

**TESTIMONY ON SB 337
BEFORE THE SENATE COMMITTEE ON JUDICIARY
MARCH 30, 2023**

**PRESENTED BY: KAITI FERGUSON, SENIOR STAFF COUNSEL
OREGON JUDICIAL DEPARTMENT**

Chair Prozanski, Vice-Chair Thatcher, and Members of the Committee:

My name is Kaiti Ferguson, Senior Staff Counsel at the Oregon Judicial Department (OJD). I am here to provide OJD's testimony on the -1 amendments to Senate Bill (SB) 337. We would first like to thank the co-chairs of the Three-Branch Work Group – Senator Prozanski and Representative Evans – for their leadership, the legislative members and their staff for their engagement, the diverse and many work group members for their participation and contributions, and the Legislative Policy and Research Office staff for their diligent work.

It has been nearly one year since former Chief Justice Walters requested the three branches of government meet to address both the immediate public defense provider shortage and the development of longer-term, systemic change to make the public defense and public safety systems stronger and more effective. Since the spring of 2022, the work-group co-chairs have regularly convened meetings to engage stakeholders in a dialog about how to ensure that Oregon meets its constitutional right to counsel obligations. We have valued the opportunity to attend and participate, where appropriate, in these meetings.

While OJD is neutral on a majority of the provisions of the -1 amendments, including whether the public defense agency should be in the executive branch, we do have an interest in ensuring that the agency tasked with the responsibility of providing counsel when constitutionally or statutorily required has the capacity and structure, expertise, and resources needed for this critical task.

As we are all aware, there currently is a real and immediate need to increase attorney capacity. For context, as of March 30, 2023, far too many Oregonians with a right to counsel remain unrepresented:

- 108 people are currently in custody.
- 801 people are out of custody.
- An additional 85 people remain unrepresented in non-criminal matters who have a right to counsel.

This actual denial of counsel is unacceptable. And its impact is most profoundly felt by Oregon's historically and currently marginalized populations that too often suffer disproportionate outcomes in our criminal legal system. We must do everything in our power to change the current dynamic and to ensure that the right to counsel in Oregon is not illusory.

For too long, the criminal legal system has overly relied on the dedicated attorneys who give more of themselves than is sustainable. In addition to providing adequate compensation to providers, ensuring proper oversight, transparency, and accountability in the system is critical for Oregon to not only meet its right to counsel obligations but also to move toward equity in our criminal legal system. SB 337 with the -1 amendment begins the process of making systemic changes to Oregon's public defense system.

That said, there is one provision OJD must oppose. Section 9 (3) of the -1 amendment directs the Chief Justice to resolve any dispute between the current Public Defense Services Commission (PDSC) and the Office of Public Defense Services (OPDS), and the new Oregon Public Defense Commission (OPDC) relating to the transfer of duties, functions, and powers, including records, property, and employees and employment. Because by statute the Chief Justice is prohibited from having any administrative authority or supervision over the PDSC, she lacks the authority and information necessary to serve in that capacity. In addition, we assume there are existing employment agreements, rules, and law that would need to be evaluated prior to deciding any dispute, which could lead to litigation in trial and appellate courts. For those reasons, OJD requests removal of Section 9 (3) in the -1 amendment, or alternatively that the new Commission be tasked with resolving any disputes that arise.

We also believe the statutory framework would be strengthened by clearly articulating the agency's authority to provide oversight, coordination, and monitoring of assignment of counsel and client services at the local level. Given the systemic change this legislation seeks, inclusion of this express statutory mandate is vital to achieve the legislative intent of providing equitable and quality representation while increasing transparency, oversight, and accountability in the public defense system.

Finally, and of significance, given the actual denial of counsel that our courts see on a daily basis, we reiterate that it is essential that the current agency has the capacity, structure, guidance, and resources to fully implement the policy and timeline decisions outlined in SB 337 with the -1 amendment, without dividing and diverting its attention from the imperative task of increasing attorney capacity to meet current needs and, most importantly, to not further overload an already fragile public safety system.

While many necessary steps have been taken – including the investments made by the legislature in recent years – to address the long-standing issues impacting public defense and public safety systems, there is more to be done. We welcome the opportunity to assist in Oregon's significant leap forward to restructure the public defense system by comprehensively addressing the agency that oversees and regulates that critical work.

Our courts see the dedication and mission-driven work of public defense providers on a daily basis and value the representation they provide to and on behalf of their clients and the indispensable role they play in ensuring we have a functioning public safety system. While Oregon cannot afford to lose any of the attorneys providing this crucial representation, we must also keep at the forefront of the conversation the Oregonians who are directly impacted by the current actual denial of counsel.

OJD stands as a partner who is ready and willing to assist as needed and we welcome the opportunity to continue to participate in the process.

Thank you for the opportunity to submit this written testimony.