



**Testimony of Ricardo Lujan-Valerio, Policy Associate
In Support of HB 3145 with Proposed Amendments
House Committee on Judiciary
March 26, 2019**

Chair Williamson and Members of the Committee:

The American Civil Liberties Union of Oregon¹ supports HB 3145 with the proposed amendments, which would reform Oregon’s public defense system to ensure indigent defendants are treated fairly. As the U.S. Supreme Court reminded us more than 50 years ago in *Gideon v. Wainwright*, the right to counsel is “fundamental and essential to fair trials.” It is the constitutional duty of the State of Oregon to ensure fairness to everyone in the criminal legal system, especially those who are poor and swept into an adversarial system where the state ultimately controls what happens on both sides of the table.

The ACLU of Oregon believes that public defense reform should be the highest priority for the legislature this session. Oregonian’s right to counsel is an issue that warrants the utmost level of attention and seriousness. We commend the work of stakeholders participating in the work group with the goal of shaping HB 3145-1. The policy before you today is a model that, if fully funded, addresses the systemic deficiencies that are preventing Oregon from providing constitutionally mandated representation to indigent defendants. We are committed to ensuring the bill’s passage and its implementation so that vulnerable communities may obtain the legal representation they constitutionally deserve.

The Supreme Court mandates independence of defense to ensure zealous advocacy on behalf of clients who must face the full power of the state. However, Oregon has currently hamstrung the defense with lack of funding and quality control while leaving the prosecution to be fully independent of state control in order to zealously bring the full power of the state against low-income Oregonians. This is fundamentally unbalanced and backwards. In a word, it is unfair.

¹ The American Civil Liberties Union of Oregon (ACLU of Oregon) is a nonpartisan, nonprofit organization dedicated to preservation and enhancement of civil liberties and civil rights, with more than 45,000 members and supporters statewide.

Last year, the Oregon Legislature sponsored a study conducted by The 6th Amendment Center. The report released on January of 2019 revealed significant flaws to the state's public defense system – from its flat fee payment structure to the low funding it receives from the state. HB 3145-1 adopts recommendations presented by The 6th Amendment Center so that the state may comply with its 14th amendment obligation of providing adequate public defense to indigent Oregonians.

The state's current public defense system does not receive adequate funding to meet its constitutional obligation to indigent defendants. In the United States, you have the right to an attorney – even if you cannot afford one. But in Oregon and many other states, if you're poor and you enter the broken criminal justice system, justice is a gamble. Public defenders are chronically underfunded and stretched too thin, with poor people paying the ultimate price. In order to properly address the state's unconstitutional public defense structure, the legislature must increase its investment to effectively implement the reform proposed under HB 3145-1.

The majority of Oregon's public defense system is funded by the state's general fund. During the 2017-19 biennium, the Office of Public Defense Services received over \$300 million in state funding; however, such amount does not suffice to meet the constitutional duty the office must execute. Additionally, it is difficult to retain public defenders under the current scheme. The absence of strong, well-resourced indigent defense systems offends the Constitution, leads to deeply unfair results, and contributes to our overburdened and wasteful jail and prison systems.²

Oregon's current flat fee payment structure creates a conflict of interest with a defendant and an attorney's financial benefit. Public defense attorneys are compensated on a fixed rate that undermine how much time an attorney may spend on a case. This scheme can lead to a practice that focuses on handling as many cases as possible regardless of the outcome. HB 3145-1 would prohibit the use of flat fee compensation or any mechanism that may similarly operate as a flat fee structure.

Additionally, by creating a trial and appellate public defense division, HB 3145-1 will provide defense attorneys with adequate compensation. For defense attorneys not employed by the state, HB 3145-1 would ensure that contractual agreements meet compensation standards resembling those of state employees situated similarly.

Oregon's Public Defense Services Commission must be independently established. The U.S. Supreme Court consistently recognizes that the independence of indigent defense counsel is constitutionally protected. States must respect the professional independence of

² [ACLU – Indigent Defense](#)

defense attorneys and the ways in which counsel determines to conduct the defense. Oregon's commission, housed under the judicial department, rests entirely under the control of the Chief Justice. Commission members are solely appointed by the Chief Justice which disproportionately affect the representation of other state leaders and stakeholders.

HB 3145-1 proposes a solution by allowing commission appointment recommendations by the legislative, executive, and judicial branch. Each position must be filled with individuals that hold a high interest and dedication to public defense. Under the recommended commission structure, independence and equitable representation would be assured.

Every public defender must be properly trained to ensure indigent defendants with zealous legal representation and hold practitioners to high performance standards.

It is the state's responsibility to ensure that people charged with crimes within its borders are given a full and fair opportunity to defend themselves in court—and that can only be achieved when public defenders have access to the training and resources they need to advocate on all of their clients' behalf. Again, as the Supreme Court admonished, the right to counsel is fundamental to ensure the system is fair.

Low retention is an increasing problem for public defense offices in Oregon. Indeed, low state funding levels and compensation are a major factor to this issue, but the lack of training and resources available to practitioners hinder their ability to successfully represent their clients. The failure of the state to ensure all public defenders there have the resources they need to represent their clients in an effective way puts the entire system—not to mention the liberty and livelihoods of low-income Oregonians—in jeopardy.

The Office of Public Defense Services must hold practitioners to caseload standards adopted by the commission to ensure adequate and constitutional representation.

Oregon has an obligation to establish a statewide public defense system with uniform standards for workloads, performance, and training. They must make the Sixth Amendment a reality for all Oregonians. Under the proposed scheme, public defenders would be held to a caseload standard similar to the state of Washington. With the upcoming caseload standard recommendations proposed by the American Bar Association, not only will the Office of Public Defense Services provide a reasonable caseload threshold, it will allow for the collection of caseload management data that will ultimately lead the state legislature and public defense commission to propose sound policies in the future. The policy also ensures important periodic review of these standards as an invaluable and ongoing quality control mechanism.

These policy changes are crucial for ensuring access to justice for all Oregonians. For these reasons, the ACLU of Oregon urges you to support HB 3145 with the proposed

amendments. Please feel free to contact us if you have any questions, comments, or concerns.