

**OREGON DEFENSE CONSORTIA ASSOCIATION, INC  
RESOLUTION BY UNANIMOUS CONSENT**

The Board of Directors of Oregon Defense Consortia Association, Inc. hereby unanimously adopts the following findings and resolution:

WHEREAS; Public defense providers have received no material increase in compensation for 4 years and;

WHEREAS, At the most recent legislative session, OPDS represented to the Legislature that criminal defense attorneys are chronically and severely underpaid; and that a substantial increase in compensation was necessary to ameliorate the cumulative impact of several years of compensation freezes and less than Current Service Level increases in order to address a coming crisis in the system.

WHEREAS, The Oregon Legislature's response to OPDS' representations was to provide for a budget increase, and additional funding to providers, shown in particular by large increases in the OPDS' budget and the Special Purpose Appropriation in HB 5050 of \$20 million. Even without the \$20 million provided in HB 5050, the Legislature increased the budget of the OPDS budget as follows

Appellate Division: increase of 24%  
Contract Services: increase of 46%  
Professional Services Account: increase of 12%

WHEREAS, OPDS has offered to providers a 6-month extension of ~~our~~ criminal defense providers' current contracts with a 5% increase in compensation (representing less than 1% annual compounded increase over a 4.5 year period). This extension also will include a yet to be determined modification in the case compensation framework.

WHEREAS, as case managers and front-line providers we have vast experience and a "rubber meets the road" understanding of the current system; and are well equipped to provide valuable input about the modification or eventual replacement of the current system, the associated costs, and the best way to achieve optimal results. We have vigorously attempted to provide input into the design and implementation of necessary systemic changes in the service delivery system, but have been rebuffed through the OPDS' adoption of a non-transparent approach and rejection of any meaningful participation by members of the private bar. We believe that there exists no urgent need to immediately eliminate or radically alter the current delivery system in order to achieve the Commission's stated goals, and that changes of the magnitude envisioned by the OPDS must be made thoughtfully and prudently over time in order to avoid waste and protect the basic rights of all Oregonians.

WHEREAS, It is anticipated that the OPDS' plan for the upcoming contract period will be unnecessarily costly, wasteful, hastily put together, fraught with unforeseen consequences, unnecessarily cumbersome, and far beyond anything required to address the concerns raised in the 6th Amendment study.

THEREFORE, we have developed a plan (attached) that addresses fundamental flaws in the current system in a cost-effective manner that protects the basic rights of all Oregonians. It is based on contributions by experienced providers and draws from ideas articulated by Commissioner Mike De Muniz.

**WE HEREBY UNANIMOUSLY ADOPT THE FOLLOWING RESOLUTIONS**

1. We believe a mere 5% increase in compensation to be inadequate for our members to be able to continue delivering adequate public defense services as well as comply with the concerns of the 6<sup>th</sup> Amendment Center's report. We urge the Commission to honor the will of the Legislature and direct the Executive Director to increase provider compensation by a minimum of 12% within the current approved OPDS budget.
2. We further urge The Commission to provide close oversight of the OPDS' use of funds, to assure that all funds are used - in a manner consistent with the Legislature's intent. When the anticipated additional \$20 million SPA is received, those funds should go to further increase provider rates and reduce caseloads, both of which are consistent with the Legislature's intent in allocating those funds.
3. We don't believe it is possible for any public defense provider in Oregon to continue to accept public defense appointments based on a 6-month contract and a 5% increase.
4. We urge the Commission to adopt the proposed changes to the current service delivery plan (attached hereto) and ensure a transparent, inclusive, collaborative process in its development and implementation.

**ADOPTED AND Dated September 3, 2019**

Jon Weiner, President  
Rob Harris, Vice President  
Bruce Liebowitz, Treasurer  
Bruce Tarbox, Board Member  
Jonathan Pritchard, Board Member



## PROPOSED CONCEPT FOR PUBLIC DEFENSE COMPENSATION FOR PROVIDERS

The proposed plan is designed to act as a bridge between the current system and the OPDS' ultimate plan to establish a statewide public defender's office staffed by state employees. The plan will allow the OPDS adequate time to responsibly design, fund, and implement a state public defender's office. Similarly, the proposed plan will allow the OPDS to redirect personnel and resources back to the business of day-to-day operations and thus return to its former level of functioning.

The basic elements of the proposed plan are:

- a. Modify the current case credit system, in order to address the concern that attorneys are currently incentivized to avoid motion practice and resolve cases short of trial.
- b. Contract directly with a private bar administrator in each county, in order to address
- c. concerns regarding lack of adequate OPDS oversight.
- d. Maintain current caseload standards until funding is available to permit the OPDS to implement new caseload standard without erasing the benefit of anticipated compensation increases.
- e. The current case credit matrix values would be increased. Case credits would be redefined as "base case credits."
- f. Additional compensation will be provided for the filing of substantive motions (e.g. – motions to suppress, prior bad acts motions, sentence memoranda). The definition of "substantive" would need to be refined via a collaborative process. Additional compensation for trial and trial preparation will similarly be provided.
- g. If the additional compensation described in Paragraph 5 is based on an hourly fee basis,
- h. then to the extent possible the compensation model should mirror the model used by the Federal Defender's Office in the District of Oregon. In particular, the hourly rate should be identical to the federal hourly rate.
- i. If the additional compensation described in Paragraph 5 is based on per day (or per ½ day) basis, then the level of compensation will be consistent with the hourly fee structure described in Paragraph 6.
- j. The foregoing should be implemented so as to yield a 12% to 16% increase in compensation to providers.

This proposal has the following advantages:

1. It will withstand constitutional scrutiny as it's virtually identical to the way most private bar defense attorneys charge their retained clients.
2. It is far less costly than the anticipated plan from OPDS.

OPDS will be in a far better position to monitor caseloads and individual attorney performance, because the county administrators will be contracting directly with OPDS rather than through individual consortia or law firms.

3. It will not create a financial incentive to plea cases out, nor a financial hardship to go to trial.
4. The proposed plan is much simpler to manage implement as current state analysts are familiar with the credit system. The credit system, we should remember, is complicated, but was a product of long-time experience in Oregon.
5. If the proposed plan is successful, cost effective, and raises the quality of service, it would mean that the size and scope of the public employee trial offices could be reduced.

It has the following drawbacks

1. The Cost to the state is uncertain. However, the same can be said about changing credits to FTE's. The mitigation to the uncertainty is that it can be easily tested as a model in several counties starting January 1, 2020.
2. It will increase some recordkeeping by attorneys. However, since their pay compensation will depend upon such recordkeeping, attorneys wish to stay in business they will need to bear this additional burden.