

Office of Public Defense Services

Senate Judiciary

March 30, 2023

SB 377-1 Support

Submitted by Lisa Taylor, Government Relations Manager

Chair Prozanski, Vice Chair Thatcher, members of the Senate Committee on Judiciary,

Please accept this testimony in support of SB 377-1 on behalf of the Office of Public Defense Services. OPDS is the agency responsible for establishing and maintaining a public defense system that ensures the provision of public defense services in the most cost-efficient manner, consistent with the Oregon Constitution and the United States Constitution, as well as state and national standards of justice.

First, we would like to thank the Co-chairs of the Tribbranch Workgroup, LPRO, LFO, LC and all of the members of the workgroup for their dedicated and continued focus and work on this issue. A lot of time and thought has gone into this bill and we are truly appreciative of the effort.

The following is a summary of the substantial parts of this bill, and their effective dates, as OPDS sees them:

Change to Commission Member Appointment, and Commission Duties:

Section 2: Appointment and duties of the Oregon Public Defense Commission Members. (January 1, 2024)

Section 3: Duties and principles of the Oregon Public Defense Commission as an agency. (January 1, 2024)

Section 4: Duties of the Executive Director of the Oregon Public Defense Commission. (January 1, 2024)

Section 8-13: Changing of the name of the Public Defense Service Commission to the Oregon Public Defense Commission. (July 1, 2023)

Section 14: Pre-appointing Commission Members. (November 1, 2023) Appoints new Commission Members. (January 1, 2024)

Move from Judicial to Executive Branch

Section 76-77: Transfer of the Oregon Public Defense Commission to the Executive Branch (January 3, 2025)

Section 78: Transfers public defense population forecasting to the Department of Administrative Services (January 3, 2025)

Change to the Delivery Model

Section 81: Change to delivery model, conduct economic analysis for hourly pay rate (April 1, 2024). Sets State employee trial level floors, 20% by January 1, 2031, and 30% by January 1, 2035. (Repealed January 2, 2035)

Section 83: Create a panel of attorneys that may be directly assigned to cases. Develop a certification process for the panel. Endure there is no financial conflict of interest for lawyers providing counsel. Allows for contracts with nonprofits. Prohibits flat fee per case appointments of counsel. (July 1, 2025)

Section 85: Reporting to the Legislature. Beginning May 15, 2024, and then December of odd years from 2025 through 2035 the agency shall give a progress report to the Legislature. (Repealed January 2, 2036)

Change to Commission Member Appointment, and Commission Duties:

The agency supports the change to the way the Commission members are appointed. As a Judicial agency, with a Commission solely appointed by the Chief Justice, it is easy to be overlooked by the other branches. By having all three branches involved in appointing Commission members, all three branches will have a stronger stake in the success of the Agency.

This bill also cleans up the agency's current statute as well as adding duties and principles to the agency. Having a clear statute with roles and responsibilities clearly defined, will greatly benefit the agency. This will also provide a strong foundation to the work we do while transitioning to a new delivery model, and in future strategic planning work.

Move from Judicial to Executive Branch

Moving from the Judicial to the Executive branch will put Oregon in line with best practices in public defense throughout the country. This transition will not be without challenges, for example, currently we contract with the Oregon Judicial Department for our IT services and many policies in the agency do not currently align with executive branch administrative rules. However, we are committed to working with both branches to make the transition a smooth and successful. We appreciate OJD and the Governor's Office input and involvement in this bill.

Public defense population forecasting is currently done by the agency, however the data available to us is limited. Moving this function to DAS will allow more data sets to be incorporated and will help public safety agencies across the state work from a more uniformed forecast. We look forward to working with DAS on this transition.

Change to the Delivery Model

Trial Level State Employees: Allowing the agency to bring trial level public defenders "in house" will greatly benefit the overall system. Even a small team at the beginning of this transition will allow the agency to strategically deploy state employed attorneys to areas with the most need, assign them to clients with cases in multiple jurisdictions, and focus on complicated

cases that may require more coordination than normal. The agency already employs Appellate level attorneys, and our Appellate Division is stable, with low turnover and consistent performance. Replicating that at the trial level will be the agency's goal.

Hourly Model: The hourly model is important to our ability to collect data. If attorneys are billing hourly, we can see what their time is being spent on- even just in broad categories like court time, time with client, or administration. We will be able to use that data to evaluate if attorneys are meeting the standards and guidelines we will establish based on this bill and provide additional training and supervision to bring providers up to those standards. This model will also prevent financial conflict of interests, as it prohibits flat fee contracting and incentivizes attorneys to spend an appropriate amount of time on each case because they are being fairly compensated for the time they put into the case.

While implementing these changes and meeting these timelines will take planning, leadership, and additional resources, the agency recognizes that this bill moves us towards a public defense system recommended by the [6th Amendment Report](#). We have already begun this planning and are working on what resources the agency will need to successfully implement this bill.

SB 337 is critical to reforming Oregon's broken public defender system and adequately resourcing the state to meet its obligation to people who qualify for public defense services. The change will be difficult to implement. The agency will actively engage with statewide public defense leaders to understand how to implement this new system in a way that facilitates local coordination and serves communities by building the infrastructure to efficiently assign counsel and ensure public defense engagement with criminal justice stakeholders, judges, district attorneys, and community members in every judicial district.