

Analysis

Item 3: Public Defense Services Commission

Grand Jury Recordation

Analyst: Steve Bender

Request: Acknowledge receipt of a report on implementation of SB 505 (2017).

Analysis: In 2017, the Legislature enacted SB 505 (Chapter 650, 2017 Oregon Laws). The bill requires county district attorneys to electronically record all grand jury proceedings, and to store and maintain copies of the audio recording. Three counties - Multnomah, Deschutes, and Jackson, were required to begin recording grand jury proceedings on March 1, 2018. The remaining counties are required to begin recording grand jury proceedings on July 1, 2019.

The bill also directs the Oregon Judicial Department (OJD), Public Defense Services Commission (PDSC), and each county that begins the recording of grand jury proceedings by March 1, 2018 to submit a preliminary report to the Legislature by December 1, 2018. PDSC responded to this reporting requirement with this Emergency Board request.

Impact of the Grand Jury Recording Requirement to the Public Defense Services Commission

PDSC reports that it has not yet produced a final measure of the fiscal impact of SB 505 to the agency. The agency will provide more information in a second report to be submitted by February 1, 2019.

SB 505 potentially impacts PDSC costs in three ways, however:

- The agency pays the costs of providing copies of the grand jury proceeding recordings to defense attorneys. These costs are included in the broader category of discovery costs. Discovery costs have increased, but PDSC has not determined to what extent this increase is due to obtaining copies of the grand jury recordings.
- The agency pays for the recordings to be transcribed, when it is necessary and reasonable. So far, however, there has not been a significant increase in transcription costs.
- Defense attorney workloads may have increased, as time is allocated to reviewing grand jury recordings. This does not directly affect agency costs significantly, since most providers are paid a flat fee per case. However, the additional workloads imposed may increase the need for the Commission to increase case rates to maintain adequate public defense services. There may also though be offsetting reductions in defense attorney workloads, if the recordings accelerate the settlement of criminal cases.

Legislative Fiscal Office Recommendation: Acknowledge receipt of the report.

3
Office of Public Defense Services
McDonald

Request: Report on the status of Senate Bill 505 (2017) regarding the implementation related to the recordation of grand jury proceedings.

Recommendation: The Office of Public Defense Services (OPDS) is not under executive budgetary authority.

Discussion: Senate Bill 505 (2017) requires county district attorneys to begin recording grand jury proceedings and provide copies of the recordings to the defense counsel when a case is prosecuted in criminal courts. The measure provides for a phased implementation. Three counties were named in the Budget Report as early adopters; Deschutes, Jackson and Multnomah. These district attorneys began recordation on March 1, 2018. All other counties will begin implementation on July 1, 2019.

The Criminal Justice Commission recently found OPDS funds more than 90 percent of the criminal defense work in Oregon's Circuit Courts. Consequently, any increase in workload and the expense for defense attorneys resulting from paying for and reviewing grand jury recordings will effect OPDS. Although the full impact of statewide implementation is conjecture based on limited data at this time, the agency reports the fiscal impact will be realized in three categories; cost of recordings, cost of transcription, and attorney workload increases.

- Cost of recordings – OPDS pays a significant amount in fees to district attorneys to obtain discovery in each case. This year, the discovery costs have increased and the agency conjectures this is related to grand jury recordings.
- Cost of transcription – There are times when it is necessary and reasonable to have a written transcription of the grand jury proceeding. To date, OPDS has not seen a significant increase in transcription costs, but this may change with the statewide implementation.
- Attorney workload – OPDS does not have a reliable estimate on how much time district attorneys spend reviewing grand jury recordings. Multnomah County implemented time tracking, along with the recordation to evaluate any workload impacts, but the data and analysis is not yet sufficient.

No cost projections were provided in this report, however, the agency will continue to gather information and report back during the 2019 Legislative Session.



Oregon

Office of Public Defense Services

1175 Court Street NE
Salem, Oregon 97301-4030
Telephone: (503) 378-3349
Fax: (503) 378-4463
www.oregon.gov/opds

October 29, 2018

The Honorable Senator Peter Courtney, Co-Chair
The Honorable Representative Tina Kotek, Co-Chair
State Emergency Board
900 Court Street NE
H-178 State Capitol
Salem, OR 97301-4048

Dear Co-Chairpersons:

Nature of the Emergency/Request

The Office of Public Defense Services (OPDS) is requesting acceptance of report provided to meet reporting requirements in Senate Bill 505 (2017).

Agency Action

Senate Bill 515 (2017) created new affirmative obligations for district attorneys to both (1) ensure certain portions of the grand jury proceedings are recorded and (2) provide a copy of those recordings to defense counsel when a case is prosecuted in our criminal courts. On March 1, 2018, those affirmative obligations took effect for district attorneys in three judicial districts – Deschutes, Jackson, and Multnomah. These obligations will extend to all district attorneys on July 1, 2019.

OPDS funds a significant portion of the criminal defense work in Oregon's Circuit Courts. When providing fiscal impact statements in 2017, OPDS estimated that it funded counsel for 83.5% of the cases in our criminal courts. This past year, the Criminal Justice Commission used a new methodology and concluded OPDS funded more than 90% of the cases. Accordingly, any impact on the workload and expenses of a defense attorney, such as paying for and reviewing grand jury recordings, will impact OPDS.

OPDS has yet to produce a final measure assessing the fiscal impact of SB 505 on the agency. This is partially attributable to the limited duration for which recording has occurred. SB 505 has been in effect for 8 months in 3 judicial districts. Additionally, in Multnomah County, the district attorney elected to initiate a significant number of felony cases through preliminary hearings. Regardless, SB 505 impacts OPDS in three ways:

1. Costs of recordings – The recordings themselves are being delivered to public defense providers. Generally, OPDS has received information that the recordings are being delivered on a cd, and arriving relatively timely. OPDS pays fees to district attorneys to obtain “discovery” in each case, and the amount OPDS pays statewide is

significant. This year, the discovery costs paid by OPDS have increased, and we have reason to believe that increased costs associated with obtaining the grand jury recordings are one piece in understanding those increased costs. OPDS will continue to gather information and report back to the Emergency Board on February 1, 2019

2. Costs of transcription – There are times when it is necessary and reasonable to a public defense provider to have a written transcription of the grand jury proceeding. This may arise if the attorney plans on litigating a motion or going to trial, and the transcript will aid counsel in cross-examination. Or it may arise if the transcript is unusually long, such that reading the transcript is more efficient.

So far, we have not noticed a significant increase in our transcription costs. We will continue to monitor those costs, particularly as the implementation is faced in statewide.

3. Attorney workload – In 98% of adult criminal cases, public defense providers are paid a flat fee per case, regardless of time actually spent on the case. Additional workload requirements increase the amount of time attorneys must spend on a case. If case rates are not increased, the attorneys perform more work without compensation by the state. If case rates are increased, attorneys could accept representation in fewer cases and spend the appropriate amount of time on their cases.

OPDS does not currently have a reliable estimate regarding how much time attorneys are spending reviewing grand jury recordings. Time tracking occurred in Multnomah County to evaluate the impacts to work performed on these cases, but there has not been sufficient data analysis to date to allow the agency to quantify these impacts. We will continue to monitor the issue and report back on February 1, 2019.

Action Requested

OPDS requests acceptance of this report.

Legislation Affected

Senate Bill 505 (2017).

Sincerely,

A handwritten signature in blue ink, appearing to read 'C. Lane Borg', is written over a light blue horizontal line.

C. Lane Borg, Executive Director
Office of Public Defense Services