

Oregon Public Defense Commission

Commission Work Session

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Context for Discussion

ORS 151.216 prohibits the Oregon Public Defense Commission from entering into contracts with entities that subcontract with other entities or persons for the provision of public defense starting on July 1, 2027. This provision directly impacts public defense providers who organize as 'consortia'.



A consortia is a group formed to undertake an enterprise beyond the resources of any one member. Within Oregon's public defense system a 'consortia' is a group of lawyers that contracts with the Oregon Public Defense Commission to provide public defense representation. The consortia then subcontracts with law firms or individual lawyers to provide the direct representation.

Context for Discussion

ORS 151.216 requires the Oregon Public Defense Commission to develop, adopt and oversee the implementation, enforcement and modification of policies, procedures, and minimum standards and guidelines to ensure that public defense providers are providing effective assistance of counsel consistently to all eligible persons in this state as required by statute and the Oregon and United States Constitutions. Some of these requirements include:

Set minimum standards by which appointed counsel are trained and supervised.

Establish a system, policies and procedures for the mandatory collection of data concerning the operation of the commission and all public defense providers.

Enter into contracts that include a requirement for the collection by the commission of data qualitatively necessary for any report required to be submitted to the legislative assembly.

Control the workload of appointed counsel to permit effective representation.

Ensure that appointed counsel continuously represent a client throughout the pendency of the case.

Prohibit economic disincentives or incentives that impair the ability of appointed counsel to provide effective assistance of counsel.

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Context for Discussion

Quotes from the Senate Rules Informational Meeting on SB-337: May 11th, 2023

(55:42) “The other part of the bill that I appreciate is making sure that we are clear about the standards we expect for legal representation and to make sure we are effectively using public dollars. That is also coupled with investments in training to make sure we have attorneys able to meet those standards. Also, and I think that what is lacking now and I hope it is probably apparent that data and reports back from the agency to us and to other parts of government is that we know how the system’s working, what the gaps are and whether or not or why or why not we are not meeting our constitutional requirements”

(1:08) “I think your original question asked about where people who are doing public defense where they are spending their time. We don’t necessarily know that because we don’t require timekeeping at this spot.

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But if you were to actually do real timekeeping we would have a more accurate view of the time that is going on. So I think the challenge we have here is trying to project out how many criminal and juvenile cases we think are going to happen in the next two years- tough question- and then we need to figure out how many attorneys we need to do that. There’s some data we are just missing. How much time an individual attorney spends on a case would make it easier to do some of these projections.”

-Representative Kropf

Context for Discussion

Quotes

Senator Steiner: Senate Rules Work Session on SB-337: May 30th, 2023

(15:34) “We have to be able to track outcomes, have to really know what each attorney is doing and what their caseloads look like and whether we have the right kinds of support services and wraparound services for defendants and those kinds of things. And without good administrative process we won’t know that.”

Representative Evans: Joint Ways and Means Full Committee Meeting: June 9th, 2023

“We need an accounting procedure that everyone can understand. Right now we have a hard time telling you how many cases are out there and how many providers there are because of the system we have.”



Questions For Consideration

- How can the Oregon Public Defense Commission adopt and enforce policies that fulfil the oversight and accountability expectations in a system where the state contracts with entities that subcontract with law firms or lawyers to provide public defense representation?
- The oversight and accountability challenge is particularly difficult for the state in our existing system when it comes to law firms or lawyers who have a mixed public and private practice. For example, if a lawyer has a contract to spend 75% of their professional time on public defense practice, how does the agency ensure that it is actually receiving 75% their time?

Thank you

