

Tahra Sinks PC

ATTORNEY AT LAW

March 29, 2023

Sen. Floyd Prozanski

Rep. Paul Evans

Rep. Kim Wallan

Sen. Dennis Linthicum

Subject: SB 377 Is Not the Solution to Maintain Quality Representation. Marion County Needs a Juvenile Consortium.

Dear Sen. Prozanski, Rep. Evans, Rep. Wallan, and Sen. Linthicum,

I am a Senior Attorney for the Marion Juvenile Advocacy Consortium (MJAC, formerly JAC), here in Salem Oregon. I have been a defense attorney in juvenile delinquency, juvenile dependency, and termination of parental rights cases for more than twenty-three years.

We all share a passion for public safety and protecting public trust, for juvenile justice, and for an efficient, progressive, and workable justice system. I am writing to voice strong opposition to the amendments proposed to Senate Bill 337 which, as written, would erode every one of these important Oregon values and goals. A baseline standard for any legislation is that it ought not cause more problems than it seeks to solve. The amended Senate Bill 337 would fail this test.

I have first-hand experience working as an independent contractor and in a consortium.

In addition, I have observed the extreme limitations that the Public Defender's office has regarding dependency cases. Hence, I feel compelled to explain why Consortia are essential in Juvenile Dependency proceedings, as opposed to Public Defenders Offices or private contract lawyers.

I understand that dependency and termination of rights trials are substantially different than the types of cases you may be most familiar with. I say that because juvenile cases are often discussed in conjunction with criminal cases when the Legislators are developing contracts or disbursing money, but the Constitutional requirements in a dependency case are significantly different. I will do my best to succinctly explain a dependency case, but please if there is any other information I can provide, do not hesitate to contact me.

The Consortium Model works in Marion County

The Marion County consortium currently has 14 independent attorneys (we have had 18) who devote between 50% and 100% of our time to public defense. We take pride in providing high-quality representation to our clients.

What is a Dependency case?

Dependency and termination of rights trials are substantially different than the types of cases you may be most familiar with. First and foremost, dependency proceedings (during which the State has intervened with a parent's constitutional right to parent, and a child's constitutional right to be safe from abuse or neglect) require a minimum of three attorneys – most cases require more.¹

Best practice requires that each parent and each child have their own attorney because of inherent legal conflicts.², when there are nine (9) children and three (3) dads and a mom, there could be a need for as many as 13 lawyers to ensure that the Constitutional rights of each person are protected.

A public defender's office can only take one of the 13 clients. Then, under the proposed SB337, the State would need to find 12 additional lawyers (the independent contract lawyers) to be present at the preliminary hearing to represent the parent whose constitutional rights are being infringed upon, *within 24 hours of removal*, as is statutorily required.

This would border on the impossible. In fact, as you know, the actual crisis facing our criminal justice system today is the lack of available defense attorneys, to the point where adults charged with serious crimes are being released from jail — specifically because a defense lawyer is unavailable.

In the Consortia model, attorneys, each from a separate office — and each with specific expertise in these thorny and vitally important cases in which children need protection — are available by contract instantaneously.

In nearly 30 years I believe there has been **only one** case where MJAC, formerly JAC, had to turn to the State to find lawyers. I believe the State eventually assigned new lawyers, but it did not happen instantaneously. The significance of the delay is that a permanent safe plan for a child is delayed.³

The Marion County Juvenile Advocacy Consortium (MJAC) Retains Its Lawyers:

MJAC does **not** have the high turnover rate experienced by public defender offices and independent contractors. In nearly 30 years when members of the Marion County consortium left the group, they have been appointed to the bench, retired, or passed away, with only a couple of exceptions. This is our career, our commitment to public safety, and our passion.

In the rare instances where someone has left, we have had a seamless transition of caseloads that provide the clients with the continuity of services and thus do not place a burden on our courts. This ensures that we can re-assign cases for clients to have new attorneys, file substitution of counsel, connect with our new client and request discovery all within the same day. This is not possible to accomplish with the systems SB 337 suggests.

¹ Adult criminal defense generally requires only one attorney.

² Mother's, Father's, and Children each have constitutional rights that are being infringed upon requiring separate advocacy, so as to ensure that there are no legal conflicts of interest. It is common knowledge in criminal cases that one lawyer cannot represent the state, the victim, and the defendant. It's a similar analogy here.

³ An objective way to determine quality representation would be by surveying judges, community partners, bar complaints, etc. In addition, the number of cases for a new lawyer to exhibit "quality" may be different than that of an experienced lawyer.

A Historical Perspective.

Oregon did not always have lawyers present at Shelter/Pre-liminary Hearings. This is the first hearing when a child is being removed from his/her parent. In fact, clients had no representation. Lawyers were assigned in absentia, and later received a fax with the case number, the name (not contact information) of the person we were appointed to represent, and clients were given a business card. Hardly any of the statutory timeframes were met.

Years later we began having lawyers present at the shelter/pre-liminary hearings to represent parents. Consortiums, such as ours, had enough lawyers for every legal party, and the quality of the process was improving.

Years later, the State of Oregon, or at least Marion County, began to ensure that every child who has suffered abuse and neglect not only has a lawyer, but has a lawyer present from the beginning. All parties (even if there are 13 lawyers needed), are present, can represent, and can together schedule statutorily required hearings within the statutory timeline.

Oregon was making progress in protecting a parent's constitutional right to parent, and a child's constitutional right to live free of neglect and abuse. Consortia are crucial to providing quality representation.

Net Result Would Be Less Defense Attorney Capacity.

If the Legislature were to move to an assigned counsel model, our consortium could cease providing public defense services. This would result in the loss of dedicated attorneys, who may choose to focus on other, more lucrative private work. Others may be deterred by the administrative burden of contracting directly with the state, which the Consortium now manages on its members' behalf.

This loss of capacity could have a significant impact on the state's public defense system. As noted above, consortia currently provide approximately 60% of public defense services across Oregon. In some rural communities, consortia are the only available public defense delivery model.

The current contracting process between the Office of Public Defense Services (OPDS) and consortia administrators has proven efficient and effective. This model allows for streamlined coordination between private law firms, solo practitioners, and OPDS to provide public defense services according to their contractual agreements. As noted above, Oregon's public defense system has evolved over time, moving away from the assigned counsel model, which was found to be inefficient due to a lack of coordination and the administrative burden of contracting directly with individual providers. The assigned counsel model was not able to effectively protect peoples' constitutional rights.

Consortia serve as a vital infrastructure for members of the private bar, acting as a point of contact for presiding judges, district attorneys, and other members of the criminal justice system. This infrastructure is essential for addressing emerging issues and capacity challenges, and without it, coordinating and creating efficiencies with the private bar would become increasingly difficult.

Consortia are accountable, monitored, and transparent.

It is important to note that consortia are transparent and held accountable through oversight by the consortium administrator, OPDS, the courts, and one another. Consortia are required to report to OPDS monthly, providing information on the number of attorneys and support staff working on cases, open cases, and other relevant data. This reporting process ensures that consortia are consistently monitored and held to high standards of service and accountability.

Marion County Juvenile Advocacy Consortium attorneys ensure that each of our members are up to date with the laws and OAR's pertaining to juvenile cases. We meet every week. In addition, we have community partner meetings, which include the bench, the state, the district Attorney's, the Attorney General's, ODHS, CASA, juvenile department, and defense bar to collectively discuss how we can improve both the dependency practice, and the delinquency practice.

This is not the case with the three delivery models SB 337 wants to adopt.

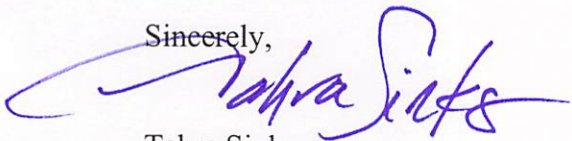
Please Do Not Move Oregon Backward.

As the Oregon State Legislature considers amendments to SB 337, I respectfully urge you to recognize the value and importance of maintaining the consortium delivery model for public defense services. Transitioning to an assigned counsel model would not only disrupt the current efficient system but could also potentially result in a significant loss of capacity for public defense across the state.

Please take these concerns into consideration as you work on SB 337 and strive to ensure that our public defense system remains strong, efficient, and capable of serving the needs of Oregon's most vulnerable citizens. Oregon is in dire need of swift and progressive action, and the proposed SB 337 is not the answer.

If you have any questions, I would be happy to be a resource.

Sincerely,



Tahra Sinks
Attorney At Law