

Submitter: Joshua Marquis
On Behalf Of:
Committee: Senate Committee On Judiciary
Measure: SB337

Chair Prozanski, members of the Committee

I have practiced criminal law in Oregon for over 40 years, having both defended and prosecuted people charged with shoplifting to murder.

I have done work as lead attorney for three defendants charged with murder as a court appointed lawyer, although most of my experience is as a prosecutor.

The work done by line attorneys providing Public Defense is important and should be fully funded.

That said, this very body heard testimony 20 years ago about some pretty outrageous abuses in the indigent defense system. They are not typical, but there is no mechanism to monitor or prevent them. In one murder case the defense attorney flew a recently acquired pen pal of the convicted murderer from London England to Bend for his then-third retrial for Aggravated Murder. This woman had no real knowledge of the case and was being brought in for "moral support" at public expense. It was only when the BEND BULLETIN exposed this abuse that the lawyer hurriedly wrote a check to cover the cost.

We also provided testimony that it was common for expert witnesses to be paid tens of thousands of dollars each - this was 20 years ago, and such an expenditure would be an absolute impossibility for the prosecutor.

One of the witnesses who testified personally made the point well - if inadvertently - when he testified that Oregon funds far more than the constitutionally required criminal defense when someone who cannot afford an attorney faces possible jail time.

Instead, in Oregon, we pay for endless Post Conviction Relief cases, which drag on for decades after conviction and (for non-lawyers) long after all direct appeals have been denied. We also pay for virtually all parties in child dependency cases. There are proposals to start using Indigent Defense to pay for lawyers in land-lord-tenant disputes.

There is a crisis in hiring criminal lawyers for BOTH sides. I am no longer in office as an elected DA but I know that many Oregon DA's offices cannot find lawyers willing to work for public wages. Some media have highlighted a couple of well-paid senior prosecutors in a single Oregon county as evidence that Deputy DAs are overpaid.

There was a bill - SB 2308 had a hearing, but appears to have died from inaction, which would have raised the salaries of elected DAs. I was lucky to be married and my wife and I had no children, so after 35 years of practice I earned about \$135,000 - with the county chipping in over \$30,000 of that.

I urge you strongly to look at the SCOPE OF PRACTICE of indigent defense, before you simply drop a few hundred million dollars more into the program.

The claim that defendants are "constructively denied counsel" is absurd. When a defense attorney is not available the result is the temporary suspension of charges, and if it continues (as it has in several counties) the result is that the defendant will not be a defendant any longer - the charges will be permanently dismissed.

It is concerning to hear the hyperbole of some that "Oregon's system is broken" and that our state has never adequately funded public defense.