

Submitted by Thomas Busse on April 5, 2022

I urge the County Charter be revised to institute a new elected County Public Defender. This is the practice in the county charter of San Francisco County, CA, and it would implement a practice of greater government involvement in Oregon public defense recommended by the American Bar Association in a report issued January 2022 to the legislature.

As it is, Oregon is the only state in the union to contract out most of its public defense work, and this is done at the state level - and is generally very poor. An essential element of home rule as enshrined in the Multnomah county charter is local voter oversight of the essential state function of public defense. In Multnomah county, this is not being done. The creation of an elected public defender with oversight authority of public defense in the county and authority to assign/reassign/assume caseloads will remedy this flaw. In San Francisco, the elected public defender has also been a voice to call out abuses in the county's district court, abuses by judges, abuses by the police and sheriff, fraud in the local crime lab, fraud by the local medical examiner, and abuses in the District Attorney's office. One associate public defender, Mr. Matt Gonzales, was a national vice presidential candidate in 2008, and in 2017, the elected public defender Jeff Adachi presented a zealous defense in the Kate Steinle shooting first-degree murder trial, securing an acquittal. Under Oregon's system, such a defense would have been highly unlikely.

An elected public defender (with an office and support staff) would also gather and centralize strategic intelligence and institutional knowledge on matters such as bad cops, warrant application perjury, entrapment operations, racial biases of law enforcement personnel, civil forfeiture abuses, expert witness strengths/weaknesses, or judge's temperaments. The current outsourced system is fragmented so that this information is not shared among attorneys performing public defense, enabling bad actors in the system. An elected office of the Public Defender would also create a more diverse pipelining of public officials. As it is, Oregon courts are overrepresented by judges with backgrounds as prosecutors.

According to a two-year ABA study funded by the legislature released in January 2022, Oregon has only a third of the constitutionally-required public defenders needed. The report found contract public defenders routinely violate Oregon Rules of Professional Responsibility, and there is no oversight or enforcement of these rules. ABA standard, which have been part of a US Supreme Court consent decree, require a public defender complete an investigation and study of a case before recommending a plea bargain to clients. In Multnomah county, this is often not done or is haphazard. As a result, local law enforcement and especially the DA's office are careless in terms of evidence handling and disclosure. Multnomah also has an excessive plea-bargain rate compared to comparable cities - likely because the public defender pre-plea investigation is insufficiently thorough.

<https://www.registerguard.com/story/news/2022/01/25/oregon-needs-more-public-defenders-american-bar-association-study/6621273001/>