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May 5, 2023 (remote testimony given on May 3, 2023),

Co-Chairs Sollman and Evans, and members of the Ways and Means Subcommittee on Public Safety:

My name is Brook Reinhard, I am the Executive Director of Public Defense Services of Lane County and testifying today on behalf of Public Defenders of Oregon, the association of nonprofit public defense offices across the state.

PDO would like to thank you for the opportunity to comment on SB 1093 today, and I want to personally thank you for your leadership in trying to solve the complex problems with delivering ethical public defense services across Oregon. We applaud the underlying goal of this bill - to ensure more coordination at the local level to address the unrepresented crisis - and the urgency reflected in the speedy timeline within the bill. We agree that creating more certainty is essential, particularly with the public defense workforce. At this moment, we have many law school students about to graduate and take the bar who could help with this crisis. Unfortunately, we are unable to extend offers to all who are interested - and many are now taking offers outside public defense - as we do not know the funding landscape after July - or instead, we're taking a risk in hiring positions without a guarantee from the state that those roles will be funded.

We recommend caution in these discussions and in forthcoming plans – The crisis of individuals not having their 6th amendment rights to effective counsel will not be solved by the mere fact of placing the name of an attorney next to the defendant's name on paper. It will be solved by offering concrete solutions that protect everyone's 6th amendment right, reduce repeat and unnecessary appearances with the court, improve court inefficiencies, and invest in retaining and recruiting a public defense workforce to do the work. That is why we are here today and will continue to work with any and all stakeholders to ensure that everyone has access to justice.

On our end, our nonprofit attorneys are dedicated to ensuring that every person gets access to their constitutional right to ethical representation. We are committed to recruiting and retaining the public defense workforce to meet the need of the number of cases filed every day.

As far too many cases get filed for the number of public defense attorneys Oregon currently has, we stand ready to hire, train, supervise and retain the number of public defense providers needed to meet the demand.

We also appreciate your recognition in the bill that all public safety stakeholders must take accountability and coordinate a plan to address the unrepresented persons crisis. Historically, there has been a disconnect between the charging decisions made by some county prosecutors and how it impacts Oregon's ability to provide defense attorneys, probation officers, treatment resources, and prison beds. The presiding judge from each judicial district can and should evaluate each of their District Attorney's charging policies, discovery practices, and historical trends; determine how those policies contribute to the crisis and work to correct unhelpful prosecutorial practices. The presiding judge can prioritize the allocation of judicial resources to encourage District Attorney Offices to develop reasonable charging practices, improve pretrial offers, implement mandatory judicial settlement conferences, ensure integrity and timeliness, throughout the DA's discovery systems and processes, and encourage alternatives to incarceration through resolution, including not automatically trying to revoke probation on technical violations that demand court time and state resources.

As stated in SB 1093 (2), the current unrepresented crisis represents a threat to the constitutional rights of Oregonians and must be resolved. But there must be a balance between the pragmatic desire to lower the number of individuals who are unrepresented without sacrificing constitutional rights in the name of expediency. All decisions made must carefully consider whether the plans for action will deepen long-term inequities in our legal system. We must look closely at resulting plans to ensure they truly meet our constitutional and ethical obligations to those without legal representation

As OCDLA highlights in their proposals, we assisted in recommendations for new uniform trial court rules to create efficiencies in the court process including expedited discovery, better attorney access to in custody clients, streamlining mass scheduling dockets to reduce attorney wait time in court, reducing the number of court appearances and exploring the use of remote appearances. It is our hope that those reforms can actually be enacted quickly, instead of just being discussed. See the appendix below for specific proposals that could be enacted.

In conclusion, PDO members have worked tirelessly to center the needs of our clients without compromising the quality of representation Oregonians deserve under the 6th Amendment. We will continue to do so, while working with all stakeholders and offering effective solutions.

Sincerely,



Brook Reinhard
Treasurer, Public Defenders of Oregon
Executive Director, Public Defender Services of Lane County

About PDO

Public Defenders of Oregon (PDO), a nonprofit 501(c)4, was founded to advocate for nonprofit - public defender offices across Oregon. We organized in response to the overwhelming and urgent need to provide sound and sustainable public defense services, to build and retain a strong public defense workforce, and to equitably center the needs of all clients through effective and ethical representation.

Appendix:

Suggestions for language to amend the bill:

- remove “the resolution of the cases of unrepresented defendants” as a goal and instead use “ethical representation for those who are unrepresented.” Speedy “resolution” implies putting an attorney’s name next to a defendant, in order to simply reduce the number of unrepresented individuals, without ensuring constitutional and ethical representation - effectively making unrepresented individuals underrepresented without access to ethical representation
- Crisis teams should include “public defenders within the judicial district”
- All Ballot Measure 11 cases should have a judge initially assigned at the time of arraignment.
- Plans crafted by each presiding judge in each judicial district should:
 - Define expedited release of “discovery” (e.g. police reports and other evidence against an accused) from the prosecution to the defense
 - Cover the expansion of visitation between PDs and their clients
 - Identify cases that can be diverted from the legal system. The public safety stakeholders (which includes public defense providers) should come together to take a look at what cases need to be in the criminal legal system and what cases should be diverted from the systems. Stakeholders should have an eye towards ensuring public safety and an acknowledgement of the detrimental effects of court-involvement on an individual trying to participate in their community.
 - Increase the use of remote hearings.
- Streamline mass scheduling dockets. Defense attorneys spend hours at a mass scheduling dockets. Mass scheduling docket procedures vary from county to county and make it incredibly difficult for defense attorneys to practice across jurisdictions.

- Reduce Multiple Court Appearances and Streamline “Check-In” Appearances. In each judicial district, identify all the court appearances required in a criminal case and reduce the number of required appearances. If a scheduling court date is needed, allow the parties, in lieu of appearing in person, to email a standard form a certain number of days (1 or 2 business days) before a scheduling/reporting court appearance.
- Encourage DDAs to make initial plea offers on misdemeanors and felony grid block cases as a matter of course when an indictment is issued. Having an offer early in a case gives the defense attorney something to discuss with their client right away rather than wait weeks or months for a court date and the DDA issue a boilerplate offer.
- Eliminate barriers and deadlines to negotiate plea offers. There are court-imposed deadlines, DDA-imposed deadlines. There will be a UTCR eliminating court-imposed deadlines, but not DDA-imposed deadlines. For example, in Lane County, the prosecutor’s plea offer states that the plea offer will be withdrawn if the accused files a Motion to Suppress or any other challenge to the evidence. Prohibiting this practice would result in more Motions to Suppress filed earlier on in the case, and in conjunction with a rule that those motions will be litigated *before* trial, this change would mean more cases would be resolved before trial without the need for preparation by both the defense and the prosecutor.
- Increase Effectiveness of Judicial Settlement Conferences by requiring a decision-making DDA negotiating authority in order to settle the case at the settlement conference.
- In Washington and Lane counties, allow omnibus hearings to be scheduled before trial, not the day of.
- Expedited release of “discovery” (e.g. police reports and other evidence against an accused) from the prosecution to the defense. The court may impose a discovery disclosure schedule. The DA should provide a copy of all discovery in the DA’s possession, custody, or control no later than the first appearance after any charging instrument is filed in the case.