and training for public defense attorneys, staff and investigators throughout the state.

OCDLA welcomes the opportunity to continue to work collaboratively with PDSC in increasing training capacity for lawyers. A modest investment in OCDLA’s training and education programs would allow us to keep the Library of Defense a cutting-edge resource, to offer more trainings per year, and to offer trainings/resources at low or no cost to public defense participants.

In conclusion, SB 1093 creates an opportunity to develop local plans tailored to geographic areas needs and challenges. System efficiencies would be a very helpful facet of those plans and it would be potentially useful to offer that in the bill or for this committee to create a record of expectations that court efficiencies be part of those plans. OCDLA stands ready to create and expand public/private partnerships with OPDS and these local teams to increase training opportunities, which would be a cost-effective way to enhance an already well-established training program.

Thank you for the opportunity to testify.

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