

Members

Shaun S. McCrea, Chair
John R. Potter, Vice-Chair
Thomas M. Christ
Henry H. Lazenby, Jr.
Per A. Ramfjord
Janet C. Stevens
Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Thursday, April 21, 2016
10:00 a.m. – 1:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, OR 97301

MEETING AGENDA

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| 1. Action Item: Approval of minutes - PDSC meeting held on March 17, 2016 (<i>Attachment 1</i>) | Chair McCrea |
| 2. Governor’s Task Force on Dependency Representation | Addie Smith
Governor’s Office |
| 3. Racial and Ethnic Disparities in the Juvenile Justice System (<i>Attachments 2a, 2b and 2c</i>) | Connie Carley, OYA
Paul Bellatty, OYA
Jon English, ODE
Mark McKechnie, YRJ |
| 4. Criminal Justice Commission – Oregon crime, prison use, and Justice Reinvestment | Michael Schmitt, CJC |
| 5. Strategic Planning Update; PDSC Retreat | Nancy Cozine |
| 6. National Juvenile Defender Center Self-Assessment Tool (<i>Attachment 3</i>) | Amy Miller |
| 7. OPDS Update | OPDS Staff |

Please note: Lunch will be provided for Commission members at 12:00 p.m. The meeting location is accessible to persons with disabilities. Please make requests for an interpreter for the hearing impaired, or other accommodation for persons with disabilities, at least 48 hours before the meeting, to Laura Al Omrani at (503) 378-3349.

Next meeting: May 12, 2016, 10 a.m. – 2 p.m., at the Office of Public Defense Services, Salem, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, March 17, 2016
10:00 am – 2:00 pm
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT: John Potter (Vice-Chair)
Thomas Christ
Chip Lazenby
Per Ramfjord (by phone)
Janet Stevens (by phone)
Hon. Elizabeth Welch

STAFF PRESENT: Nancy Cozine
Cynthia Gregory
Ernest Lannet
Paul Levy
Amy Miller
Caroline Meyer
Shannon Storey
Cecily Warren
Rachel Woods

The meeting was called to order at 10:08 am

Vice-Chair Potter noted that Chair McCrea could not make it due to illness and the agenda items would be taken out of order.

Nancy Cozine, Executive Director of OPDS, introduced the new PDSC member Thomas Christ. He is with the firm Cosgrave Vergeer Kester and specializes in civil appeals. Mr. Christ came with praise from the Chief Justice.

Agenda Item No. 1 Approval of minutes – PDSC meeting held on January 21, 2016

MOTION: Judge Welch moved to approve the minutes; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

Agenda Item No. 5 Approval of adjustment to ACP Contribution Amounts

Caroline Meyer, OPDS Contracts Manager, requested the Commission's approval of updated ACP contribution amounts. She explained that the adjustment reflects the change made to the updated compensation schedule in December, and reflects exactly one half of the PDSC compensation schedule. She noted that the only change to the schedule was the addition of a

Jessica's Law case type (which had been previously included under the murder rate) because it aligns more closely with Measure 11 non-routine expense costs. Lastly, Ms. Meyer noted that OPDS will be updating the privately retained attorney fee schedule at some point, and that there is hope that the Oregon State Bar will be able to assist with this project.

Judge Welch asked about attorney appointments in juvenile cases. Norma Alexander, the ACP coordinator for the Oregon Judicial Department, said that juveniles are assigned an attorney under any circumstance. Judge Welch presented concern that judges in some counties may not follow that practice. Amy Miller, Deputy General Counsel, noted that through surveys she has found that in some counties juveniles are waiving counsel, fearing the costs of an appointed attorney. Commissioner Lazenby expressed concern that youth do not have adequate access to counsel.

Agenda Item No. 2 Commission Training: Commission Handbook

Paul Levy, General Counsel, provided an overview of the new Commission Member Handbooks, which include information about how the commission should operate as a public entity and governing body, as well as practical materials on how to do their work. Mr. Levy noted this was the first edition of the handbook and that updates and additions would follow. He invited Commission members to make requests if they identify other topics that would be helpful.

Mr. Levy continued with a lengthy discussion of public meetings laws, and in particular developments in the *Handy v. Lane County* case.

Agenda Item No. 3 Juvenile Dependency Task Force Update

Nancy Cozine, OPDS Executive Director, provided an update on the Governor's Task Force on Juvenile Dependency Representation. Ms. Cozine informed the Commission that all of the information from the meetings are available online and that there are five subcommittees: performance standards, quality assurance, unlawful practice of law, alternative models, and a crossover-cases. She named the chairs of each subcommittee and the members of the task force. Ms. Cozine described the work of the alternative models subcommittee, of which she is a member. She explained that the subcommittee is examining different representation models, and that the subcommittee Chair requested cost information for different representation models. In particular, a statewide FTE model, an hourly model, a per-case model, a workload model, and the PCRCP model. She noted that this subcommittee is charged with merely presenting the strengths and weaknesses of each model, not necessarily recommending a model. Ms. Cozine shared that she has consistently represented to the subcommittee that the Commission is the entity with authority to make decisions about Oregon's representation model. She also noted that Addie Smith, from the Governor's office, staffs the task force and will be presenting at the April Commission meeting.

Agenda Item No. 4 Commission Approval of Case Manager Contracts

Amy Miller, Deputy General Counsel, reminded Commissioners that the PCRCP program has been in need of two additional part time case managers, and requested the Commission's approval of two new contracts, both of which are for highly-qualified practitioners. Vice-Chair John Potter inquired about the work being done by the case manager approved in January. Ms. Miller said that she is doing well, and that Columbia County is very happy to have her services.

MOTION: Judge Welch moved to approve the case manager contracts; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

Agenda Item No. 6 PDSC October Meeting Date Change

Nancy Cozine requested a date change for the October meeting, which is held in conjunction with the annual management conference. The conference is now scheduled to begin on October 27th; the Commission meeting will be on Friday, October 28th from one o'clock to four o'clock. Commission members also agreed to end the April meeting one hour early to accommodate a meeting of the Juvenile Dependency Representation Task Force.

Agenda Item No. 7 OPDS Monthly Report

Ernie Lannet, Chief Defender of the Criminal Appellate Section, began by introducing a new podcast featuring appellate attorney Marc Brown, and available through OCDLA's Library of Defense. He also noted that five Oregon Supreme Court opinions, in cases argued by OPDS criminal appellate section attorneys, had issued since the January meeting.

Shannon Storey, Chief Defender of the Juvenile Appellate Section, shared news of a recent juvenile law success in the Supreme Court, and noted that OPDS attorneys were presenting at the Juvenile Law Bar Section CLE in February, and at the OCDLA CLE in April. Lastly, she informed the Commission that the Juvenile Appellate Section, in partnership with the Criminal Appellate Section, has taken on their first juvenile delinquency case. Nancy Cozine added that due to a shortage of conflict attorneys, this presented a good opportunity to test the expertise of the two divisions in the office.

Ms. Cozine updated the Commission on three other things the office has been working on: strategic planning, budget building, and courthouse planning. She said that the strategic planning process, focused on planning for the next five years, continues to generate positive feedback and valuable input. She touched on the lengthy policy option package building process and indicated that there would be a thorough discussion of options at the June Commission meeting when the majority of Oregon's public defense contract administrators are present. Lastly, Ms. Cozine reminded Commission members that they had asked her to submit a letter of interest for the Lane County Courthouse. She indicated that funding to start the project was approved in the February session and that she would be following up with leaders in Lane County.

Agenda Item No. 8 Executive Director's Annual Report

Nancy Cozine reminded Commission members of their requested changes to the annual report, and indicated that those changes had been made. Commissioner members praised the report. Ms. Cozine said it would be posted on the OPDS website.

Agenda Item No. 9 Executive Session – Executive Director Performance Evaluation

The Commission then proceeded into executive session for the purpose of the executive director's performance evaluation. The vice chair read the statutorily prescribed notice stating the purpose for the executive session and citing the statutory provisions that allow it.

Return to Public Meeting

After the executive session, the Commission returned to its public meeting.

There being no further business, the Commission adjourned the meeting. MOTION: Commissioner Lazenby moved to adjourn the meeting; Judge Welch seconded the motion; hearing no objection the motion carried: VOTE 5-0

Meeting Adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

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10:00 am – 2:00 pm
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MEMBERS PRESENT: John Potter (Vice-Chair)
Thomas Christ
Chip Lazenby
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STAFF PRESENT: Nancy Cozine
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The meeting was called to order at 10:08 am

Agenda Item No. 1 Approval of minutes – PDSC meeting held on January 21, 2016

0:14 J. Potter Welcome everyone. Welcome to the March 17th Public Defense Services Commission meeting. We are going to start out with the approval of the minutes. Are there any additions, corrections, changes to the minutes?

0:28 J. Welch Yes. Page twelve, at the bottom of the page, A. Miller is being quoted. The fifth line it says, ‘months prior to the determination of juvenile court supervision,’ it should be ‘termination’ instead of ‘determination.’

0:55 P. Levy Are you on the transcript?

0:57 J. Welch Yes. I’m sorry, I jumped the gun. Sorry, I take it back.

1:04 P. Levy We don’t correct the transcript.

1:06 N. Cozine No, it’s in the minutes on page twelve.

1:11 J. Potter No, that’s the transcript. Nevertheless it is a significant change.

1:17 P. Levy We don't do much to correct the transcript. The minutes are the official record.

1:24 J. Welch I have no corrections for that.

1:26 J. Potter Do we have a motion? **MOTION:** Judge Welch moved to approve the minutes; Commissioner Christ seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

1:46 J. Potter Before we move forward, I am going to have Nancy introduce our new board member, Tom Christ.

1:55 N. Cozine Sitting with us today is our newest member, Tom Christ. He is with the firm Cosgrave...

2:02 T. Christ Cosgrave Vergeer Kester.

2:04 N. Cozine Thank you. He specializes in civil appeals. He came with great praise from the Chief Justice who knows him well and had great things to say. He has a little bit of exposure to the public defense world, I think it was back in 2003. Was it '03 that you filed?

2:23 T. Christ Whatever the year was when they wanted to resolve a budget crisis, they suspended arraignments for criminal defendants in order to postpone hiring counsel. I brought a lawsuit on behalf of the ACLU challenging that as a violation of Constitutional rights to counsel. We filed it in federal court and unfortunately the judge concluded that he shouldn't get involved and he dismissed the case on abstention grounds. We appealed to the ninth circuit and by that time the budget crisis resolved and so the ninth circuit said it was moot. That is really my only foray into criminal practice.

3:11 N. Cozine We will try to get you caught up in criminal practice since 2003, but we are very happy to have you.

3:19 T. Christ Thanks, I am very pleased to be here, to be sitting at a table with my friend Chip Lazenby.

3:31 J. Potter Chair McCrea is ill today and will not be joining us, but I understand that Shaun and Tom were classmates together.

3:44 T. Christ Yes, back in the day. We won't tell you when that day was.

3:46 C. Lazenby We don't talk numbers here.

Agenda Item No. 5 Approval of adjustment to ACP Contribution Amounts

3:49 J. Potter We are going to go out of order slightly in order to accommodate DOJ. We are going to drop down to action item number five. Caroline, do you want to talk to us about ACP contributions?

4:05 C. Meyer Good morning Vice Chair Potter, members of the Commission. I am going to talk about attachment number four which is the guideline maximum contribution amount schedule and with us today we have Norma Alexander and Mary Olette from OJD.

4:20 J. Potter OJD, sorry, I said DOJ, I meant OJD.

4:26 C. Meyer They are with us today to answer any questions that you might have about the verification piece. They are the experts. Norma has been doing this for a very long time and Mary Olette is in training. Again, this is simply if you have questions. The guideline maximum contribution refers to the, I am sure you have heard us talk about the ACP account, which is

the Application Contribution Program. We get funds directed from that account. There is an application fee that is assessed up front, I believe it is twenty dollars at the onset of a case and then there is the option for the court to impose a contribution amount. In December we approved the updated compensation schedule which is essentially what our office pays for the average case. This is essentially one half of those amounts. Katherine presented to you at the last update that was in May of 2012. We just need to update it to the current PDSC Compensation schedule. The amounts that you see here are exactly one half of the PDSC compensation schedule. The only change was that we added in Jessica's Law. That is a new case type. It is a case type that contractors have been handling for some time when the law changed but we had been paying it under the murder rate in terms of contract and we have now changed that to have its own case type and the expenses were more in line with measure 11. In terms of the guideline maximum, it is considerably less than the murder and ag murder rate. Again, we hope to keep these documents updated more regularly rather than waiting four or five years and we will keep them on the same schedule going forward.

- 6:25 J. Welch Is the one half standard as well, this is just an adjustment to the changes?
- 6:31 C. Meyer Yes, the one half was already in place.
- 6:32 J. Welch So, there is no conceptual or substantial reason?
- 6:37 C. Meyer Right, it is just an update to the schedule that was already in place.
- 6:42 J. Potter Does it make sense to adjust these every contract cycle?
- 6:47 C. Meyer I think we have talked about possibly (inaudible 6:49)
- 6:54 N. Cozine Vice Chair Potter, members of the Commission, I think our reluctance to update it the last contract cycle was that you may recall we had been given a policy option package to give increases to the public defender groups but we hadn't yet been given anything to compensate the consortium and law firm provider types, but they actually provide the bulk of the services across the state. So, adjusting at that point in time would've been a little awkward. We are now at a place where we've got consistency in the case rates. Prior to that, we had actually gone through a contract cycle with no increases so there was no change. I think that we need to just be strategic about when we update that it makes sense given all the factors at play.
- 7:36 J. Potter Under the new plan we are trying to keep all the contract rates more or less the same. It would seem like it would be something to be discussed every contract cycle.
- 7:46 C. Meyer I agree, which is why we are updating it.
- 7:48 N. Cozine Assuming that there are changes and we are able to give increases, it ought to be.
- 7:54 C. Meyer There is a third document that I am going to mention that you helped us with in the past, the privately retained attorney fee schedule. We are going to be doing that with the Oregon State Bar later this year in terms of a survey, finding out what we suspect that its considerably out of date since it hasn't been updated since 2010. That will be on your radar for a later meeting this year. That's it unless you have questions.
- 8:25 J. Potter Judicial Department doesn't have any?
- 8:29 C. Meyer I think Norma said to me she was happy to not say anything unless you had questions.
- 8:33 P. Levy If I could give a little more context to this document before you end this privately retained pay schedule, are part of a verification manual that is close to 400 pages long that OJD and Norma Alexander maintain and provide to the verification specialists in all of the courts that they use

to determine eligibility for court appointed counsel. They are the ones that actually maintain the book and operate the program but we have to provide these parts to it.

- 9:15 J. Welch I would like to ask a question that is only relevant to the fact that people are here rather than to what is being presented. We haven't heard about how lucrative your undertaking is in a long time and I am particularly interested in knowing if anybody has found out how to collect either the upfront or the later in juvenile appointments.
- 9:41 N. Alexander It was my understanding that in juveniles, no matter what, they are going to get an attorney because we want to have representation up front with them. So, they get the attorney and they kind of not even looking at eligibility at this point, across the board.
- 10:00 J. Welch I wonder if the judges in the counties know that.
- 10:04 N. Alexander I believe they do. I see very little being assessed with regard to juveniles.
- 10:10 J. Welch I mean that everybody is getting a lawyer.
- 10:13 N. Alexander Oh, well that I couldn't say.
- 10:15 J. Welch Anyway, that is off base. Thank you.
- 10:18 C. Meyer My understanding with my conversation with Norma is that they are working on more consistency across the counties on if they are collecting up front, if financial eligibility is being taken into account. That is all on the verification side of things.
- 10:37 C. Lazenby Keep in mind one of the things we have been concerned about with Judge Welch kind of being on the point of it is Juveniles, especially, being dissuaded from getting attorneys by their family or pressure from the court and this could be another feature, 'well you are going to have to pay that \$250 too.' So, as you move forward, our concern about there being adequate representation along all these guidelines is that it not be an impediment to people getting access to an appointed counsel or not be used by the system that way.
- 11:11 C. Meyer I think that is consistent with what you are finding, most juveniles are getting counsel. It is consistent with what Norma is saying for the most part. Thanks.
- 11:21 A. Miller Caroline, Vice Chair Potter, members of the Commission, Chair Lazenby; I have done some surveys about waivers and I think what you are talking about is attention between a juvenile asking for counsel and the parents sitting there saying 'we can't afford it' and the judge saying 'well I might order some contribution' and then the juvenile in essence having some pressure to waive counsel. I think that is what you are alluding to.
- 11:48 C. Lazenby Yes.
- 11:49 A. Miller They are given opportunity to have counsel, but then that occurs and it still does occur. I did a survey last summer of attorneys and there are jurisdictions where that continues to be a problem. There are others where it does not. There are others where it's very routine that it doesn't come up at all. That has to do with some of the way the appointment statute works for juveniles and fortunately or unfortunately the statute contains that reference to the parents.
- 12:24 J. Potter Are there any other questions commission members? Do you need approval of this?
- 12:28 N. Cozine Can I make one more comment? Caroline mentioned that there is also the privately retained attorney fee schedule, which is something that really does need updating. It hasn't been updated since the 2012 time. It is a bigger undertaking because we really need to do a survey. My intention is to induct the Oregon State Bar and try to get their help. They haven't done an

economic survey since 2012 either. That is something that we are aware of and that we will be working on.

12:56 J. Potter

Okay. Do we have a motion to approve? **MOTION:** Commissioner Lazenby moved to approve the adjustment to the ACP contribution amounts; Judge Welch seconded the motion; hearing not objection the motion carried: **VOTE: 6-0**

Agenda Item No. 2

Commission Training: Commission Handbook

13:08 J. Potter

Let's go back to number two, the Commission's Handbook that Paul is going to talk about.

13:17 P. Levy

Well, I am going to talk to you about two things, this handbook and briefly one chapter of it in particular. This is something that we have long wanted to provide to the Commission and we thought we would use the occasion of the new member to finally get it done, which is to give you, we hope, in a handy smallish binder something that you might bring with you and use with the essential documents that commissioners would likely want to refer to. They include materials both about how the commission should operate as a public entity, as a governing body, and some guidelines to keep you out of trouble. Then, reference materials on how to do the substantive work that you are charged with. If I can just go through it quickly just to tell you what is in here. Each section has a short introduction and then some lengthier materials behind it. We give you a very brief history of the PDSC since we just lost one of our great historians, well not lost in the sad sense, but Barnes has been a part of and has made much of its history. The history and structure of PDSC and OPDS is the first tab. Best Practices for boards and commissions, meeting compliance with a set of best practices as part of the Commission's key performance measures. We have given to you our last review of that under this tab as well as a summary of the last major review of the state's various boards and commission from the secretary of state according to, and I reviewed this with the Commission some years ago. They found a lot of faults with the way boards and commissions operate, but if you look at what they found you all do very well on most of the points. Then, I give you are current key performance measures and the documents that we provide in connection with those. Oregon Government Ethics law with applies to you folks and we have had a training on this and we should have another one before too long. There actually has not been that much change in the law since I first presented to you in 2008 on this and there were some changes but primarily to the way that the Oregon Government Ethics Commission operates in the 2015 regular session and I outlined those there. Public meetings and records law, public meetings law obviously is a big concern for the Commission. I am going to talk about that in just a moment, and then we get to the substance to what you all are about, chapter 151 of ORS which establishes the Commission and sets out your responsibilities and duties and those of the executive director of OPDS. So, that's a document that we refer to frequently in our day to day operations. In chapter 151 you are charged with establishing and maintaining a public defense system that satisfies state and national constitutional and statutory requirements and standards of justice. We provide under tab seven links to some of the major state and national standards of justice. The Oregon State Bar performance standards probably warranted being printed in their entirety expect for the most recent revisions, they are very lengthy and so we of course just have links here. You do have in what was emailed to you, the electronic version of this document, so you can just click on the links there. We have provided you with the most frequently cited document when it comes to structuring public defense systems which is the ADA's Ten Principles on Public Defense Delivery Systems. Those are here and well worth refreshing. I think we also provided our own best practices document which is also really worth taking a look at because this is incorporated into our contract with public defense providers in section seven of that contract. Section eight has other online resources. Really, what this is is an invitation to visit our website because there is a lot there. There are all of your service delivery reports, all of your agendas, meeting transcripts, reports. There is a lot of good stuff there. The last section is logistics like parking which is always fun, especially here. We hope that this is something that will be a useful guide to you. This is the first edition,

so if you have suggestions for better format, new or different material, we will update this as things change but we want this to be something that you use.

19:59 J. Potter

Thank you Paul. I would think as a new member, Tom, this would be quite helpful. This was all developed over a long period of time to get to this. It would've been nice from day one to have had a manual like this. Of course we couldn't.

20:15 P. Levy

I only did it when Nancy lit a fire under my chair.

20:21 C. Lazenby

Does this point out that there will be a pop quiz for new members at the next meeting?

20:28 P. Levy

What I also wanted to briefly touch on was public meetings law, which we try to follow carefully and make sure we abide by. We have had training on it and the materials are in here. I have reported to you on developments on this. Just briefly, one of the last meetings mentioned a court of appeals opinion, *Handy v Lane County* or *Lane County v Handy*. It arose out of an earlier incident that I reported earlier to you about and it all arises from Lane County's county commissioners not really knowing what they are doing and how to conduct their business well. There was a lawsuit quite a few years ago now where county commissioners individually and the county were sued over violations of public meetings law. There was a trial and a verdict against the county with a long trial court opinion that should've been appealed because it set out at the time what were thought to be pretty extreme views about how the public meetings law operated. It was not appealed because the county settled for actually giving the plaintiff and great deal of money, both from the county and from the individual commissioners. That trial court opinion said, among other things, that the law was violated by when commissioners met serially, one commissioner went to another's office and chatted about a subject that was going to be decided by the entire body and they chatted serially office to office and the trial court said that it constituted a meeting and violated public meetings law and there was not appeal on that. There is member from legislative counsel about that trial court opinion because there was a brief effort to address legislation to that issue. It didn't go anywhere. Related to that was another incident in Lane County and it rose out of the judgement in that earlier trial case which gives us the *Handy v Lane County* case which I think I give a site to here. It was badly handled by Lane County. It was a public records request that went to the county chair when it should've been something that the county counsel and the county chair resolved. Instead, they think it needs to be decided by the county commission, which it shouldn't have been, and then the county commissioners are in replay. One emails another who emails another who emails another and that is alleged to have been a violation of the public meetings law. The county defended it in a way that the Court of Appeals thought was really inappropriate and it probably was with an anti-slap motion, which is a quick way of resolving lawsuits against public officials and inappropriate here. But, the Court of Appeals ended up saying two things; one which is helpful to us and the other which is very concerning and is now subject of review by the Supreme Court. The helpful thing was that one of the things they were emailing about was whether they should hold a meeting as well as whether they should release this document which was going to be decided at the meeting. The Court of Appeals said when to schedule a meeting is not a matter than requires a decision by a quorum of the body and is not subject to the public meetings law and so on that you can confer privately. We can email you all and you can email one another about what is a good date for the next meeting without violating the public meetings law. That is good news and makes common sense and we have probably done that before. The Court of Appeals said that the serial emails constituted a meeting and that violated the public meetings law. We have avoided doing that with you and we will continue to do so because we, out of an abundance of caution, that statute defines meeting in a way that makes it clear that this is the meeting, when you gather together, that the statute is referring to when it says your meetings have to be public. You are forbidden to meet, by the statute, in private and the Court of Appeals said that there is a different definition of meeting and meet and it doesn't make any sense and I won't go into the convoluted reasoning of the Court of Appeals. The Supreme Court is going to review on whether the noun 'meeting' and the verb 'to meet' have the same meaning. So,

stand by for the Supreme Court's decision in this case. For now, we will continue our practice of not luring you into conferring on matters of substance that will be on an agenda.

- 28:10 C. Lazenby Isn't the critical language in this statute still deliberating on a decision towards something? So, if we have got a five member Commission and three of them are in an elevator leaving a meeting, that is not a meeting, even though they are numerically a quorum. What particularly riled the trial court in Lane County was that the emails revealed that the reason why they were meeting in those serial meetings was to avoid having a public meeting about what they were discussing.
- 28:42 P. Levy That was the original case.
- 28:45 C. Lazenby The Dundee case.
- 28:46 P. Levy Yeah, that was the original case. This case is actually, although it is related to that, it is different. In that case, they were trying to avoid a public meeting. That is not what happened here, they were just emailing about what to do with this whether to comply with their public records law obligation law or not. This new Court of Appeals case does address the earlier case which recognizes that a quorum of public body can meet together at a restaurant or a social occasion, like on break here, and talk generally about matters of concern having to do with public defense so long as it is not a matter about which the commission is going to be asked to make a decision.
- 29:52 T. Christ At the time of that conversation, or potentially? Suppose commissioners get together and we talk about something and think, let's bring that up at a later meeting, does that run afoul?
- 30:10 P. Levy I would have to look at the language. If a group meets at a restaurant and I think it is described as a general discussion. I think the critical matter is that it is not at that time a matter that is set for an agenda and going to be decided.
- 30:42 C. Lazenby And there is cure right? Let's say that a quorum of us ended up meeting at a restaurant and we were just talking general about things that were going on but then we also touch upon an item that will be on the agenda, can we cure it by putting that conversation on the record at an official meetings?
- 30:58 P. Levy I don't think so.
- 31:04 C. Lazenby So we should all just go get our own lawyers? Would Public Defense Services cover our lawyers?
- 31:13 P. Levy No. I think if you care to be amused, reading the Court of Appeals case, it is worth it because there is very good dissent but you also see how badly Lane County handled this both in luring their commissioners into violating the law and then in litigating this they didn't brief in the Court of Appeals the central issues in the case which annoyed the Court of Appeals.
- 31:57 C. Lazenby What is the practical guidance for us?
- 32:00 P. Levy It would be to continue to try and do what we have been doing in the past which is not to ask you to decide issues through private conversations with one another or through email but continue to feel free to talk generally about public defense, its health, its wellbeing and how it can be improved but not to talk about matters that are likely to be agenda items.
- 32:40 J. Potter So even if, and this is taken from Tom's comment, even if its prospective, even if we are sitting in a restaurant and someone has an idea and says, that is a good idea let's talk about it and put in on the agenda next month.

32:55 P. Levy That I would say, let's not talk about it if we are going to put it on an agenda. Let's not talk about it anymore other than to ask that it be put on the agenda.

33:12 T. Christ I guess what concerns me as the new kid is this serial violation idea so that if I run into Chip on the street and I say something about public defense and then he runs into John then emails the judge, and I am not knowing from the start that I have set in motion a chain reaction even it is just 'Tom's an idiot, let me share this with you.' But, if it goes through a quorum, we have now serially violated the law.

33:50 P. Levy That is what happened in *Handy v Lane County* and I think you are not the only person that is perplexed that that would be the case. The good news is that this is not the last word and we should have clarification on this.

34:30 J. Potter And *Handy v Lane County* is distinct from *Dundee v Handy*.

34:35 P. Levy *Dundee v Lane County* ended up with Mr. Handy, who had then been found to violate the law and owing substantial money to Lane County. He tried to pay that off while a commissioner by soliciting money from people saying that it could be kept private. One of the people who was identified as 'recipient' got a lawyer who wrote a letter to the county and counsel who at the time also happened to be the county DA who turned that letter over to the county chair and then the media made a public records request for that letter. Then the county chair started consulting with the commissioners on whether they should release the letter and he said 'well we need to have an emergency meeting later this morning about it.' It's what we call a cluster...

35:50 C. Lazenby Or something like that.

35:52 P. Levy It is all set out in the case but it is fascinating really, but the good news is that we will get clarification that either way will be helpful. Right now it is not very clear and I think I am illustrating that.

36:18 C. Lazenby I still think that a lot of these statutes are sort of 'gotcha' statutes where they sort of pronounce a general rule but then the situation that we just talked about where I run into you in the street and we just have a casual conversation and I mention to John my casual conversation with you about something and maybe it is something we should consider. Are we deliberating at that point towards a decision? That is the part of the statute that I have always focused on as opposed to kicking the can around and I know people play games with that and that is part of what got the people in Lane County in trouble. It was clear that from the totality of the evidence that they were actively trying to avoid the public meetings law.

37:03 P. Levy That's the original, in the Dundee case.

37:05 C. Lazenby Yeah, in the original case. Then you do this other shenanigans with raising the money, that's just a quicksand thing.

37:16 P. Levy Lane County did win this Handy case in the trial court, but that was reversed by the Court of Appeals.

37:28 J. Potter Any other comments or questions for Paul?

37:30 P. Levy I am glad I could clarify this.

37:33 C. Lazenby Thank you very much.

37:34 J. Potter Does our Lane County representative have anything to say.

37:37 G. Hazarabedian The only thing I would add is if the person, Commissioner Handy, solicited for financial help was an extraordinarily irrational choice on his part which I think led to the further action.

37:55 J. Potter Okay, moving along, let's talk about The Juvenile Dependency Task Force update from Nancy.

Agenda Item No. 3 Juvenile Dependency Task Force Update

38:01 N. Cozine Vice Chair Potter, members of the Commission, I have spoken to you a few times about the Governor's Task Force on Juvenile Dependency Representation. We had our sixth meeting yesterday in Medford. We met from one thirty to four thirty and prior to that there was a lunch with practitioners in the county. It was, as always, a very jam packed agenda. All of the meeting agendas, all of the information from these meetings are available online. I can send you a link to that information if you take a look at the website for this task force. There are five subcommittees. There is a subcommittee on performance standards that is headed by Angela Sherbo. There is a subcommittee on quality assurance chaired by the Leola McKenzie. There is a subcommittee on the unlawful practice of law chaired by Judge Murphy which focusses on whether or not case workers are engaging in the unauthorized practice of law when they appear in court without a lawyer by their side. There is an alternative models subcommittee chaired by Professor Harris from the University Oregon. I am on that subcommittee and I will talk a little bit more about the work that the group does. Then, there is the last one which is the cross over cases subcommittee chaired by Judge Waller.

39:25 J. Potter How many people total on the task force?

39:29 N. Cozine The task force includes Justice Brewer, Judge Crain from Jackson County, Judge Murphy from Linn County, Fred Boss from the Department of Justice, Valerie Colas who is one of our appellate lawyers, myself, Lois Day from Department of Human Services, Mimi Labor who is with the ABA Parent and Child Representation section, Leola McKenzie who is the juvenile court improvement program director, Angela Sherbo from Youth Rights and Justice, Matt Shirtcliff who is the DA in Baker County, Joann Southy from the Department of Justice, Lynn Travis who is the CASA director in Multnomah County and I think she also does Washington and Columbia counties, and then Rod Underhill the Multnomah County District Attorney. We have legislative members, Senator Jeff Kruse, Senator Floyd Prozanski, Representative Duane Stark, and Representative Kathleen Taylor. Those are all of the members and it is staffed by Addie Smith who is a member of the Governor's office. It is also attended by Danny Ladezma. Danny is the Governor's housing and human services policy advisor. The materials are voluminous. Addie is doing an amazing job at collecting information from all around the country so that we can compare what we do here with what people do in other places and then also look at outcomes of these different representation systems. In the alternative models subcommittee that I participate on, the state and us as representatives for parents and children have been asked to compile cost information on different representation models. The different representation models we have been asked to compile cost information on are something that would be a statewide public defender system with everyone being represented by a public defender that was a state employee which would require multiple offices, one for kids, one for parents and then another for parents with conflicts being handled by creating firewalls between those offices and then we assume there would be some number of cases that would actually have to have conflict counsel through private bar.

42:04 J. Potter So, that would be a state public defender system for juvenile cases only?

42:09 N. Cozine Correct, it would be both juvenile dependency and delinquency because there is so much in the crossover realm.

42:18 J. Potter Is there another state that has such a model?

- 42:23 N. Cozine Interestingly, there are other states that have a statewide public defender model but this three office concept is something out of California where it is a county based system in California and they have that type of model there. We were asked to build that out for Oregon. I will tell you right off the bat that it is by far extraordinarily more expensive than any of the other models. We are also asked to come up with an hourly model. That is another pretty expensive model, although the way that we were asked to structure it is with a cap on the number of hours that could be spent. Then, there is a per-case model, then the PCRCP model which mirrors what we are doing now but statewide. Then, they are comparing all of that to the current model. In our last meeting they also asked us to come up with a hybrid model. The hybrid model would be something where you would have a PD office handling juvenile matters in four of Oregon's largest jurisdictions, so Multnomah, Jackson, Lane and Deschutes with are sort of being the regional hubs for training and then all of the cases that were conflict cases being handled by PRCP type private lawyers. So, we are working on that and this alternative models subcommittee will not necessarily be recommending any model but talking about the strengths and weaknesses of each model both in terms, well there is an entire rubric set forth that measures outcomes. What are the critical components of a representation model that we want to make sure we have things like consistency statewide, time for lawyers to meet with their clients, some provision to prevent excessive caseloads. So, they are measuring each of these different models against these different criteria. There will be more forthcoming. I have asked Addie if she would be willing to come and present to the Commission herself at our next meeting in April and she is willing to do that. We actually have a task force meeting; the juvenile task force meets directly after the Commission meets in April. She has been gracious in her willingness to present to this group before heading over to do the task force group. I wanted to keep you apprised of this conversation. I have been very open in my communication with the subcommittee and with the task force that the decision about how to structure public defense services is a Commission decision and so all of this work is very helpful and informative but ultimately something that would need be brought to this group so that if there were going to be any changes made like a PCRCP model that we have already endorsed in three counties, then this Commission needs to be the entity to make that decision.
- 45:30 J. Potter Is there a timeline that the task force is working on?
- 45:34 N. Cozine The task force has to have a report generated by July. So, each of these subcommittees is trying to work very quickly to compile information. As I said, they are all available on the website which I will send a link out so everybody has that.
- 45:51 J. Potter That is ambitious.
- 45:52 N. Cozine It is terribly ambitious. I think people are really interested in having some legislative concepts prepared that I think will include both sub-statutory changes as well as some budget packages and we will also have to work on how we need to link that in with our own budget building process. That is the report. Any questions?
- 46:19 J. Welch You keep talking about his 'we' that looks like it is making decisions. Who is the 'we' on the task force? Who is the chair?
- 46:31 N. Cozine The chair of the task force is Justice Brewer and note thus far really no decisions have been made. So far, I'd say we have been asked by the governor's office running this task force so each of those subcommittees has a chair and each of those subcommittee chairs are the ones who are making the request. It is, primarily, shepherded by the governor's office.
- Agenda Item No. 4 Commission Approval of Case Manger Contracts**
- 47:03 J. Potter Until April. Thank you. Amy, do you want to talk to us about approval of contracts for case managers? If I recall correctly, we did a couple of these at the last meeting right?

47:19 A. Miller Vice Chair Potter, members of the Commission, you did approve one contract for case management services in Columbia County back in January and when I was here talking with you I had said that we had issued an RFP over the Christmas holiday and didn't get the world's greatest response to that and we are continuing to regroup because what we are trying to do is identify part time case managers so that there would be more bodies up in Columbia County to work on these cases and address the conflicts. We have done that and so I am here today to ask for your approval of the other two case manager contracts. This would be a total of 1.6 worth of case manager time up in Columbia County, which would allow for case managers on about 12 percent of their cases. I participated in interviews of these candidates and they are fantastic and have a wealth of experience and in particular I think it says something about our program now that folks from within the county who are doing social services work in these counties are reaching out to us asking to be a part of it. Jillian, the first person on your list was a domestic violence and crisis worker co-located with the Department of Human Services and felt real frustration about the inability to do safety planning where the families were sort of recognizing where they are and in a way it didn't result in a removal of children. So, she feels fortunate that she wanted to come work for this program with just a little bit more flexibility. I am happy to answer questions if you have them, but these are the other two folks that I was referencing back in January. It is probably worth noting that these are up to contracts, so it is a pay as you go contract. The case managers have a cap on hours every month, they submit an invoice to us, I cross check and so does our staff and they can bill up to this amount but certainly not over it and these are two year contracts.

49:23 J. Potter And you envision the up to amounts being in FTE, half time for Jillian?

49:30 A. Miller Jillian, in FTE terms would be a .8, so we use a number of 160 hours per month and Tracy is a .3. These are independent contractors so this rate is intended to cover not only whatever a person would need for salary but also all of their business expenses as well.

49:58 J. Potter In the contract that we approved in January and the person that was approved for that has been hired and is working?

50:05 A. Miller She has been contract, Debby, yes she is. I think I mentioned it in January that the attorneys up in Columbia County have been excited and the court has been excited. This is a county that I think has been historically under-resourced and they are excited to have this additional resource and she is very busy already and she started in January. Things are going well so far.

50:30 J. Potter Questions?

50:32 C. Lazenby Is this just Columbia County specific or are we doing this in other counties or are there other agencies that are filling this role elsewhere?

50:40 A. Miller That is a good question. This is specific to Columbia County and is part of the PCRCP model so the same sort of service applies both in Yamhill and Linn counties. There are programs around the country that utilize this type of model but no others here in Oregon. There are some pretty good successes that those programs have had. There is no one filling this role, the sort of multidisciplinary representation of a parent type of role. There is no one else filling this role consistently in Oregon that I am aware of. This is something that they do in Washington, and like I said it is working in other parts of the country.

51:20 C. Lazenby So it is a bit of a pilot, we are going to look and see how it works and then try and expand it maybe?

51:25 A. Miller I think that would be accurate, yes.

51:32 J. Potter The funds that came for this came in the last legislative session?

- 51:40 A. Miller It was actually from the 2013 session, two sessions ago. It was part of that program and part of the PCRCP.
- 51:51 N. Cozine Just to remind the Commissioners, there were savings accrued so the money was given in 2013 and it took us a year to launch and then we had savings accrued and that is what we used to expand to Columbia County. Legislatively approved in the sense that they let us keep the funds and use them to expand the program.
- 52:08 P. Levy They did also give us additional funds to make Amy's position permanent, this is what she is doing.
- 52:18 J. Potter Thank you for the refresher.
- 52:21 C. Lazenby So you take this plus the other person, how many cases, or families, I am not sure how to gauge the impact of that, are this folks expected to do in a years' worth of work?
- 52:32 A. Miller We modeled this program closely to what they do in Washington because it has been successful over a long period of time there. Their caseload cap is about 30 cases per case manager with the idea being that there work is sort of discreet. They have a very detailed manual but one of the things that they need to do is have touched on their case every month, they need to be working closely with these clients and if that doesn't occur the case is closed, because they are pretty valuable resource. The lawyers, I think, have been using them in primarily one of two ways. I think one prior to the establishment of jurisdiction to work on alternative planning, to identify resources, to help make dispositional recommendations and that sort of thing. I think the other place they work with them quite successfully is more on the reunification side. As you know housing is a huge barrier and our case managers have spent a lot of time and have been successful particularly in Yamhill County working with the housing authority, freeing up housing vouchers with DHS and then working with landlords who have been able to allow people to move into their facilities. It is not a role that, it is one of those roles that is in between DHS and the housing authority and not really filled by anyone.
- 53:50 J. Potter Judge, do you have any comments?
- 53:54 J. Welch I am smiling.
- 53:59 J. Potter We need a motion to approve these contracts. **MOTION:** Judge Welch moved to approve the case manager contracts; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**
- 54:14 P. Levy Can I just say one more thing about the manual? For the commissioners who are not here, we will have yours for when we next see you. You don't need to print this out, we will have shiny manuals for you when you come to the next meeting.
- 54:45 P. Ramfjord I would have loved to be there today, but I had something this afternoon I couldn't get back in time for, so I am sorry about that.
- Agenda Item No. 6 PDSC October Meeting Date Change**
- 54:54 J. Potter Are we ready to move on to number six? This is the PDSC October meeting date change from what was originally published.
- 55:01 N. Cozine I believe when the Commission adopted the schedule for the 2016 Commission meetings we had not yet firmed up the date of the annual management conference. We always hold the October Commission meeting in conjunction with the management conference. The management conference will actually be the 27th and 28th and that necessitates a change in date for us to October 28th. This is always an afternoon meeting and it is from one o'clock to

four o'clock. If you could make that change we will also amend the meeting invite. Was that helpful for people? We sent out a meeting invite for all of the meetings so you could add them to your calendar. It is one where you can just accept the invite and it will automatically add it to your calendar if you are on an electronic device that associates your email with your calendar. We can do it that way again or not depending on what is helpful for people.

- 56:13 J. Welch That's in Bend again?
- 56:14 J. Potter It is in Sunriver, yes.
- 56:18 C. Lazenby What I've got is from you and I can't change it.
- 56:24 N. Cozine We will do an amended invitation with a new date and get that out.
- 56:28 C. Lazenby So, I should just decline what is here?
- 56:32 N. Cozine You could, yes.
- 56:33 C. Lazenby I did.
- 56:34 N. Cozine Excellent, thank you. While we are on the subject of meetings, I mentioned at our April meeting that we have the task force. The task force meetings actually starts at 1:30, so I would like if our April meeting could be adjusted time wise and I think the options are either if we want a four hour meeting to have it from nine am to one pm or shrink the meeting length and have it from ten am to one pm.
- 57:08 J. Potter What do you visualize as being on the agenda?
- 57:12 N. Cozine We have three items on the agenda so far. We have a presentation from Adrian Smith about the dependency task force. I anticipate that will be about 30 minutes. We have a presentation from Oregon Youth Authority about disproportionate minority contact at 30 to 45 minutes. Then, we have a presentation from the Criminal Justice Commission to talk about some of the work they have been doing around the state and justice reinvestment. They have some data dashboards that are really quite interesting and informative in terms of what case filings look like statewide. That will probably take another 45 minutes and then we will have the beginning discussions of budget building. I think we can get it done in three hours. It could be a little tight.
- 58:06 J. Potter Are we willing to work through lunch? Okay, ten to one.
- 58:12 N. Cozine Ten to one would be great. Thank you.
- 58:17 C. Lazenby We would probably travel over the night before so it brings us...
- 58:21 N. Cozine April is here, but for the October meeting, then yes. We will email you with travel information for Sunriver.
- 58:37 J. Potter Alright, number seven, the OPDS monthly report.
- 58:42 J. Stevens John, may I interrupt for a minute?
- 58:47 J. Potter Yes.
- 58:48 J. Stevens One, Shaun isn't there to kick your leg and say 'it's about time for a break.'
- 58:57 J. Potter Thank you very much.

59:00 J. Stevens Two, if you are done with action items, I am going to hang up. I've got to try and get another editorial out this morning.

59:07 J. Potter Okay Janet, thank you for joining us and will we see you or will you be on the phone in April, do you know?

59:15 J. Stevens I don't know yet. Alright, thank you.

59:17 C. Lazenby Bye Janet.

59:19 N. Cozine Thank you Janet.

59:22 J. Potter Shall we take a five minute break?

Back From Recess

0:11 J. Potter Per are you there?

0:14 P. Ramfjord I am.

Agenda Item No. 7 OPDS Monthly Report

0:15 J. Potter Okay, we are going to start the meeting. Let's reconvene the meeting and find out what is happening on the legal side of the OPDS world.

0:33 E. Lannet Vice Chair Potter and members of the Commission, and might I add congratulations to Mr. Potter, I saw the announcement.

0:38 J. Potter Thank you.

0:41 E. Lannet Probably one of the most exciting things we've got going on right now is Marc Brown is beginning a podcast discussing recent opinions and the is being made available to members of the defense community through the OCDLA's library of defense. So far, he has done two, one on Bonilla and a second one that just came out was him interviewing Lindsey Burrows who litigated *State v Simonoff* which came out since we last met.

1:38 J. Potter I might say that the second one, the first one I thought was well done I think Marc did a very nice job. He has a very nice speaking voice and a radio personality kind of voice, but the combination of the two is really good.

1:51 E. Lannet Yes, I think it is going to be a great addition to our outreach efforts and Marc is pretty fearless with this kind of stuff and he would acknowledge if he was in the room that it has been a learning process for him and he is enjoying that. On the Supreme Court front I will give you a quick update on what is happening there since we last met. There were five opinions from the Oregon Supreme Court in criminal sections cases. One was Simonoff litigated by Lindsey Burrows. That was the joyriding statute case that the state was arguing that a person need only be criminally negligent as to whether they did not have permission to be in the car. Luckily, the Supreme Court took a view of conduct looking at what the statute is trying to prohibit and that is using cars without permission and they said that was the conduct for which someone had to have a knowing mental state. Then, we got two decisions in restitution cases that were litigated by Morgen Daniels. This is an instance where we lost the cases but we won the rule. The restitution, the Court of Appeals had recently decided that basically any monetary loss that was caused by a crime could be imposed as restitution and there just had to be a relationship. We argued that the legislative changes that they made to the restitution statute weren't intended to change it at all and still should be viewed as what is reasonably

foreseeable as it points to tort statutes to what is a recoverable restitution. While they decided in those cases that the costs that were imposed did fall under being reasonably foreseeable, we were able to kind of put the restitution statute back on track of what it should be and when it should be applied. There were two other decisions, one litigated by March Brown, *State v Lazarides* which involved the abscond rule. It held to the new rule, they changed the rule in response to a case that was decided in 2012 where if someone has surrendered to police or if they have been taken into custody, their appeal won't be dismissed because at that point a judgment in the appellate courts would have no effect on them. That was a nice win. Josh Crowther litigated *State v Suppa* and that one was a loss. It was looking at attenuation, when you are illegally seized and you commit a new time, whether that is attenuated from the legality. In this case, someone was pulled over illegally with regard to a traffic violation, was asked their name and they provided a false name. The Oregon Supreme Court decided that that kind of conscious decision is something that attenuates from the illegality and that evidence can't come in against the person. So, some interesting decisions and we are still in the midst of litigating three other cases. It has been fun on the Oregon Supreme Court.

5:19 S. Storey

Vice Chair Potter, members of the Commission, in the juvenile appellate section I wanted to bring the discussion back to T.L. which I talked at length about in June which was our single Supreme Court case we have had this year. That case is where the parent's attorney didn't appear at a permanency hearing at which the department was moving the court to change the permanency plan for the parent's children. The court went ahead and conducted the hearing and changed the permanency plan without the father's attorney present. The father appealed and on direct appeal we assigned error to trial counsel's failure to provide adequate assistance of counsel, among other things. The Court of Appeals affirmed holding that the father's claim of inadequate assistance of counsel was not reveal able because he hadn't raised it in the first instance at the trial court level. We PFR'ed and that is where we left off in June. We had our PFR granted. We recently received the opinion of the court and they reversed the Court of Appeals and adopted our rule which we are very pleased with. We presented sort of a hybrid system where in a very narrow class of cases we would raise ineffective assistance on direct appeal when it is reveal able on the record and the court is able to discern from the record on appeal because our records our closed the attorney provided inadequate assistance and that prejudiced the client and in other cases appellate counsel would play a critical role in advising trial counsel, we are helping to get new trial counsel appointed to raise this in the trial court in the first instance. The Supreme Court did adopt that rule. We think it comports with the statutes and is also really gives effect to the idea that people are entitled to adequate assistance of counsel. Holly Telerant from my unit litigated that. Otherwise, we have been very busy with CLE presentations. We presented at the Juvenile Law Bar Section CLE in February. Almost every member of my section will be presenting at the OCLDA CLE in April. We are very pleased about that. As a joint effort between our two units we have accepted our first delinquency case and are in the process of litigating that as a direct appeal.

8:00 J. Potter

Notwithstanding the legal issues in the first case, the father's lawyer not being present, is this something we should be concerned about in terms of why the father's lawyer was not there?

8:16 S. Storey

Should we be concerned more globally than this case?

8:19 J. Potter

Yeah, from a contract management point of view, I know you are on the legal side.

8:25 S. Storey

Right, and certainly we have a really bright line between the two sides. We do consult and my attorneys if we see what we think is inadequate assistance not only are we going to be raising it on direct appeal or facilitating new appointment of counsel to get relief for that client, we also go through the complaint process which entails complaining to Amy [Miller] and it is my understanding that those complaints are logged and tracked and will play a part in future contracts, is how I think the system is supposed to work. We are certainly looking at and working with the other side of the office as well because this opinion very much endorses appellate counsel identifying these things and then imposes a duty for us to do something with

it. So, we are trying to figure out ways to do that particularly all the nuances of getting new counsel appointed below.

9:24 J. Potter

Any other questions?

9:27 S. Storey

Thank you.

9:35 N. Cozine

Vice Chair Potter, members of the Commission, I wanted to follow up on a few other office matters. One, I wanted to revisit something Shannon had mentioned, that we undertook representation in a delinquency case. This office has not traditionally handled delinquency cases but we have long talked about desire to take on representation in a delinquency case. So, many of our dependency cases end up with kids who enter into the delinquency system. There is more and more discussion about the cross over between kids in juvenile dependency proceedings turning into kids in the juvenile delinquency system. We have the majority of our delinquency cases handled by Youth Rights and Justice. When they have a conflict we try and find panel lawyers. We have fewer panel lawyers available to take these cases. Most people that we reach out to are too busy to take a case. In light of those circumstances it seemed like the right time for our lawyers who have expertise in appellate and also in juvenile and criminal to take on a case. This is a test case for us and we may come back to you with more ideas about how we can more effectively handle delinquency cases statewide if we continue to run into this situation where we are having difficulty finding panel lawyers to take these cases. The other three things I wanted to touch base on were strategic planning, budget building and courthouse planning. On the strategic planning front, we are continuing to work with Geoff Guilfooy meeting with our stakeholders and with our employees here at the Office of Public Defense Services to make sure that we have a very thorough examination of our system and where we need to focus in the next five years. We had a meeting with the court earlier this week and I will let you know that there were very positive comments at the appellate level about the representation being provided by the lawyers in this office and it was very encouraging and more on that, I suppose, as we build our strategic plan but I just wanted you to know how positively the lawyers here were reviewed. Budget building, our budget will be due, we usually submit it around October of every even year. We are working on that internally. We went through a very lengthy process in terms of policy option package building in the last legislative cycle so we will be working from a little bit of that in combination with the strategic plan and bring some proposals to you. We would like to have a very good discussion about policy option packages at the June meeting when all of our providers are present. April and May, we will have some sort of preparing of initial plans for policy option packages. Then, finally the courthouse planning in Multnomah County, I am continuing to spend quite of a bit of time getting the public defense resource center planning done. It is really quite exciting and I will send you information. I think there will be an open house in April that would be a really great place to go and have all of you attend if you are interested because there will be a description of every level of the building including the public defense resource center. Lane County has also expressed an interest and has had some initial funding from the legislature to build a new courthouse. I think that this Commission, when we talked about it last, you asked that we submit a letter of interest and the situation in Lane County was that they wanted to know if people were interested but there was no guarantee and so that is where we are with Lane County right now. We have submitted a letter of interest in becoming a part of their new courthouse. I believe the Department of Justice also submitted a letter of interest and so I will continue to reach out to Lane County and see what is happening on that front. I just wanted to keep the Commission apprised. It does give us an opportunity to have our appellate lawyers telecommute and observe trial practice and potentially observe and take an appeal. This was actually one piece of feedback in our strategic planning that was endorsed as something that would benefit our lawyers.

14:12 J. Potter

Any questions? On the short session fiscal side, ways and means presentations, where did we end up in securing piles of money?

14:27 N. Cozine In the short session we had some really great conversations about the importance of public defense funding. We were in that building a lot and as you know were presenting to the legislature. We did not get any funding in the short session. We do intend to go back to the legislature in May. As you know, we have a contract without appellate lawyers and that contract expires in October of this year, so we will need to renegotiate. We have already scheduled our negotiation dates with ASFCME and we anticipate that by the legislature's May legislative days we will be in a position to bring to them our proposed updated compensation plan. We have been told that they are aware that this request will be coming and they are prepared for it.

15:24 J. Potter Is that in E-board request of ways and means?

15:28 N. Cozine It will be an E-board request. Our hope is that we can get something accomplished during this biennium for the appellate lawyers and then really focus on the trial level which will dovetail nicely with the work of the governor's juvenile dependency task force as well.

Agenda Item No. 8 Executive Director's Annual Report

15:52 J. Potter Any other comments? Do you want to move into your annual report?

15:59 N. Cozine Certainly. In our last meeting I presented you with our last draft of the Annual Report. My sincere hope is that this is a final version of the Annual Report. You had asked me to make substantive changes. The most substantive of which were in the first paragraph a bit of tempering of the language describing the success that we had had in 2015 and in the challenges for 2016 you had asked that I move up the discussion of funding challenges and elaborate upon those challenges. Both of those two substantive changes were made. If there were other changes I of course would be happy to have your requests. This isn't something that you have to approve but it is something that we put on our website so I always want to make sure that you are comfortable with the content. It is my report to you.

16:59 J. Potter Any comments or suggestions? I like the way the first sentence reads a little better now.

17:05 N. Cozine I am so glad.

17:08 P. Ramfjord I thought the report was excellent.

17:12 N. Cozine Thank you.

17:15 J. Potter But, no action needed by us.

17:17 N. Cozine No action needed, I will post it on the website though. Thank you.

Agenda Item No. 9 Executive Session – Executive Director Performance Evaluation

17:20 J. Potter Thank you. So, I believe we are ready to go into executive session. No other public business? As we go into executive session, legal counsel demands that I read the following, 'Public Defense Services Commission will now meet in executive session for the purpose of conducting a performance review of OPDS Executive Director. The executive session is being held pursuant to held ORS 192.660(2)(i) which permits the Commission to meet in executive session to conduct performance reviews of the chief executive officer of any public body. Representatives of the news media and designated staff shall be allowed to attend the executive session. All other members of the audience are asked to leave the room. Representatives of the news media are specifically directed not to report on any of the deliberations during the executive session except to state the general subject of the session as previously announced. No decisions may be made in executive session. At the end of the executive session we will return to open session and welcome the audience back in the room.'

Back from Executive Session

0:06 J. Potter We are done with the executive session and we are back in public session.

0:15 P. Levy Shall I find people?

0:18 C. Gregory I will witness it.

0:21 P. Levy Is Nancy around here?

0:22 J. Potter Is there a motion to adjourn the public session? **MOTION:** Commissioner Lazenby moved to adjourn the public session; Judge Welch seconded the motion; hearing no objection the motion carried: **VOTE 5-0**

Meeting Adjourned

Attachment 2a

YOUTH & YOU

Oregon Youth Development Council

2003 – 2014 Disproportionate Minority Contact Relative Rate Index (RRI)

Quick Facts

Relative Rate Index (RRI) method involves comparing the relative volume (rate) of activity at major decision points of the juvenile justice system for minority youth with the volume of that activity for white (majority) youth. RRI provides a single index number that indicates the extent to which the volume of that form of contact or activity differs for minority and white youth. An index of one would represent statistical equity. An index of 2.00 reflects a volume of contact for minority youth double the volume for white youth, while an index of 0.50 shows a volume of contact for minority youth half the volume of contact experienced by white youth.

Referrals

Race/Ethnicity	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
African American / Black RRI	2.38	2.45	2.91	2.56	2.48	2.30	2.36	2.39	2.54	2.93	2.77	2.58
Numbers of Youth	1,334	1,319	1,383	1,443	1,435	1,396	1,290	1,323	2,257	2,287	1,805	1,577
Hispanic/ Latino RRI	1.25	1.20	1.71	1.09	1.27	1.23	1.23	1.20	0.97	1.02	0.99	0.98
Numbers of Youth	3,325	3,362	3,584	3,713	4,068	3,947	3,849	3,752	5,106	4,808	3,925	3,758
Native American RRI	1.38	1.28	1.59	1.35	1.38	1.43	1.45	1.59	1.51	1.79	1.72	1.87
Numbers of Youth	529	508	443	510	472	472	399	441	750	761	592	585

Secure Detention

Race/Ethnicity	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
African American / Black RRI	1.08	1.15	1.24	1.43	1.34	1.27	1.22	1.09	0.95	0.92	1.15	1.21
Numbers of Youth	656	744	872	989	878	794	751	646	541	556	566	572
Hispanic/ Latino RRI	1.00	1.09	n/a	1.19	1.25	1.23	1.24	1.23	1.25	1.26	1.23	1.17
Numbers of Youth	1,338	1,484	1,518	1,758	2,110	2,006	1,996	1,835	1,604	1,598	1,313	1,315
Native American RRI	1.80	1.85	2.41	2.45	1.97	1.88	2.01	2.23	1.74	1.69	1.55	1.56
Numbers of Youth	452	417	495	531	426	387	384	411	328	340	250	274

Secure Confinement – OYA Facilities

Race/Ethnicity	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
African American / Black RRI	0.21	1.71	1.48	2.04	2.62	2.59	2.78	2.29	2.12	1.62	1.94	2.44
Numbers of Youth	15	27	26	31	45	40	52	34	51	39	40	59
Hispanic/ Latino RRI	1.42	n/a	1.16	1.19	1.39	1.51	1.93	1.55	1.31	1.39	1.26	1.72
Numbers of Youth	48	52	63	73	72	97	177	81	115	122	79	115
Native American RRI	n/a	n/a	n/a	1.42	n/a	1.56	.99	2.00	1.96	1.13	1.75	2.07
Numbers of Youth	22	19	*	25	15	14	13	16	33	19	21	33

Cases Transferred to Adult Court

Race/Ethnicity	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
African American / Black RRI	3.66	4.29	4.11	3.57	2.87	4.07	3.21	5.77	4.32	5.46	3.80	6.04
Numbers of Youth	52	61	54	65	66	66	50	65	30	42	34	35
Hispanic/ Latino RRI	1.39	1.72	2.17	1.98	n/a	2.27	1.78	1.65	1.95	1.91	1.24	2.20
Numbers of Youth	50	66	78	82	79	117	95	71	46	45	29	30
Native American RRI	1.84	n/a	1.86	n/a	n/a	n/a	n/a	1.95	n/a	**	**	**
Numbers of Youth	19	12	14	13	7	*	*	11	*	3	5	5

Data sources and notes:

2003 – 2013 youth population ages 10 to 17 estimates from Easy Access to Juvenile Populations, OJJDP
2003 - 2014 Juvenile Justice Information System (JJIS) Reports

n/a means that data is either not statistically significant or insufficient number of cases for analysis
red font – means that results are statistically significant

* means that the numbers of cases are too small for public distribution

** the numerator in the calculation was 5 or less or the denominator was 50 or less. Consequently, the resulting calculation comprises insufficient numbers to provide reliable results.

For more information contact Anya Sekino at anya.sekino@state.or.us

Attachment 2b



**Oregon Juvenile Justice System Needs Analysis:
Disproportionate Minority Contact Identification Report**

Oregon Summary

November, 2014

William Feyerherm, PhD
Portland State University

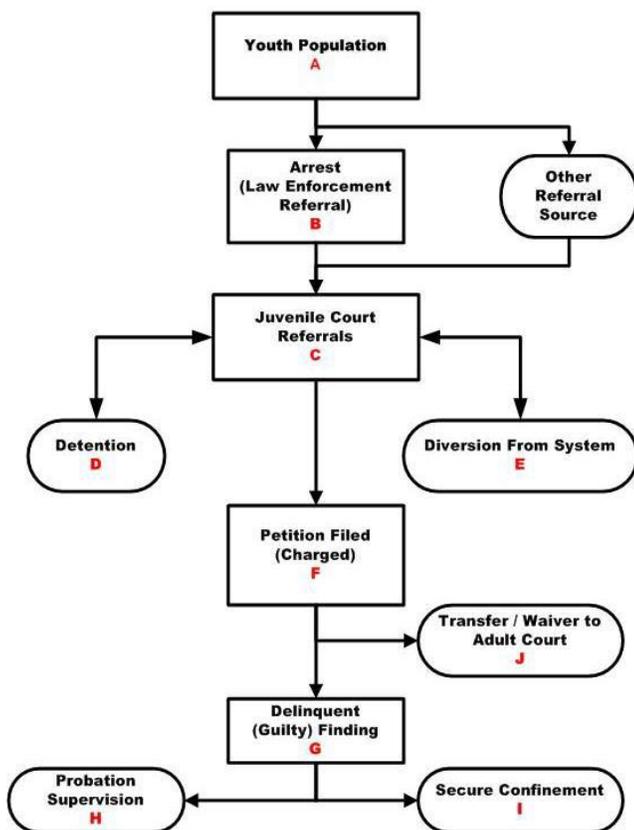
Overview

This report is intended to support the work of the Youth Development Council (YDC) and the Governor’s Summit in addressing the OJJDP mandate to address Disproportionate Minority Contact. The report is designed to correspond with advice from OJJDP related to addressing DMC as one of the four core areas of compliance with the requirements of the JJDP. The report is also intended to provide an explanation of the identification process and relevant data so that individuals and organizations within Oregon can identify the DMC related issues and needs within specific communities.

The Relative Rate Index

The 2002 Juvenile Justice and Delinquency Prevention Act requires states receiving JJDP funds to “Address juvenile delinquency prevention efforts and system improvement efforts designed to reduce, without establishing or requiring numerical standards or quotas, the disproportionate number of juvenile members of minority groups who come into contact with the juvenile justice system” (DMC for short)

DMC is measured using the ‘Relative Rate Index’ or RRI. It has three components, a system map describing the major contact points or stages at which a juvenile may have additional contact or move further into the justice system, a method for computing rates of activity (by race and ethnicity) at each of the stages, and a method (the index) to compare the rates of contact for different demographic groups at each stage



Oregon: Base for Calculation of Rates at each Stage of the Juvenile Justice System
• Juveniles arrested—Not used due to unavailability of information
• Referrals to juvenile court—rate per 1000 population
• Juveniles diverted before adjudication—rate per 100 referrals
• Juveniles detained—rate per 100 referrals
• Juveniles petitioned—rate per 100 referrals
• Juveniles found to be delinquent—rate per 100 youth petitioned (charged)
• Juveniles placed on probation—rate per 100 youth found delinquent
• Juveniles placed in correctional facilities—rate per 100 youth found delinquent
• Juveniles transferred to adult court—rate per 100 youth petitioned

The calculation of the RRI is fairly straightforward:

Relative Rate Index (RRI) = Minority Rate / White Rate
--

The index ranges (theoretically) from zero to infinity. An index of one would represent statistical equality. An index of 2.00 reflects a volume of contact for minority youth double the volume for white youth, while an index of .50 shows a volume of contact for minority youth half the volume of contact experienced by white youth.

The attached sheets have three sections: the top gives the rates of activity for each group, the middle section gives the RRI values, with the statistically significant values highlighted in red, and the bottom provides the calculated change needed in the number of contacts for minority youth in order to reach statistical parity with the rate of contact experienced by white youth.

A few notes of explanation related to data sources are appropriate. Most of the federally identified decision points in the Juvenile Justice System are contained in Juvenile Justice Information System, JJIS, which is operated by the Oregon Youth Authority through voluntary collaboration of all thirty six Oregon counties. The only piece of information which is not contained within JJIS relates to law enforcement activity. This activity is reported by law enforcement agencies to the Uniform at Crime Reporting program operated by the FBI. That program however does not uniformly collect or publicly report information about Hispanic individuals. As a result, the information available regarding law enforcement activity does not fit with the remainder of information available in the State about DMC issues. Moreover, information on juvenile arrests by racial category is only sporadically available, whereas the JJIS information is collected and reported on an annual basis.

The data which is collected within Oregon related to the DMC decision points from referral onward is also entered into a federally sponsored DMC website. That website is used to collect information from all participating States, with a requirement that each State must enter the data representing at least its statewide information and information from a minimum of three jurisdictions (usually counties). That data (for all States) is then collected and aggregated to examine the range of experiences that minority youth have in the various juvenile justice systems across the country. For the purposes of this report, that information has been used to provide a comparative basis for assessing whether the disparities experienced in some Oregon counties by minority youth are more or less severe than those experienced elsewhere in the country. In the comparative charts there are markers that represent the highest group of States (top 75th percentile), the median (50th percentile) and the lowest (25th percentile) sets of States. There is a fourth marker which shows Oregon in relation to these other cutoff points. For purposes of identifying issues in comparison to other States across the country, the 25th and 75th percentile markers were used as noted below.

Interpretations

In order to identify those areas of highest priority, we have used the OJJDP Endorsed Criteria for interpreting the RRI matrix

1. Statistical Significance
2. Magnitude of the RRI values
3. Volume – the number of youth involved and / or the numeric extent of disproportionate contact.
4. Comparison with other States / communities

In order to use these criteria in examining statewide data in Oregon, we used the following cutoff points:

1. For Statistical Significance the Index must be significant at the $P < .01$ level
2. For Magnitude, the Index value must be over 1.50 in magnitude or under .667
3. For Volume, the number of cases to be changed in order to reach statistical parity must be at least 150
4. For Comparison, the index value must be above the 75th percentile , or for diversion and probation decisions, below the 25th percentile when compared to all other Communities providing DMC reporting.

Decision points meeting the Significance and Magnitude criteria are identified in the following matrix:

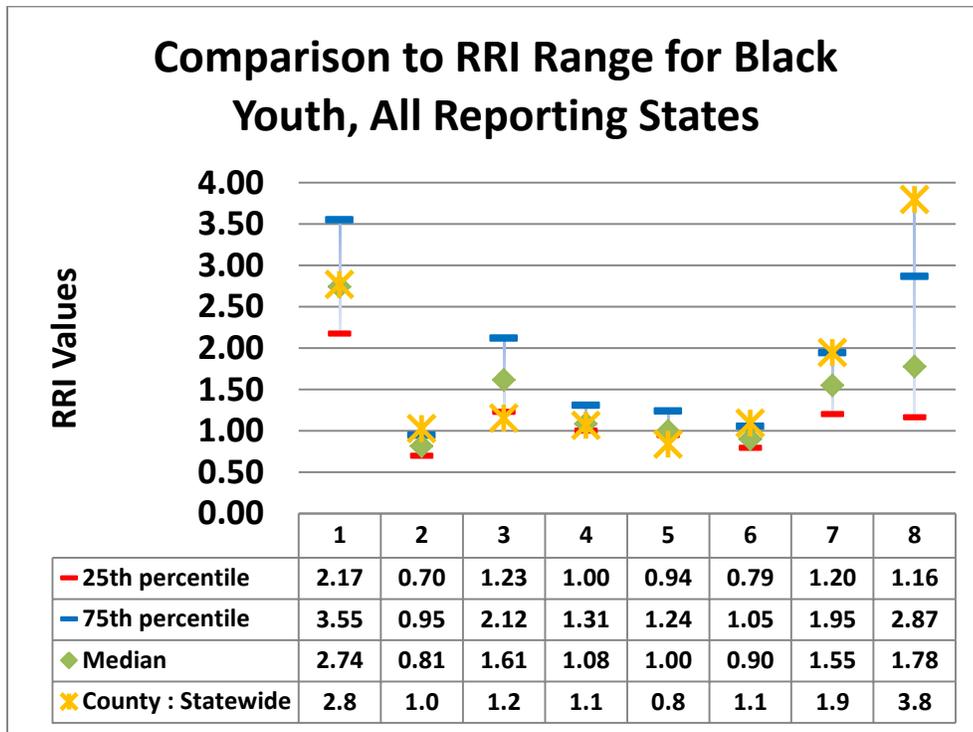
Statistically Significant RRI Values which meet Magnitude Criteria (above 1.50 or below .67)

Stage of System	Black or African-American	Hispanic or Latino	Asian	American Indian or Alaska Native	All Minorities
Refer to Juvenile Court	2.77		0.33	1.72	
Cases Diverted					
Cases Involving Secure Detention				1.55	
Cases Petitioned					
Cases Resulting in Delinquent Findings					
Cases resulting in Probation Placement					
Cases Resulting in Confinement in Secure Juvenile Correctional Facilities	1.94			1.75	
Cases Transferred to Adult Court	3.80				1.63

Assuming All Else Remained Constant, What Changes in Volume for Minority Youth Would Achieve Statistical Parity with White Youth? (Areas with more than 150 cases needed to reach parity)

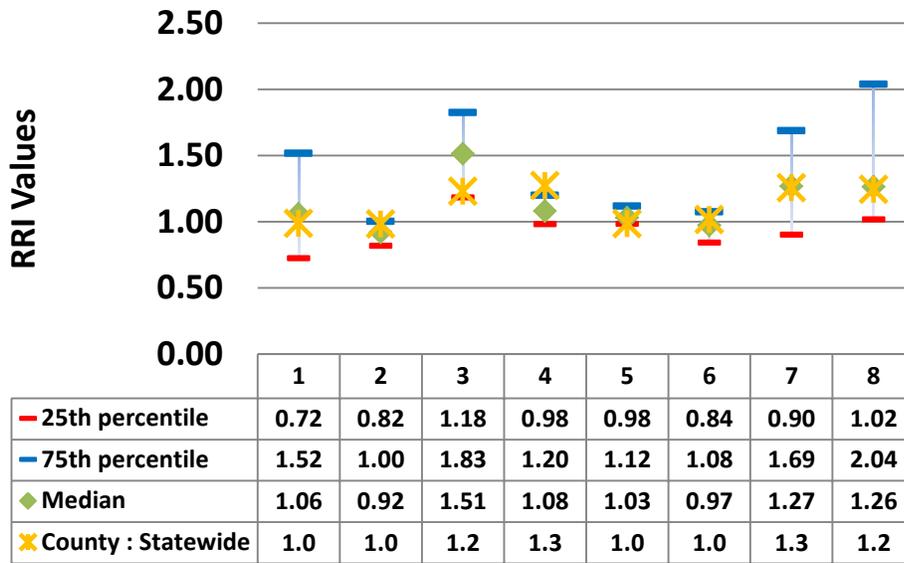
Stage of System	Black or African-American	Hispanic or Latino	Asian	American Indian or Alaska Native	All Minorities
Refer to Juvenile Court	-1,153			-248	-2,294
Cases Diverted					165
Cases Involving Secure Detention		-245			-285
Cases Petitioned		-256			-378
Cases Resulting in Delinquent Findings					
Cases resulting in Probation Placement					
Cases Resulting in Confinement in Secure Juvenile Correctional Facilities					
Cases Transferred to Adult Court					

Comparison:



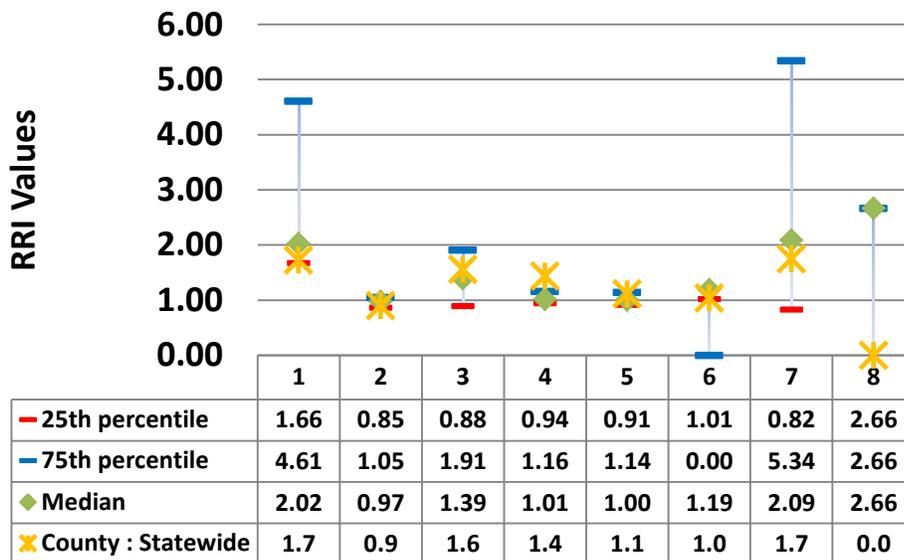
While Oregon has a statistically significant RRI value related to referral of African American youth, it is firmly in the midstream of other States with respect to that area. On the other hand, Oregon is a clear outlier with respect to disparities in the transfer of African American youth to adult courts.

Comparison to RRI Range for Hispanic Youth, All Reporting States

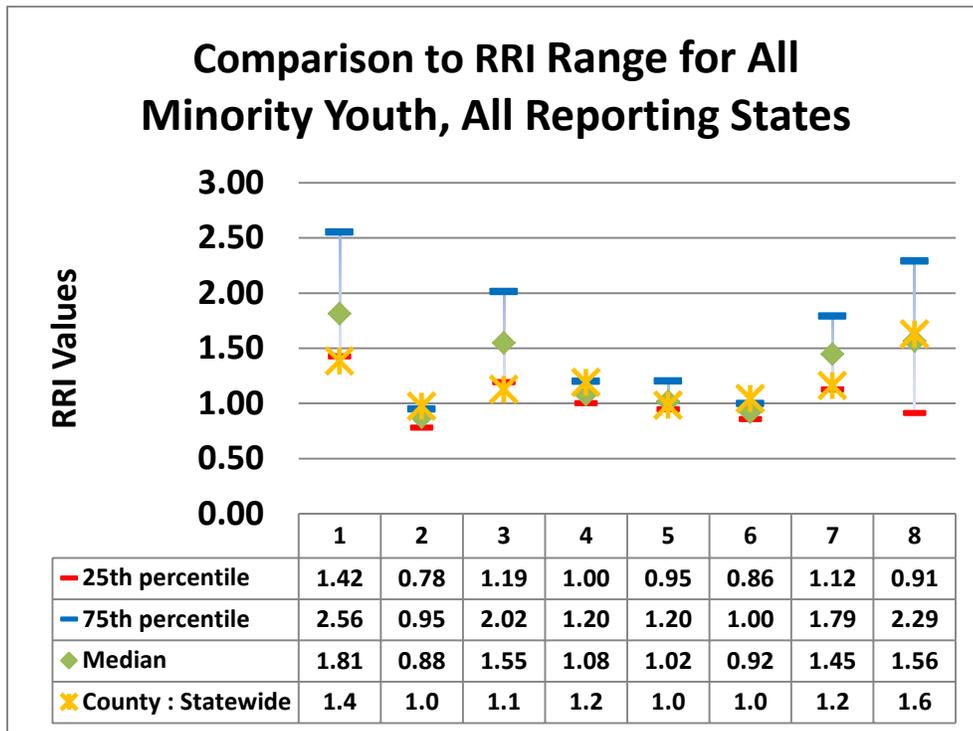


The RRI values for Oregon with respect to Hispanic youth are above the 75th percentile in terms of the filing of delinquency petitions (decision point # 4). Other than that area, the other values are near the median in all other decision points.

Comparison to RRI Range for Native American Youth, All Reporting States



On a Statewide basis, the experience of Native American youth in Oregon are fairly comparable to the experiences of these youth in other States, with the exception that disparities in referral are smaller in Oregon than most other States.



With respect to the aggregate of all minority youth, the RRI values for Oregon close to or better than the median values, with the exception of the decision to issue a delinquency petition, in which 75% of States have a ‘better’ score than Oregon.

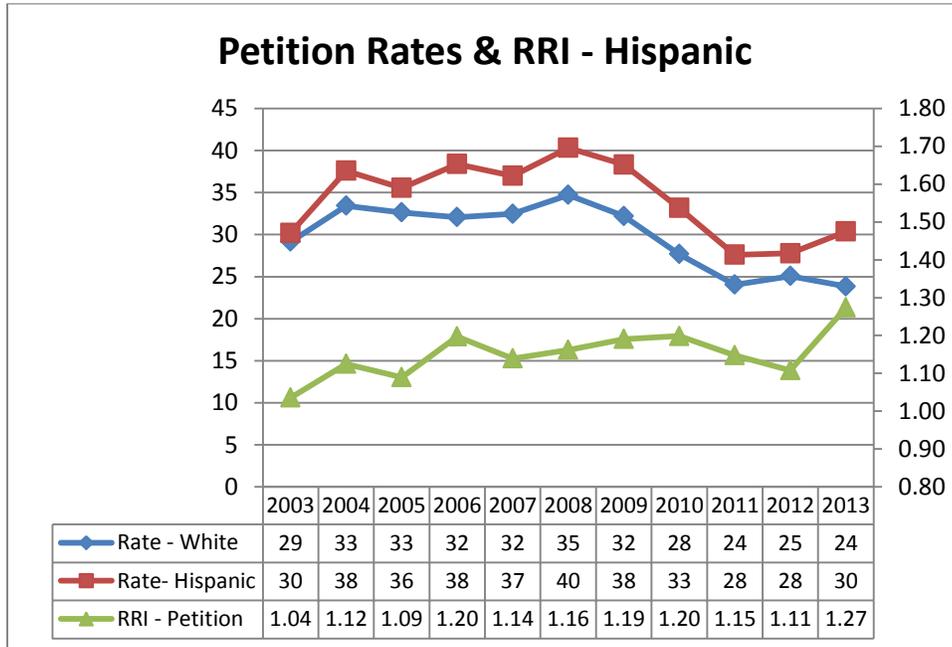
Summary

In summary of all four criteria (significance, magnitude, volume and comparison), Oregon RRI values for the filing of delinquency petitions, particularly for Hispanic youth, Native youth, and for all minority youth combined, are the areas that rise to highest priority levels using those OJJDP criteria.

Trends

For each of those priority areas, we examined the patterns of rates and RRI values over the past several years, reflected in the following charts. In each chart, the rate of activity for both white and minority group youth is charted against the scale on the left hand vertical axis. The RRI value is charted on the scale on the right hand vertical axis. This allows us to see what types of changes in the underlying rates of contact lead to the changes in the RRI value over time.

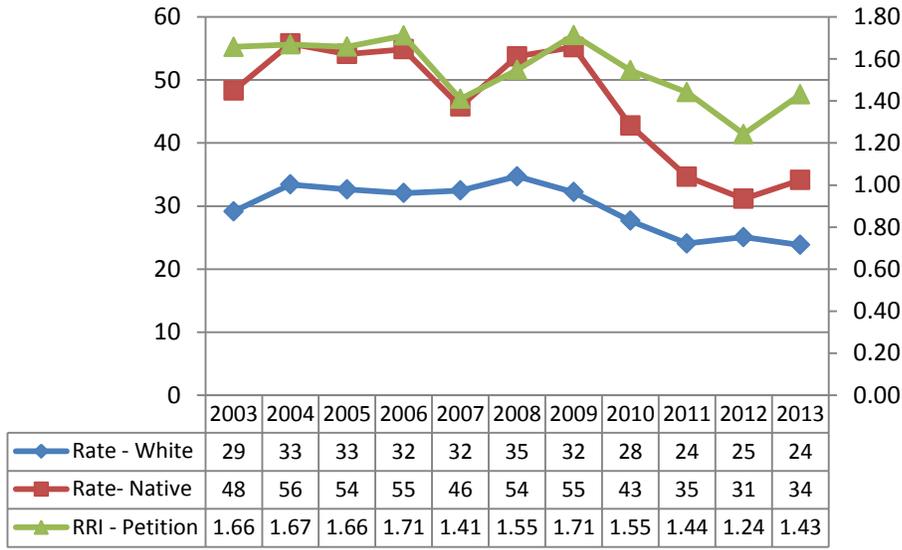
Referral rates for African American youth were lower in 2013 than in previous years, but the referral rates for white youth have also been declining since 2007, so the relative disparity in referrals in 2013, while lower than the 5.45 registered in 2012, remains at a high level, particularly when compared with other counties across the US.



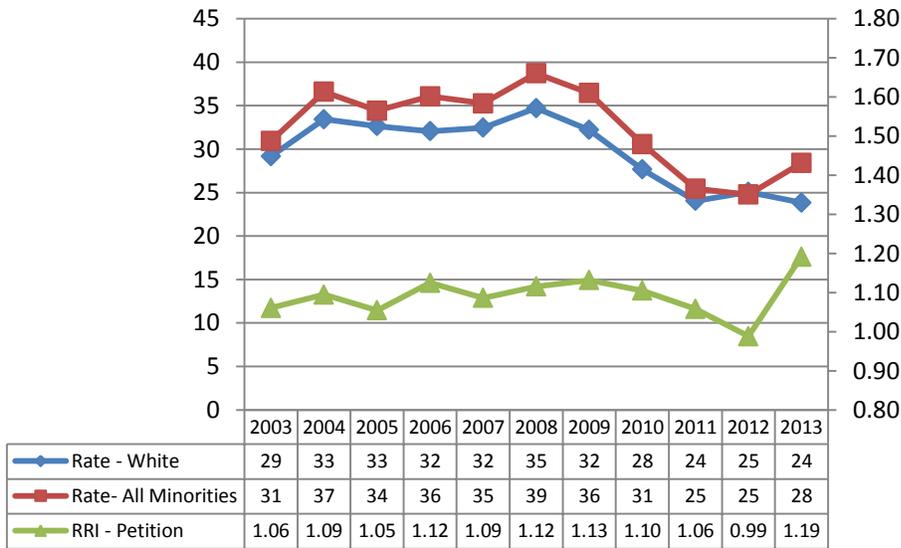
The rate at which petitions of delinquency are issued has been dropping for white youth for several years (since 2008). For the period from 2008 through 2011 that same pattern applied to petitions filed against Hispanic youth. In 2013 the rate of petitions filed for white youth decreased slightly (blue line) and the rate for Hispanic youth (red line) increased. The divergence of those two trend lines created an increase in the statistical measure of disparity, to its highest level since 2003 and to a level outside the usual range for US juvenile justice systems.

A similar description fits the pattern with respect to filing of delinquency petitions for Native youth. (Chart on following page) After three years of decreasing rates of petition filings (2010 – 2012) the rate of filings for Native youth went up in 2013, while the rate for white youth continued a slow decrease.

Petition Rates & RRI - Native American



Petition Rates & RRI - All Minorities



That same uptick in disparities occurs when we look at the aggregate of all minority youth. Of course we can only identify this as an area worth exploration; we do not have definitive information which explains this apparent divergence in trends.

Attachment 2c



Racial and Ethnic Disparities within the Juvenile Justice System

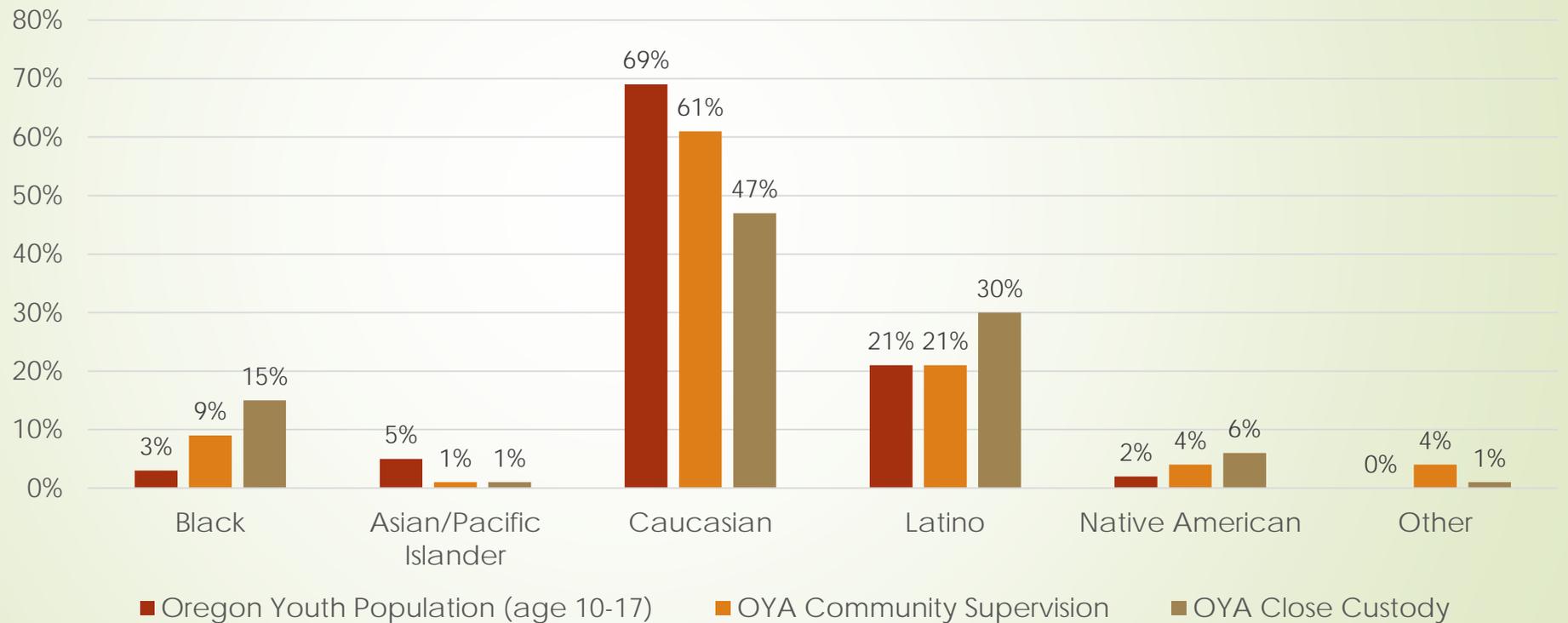
Public Defense Services Commission

April 21, 2016



*Sources: Oregon Youth Authority; Oregon Department of Education; Oregon Youth Development
Division and Youth, Rights and Justice*

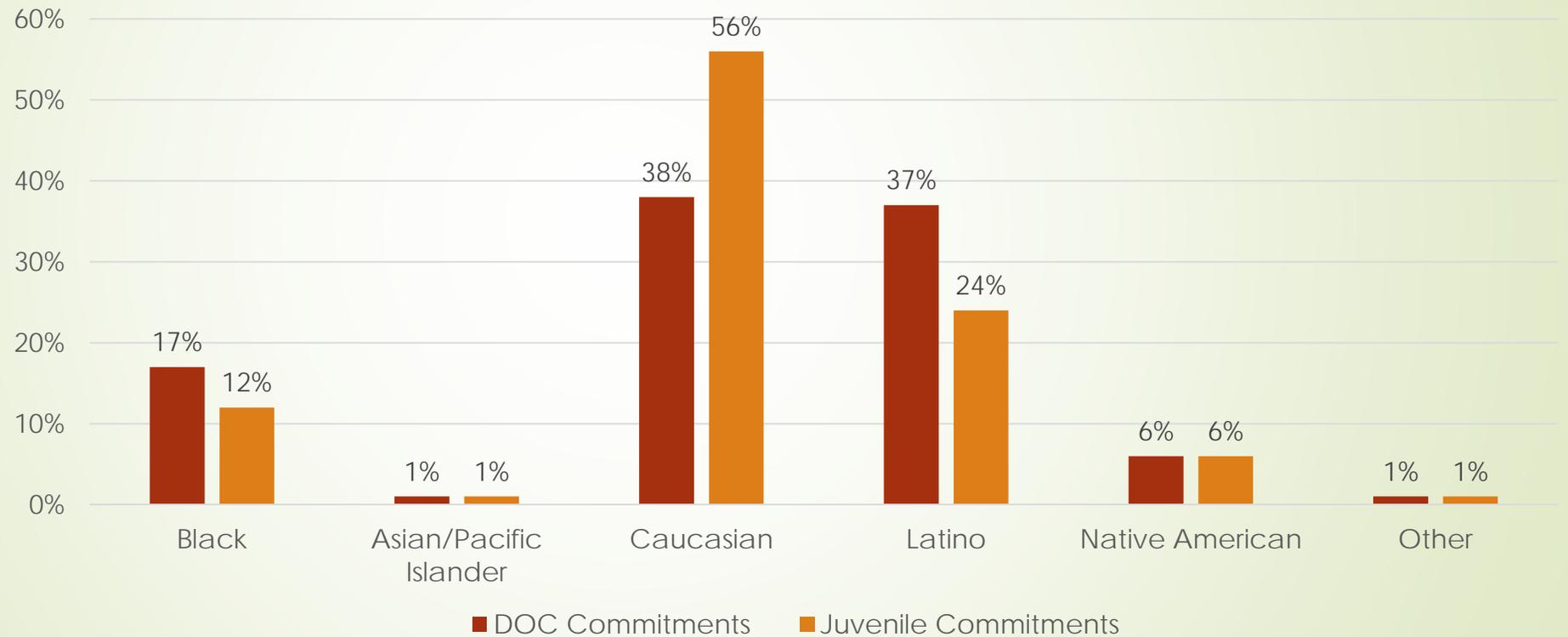
Oregon Youth Population and the Oregon Youth Authority (OYA)



OYA Quick Facts January 2016. Available http://www.oregon.gov/oia/docs/QuickFacts/QuickFacts_Jan2016.pdf

Statistics from a 2016 Juvenile Justice Information System Report

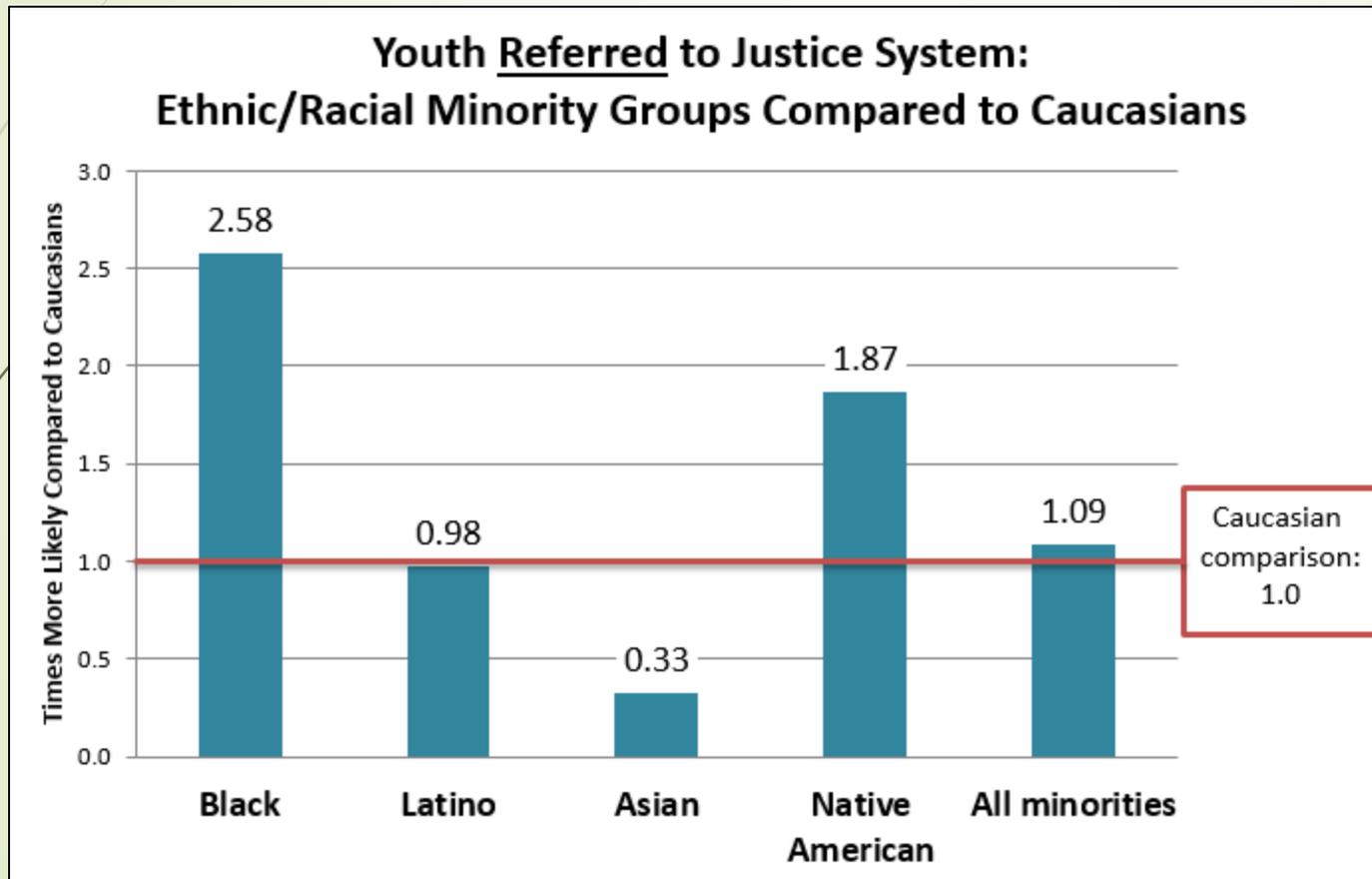
Population Make Up in OYA Closed Custody



Racial and Ethnic Disparities
within the Juvenile
Justice System:
Critical Decision
Points



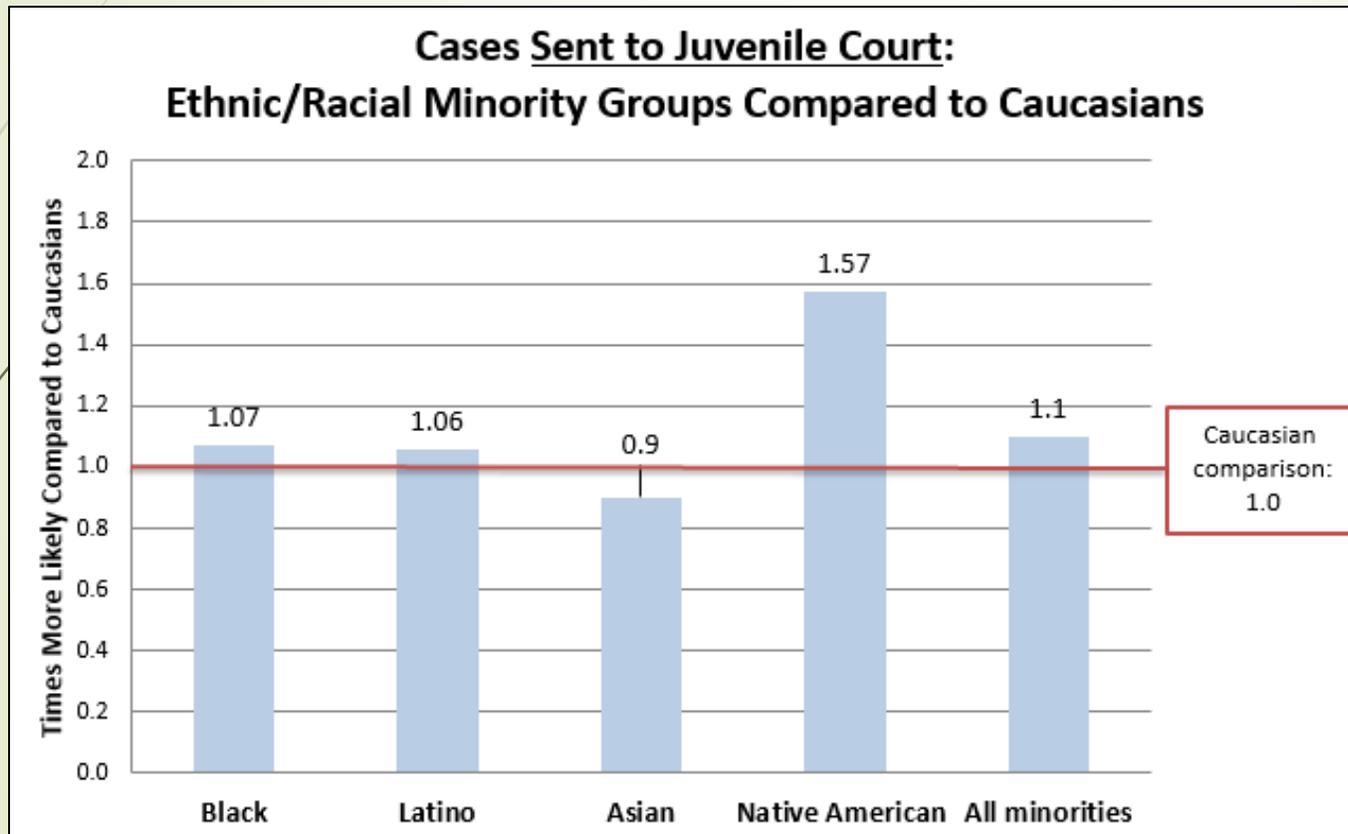
Decision Points Through the Juvenile Justice System: Referral to the System



This graph shows the racial and ethnic makeup of youth **referred** to the juvenile justice system (JJS).

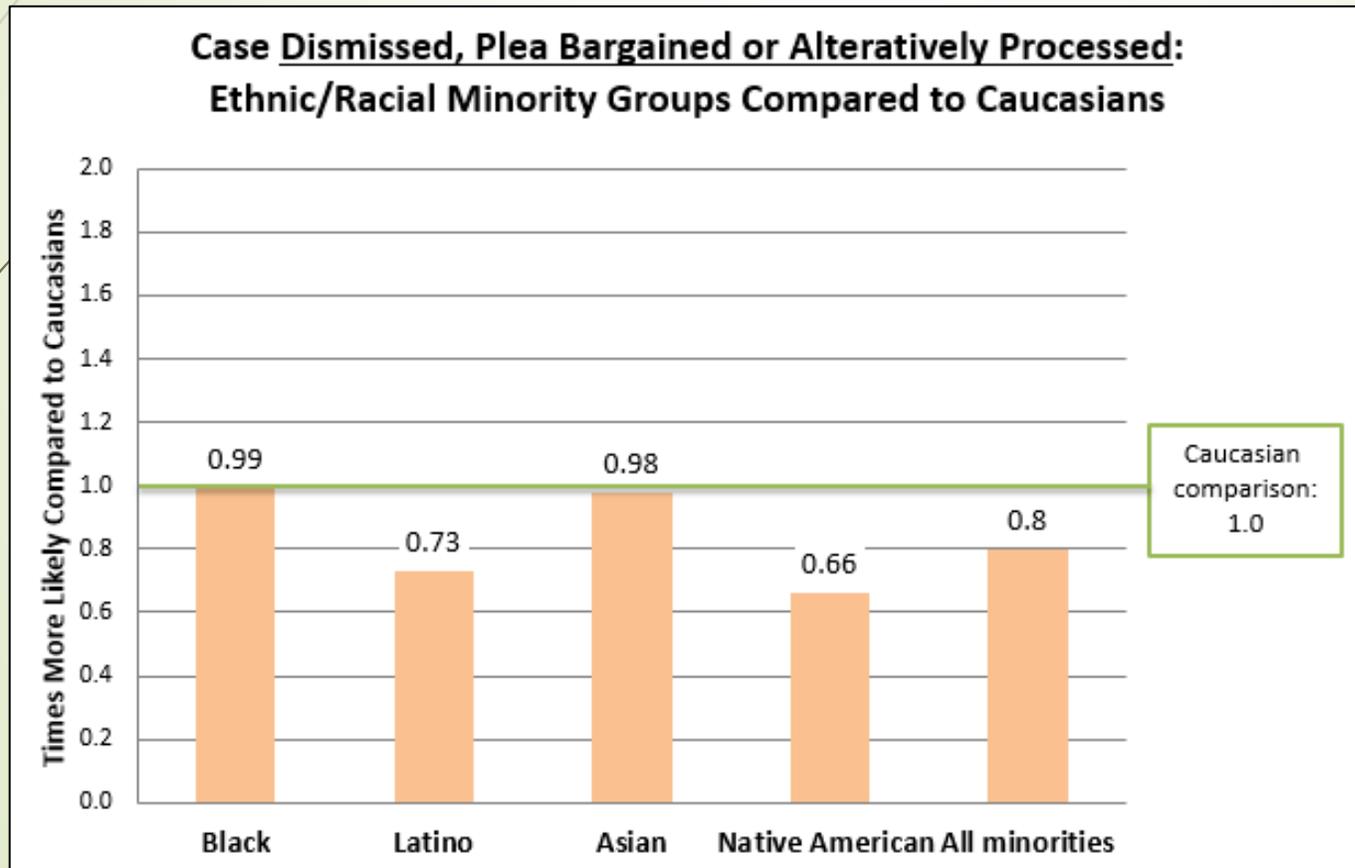
When we look at Black youth, they are 2.58 times more likely than white youth to be referred to the JJS. Native American youth are 1.87 times more likely than white youth to be referred.

Decision Points Through the Juvenile Justice System: Case Sent to Juvenile Court



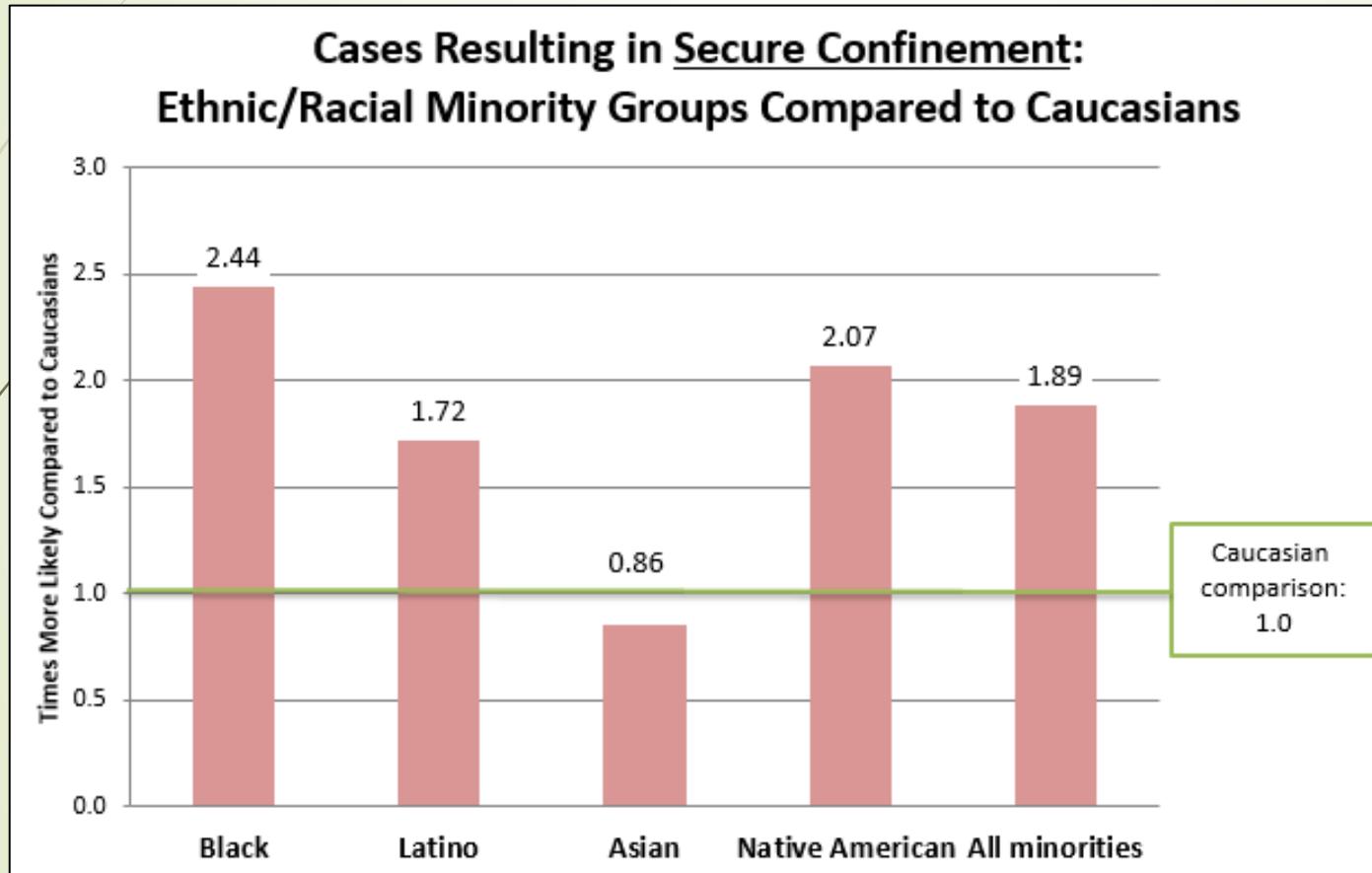
This graph shows the racial and ethnic makeup of youth whose case was **sent to Juvenile Court**. Native American youth are disproportionately high at this decision point.

Decision Points Through the Juvenile Justice System: Case Dismissed, Plea Bargained or Alternatively Processed



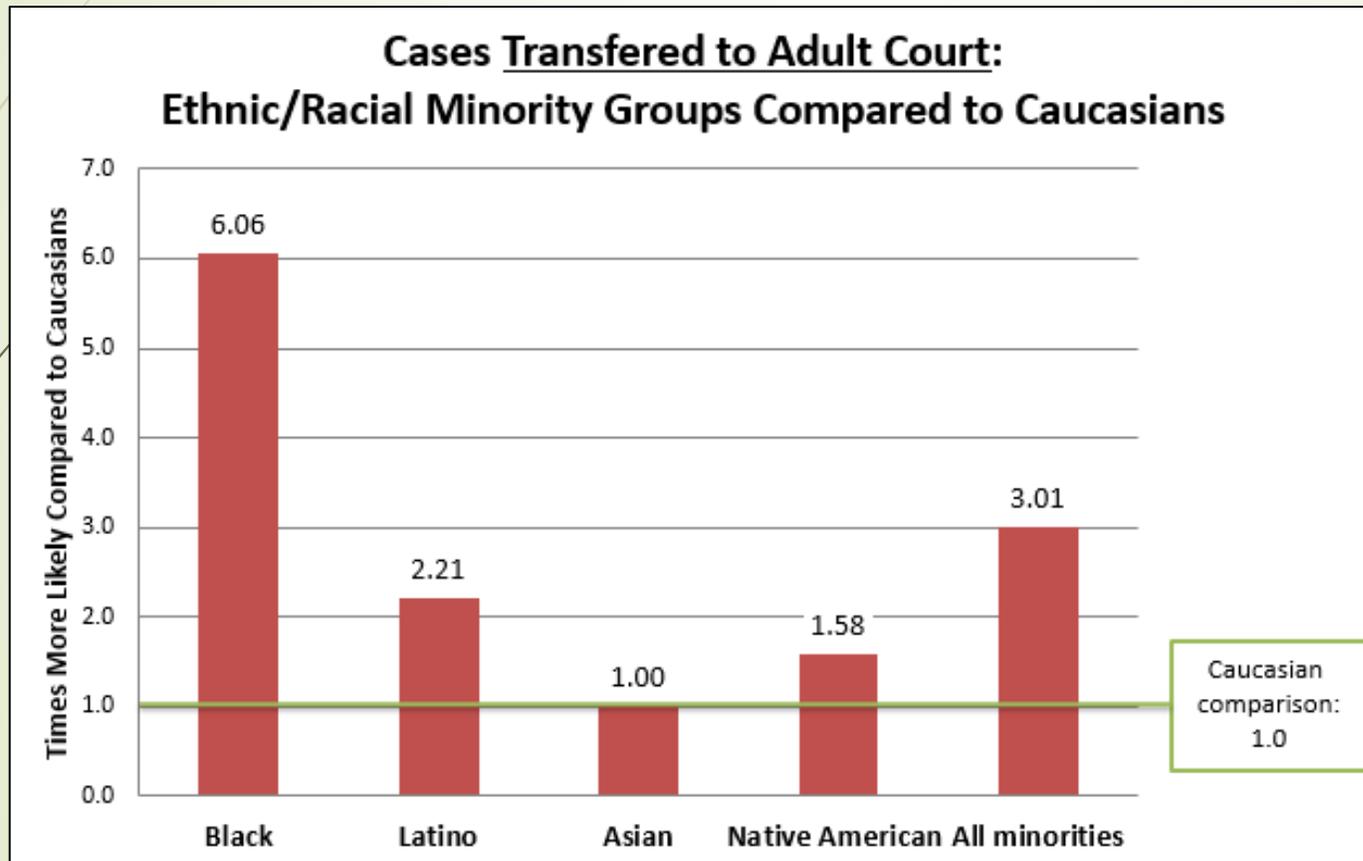
This graph shows the racial and ethnic makeup of youth whose case was **dismissed, plea bargained or alternatively processed**. Latino and Native American groups are disproportionately low at this decision point. Since this is a desirable outcome, it would be equally as important for this decision point to be close to the 1.0 comparison line compared to other decisions points. So Latino and Native American youth are the concern here.

Decision Points Through the Juvenile Justice System: Cases Resulting in Secure Confinement (OYA)



This graph shows the racial and ethnic makeup of youth who were **sent to secure confinement (OYA)**. Except for Asian youth, all ethnic minority groups are much more likely to be placed in secure confinement compared to Caucasian youth.

Decision Points Through the Juvenile Justice System: Case Transferred to Adult Court



This graph shows the racial and ethnic makeup of youth whose case was **transferred to Adult Court**. All ethnic groups except Asians are disproportionately high at this decision point, but Black youth would be the major focus of concern here.



Possible Contributors to Youth Entering the Juvenile Justice System

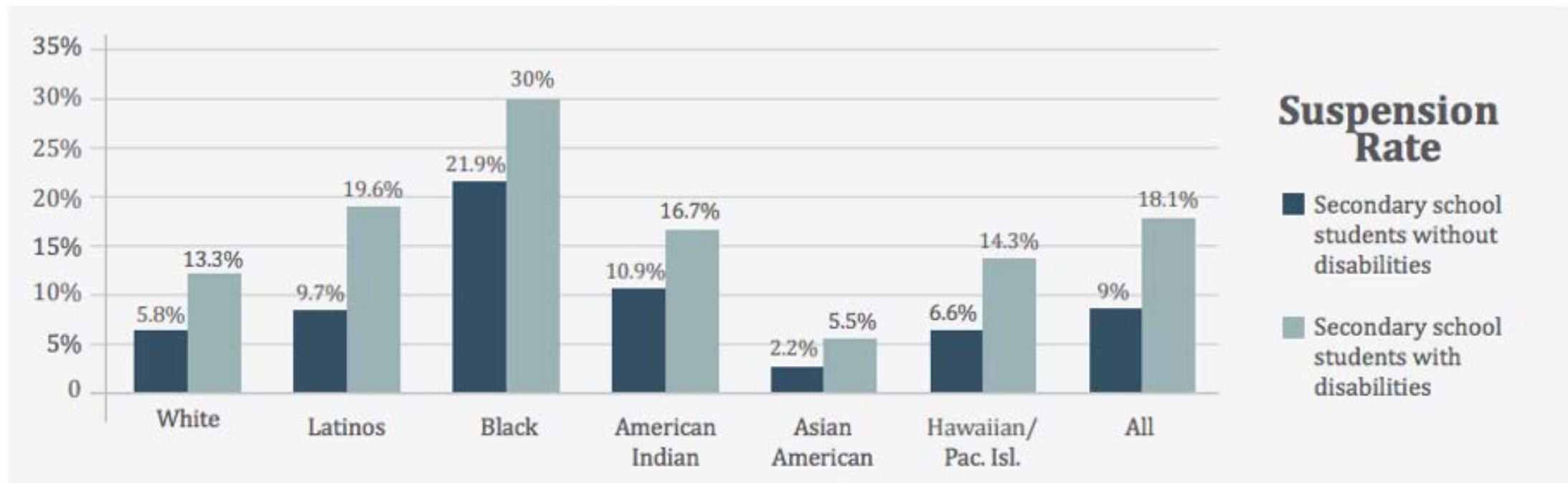
- ▶ Oregon Health Authority: Mental health and substance use treatment
 - ▶ Department of Human Services: Foster care
 - ▶ **Department of Education: Suspensions and Expulsions**
- 

Ethnic and Racial Group Contact in Education



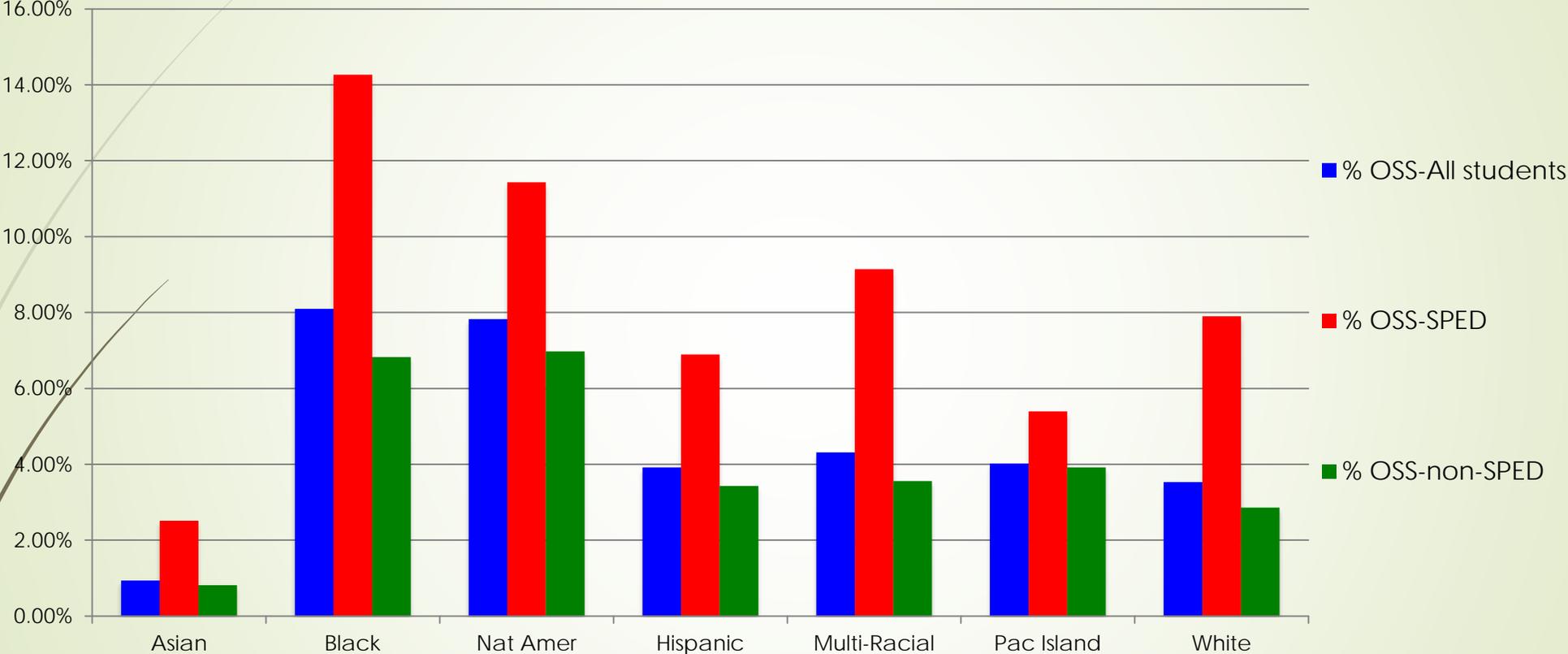
National View: Race and Disability

Figure 7. Comparison of Risk for Suspension for Secondary Students by Disability Status, and Race/Ethnicity, 2011-12

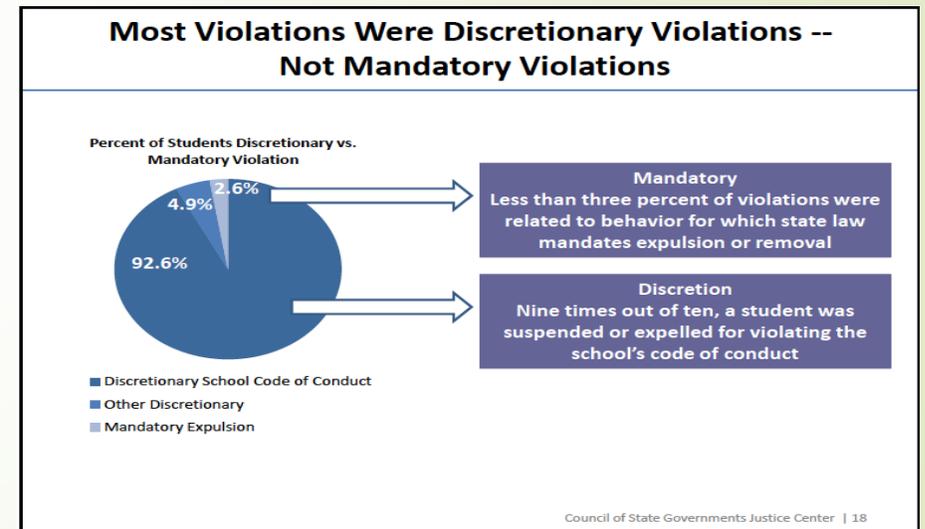
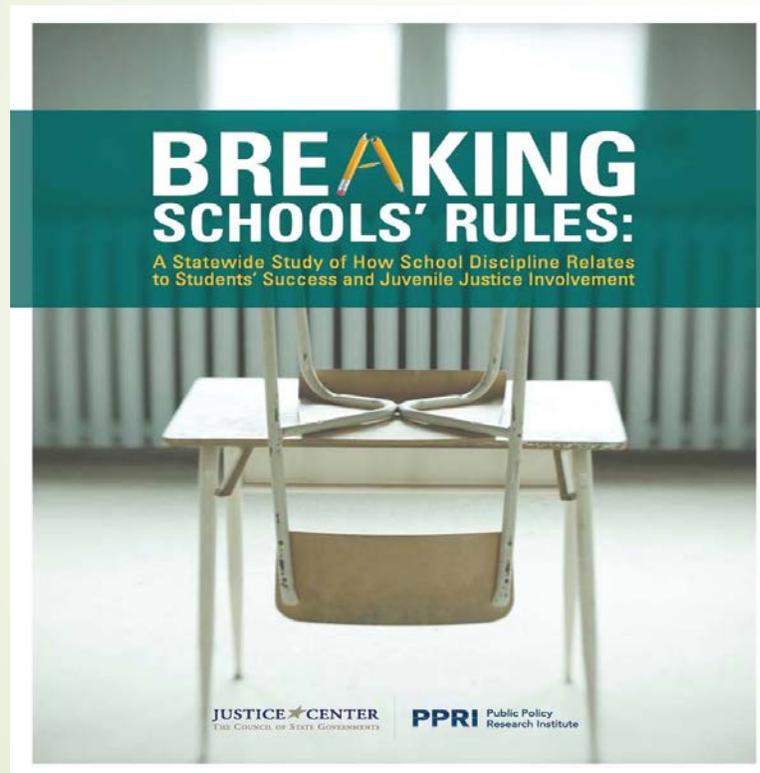


Source of chart: Atlantic Monthly magazine, 2015

OREGON SY 2014/15-OSS



How is suspension/expulsion being used?



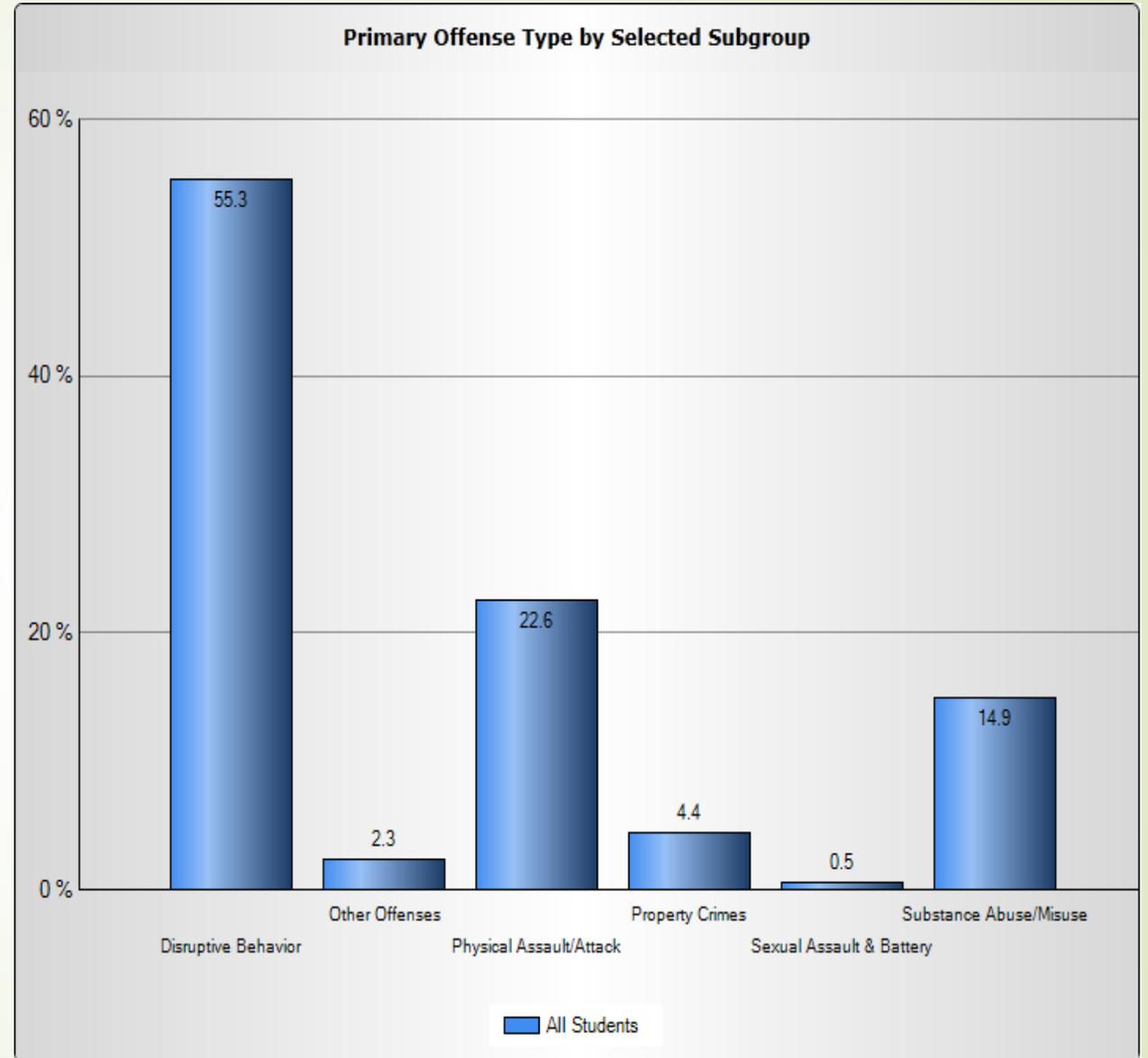


Categories of Suspension/Expulsion reported by schools to ODE:

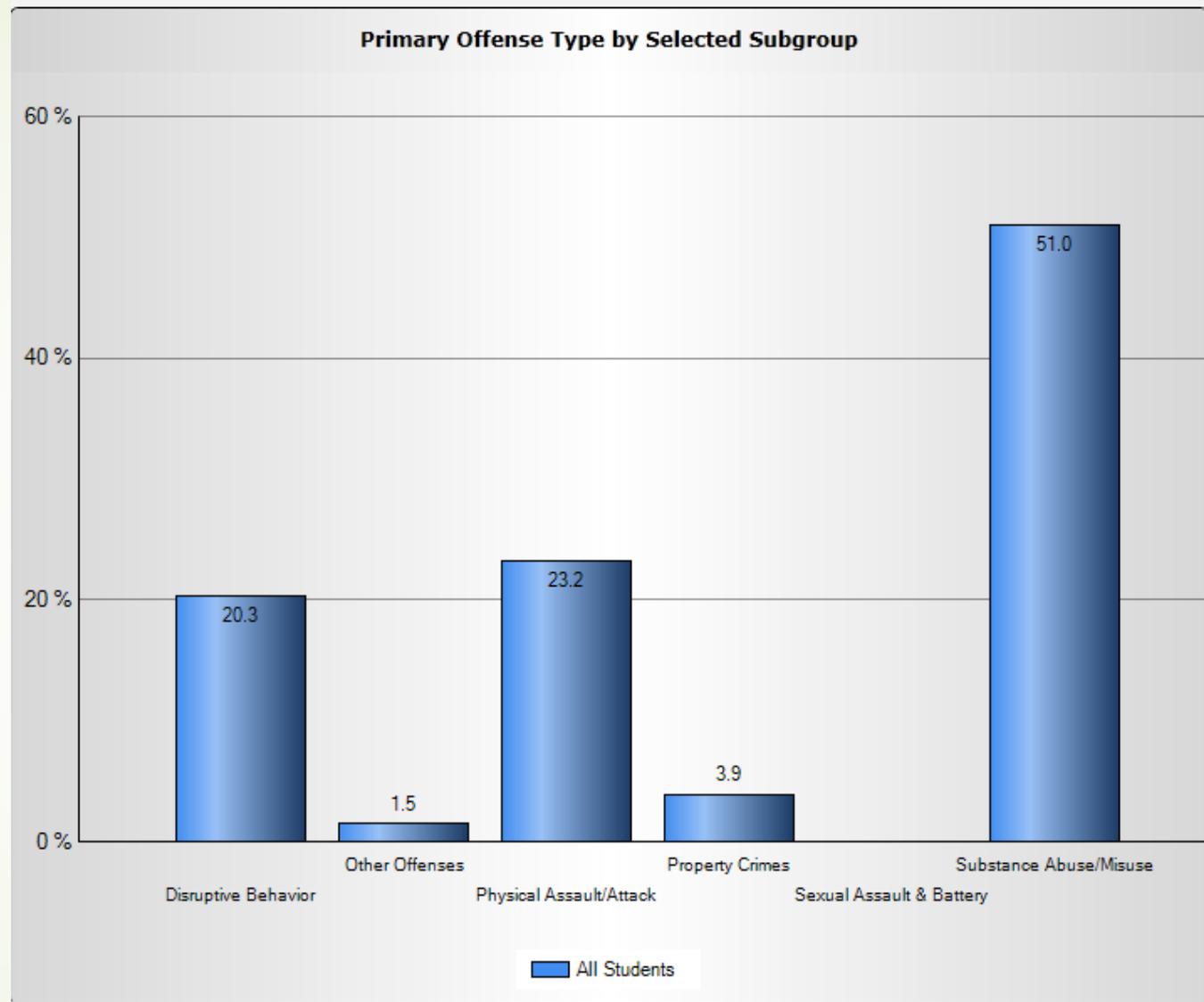
Offense types include:

- **Disruptive Behavior**
- Physical Assault
- Property Crimes
- Substance Abuse
- Sexual Assault and Battery
- Homicide

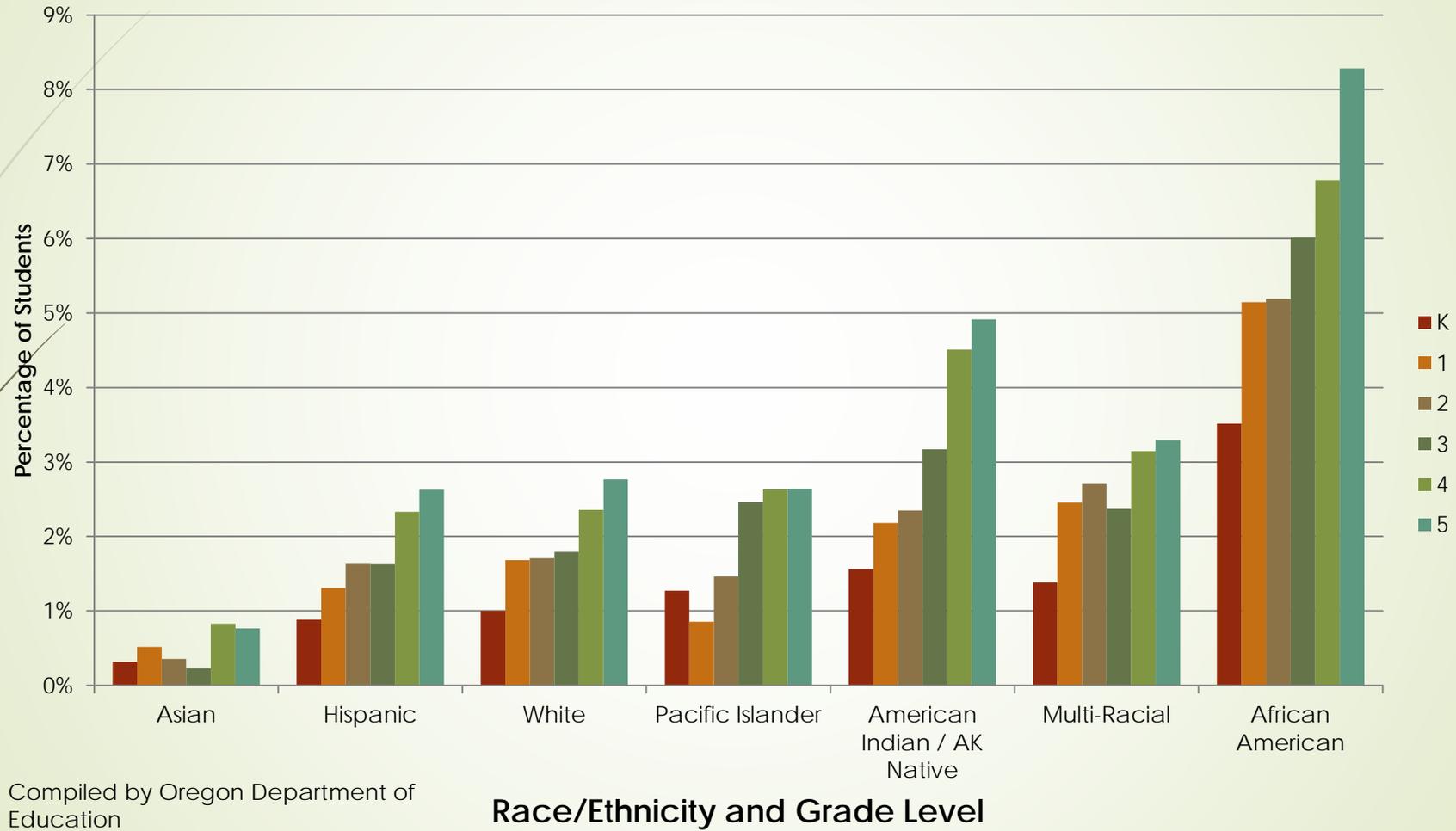
Oregon-Out of School Suspensions SY 14/15



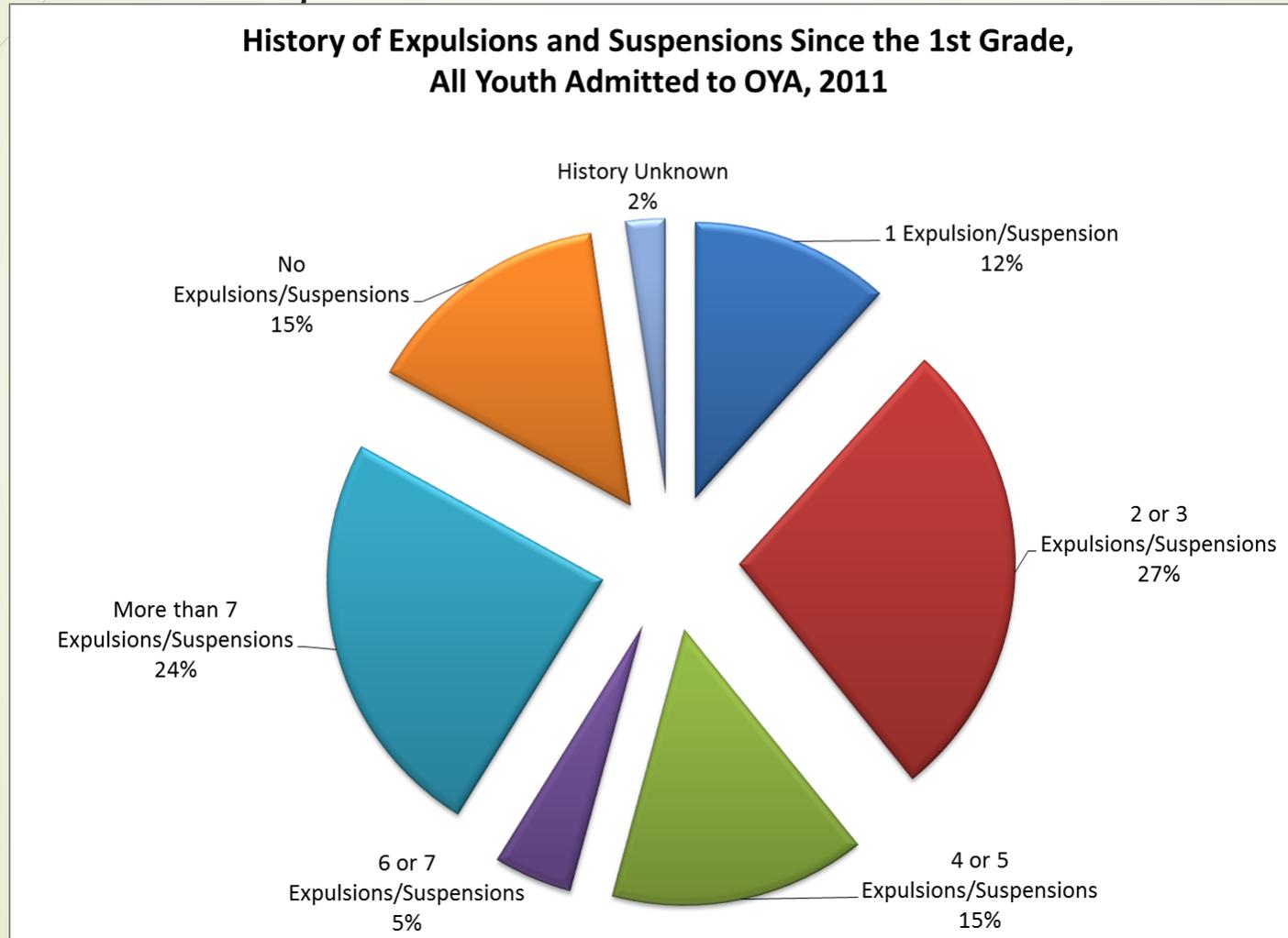
Oregon- Expulsions SY 14/15



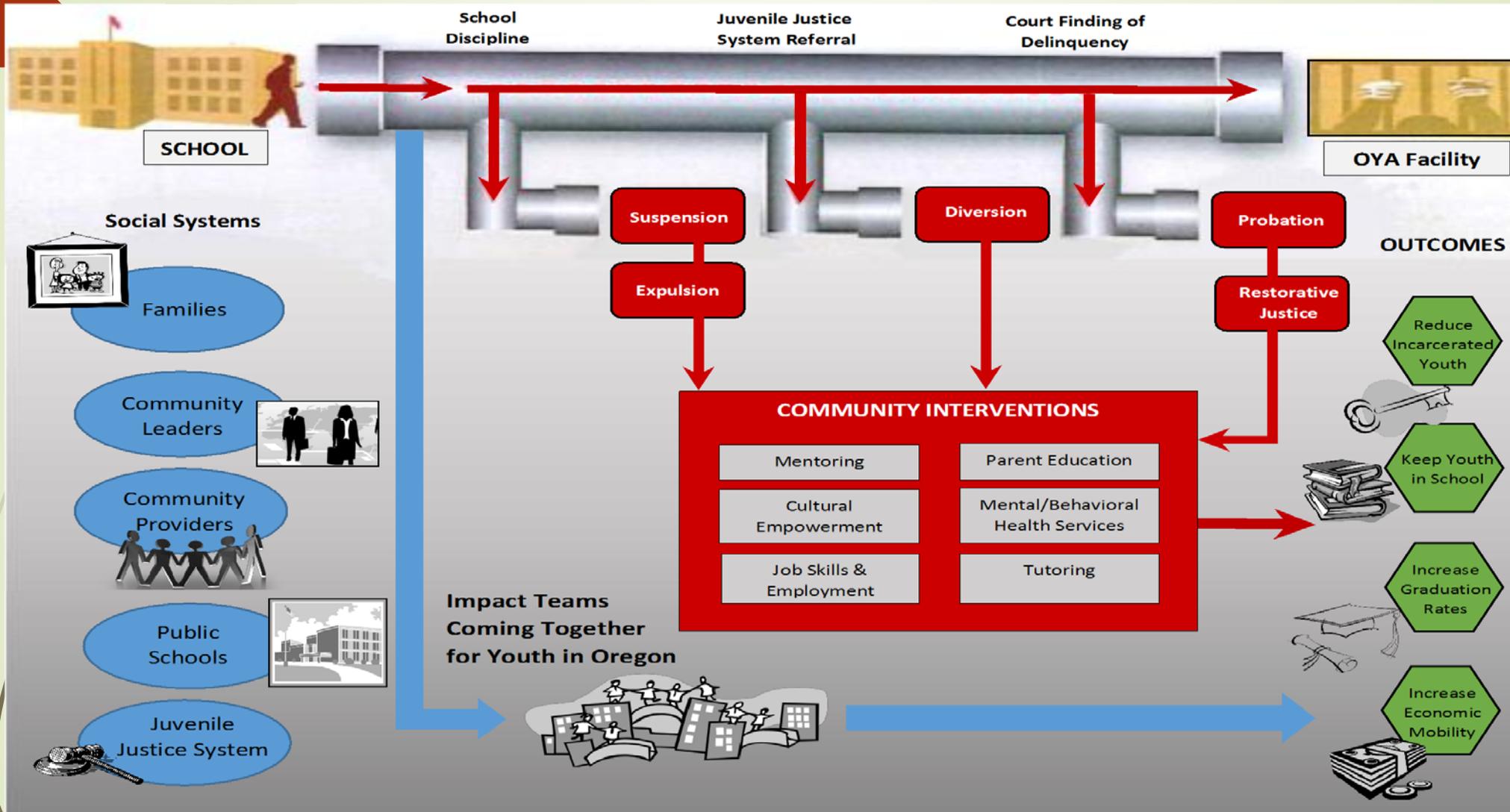
Percentage of Oregon K-5 Students Suspended or Expelled by Race/Ethnicity, 2012-13 (ODE)



The School-to-Prison Pipeline: Punishment is highly collated with justice involvement



Collective Impact Model for Youth in Oregon



This model and key were adapted from the original design by Frontline Solutions for the Clayton County Georgia System of Care through the Robert Wood Johnson Foundation: Forward Promise Grant.

Attachment 3



NATIONAL JUVENILE DEFENDER CENTER



Juvenile Defense Self-Assessment Tool

Dear Public Defense Leader:

Juvenile delinquency defense is an important and vital part of a functioning public defender system. Research shows that juveniles who experience incarceration are more likely to commit adult offenses than similarly situated juveniles who avoid incarceration. Juveniles in custody experience trauma, violence, disengagement from family and community and exacerbated mental health problems including suicide, and sexual abuse in prisons. Dedicated high quality, properly resourced, developmentally-informed defense for juveniles creates profound opportunities for children accused of delinquent and status offenses.

While public defender offices are underfunded, and often stretched to and beyond the breaking point, we believe that defense in juvenile delinquency cases requires carefully cultivated and properly developed juvenile defenders. Skilled advocates who choose the juvenile defense field should be placed on an equal footing with their counterparts in adult criminal defense. The defense of juveniles is a highly complex and specialized practice. The role of the juvenile defender has evolved to require a challenging and complex skillset needed to meet core ethical obligations. Youth need attorneys who are well-versed in the science of adolescent development and who can leverage that understanding to help youth navigate the complexities of the justice system; present the legal and the social cases; promote accuracy in youthful client decision making; provide alternatives for system decision makers; enforce the client's due process rights; and monitor institutional treatment, aftercare, and re-entry.

The Juvenile Committee of the National Association for Public Defense (NAPD) and the National Juvenile Defender Center (NJDC) have developed a Self-Assessment Tool that is intended to create an opportunity to reflect on practices in your office that you may not have considered before. We hope you will complete this assessment and fairly consider the juvenile practice in your office.

The National Juvenile Defender Center and the National Association For Public Defense stand ready to assist your office in completing the self-assessment or in developing solutions that will improve juvenile defense delivery to ensure children's access to counsel and quality of representation.

Sincerely,

Tamara Steckler, Attorney-in-Charge
Legal Aid Society, Juvenile Rights Division
New York, NY
(212) 577-3502, TASTEckler@legal-aid.org

Kim Dvorchak, Executive Director
National Juvenile Defender Center
Washington, DC
(202) 452-0010, x 101, kdvorchak@njdc.info



Dear Colleagues:

We all work each day to ensure that public defender offices are well-resourced, that defenders are well-trained, and that the defense profession is respected and valued by all stakeholders. We know that only by elevating the practice of public defenders do those accused and charged truly get the benefit of a justice system. We also know, like you, that this is an uphill battle requiring our collective and collaborative support for each other. Organizations that provide defenders the ability to share tools, techniques, successes and lessons learned, like the National Association of Public Defenders (NAPD) and the National Juvenile Defender Center (NJDC), are at the center of many of the innovative and creative ways in which we work together towards our common goal of justice for all.

To this end, we share a recognition of the critical importance of a well-funded, fully resourced, expertly trained juvenile defense workforce, one that recognizes the nuanced and complex work of representing juveniles who have been charged with crimes. The manner in which juvenile defense is provided is vastly different from state to state, in fact, even the definition of who is a juvenile varies from jurisdiction to jurisdiction. But one thing remains clear: children deserve the same robust, innovative and thoughtful defense as adults targeted to their needs and issues, and adult defense offices are in the best position to champion this cause.

Attached to this letter, you will find a Juvenile Defense Assessment Tool created via a partnership between NAPD's Juvenile Committee and the NJDC. This excellent tool was designed to assess the state of juvenile defense in your jurisdictions, and to give thoughtful pause to the priority placed on juvenile defense provision. It is not a test, nor an evaluation, more simply an outline that will assist defender offices in looking more closely and carefully at whether juveniles receive appropriate and meaningful defense services. NAPD's Juvenile Committee and NJDC are staffed by juvenile defense attorneys who are the experts in their field, and remain at the ready to assist any public defender office who, after utilizing the assessment tool would like to take a deeper look at how to improve juvenile defense.

So, please join us, in promoting the strongest juvenile defense system possible and ensuring that all children charged with crimes receive focused, comprehensive and quality legal representation. The Juvenile Defense Assessment Tool is just one step towards realizing that goal.

Sincerely,

Tina Luongo
Attorney-in-Charge, The Legal Aid Society
Criminal Defense Practice

Paul DeWolfe
Public Defender
State of Maryland

This tool is intended to assist defender leaders who want to ensure that juvenile defense is sufficiently resourced and that juvenile defense delivery complies with national standards. Throughout this material NAPD referenced the NJDC and NLADA Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems, which are online at: http://njdc.info/wp-content/uploads/2013/11/Principles-in-Practice_Promoting-Accountability-Safety-and-Fairness-in-Juvenile-Delinquency-Proceedings.pdf

The most effective way to ensure high quality juvenile representation is to ensure that juveniles are represented by a juvenile defender specialist.

1. Does your office/agency employ juvenile defender specialists whenever possible? Where employing a juvenile defender specialist¹ is not possible, is an attorney's juvenile practice considered just as important in terms of evaluation and promotion as their adult practice?

Representing children is a legal specialty that requires advanced knowledge and training in both juvenile law, and how to work effectively with juveniles.² The most effective way to ensure high quality juvenile representation is to ensure that juveniles are represented by a juvenile defender specialist. Organizations with effective juvenile defender specialists encourage them to view their role as a career, not merely as a starting point towards adult practice. Juvenile defender specialists in those organizations have the same opportunities for promotion and advancement as their adult counterparts, and are given access to needed training and resources in juvenile representation.³

In those communities where it is not possible to employ a juvenile specialist, such as in rural communities where an attorney must cover every court, it is critical that the attorney's juvenile cases are treated on par with their adult cases in terms of caseload assignment, evaluation, and promotion.⁴ Though juvenile cases are often relegated to lower level courts, they are generally closer to adult felony cases than misdemeanor cases in terms of the amount of time and resources required. For example, the NAC Standards developed in the early 1970s identified maximum caseloads of 150 felonies, 200 juvenile cases, and 400 misdemeanor cases.⁵

A juvenile case was therefore considered twice as time consuming as a typical misdemeanor, and 3/4ths as time consuming as a typical felony. Especially in offices without meaningful caseload limitations, placing a significantly higher priority on adult cases within a mixed caseload deprives juvenile clients of the full measure of representation that they are entitled to. This is why it is better to have juvenile specialists whenever possible.

2. Are there any obstacles for promotions/professional advancement for defenders dedicated to specializing in juvenile defense? Do juvenile defenders have salaries in parity with adult defenders in adult court with the same level of experience?

In order to ensure that juveniles receive the same quality representation afforded to adults, systems should encourage juvenile representation "without limiting access to promotions, financial advancement, or personnel benefits for attorneys and support staff."⁶ At its most basic level, this means that an adult defender or employee with a certain level of experience should not be paid more than a juvenile court attorney or employee with the same level of experience.

While many defender offices have objective standards for promotion and advancement, those standards may include factors that will not fall equally on adult and juvenile defenders. For example, if jury trial litigation and experience is a prerequisite for promotion in a jurisdiction without juvenile jury trials, then the most effective juvenile specialists will rarely qualify for promotion.

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As the prosecution of a child in adult court raises a variety of issues that touch on legal concerns but also on developmental and policy concerns, juveniles being prosecuted in adult court should be represented by a team of professionals, which should include at least one experienced juvenile defender.

One way to check to see if the office's human resources and promotion system is not treating juvenile representation the same as adult representation is to see whether the profile of the typical adult defender in terms of age, years of experience, etc., is the same as the typical juvenile court attorney. If not, and especially if the adult unit employs many former juvenile specialists, then it is probable that either the promotion system itself, or the culture surrounding it, has made clear that juvenile representation is not valued the same as adult representation for purposes of advancement.

In order to address this issue, systems must either (a) identify criterion for promotion, such as quality of legal representation and advocacy as well as overall experience, which ensures adult and juvenile defenders have equal opportunity for promotion and advancement, or alternatively (b) identify separate juvenile standards that ensure that juvenile attorneys have the same opportunities for promotion or advancement as their adult counterparts, without having to abandon juvenile practice.

Finally, juvenile defenders should be provided with not only a healthy career path, but an office environment which is client centered and focused on providing quality representation for all clients. Accordingly, defender offices should ensure that juvenile defenders have the same opportunities for professional development, including opportunities to assume a leadership role and training in how best to perform in that role, as their counterparts in adult defender units.

3. Does your office provide procedures for specialized representation for children prosecuted in adult court?

Jurisdictions differ significantly in the methods by which children may find themselves tried as an adult. Regardless of the method, the fact remains that the defendant is still a child, and that carries with it certain benefits, even in the adult system. Moreover, children differ from adults in a variety of areas related to maturity and decision-making which can often be

relevant in a criminal trial, not just as a defense to the crime, but as a basis for suppressing a statement or a search, and in other ways. Communication with a child-client is a specialized skill, so professionals experienced in communicating with child clients should be available to assist a child to understand the nature of the proceedings, and to explain plea negotiations, collateral consequences, trial strategy, and other matters related to the proceeding. As the prosecution of a child in adult court raises a variety of issues that touch on legal concerns but also on developmental and policy concerns, juveniles being prosecuted in adult court should be represented by a team of professionals, which should include at least one experienced juvenile defender.⁷ This expectation should apply whenever a person under the age of 18 is being prosecuted in adult court, even if the law of the jurisdiction treats the child as an adult at an earlier age.

4. Does your office/agency ensure that juvenile defenders have access to investigators, social workers, mental health, education and alternative sentencing experts to address the unique needs of adolescent clients?

NJDC and NLADA's "Ten Core Principles" require both "resource parity" with adult systems, but also that the system recognize "that legal representation of children is a specialized area of the law", which requires the use of "expert and ancillary services."⁸ Ensuring parity of resources between adult and juvenile defenders therefore does not mean treating both groups identically.

In addition to the basic investigative and administrative support resources which all defense attorneys require, effective representation in a juvenile case often requires access to professional support with training in social work, educational advocacy, and other disciplines which are not utilized to the same extent in adult cases. These individuals require specialized training to communicate effectively with juvenile clients, and also require training about the educational and social services protections and resources that are available to children that are not available to adults.

Public defender systems have long accepted the need to adopt standards of best practice, and which can be used as a baseline in evaluating attorneys. As juvenile practice is specialized, it requires distinct standards of practice, which reflect both local and national best practices.

In jurisdictions without a hard cap on caseloads, supervisors and system leaders must evaluate new assignments in the context of an attorney's existing caseload.

5. Does the office/agency provide juvenile defense attorneys and other experts (or “the juvenile defense team”) with access to specialized training?

As noted above, juvenile representation is a specialized area of the law, which requires specialized training both in working with a juvenile population, and in the requirements of the jurisdiction's juvenile code. Supervisors are required to ensure that all juvenile attorneys have “access to specialized training” in juvenile matters.⁹ Training topics include not only updates in the jurisdiction's juvenile law, but also updates in recent developments in our understanding of adolescent development, education, and the treatment of delinquent children.

While in-house or statewide training opportunities are superior for dealing with issues related to the jurisdiction's juvenile law, in many areas training in adolescent development, education and treatment will require participation in regional or national training events, conducted in non-local live conferences or through video webinar.

6. Has your office/agency or your jurisdiction adopted standards of practice in juvenile court, which incorporate best practices and are consistent with national standards of juvenile representation?

Public defender systems have long accepted the need to adopt standards of best practice, and which can be used as a baseline in evaluating attorneys.¹⁰ As juvenile practice is specialized, it requires distinct standards of practice, which reflect both local and national best practices.¹¹ As in the rest of the public defender system, juvenile standards should be used to evaluate an attorney's performance in juvenile cases. Even if they are not personally practicing juvenile cases, supervisors and evaluators should be trained in the standards to ensure that they are evaluating attorney performance in juvenile practice appropriately.¹²

7. Does the office/agency build community relationships with schools, other service providers, and other government agencies who specifically assist the juvenile population?

The requirement that juveniles be placed in the “least restrictive alternative” places a premium on counsel's awareness of local treatment alternatives that may be offered by schools or community organizations.¹³ Public defender agencies should build relationships with these programs with an eye towards ensuring that public defender clients have equal access to these resources when needed. This is part of the specialization that is unique to juvenile representation, and may require additional staffing, workload adjustment or office/agency support.

8. Recognizing the complex and time-consuming nature of most juvenile cases, does the office utilize juvenile-specific caseload controls?

A controlled caseload is critical to ensuring effective representation in any juvenile case.¹⁴ Methods of controlling caseloads vary by jurisdiction, and many jurisdictions still lack effective caseload controls. In jurisdictions that impose hard caps on defender caseloads, juvenile caseload caps should be identified which reflect the complexity and relative difficulty of juvenile cases. As noted above, nationally recognized caseload standards have identified a juvenile case as being slightly less time consuming than a felony case, and about twice as time consuming as the typical misdemeanor.¹⁵

In jurisdictions without a hard cap on caseloads, supervisors and system leaders must evaluate new assignments in the context of an attorney's existing caseload.¹⁶ In most of these jurisdiction leaders are also advocating for additional resources, based on their evaluation of systemic

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shortfalls. As with those states which set hard caseload limits, it is important in making evaluations about an individual attorney's caseload, or the number of attorneys needed to adequately represent all clients, to recognize the complexity and relative difficulty of juvenile cases.

9. Does the office/agency ensure regular in-person contact between attorney and the juvenile client and parent or guardian, including regular contact with out-of-custody clients?

Studies have repeatedly confirmed that most juveniles either would not be considered competent in adult court, or would be regarded as only marginally so.¹⁷ Not only do juveniles have difficulty with comprehension, they are subject to peer pressure, pressure from parents and others, and other factors that make it significantly more difficult for them to manage their own case. For this reason, regular in-person client contact is essential to effective representation.¹⁸ Contact in the courtroom on the morning of the case is not sufficient.

In addition to expecting regular visits to clients in custody, public defender systems should ensure that attorneys are regularly visiting juveniles out of custody as well. As juveniles generally are less able to come to a public defender office to meet, this will often require the attorney to visit the child at the child's school or place of residence. Further, time must be dedicated to communication with a child's guardians/caretakers. While client privilege certainly extends to juvenile clients, there is often a need to communicate appropriately about proceedings with the child's guardian/caretaker with the client's consent. This is an important consideration for juvenile supervision, workload monitoring, and staffing juvenile programs.

10. Does the office/agency provide appellate and post-disposition representation as required by law?

Appellate and post-dispositional representation is a critical part of protecting the rights of juveniles, and part of the constitutional criteria of effective assistance of counsel. Where the

law of the jurisdiction creates a defender system to provide representation in post-trial matters, such as appeals or post-conviction, whether that is through the same system that provides trial representation or through a separate system, such as an appellate defender, that system must ensure that juveniles have the same access to representation as adults do.

Moreover, as the facts underlying the Gault decision indicate, children are expected to give up core rights, such as the right to bail or a jury trial, in return for rehabilitative care that is not always provided.¹⁹ It is incumbent upon the public defender system of each state to ensure that some body, either the trial system or the relevant post-trial system, is ensuring that the juvenile court's judgments are carried out in accordance with the rationale of the juvenile justice system, and that youth are not trapped in a custodial setting which is either not providing effective care or is retaining the child long after care has ceased to be effective.²⁰

However, the American Bar Association, reviewing a recent study on the rate of appeals in juvenile cases, noted that "[t]he extent of the lack of appeals is profound and raises questions about the inability of juvenile courts to ensure just outcomes."²¹ As a result, the ABA has resolved that jurisdictions should not only ensure adequate resources for appellate representation in juvenile cases, but should be tracking the number of juvenile appeals to ensure that such resources are utilized. While the report did not identify a benchmark, it did note that "When only five out of 1000 cases juvenile convictions are appealed, it is difficult to maintain that minors are protected from error."²²

Juveniles require access to counsel post-disposition in order to effectively access the courts.²³ Children should have representation to ensure that the child is receiving the services contemplated by the court, and that the treatment being offered is effective and consistent with best practices. That representation on these issues may be provided by the trial office, or by an independent post-disposition defender.

In addition, children are entitled to representation to assist them in determining whether the child received effective representation at trial, and to investigate the for trial error, and to file appropriate post-disposition actions on those grounds. Because effective representation on those issues requires and investigation and evaluation of trial counsel's performance, where possible, representation on those issues should be provided by a specialized post-disposition counsel not associated with the trial defender. Post-disposition counsel generally need extensive specialized training in a variety of areas, including post-conviction law, methods of effective juvenile treatment, and other areas.

Due to the unique nature of juveniles, and the need to evaluate both the case and the child's circumstances, juvenile post-disposition representation is resource intensive. As noted above, most juveniles are not highly competent, and educating the child about their rights and options takes substantial time. Also, juvenile confidentiality laws can create obstacles to effective post-disposition representation. For example, post-disposition counsel may be barred from accessing confidential court files unless they become "counsel of record", which may require them to participate in all future court proceedings involving the child. These obstacles may need to be addressed in coordination with other stakeholders in order to provide this fundamental element of juvenile defense practice.

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1. The term "specialist" is being used in this document to refer to an attorney whose assigned caseload consists exclusively or almost exclusively of juvenile cases. It is not intended to communicate that the attorney must meet the requirements of a state or local bar to refer to herself as a specialist in any area of law.
 2. See NJDC and NLADA, *Ten Core Principles for Providing Quality Delinquency Representation through Public Defense Delivery Systems* (2nd Edition, July 2008) ("NJDC and NLADA *Ten Core Principles*"), Principle 2; See Also NJDC National Juvenile Defense Standards, Std. 1.3.
 3. See NJDC and NLADA *Ten Core Principles*, Principle 3.
 4. *Id.*, see also Principle 5.
 5. See Report of the National Advisory Commission on Criminal Justice Standards and Goals: Courts 276 (1973). This assessment predated the development of modern juvenile standards of practice and has been criticized for insufficient rigor in its development. While its instruction that juvenile cases are twice as time-consuming as misdemeanor cases is instructive, leaders should take care not to give these standards more weight than warranted in evaluating caseloads and caseload limitations, and should carefully measure and consider the needs of clients in local practice.
 6. *Id.*, Principle 3, comment A.
 7. See NJDC National Juvenile Defense Standards, Std. 8.1 (online at: <http://njdc.info/wp-content/uploads/2013/09/NationalJuvenileDefenseStandards2013.pdf>); see also NJDC 10 Core Principles, Principle 2, Comment A; The Campaign for the Fair Sentencing of Youth, Trial Defense Guidelines: Representing a Child Client Facing a Possible Life Sentence, Guideline 2.1.
 8. See NJDC and NLADA *Ten Core Principles*, Principles 2, 3, and 4.
 9. NJDC National Juvenile Defense Standards, Std 9.2, NJDC 10 Core Principles, Principle 7.
 10. ABA Ten Principles of a Public Defense Delivery System, Principle 10. Online at: http://www.americanbar.org/content/dam/aba/administrative/legal_aid_indigent_defendants/ls_sclaid_def_tenprinciplesbooklet.authcheckdam.pdf
 11. NJDC and NLADA *Ten Core Principles*, Principles 2 and 6.
 12. *Id.*, Principle 6; NJDC National Juvenile Defense Standards, Std. 9.4
 13. NJDC and NLADA *Ten Core Principles*, Principles 8 and 9.
 14. ABA Ten Principles, Principle 5, NJDC and NLADA *Ten Core Principles*, Principle 5.
 15. *Supra*, note 4.
 16. ABA Formal Opinion 06-441, online at: <http://dpa.ky.gov/NR/rdonlyres/0A05F4ED-79D7-40C8-BC9A-1AD7D8E33421/0/ABAFORMALOPINION.pdf> The ABA has adopted standards for managing caseload controls as a follow-up to ethics opinion 06-441. See *ABA Eight Guidelines Related to Public Defense Caseload* (2009).
 17. Grisso, et. al., *Juveniles' Competence to Stand Trial: A Comparison of Adolescents' and Adults' Capacities as Trial Defendants*, 27 J.Law and Human Behavior 333 (2003).
 18. NJDC National Juvenile Defense Standards, Std. 2.4.
 19. Gerald Gault was 15 years old when he was sent to the Industrial School until he was 21 for a series of prank phone calls which would have resulted in, at most, a 2 month sentence had he been an adult. See *In re Gault*, 387 U.S. 1, 7-9 (1967).
 20. A recent example of the importance of post-disposition representation was the "Kids for Cash" scandal that unfolded in Luzerne County, PA in 2008. In that case, youth were sentenced without trial counsel to excessive detention sentences for extremely minor offenses, allegedly as part of a kickback scheme between the judges and the detention center. The Juvenile Law Center of Philadelphia entered the case post-disposition and petitioned the Pennsylvania Supreme Court for emergency relief to release the youth from custody. That petition was eventually granted. For more see: <http://jlc.org/luzerne-county-kids-cash-scandal>.
 21. Report, ABA Resolution 103A (Adopted Feb 14, 2014), pg. 2, citing Megan Annitto, *Juvenile Justice on Appeal*, 66 U. Miami L. Rev. 671 (2012), online at: http://www.americanbar.org/content/dam/aba/images/abanews/2014am_hodres/103a.pdf
 22. Report, *supra*, pg. 6.
 23. NJDC National Juv

"NAPD is committed to zealous advocacy for persons whose liberty is threatened by a criminal charge or conviction or by a juvenile petition or other status. Included in our commitment is a strong belief that an excellent juvenile practice is an integral part of every strong public defense system. We have been strongly supportive of our Juvenile Committee that has created the Juvenile Defense Assessment Tool in collaboration with the National Juvenile Defender Center. This assessment tool is an important way for public defense systems to look at their system and evaluate it in light of best practices. It is not enough to put a lawyer in a courtroom next to a child. Rather, these best practices, from client contact to creating juvenile specialties to controlling caseloads to establishing juvenile post-dispositional sections, now express what should be expected of every public defense system. NAPD heartily endorses the use of this assessment tool by all public defense organizations."

- **Ernie Lewis**, *NAPD Executive Director*

"Six years ago we created the Youth Advocacy Division to handle all juvenile matters from misdemeanors to murder cases and juvenile lifer parole release hearings. Developing a statewide juvenile defender program that aspires to meeting all of these principles is one of the more important things we have done for clients and for our client communities since our inception as an agency in 1984. Having this tool gives us something to use on a regular basis to help us set goals and measure our progress in our quest to provide consistently zealous and comprehensive advocacy for every client."

- **Anthony Benedetti**, *Chief Counsel, Committee for Public Counsel Services (Massachusetts)*

"The NAPD/NJDC Juvenile Defense Self-Assessment Tool is an invaluable resource. My administration has always focused on promoting a strong juvenile defender unit, which has provided a career path to well-trained attorney and social work teams. This tool will ensure that defenders in juvenile and criminal court are properly trained and will lead to fair and just outcomes for youth."

- **Jeff Adachi**, *San Francisco City and County Public Defender*

"I am pleased that the National Association for Public Defense and the National Juvenile Defender Center have aligned efforts to advance the increasingly specialized practice of juvenile defense. Just as the Supreme Court continues to recognize that kids are categorically less culpable than adults, committed leadership is required to ensure that representation of children is always provided by skilled attorneys who have the training and resources required to meet national practice standards. The Self-Assessment Tool is a key new resource to guide the efforts of defender leaders in this critically important area of practice."

- **Stephen Bush**, *Shelby County Public Defender, Law Offices of the Shelby County Public Defender (Memphis, TN)*



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The National Juvenile Defender Center (NJDC) is a non-profit, non-partisan organization dedicated to promoting justice for all children by ensuring excellence in juvenile defense. NJDC provides support to public defenders, appointed counsel, law school clinical programs, and non-profit law centers to ensure quality representation in urban, suburban, rural, and tribal areas. NJDC also offers a wide range of integrated services to juvenile defenders, including training, technical assistance, advocacy, networking, collaboration, capacity building, and coordination. To learn more about NJDC, please visit www.njdc.info. If there is a topic you would like NJDC to explore in an issue brief, please contact us by sending ideas to inquiries@njdc.info.



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The National Association for Public Defense (NAPD) engages all public defense professionals into a clear and focused voice to address the systemic failure to provide the constitutional right to counsel, and to collaborate with diverse partners for solutions that bring meaningful access to justice for poor people.

Through affordable dues, relevant benefits and accessible real-life expertise, NAPD currently unites more than 12,000 practitioner-members across professions, cases and systems into a cohesive community for justice reform.