



March 28, 2023
Sen. Floyd Prozanski and Rep. Paul Evans
900 Court St. NE
Salem, OR 97301

Re: Oregon Defense Consortia Association feedback to SB 337 proposed changes

Co-chairs Prozanski and Evans and members of the Tri-Branch workgroup,

The Oregon Defense Consortia Association (ODCA) is a statewide advocacy association devoted to ensuring Oregonians have access to high quality public defense services in all corners of the state. Since 2018 ODCA has been committed to ensuring that providers operating through a consortia model have a voice in policy discussions that impact Oregon’s public defense system. ODCA is grateful for the state’s leadership to address the crisis in access to justice and embark, in earnest, to modernize and adequately resource public defense. However, ODCA writes today to express some significant concerns with the proposed changes to SB 337.

Roughly 60 percent of public defense services are provided by private bar attorneys. Of that, 85 percent of the private bar is currently organized under a consortia model, and while these models can differ depending on the needs of the community, they fundamentally serve as the infrastructure for the private bar. In some counties consortia are the only providers of public defense services. At a minimum, a consortia administrator manages the public defense workload for which they’ve contracted, providing monthly reports back to the Office of Public Defense Services (OPDS) on the attorneys and support staff working on public defense cases, reporting assignment and open caseloads, serving as the point of contact for presiding judges and other stakeholders in the justice system and providing support for providers engaging in public defense work. Other consortia are actively leading the defense bar in their jurisdictions through participation in the bench bar, local bar associations, appointments to committees such as the local Criminal Justice Advisory Committee and Public Safety Coordinating Commission, as well as active participation in ad hoc committees and groups that justice system partners participate in. Public defense requires much more than making sure each defendant has an attorney: it requires local knowledge and leadership. Importantly, consortia act as recruiters and mentors for younger lawyers entering public defense, particularly in rural and frontier counties.

Contracting Provisions Effectively Eliminate Consortia Model

On page 136 of the draft -1 amendment to SB 337, the language plainly states:

“(5)(a) The commission shall establish, supervise and maintain a panel of qualified counsel that may be directly assigned to cases. The commission shall develop a process for certification to the panel with periodic eligibility and case review.”

“(b) The Payment of panel counsel may not provide a financial conflict of interest or economic incentives or disincentives that impair an attorney’s ability to provide effective representation.”

“(c) The commission may enter into contracts for the provision of public defense services with nonprofit organizations that employ public defense attorneys.”

“(d) The commission may not enter into a contract or agreement that pays appointed counsel a flat fee per case.”

As indicated in clarifying communication between ODCA and facilitators of the Tri-branch workgroup, the transition to this new model by July 1, 2025, would result in the following opportunities for trial-level attorneys providing public defense services: 1) employees of OPDS; 2) non-profit law firms; and 3) assigned attorneys that contract directly with the state. These changes effectively eliminate the consortia delivery model and would not only dismantle the infrastructure that is supporting the private bar, but also create a substantial increase in administrative work on the state and Office of Public Defense Services to contract individually with providers.

ODCA members have expressed significant concerns around supplanting the consortia delivery model, particularly while the public defense system is experiencing a capacity crisis. Members of consortia, whether employed by a private law firm or a solo practitioner, have indicated that they aren’t interested in directly contracting with the state and the resulting administrative work to manage a contract that had previously been managed by a consortia. They simply want to provide high-quality public defense services to their clients. Furthermore, ODCA is concerned that a change to an hourly billing model will have an immediate impact not only on the amount of time private attorneys will devote to public defense, but those hours will also be spent on fewer cases, resulting in less efficiency to the state and reduced capacity to the larger system.

Oregon’s public defense system, while imperfect, has evolved over the years and more recently moved from a similarly structured assigned counsel model, which was found to be inefficient due to the lack of coordination and administrative burden of contracting directly with individual providers. As the Office of Public Defense Services begins the next contracting period, it’s imperative that public defense providers have certainty. ODCA has strong concerns that those practicing under a consortia model will begin transitioning and planning for a future that may or may not include a commitment to continue this work.

At a time where retention and recruitment of providers is arguably more important than ever, we cannot support policies that would destabilize the public defense system by effectively eliminating a key delivery model. We’d strongly urge the workgroup to reconsider this policy provision and bring forward a product that all providers can support.

Sincerely,

ODCA Board

Rob Harris, President ODCA and
Executive Director of The Washington County Defense Consortium

A handwritten signature in blue ink, appearing to read "Rob Harris". The signature is stylized with a large, sweeping initial "R" and a cursive "Harris".

John Sarr, Portland Defense Consortium
Bruce Tarbox, Clackamas Indigent Defense Corporation
Jonathan Pritchard, Bend Attorney Group
Cierra Brown, Clackamas Indigent Defense Corporation