



TINA KOTEK  
GOVERNOR

May 11, 2023

Oregon State Legislature  
Senate Committee on Rules  
900 Court Street NE  
Salem, OR 97301

Chair Lieber, Vice-Chair Knopp, and Members of the Senate Committee on Rules,

We know Oregon has a public defense crisis, and I share your urgency to address this challenge so our judicial and public safety systems can operate fairly and effectively. I also appreciate the work of the Tri Branch Workgroup and its co-chairs for their continued work on this important issue.

Over 1,000 Oregonians are without defense counsel, meaning they are unable to adequately prepare for their defense. Roughly 200 people are sitting in county jails across the state without attorneys. We all agree this is unacceptable. Justice is being denied to those defendants as well as to the victims of their crimes, who watch their cases be dismissed due to an acute lack of public defense attorneys. I believe that any bill that attempts to reform public defense should prioritize getting attorneys for defendants, which is what we need to do to solve this crisis. As state government, our role in this crisis is to ensure the agency charged with this work is spending funds adequately to meet their most basic obligation: a defendant's right to an attorney and, by extension, a victim's right to justice.

Senate Bill 337 proposes to make several changes to our public defense system that can bring Oregon closer to its constitutional and moral obligation to provide every Oregonian with qualified defense counsel if they are unable to afford it. I am supportive of the bill's aims to have state employees as defense counsel and to improve data collection and performance metrics. The systemic failures facing public defense require structural changes such as having the state more directly involved in providing defense counsel and quality assurance. I am, however, concerned about the bill's proposed move of public defense from the judicial branch to the executive branch because it may, particularly in the near term, distract from the core mission of providing people with attorneys. I have yet to hear anyone articulate how moving branches will get a single person an attorney.

Over the past several legislative sessions, Oregon has increased its spending on public defense by hundreds of millions of dollars without seeing the outcomes those investments promised. The public defense crisis that was once isolated to a few counties has metastasized to other parts of the state. The agency responsible for public defense is unable to respond adequately to legislative inquiries as to how it has spent money and how the additional resources it is asking for in this biennium will result in reducing or eliminating the unrepresented client crisis. Moving an agency that is not fully functioning from one branch to another is not, on its own, going to fix this long-standing problem.

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With that said, if it is the Legislature's desire to make this move, it will be important to add changes to the bill that will better ensure success.

As Governor, I have been working with executive branch agency directors to ensure they understand my expectation that state agencies provide Oregonians with high quality customer service. We currently do not have that in our public defense system, and Senate Bill 337 provides no meaningful way for the executive branch to hold the agency or the commission accountable if they fail to serve those who are unable to afford their own attorney. Currently, statute dictates that the Chief Justice has no administrative or supervisory responsibility for the commission or the agency. I believe this is flawed. Replacing the Chief Justice with the Governor does not fix any of the systemic issues facing Oregon's public defense system. What is needed is true accountability.

Under the current version of Senate Bill 337, I would have no tools to ensure accountability for an agency that in the 2023-25 biennium will spend more than \$500 million. We must collectively learn from our shared experience of watching a system that has consistently failed Oregonians.

I believe the current version of Senate Bill 337 must be amended with the following:

- Allow the Governor to appoint the director with confirmation by the Senate. The director would serve at the pleasure of the Governor. This would bring the agency in line with other public safety agencies in the executive branch.
- Allow the Governor to remove Commission members at her discretion.
- Require that the agency be subject to the same human resources guidelines and policies as other executive branch agencies.
- Empower an implementation workgroup composed of members of the executive, legislative, and judicial branches to monitor the progress of the commission and agency.

We must be focused on fixing the system. I look forward to further collaboration on this bill to ensure that Oregon has a functioning public defense system.

Thank you for your time and consideration.

Sincerely,



Governor Tina Kotek