

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, June 16, 2016
9:00 a.m. – 1:00 p.m.
Mt. Bachelor Village
Summer Twilight Room
19717 Mount Bachelor Drive
Bend, Oregon 97702

MEETING AGENDA

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| 1. Action Item: Approval of minutes - PDSC meeting held on April 21, 2016 (<i>Attachment 1</i>) | Chair McCrea |
| 2. Action Item: Approval of AFSCME contract (<i>Attachment 2</i>) | Ernest Lannet |
| 3. Budget Update (<i>Attachment 3</i>) | Nancy Cozine |
| 4. Strategic Planning Update; PDSC Retreat; September meeting date; (<i>Attachment 4</i>) | Nancy Cozine |
| 5. Action Item: Approval of 2017-19 Policy Option Package Concepts (<i>Attachment 5</i>) | OPDS Staff
Commission
Contract Providers |
| 6. Caseload Projections for 2017-19 (<i>Attachment 6</i>) | Caroline Meyer
Contract Analysts |
| 7. National Association of Public Defender Conference | Alex Bassos
Dan Bouck |
| 8. MPD Efforts to create Holistic Defense | Alex Bassos
Jessica Snyder |
| 9. National Public Defense Developments (<i>Attachment 7</i>) | Paul Levy |
| 10. OPDS Monthly Report | 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: July 25, 2016, 12:00 p.m. – 4 p.m.; July 26, 2016, 9:00 a.m. – 3:00 p.m. Best Western, Hood River, 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, April 21, 2016
10:00 am – 2:00 pm
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT: Shaun McCrea (Chair)
John Potter (Vice-Chair)
Chief Justice Thomas Balmer
Thomas Christ
Chip Lazenby
Per Ramfjord
Hon. Elizabeth Welch

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

The meeting was called to order at 10:08 am

Agenda Item No. 1 Approval of minutes – PDSC meeting held on March 17th, 2016

MOTION: Commissioner Potter moved to approve the minutes; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE: 7-0**

Agenda Item No. 2 Governor’s Task Force on Dependency Representation

Addie Smith, Administrator for the Governor’s Task Force on Dependency Representation, expressed her appreciation for assistance and participation of OPDS employees on the Task Force, and provided an overview of the membership and responsibilities of the Task Force. She explained that the task force is focused on creating an outcome-driven system, and trying to identify ways to overcome the challenge of providing effective representation for the state and caseworkers, as well as solutions to the budget challenges of the current model. Ms. Smith noted concern about the historical OPDS payment model in dependency cases, and expressed support for the positive work and outcomes being achieved through the Parent Child Representation Program.

There were several questions at the conclusion of Ms. Smith's presentation. The Chief Justice asked whether the impetus of the task force was to resolve the issue of agency representation at court hearings. Ms. Smith confirmed that it was, and clarified that the Governor is also very concerned with quality representation for parents and children. Commissioner Potter asked whether any legislation would be coming from the work of the Task Force, and whether any thought had been given to where delinquency representation fit within the context of a changed model for providing representation for parents and children. Ms. Smith replied in the affirmative to both. She said that legislation would be created, as well as a final report on the work of the Task Force, and that representation in delinquency cases was a big part of the discussion during the Crossover Youth subcommittee, and that it was also something that would be discussed within the larger group. She noted that most attorneys providing representation to parents and children also represent youth in delinquency cases. Ms. Cozine expressed appreciation for Ms. Smith's work, and said that when the Task Force weighs in on alternative models of representation, she will bring the information to the Commission for its consideration, noting that the Commission is the entity responsible for adopting changes to Oregon's delivery model.

Agenda Item No. 3

Racial and Ethnic Disparities in the Juvenile Justice System

Connie Carley and Paul Bellatty, from Oregon Youth Authority, Jon English, from the Oregon Department of Education, and Mark McKechnie, from Youth Rights and Justice, provided an overview of data demonstrating the disproportionate minority contacts in Oregon's educational and juvenile justice systems. (See Attachments 2a, 2b and 2c in the April meeting materials).

Commission members thanked the presenters for their testimony.

Agenda Item No. 4

Criminal Justice Commission – Oregon crime, prison use and Justice Reinvestment

Michael Schmidt, Executive Director for the Criminal Justice Commission, spoke about the justice reinvestment legislation, which passed in 2013. He explained that House Bill 3194 tasked the Criminal Justice Commission (CJC) with allocating \$15 million in grant funding to all 36 counties to begin programs, distributed based on their felony offender populations. The programs needed to be designed to address four goals: decrease usage of Department of Corrections resources, decrease recidivism, hold offenders more accountable, and increase public safety. The CJC set up Regional Implementation Counsels in 2013 by grouping the counties into four regions, and have been visiting the counties quarterly to share data. Mr. Schmidt noted that through this data sharing they were able to recognize disparities between how the counties were using resources, and have been able to begin addressing them. Mr. Schmidt then demonstrated what the CJC website has to offer in terms of data for the justice reinvestment program. He noted that they are working to improve the quality of their data.

General Counsel for OPDS, Paul Levy, asked what the CJC attributed as the reason for a drop in the counties' prison usage rates. Mr. Schmidt said it began to lower as the CJC began meeting with stakeholders in the counties to talk about the four goals of justice reinvestment in conjunction with the granting the counties money to begin programs. Mr. Schmidt then demonstrated other key pieces of their website such as the Oregon Knowledge Bank implemented to be a resource for The Center for Policing Excellence that provides information on policing programs, correctional programs, best practices, research and a state agency directory. Commissioner Potter asked what the criterion was for submitting research for the website. Mr. Schmidt indicated that they are working on a research submission process.

Ms. Cozine asked Mr. Schmidt why, with a drop in violent crime rate, there doesn't seem to be a correlating decrease in charges for misdemeanor and felony cases. Mr. Schmidt replied that their data-capturing systems are not yet equipped to capture intakes from police reports

and DA offices but that the CJC is working to add that key measurement to improve the quality of their data.

Nancy Cozine requested that the last three agenda items be deferred to the next meeting.

MOTION: Commissioner Ramfjord moved to adjourn the meeting; Commissioner Potter seconded the motion; hearing no objection the motion carried: **VOTE 7-0**

Meeting Adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, April 21, 2016
10:00 am – 2:00 pm
Office of Public Defense Services
1175 Court St NE
Salem, Oregon 97301

MEMBERS PRESENT: Shaun McCrea (Chair)
John Potter (Vice-Chair)
Chief Justice Thomas Balmer
Thomas Christ
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STAFF PRESENT: Nancy Cozine
Cynthia Gregory
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Amy Miller
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Billy Strehlow
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Rachel Woods

The meeting was called to order at 10:08 am

Agenda Item No. 1 Approval of minutes – PDSC meeting held on March 17, 2016

0:09 Chair McCrea Let's call the meeting to order. Welcome everyone to our April 21st meeting. I apologize again for not being able to be here, I was all prepared to wear green for St. Patrick's Day and I was very ill that day, so thank you Vice Chair Potter for stepping in for me. Let's start with our action item number one, approval of the minutes. Does anyone have any additions or corrections to the minutes? **MOTION:** John Potter moved to approve the minutes; Chip Lazenby seconded the motion; hearing not objection the motion carried: **VOTE: 7-0**

Agenda Item No. 2 Governor's Task Force on Dependency Representation

0:53 N. Cozine Chair, If I may give a quick overview? Chair McCrea, members of the Commission, this spring time is when we really start preparing for the next budget cycle. It seems like legislative session just ended and in a way it did, in fact the February session really did just end, but we already have to start thinking about what is ahead and what is happening for 2017. Today, we begin with a series of presentations that will help you get a better sense of what is happening around the state in other agencies that are linked to our own agency. You

will hear in coming months information about caseloads and policy option packages, things like that. But, for today we are starting with external agencies. This links in a little bit with some of our strategic planning work and we are really fortunate to have a wonderful selection of individuals to help us understand what is happening in other state agencies. With that, I would like to welcome Addie Smith who will talk to us about juvenile dependency representation.

2:08 A. Smith

Good morning Chair McCrea and members of the Commission. I really appreciate the opportunity to share with you all the hard work that we have been doing on this task force and to take an opportunity to really publically thank both Nancy and Amy who have been integral in the work that we have done in the last six months and I think they will only find more emails demanding of their time in the next four in their inboxes shortly. They have truly been a pleasure to work with but also just a wealth of knowledge and information. With that said, let's do a little overview of what's going on with [SB] 222 and talk through this task force. Starting with membership, because this is always the first question I get, it's up there and of course Justice Brewer is our Chair and he has been a wonderful resource and an incredible leader and in addition you will see we have four members of the legislature, Senator Prozanski, Senator Kruse, Representative Taylor and Representative Stark. Then, as you can see we have a whole gambit of representation from across the board in terms of those stakeholders who really have a lot of buy in when it comes to dependency proceedings and that is, of course, really the focus of this task force. For those who don't know, dependency practice in Oregon over the course of the last 15 years has tried and retried to solve the same few problems and we will talk in more detail about what those problems are but what we do know is that over the course of the last 15 years there hasn't been a lot of success in spite of their being three other task forces before this one. There was an attempt in the last session to fix one of the problems we will discuss which is the fact that many caseworkers go into court hearings without any counsel and to a certain extent present cases, although there is a lot of conversation about and we will talk about how there is an unlawful practice of law subcommittee here. In addition, there is concern about how under-resourced parent and child practitioners are and how strained they are in terms of being able to do good defense work for parents and kids in Oregon. I say all of this ahead of time to say that we are using a new frame for this task force. So, we are trying to really reset and think differently about how we do this work. I think previous task forces, it would be fair to say, really went directly at the problem and in this instance as in many instances the problem is kind of the budget. By going directly to the issue of the budget, I think there was a lot of stalling out that we saw on previous task forces and a lot of really helpful tactics and changes but they were all really piecemeal. Now we have these Frankensteinian systems, so to speak, where there have been little changes made. What we are really trying to do is take a look at what it would take to create a new and better system. With that in mind, we are really trying to let two things drive the work of the task force and that is of course the policy of the state of Oregon with regard to protecting children but also protecting families and family unity. We really want to create a system that is outcome driven. As many of you may know, Oregon has not historically performed really well with regard to child welfare outcomes. So, there is lots of room to grow and improve and this is one great opportunity to help improve those outcomes. So, I put a couple up there so that people can get a sense. For national comparison, for example, in Oregon about 9 out of 1,000 children are removed. The national average is about 5.6. So, we are removing a lot of kids from the home. Children are in care on average of 19 months, the national average is a little lower at 16 or 17 months. We also see a lot of movement between placements. We really want to come at this problem of representation for the state, the agency, the parents and the children from a perspective that says 'of course due process is at the heart of everything we do but beyond due process we want to put a system in place that is actually going to create better outcomes for kids and families in Oregon.'

I am going to go over a little bit of the problem now with people and this is straight out of the task force approved problem statement, on purpose. This has been identified by the task force as the issues that we are tackling. First of all, we are looking at state and agency

representation. The purpose of this task force is to really holistically look at the system, all sides of it and how to improve it. That requires us to look at both at state and agency as well as parent and child. With regard to the state, right now, as many of you may know, DA's do handle the front end of child welfare work and it's kind of funny to say front end but it is kind of that petition through jurisdiction phase, so the adjudication phase once jurisdiction has taken over the child. However, DA's are very underfunded so a lot of counties support the work of DA's and DA's are eligible of a total of 2 million dollars that is out there to be had and then there is an ability to get some federal reimbursement to cover about 32% of the costs. Because of these constraints there are some real concerns. They are highlighted up there. One is that DA's aren't writing petitions. In many counties, the actual petition that is filed with the court is written and filed by a caseworker which is fairly unique to Oregon. Often, DA's don't attend shelter hearings. I imagine that you have been talking about the work that OPDS has done to really ensure that there are parent's and children's attorneys at those shelter hearings because that is a crucial moment. That is the moment when the judge decides that removal is necessary. We all know that removal is an incredibly traumatic experience for a child and a family. So, it is at that hearing where in a lot of ways the most crucial decision is made because the next time you will be back in front of the court is supposed to be 60 days and it is usually between 60 and 90 here in Oregon. There are some real concerns. The other thing that I would high light about DA's that is pretty unique to Oregon is that the DA's who are there from petition through jurisdiction actually represent 'The State' and 'The People' which is very common from a DA perspective, that is who DA's typically represent. But, what is interesting when we flip to the next slide you will see that DOJ, who then comes in and handles the rest of the case represents 'The Agency.' So we have these two different entities represented at two different periods in a child welfare proceeding here in Oregon. There is a small exception to be noted; Multnomah has a long standing relationship with DHS so they have their own unique contract where they do represent the agency but they perform termination of parental rights and I am sure people in here know TPR's are less than 10% of the cases in Oregon because, of course, it is sometimes called the civil death penalty. It is a very harsh end to a child welfare proceeding. One would hope reunification or guardianship might be considered before you get to a TPR.

The next part of the problem statement is that DOJ comes in, they represent the agency, of course they bill at \$175 an hour. So, what we have seen, because of this billing model, is that DHS has to make a lot difficult decisions. DHS is not always picking up the phone and getting legal advice. In fact, I have heard there are different practices in different localities but there are some DHS workers that actually have to ask their supervisor to call. There are some DHS workers who have told me that they are afraid to call because they know the bill will come later and they will get questions about it. Then, not only are DHS workers not reaching out to get legal advice, but of course the AAG's aren't actually at every hearing. There are many review hearings and permanency hearings in particular, and some guardianships, where a caseworker is in front of the court without representation. There is a lot of conversation going on in the task force about how it seems like this is cost savings because you are not calling in an attorney but what actually ends up happening is mistakes are made so on the back end there are a lot of resources used to tidy up what might have gone awry previously. The other thing I would add really quickly on the government side as we are calling it because it captures both the state and agency is that there have been some concerns raised about the inconsistency between the work DA's do and DOJ does but also some concerns raised about the handoff that happens. Essentially, in these cases at the end of the jurisdictional trial or if there is a pleading etc., it is passed off to DOJ who then handles the case through the end whether it be reunification or TPR etc., and there is just a real variety of practices in terms of how well that goes and in terms of whether the DA's office and the DOJ have a strong working relationship that makes that handoff really clean. There are also some additional costs that we are talking about a lot that happen because of the tradeoff that occurs.

Here is a little bit about the budget because I know people can't help but wonder. The real bottom line, I know there are a lot of graphs, is that there are state funds and there are federal

funds that support the agency and therefore the agency's representation. Here in Oregon that includes those people who represent the state and stand next to the agency in some of these hearings. Essentially, the bottom line is there is about \$39 million that is spent a biennium to cover the cost of making sure that the government side has attorneys that they are working with. Again, remember that those attorneys aren't necessarily writing the petitions, they aren't present at the shelter hearings, although some DA's are, and then for DOJ they are not at all the hearings. That is the first part. On to OPDS and as you know all parent and child representation for individuals who are indigent is funneled through here at OPDS. Certainly, parents can retain their own attorneys but that is of their own volition. What we are really concerned with is the state funding and how the state supports the important work of parent and child's attorneys. You guys are probably intimately familiar with this, but one of the big things that we have recognized in the task force is that there is a payment model that is pretty unique to Oregon. As you can tell as I say this is unique I have been doing a lot of research into what other states are doing. Oregon is a unique delicate flower as they sometimes say. There is a lot of specialness going on, but I think there is also some room here in Oregon to learn from our sister and brother states and think about how we can gain from the efficiencies. As you know, you get paid per hearing. What is really key to the model right now is that you have to be in court to get paid. Child welfare cases, again I know I am talking to a group of experts so I hate to continue to restate the obvious, but child welfare cases are long cases and there is a lot that goes on outside the courtroom that really determines what happens for the child and family. The courtroom is really a place where due process comes into play to ensure that the system is abiding by the law and that the rights of parents and children are protected. However, there is an entire parallel set of processes that are happening on the social work side of a case. So, there are all types of case meetings where many decisions are made that are just later presented to the court for a double check or a sign off to make sure that due process is being followed. However, a real struggle with the current payment model is that if you are only getting paid for being in court you're not incentivized to go to the family group decision making meeting where the family may be getting together the figure out where they actually want to place that child. That is a real detriment to the kids and parents here in Oregon because attorneys can be incredible advocates not only in the courtroom but also in these meetings. Again, to restate the obvious, these meetings are meetings that are filled with professionals, so for a parent to be in a room the table very often looks like this with a row of professionals and the parent who is trying to create their service plan to not have an advocate to help give them a voice can be...

Audio was not available for this portion of the meeting due to technical difficulties.

Return From Recess

Agenda Item No. 4 Criminal Justice Commission – Oregon crime, prison use and Justice Reinvestment

0:05 Chair McCrea We are to number four on our agenda, the Criminal Justice Commission, Oregon crime, prison use and justice reinvestment. I am guessing you are Michael.

0:16 M. Schmidt That's me.

0:17 Chair McCrea Welcome. Thank you for coming to talk with us.

0:20 M. Schmidt I am Michael Schmidt the Executive Director for the Criminal Justice Commission. I have been for a little over a year now. Craig Prins was my predecessor; many of you probably know Craig. He just got back in Oregon if you are keeping track of where Craig Prins is. He went to Washington D.C. I think he started back at Department of Corrections just this last week. We are happy to have him back home. I am here. I was asked to talk to you all about justice reinvestment and also to show you the work that we're doing around data and how we can use it and what our process is with speaking with the counties and law enforcement

agencies and trying to bring data usage into their modus operandi more frequently. Some of you I see around the table I recognize are going to be very familiar with the justice reinvestment legislation that passed in 2013, maybe some of you less so. So, I thought I would start with what the bill did, if that is helpful.

1:23 Chair McCrea

Sure.

1:24 M. Schmidt

In 2013 was when the legislation was passed and it came out of a work group that Governor Kitzhaber put together and it really started before that, a longer look back at our criminal justice system and how we use our resources. But, the real tipping point for 2013 was where we were projected to go with needing to increase our capacity in our prison system. So, that group was tasked with coming up with alternatives so that we wouldn't have to make those investments and what came out of that discussion was House Bill 3194 which ended up passing and tasked the Criminal Justice Commission with the implementation of that work. The bill itself is about 60 pages long. It does a lot of things, you know how legislation goes and things get thrown into it. So, a lot of it is not all completely related to justice reinvestment. In fact, that portion of the bill is probably about 5 or 6 pages long. The bill took two approaches. One was some sentencing reform, modest sentencing changes, and those were bringing down the presumptive sentences for some crimes like identity theft and robbery in the third degree from 24 months to 18 months. Some of those were restoring discretion back to judges for Measure 57 drug crimes. Probably the biggest change in terms of sentence changes was increasing the short term trans leave program from 30 to 90 days. It was already on the books that you could spend your last 30 days of your DOC sentence in the community. This legislation expanded it to 90 days so that if you met the eligibility requirements that you could serve that last part. That we have seen through the implementation has had the biggest impact in terms of the sentencing changes. The front end of the bill was looking at sentencing changes that got consensus to move forward through the process and then the back half of the bill was the grants program, the justice reinvestment grants. We were, the Criminal Justice Commission, was allocated 15 million dollars in the '13-'15 biennium to have grants to all the counties so they could start building up programs with four goals in mind. The four goals are that they would decrease their usage of Department of Corrections resources, decrease prison usage, decrease recidivism, hold offenders accountable and increase public safety. Those are the four goals, and our commission in '13-'15 granted all 36 counties participated and we sent out that money proportionate to the felony offender population the same way the Department of Corrections grant allocations for their 1145 money. So, '13-'15 we sent it out and some of the counties started building up those programs. I understand that you talked about the MCJRP program maybe earlier or have discussed it before. That is one of the programs that came out of this process. In 2015 the legislature re-upped that granting and they increased the amount from 15 million dollars to the counties to 40 million dollars to the counties. Again, all 36 counties participated with the same four goals in mind and have made targeted investments with those ideas in place. It has really been that there are really 36 different approaches to this. There is not an MCJRP in every county; in fact I think it is pretty unique compared to what a lot of the counties ended up investing in. Part of the Criminal Justice Commission's role in the implementation is as the counties were building these programs and thinking about their systems and what they should be targeting, we wanted to give them data. We established, right away in 2013, something that we call RICs or Regional Implementation Counsels around 3194 and we cut the state into four places and I will just kind of use my website here. The way that we did this was that we essentially looked at prison usage and we said these five counties use about 63% of all the prison in our state and so we put them into one group. Then, the other three areas roughly comprised between 10 and 13% of prison usage. We tried to group them and it isn't the most elegant way, but group them by similar size, similar types, similar issues that they face in their systems. We split up the counties this way and since 2013 we have been traveling to a different county in every region quarterly and giving them data. We show them how they are using their prison, how their prison intakes are going up or down, we cut it by crime types. We look at average lengths of stay so that they can compare themselves to other counties within their regions. We give them this information

and then they have conversations and we saw right away that there was great disparities in how counties used prison. Some counties had much, much higher lengths of stay than the state average for similar type crimes. Some counties had a much higher rate for incarceration per population than others. Marion County, for example, the rate was much higher than then statewide average whereas Lane County's length of stay was almost double the statewide average when we started looking at this data. Right away for very similar type crimes we started to see vastly different treatment. We had those conversations and a lot of people weren't aware that was happening until we put it into these terms. So, it has really been a great process. We have been doing this now since 2013, so we have been doing this for three years of going out to the counties. In fact, next week is our quarterly round of RICs and we will be traveling to Wheeler County and I think Jackson and Washington. We get them together at one county seat and we discuss. This has been our approach of how we have gotten information out to the counties so far, but what I was excited to share with Nancy a few weeks ago when we were talking about this was the next iteration of this process. This is our website; this is just the homepage of the Oregon Criminal Justice Commission. If you haven't been there in a while, mark it as your homepage, it's great. You can find out about justice reinvestment and our programs. We also administer specialty court grants. We are allocated by the legislature \$14 million dollars in general fund for just specialty court grants. The Criminal Justice Commission supports about 36 courts in the state which is about half. We use specialty because the majority are adult drug courts but it really does range. We have a DUII court in Beaverton, we fund veteran's courts and mental health courts but the bulk is the adult drug courts. You can find out about our specialty courts but what I really wanted to show you today was the interactive data portion of our website. These right here represent what we are working on behind the scenes, building out these dashboards that you can go to where you can find out in as real time as we can supply it what is happening. The one that is completed right now is the prison intakes and length of the stay. This is really what we have been working around justice reinvestment. Feel free to tell me to click on certain things or if you want to see certain counties like where you are from or where you are interested in, but we start in a kind of story board format. We try to look as chronologically as possible at the system and the idea is that you can kind of get a sense of how things move around the state. We start by looking at uniform crime reports, where are the reported crimes in Oregon. The first map represents just the total count. When you see these bars on the side and you see that Multnomah County, their number of incidents at 84,000 compared to Marion where the number is 33,000. But, if you go down here we look at the rate and you can see Multnomah County comes back into line because their population is so much bigger. The way that we have broken this out is along the same lines that the UCR data itself breaks out the categories. So, we looked at person crimes, property crimes and then what the UCR terms behavioral crimes. You can see that Multnomah actually dips below Marion County and Lane County in the rate when you are talking about those behavioral crimes. We can go back five years. With the UCR data, one of our biggest frustrations is that it is very slow. It goes from our law enforcement agencies to the state police to the FBI and then back to the state police and that process takes about a year and a half. This data lags but it is what we have and it is the best that we have for reported crimes. This next slide, now we are starting to look with our own Oregon DOC data but we also look and we use LEDS data and we use court's data and we merge all of that to try and get the best picture that we can. This graph is showing you prison intakes by count and rate. This one right now is on count and you can look over the counties and see the total number of intakes and then the rate per population and what their population is. I believe it has the functionality that you can actually click on a county and compare it to the state wide like that. This is stuff we will fly through, but go back to your desk and have fun for a couple of hours, if you are a data nerd like I am you will totally geek out on this. This is 2015 and 2016 and you can see it goes to March of 2016. We are really giving as up to the minute as we have. Pretty soon, once we get half way into May we will have April's up here. Eventually, once 2016 has enough of its own data we will break it out into a discreet year. You can look at 2012. You can compare all the years and see how things go across. If you wanted to break it out by region because you want to compare those five big counties and then Multnomah and how they fall in comparison you can do that. That is on count. But, this

way you can also look at rate and you can see the statewide rate in January of 2012 was 6.8. Per population in Multnomah it was 11. You can see how things move over time and then where individual counties fall.

13:17 J. Potter

You were in the room for the previous discussion. You have gender up there but you don't have race. Is that capturable?

13:25 M. Schmidt

I am very envious of what JJIS has been able to do in compiling all of that information. We are looking at that and we are trying to get an answer to that question. Where we really fall short is with Hispanic data. That population makes up a significant portion of Oregon so if you are not capturing that correctly then the Caucasian data is over-represented which messes everything else up. That has to do with some of our system functions. LEDS, for example, when you are getting booked in, it is not an option to mark Hispanic, you are either white or black and I believe Asian. It is not even on there as an option so a lot of that group ends up being marked as white. That feeds into data problems all throughout our system. If it gets corrected because a probation officer sees you face to face and they correct it, then we capture that, but we are looking at those decision points right now. How are they made? Are there actual thoughtful policies or is it more just ad hoc as how people are re-doing things? It is a problem for us in the adult system and it is something that we are working towards because we need to be able to do the same analysis they are doing with JJIS but we have to solve some of those issues.

You can look by crime categories. The reason we do this, especially around the conversation of justice reinvestment with female and male, is because when this legislation passed we weren't looking at those populations discreetly to say 'okay we are just looking at a total number of prison population, if the number goes up we need more prisons.' Well, it turns out for female offenders we are right at the cusp of needing the next prison because female offenders are housed in Coffee Creek and they are at and probably passed capacity. Now, we are starting to track them discreetly because that is a whole other prison decision point instead of just lumping the entire population together. You can cut this out by different crime types. Another decision point for us was with justice reinvestment we are really focusing on the driving, drug and property crimes there were called out in the legislation. We track the other crimes but we focus on those other categories because that is where counties are making investments in the programs to keep people locally and not send them to prison. This chart compares length of stay in total months of prison intake. There are two different ways to look at it, you're average length of stay and then how many total months you use. You can see that this is Oregon state wide. The average length of stay for sex sentences is by far the longest but not by far the most we use in this state but that is because there are less of those crimes so you can see how that interplays. What is really interesting about this is that you look at the property crimes, the drug and the driving, and if you were to add those up you're right up there with the same total prison months as we are talking about person and sex crimes. Then, if you wanted to look specifically at a county, here is Lane County and average length of stay in total months, so you can break it out that way. We also look at revocations. It will be no surprise to you that revocation is a significant way that we use prison in the state. We try to track that. I am just going to keep buzzing through. We are looking at the regional intakes, how many people are going to prison from the regions and you can see the total counts here. You can see the metro counties which I said were 63% of our prison population. When you change that to rate per population size you see that they fall below the other three regions in terms of prison usage. Some counties, where your population is incredibly small, if you send one person to prison you have had a massive departure, you use way more prison than you used to use. It is always important to keep your eye on scale but as regions, we hoped that now we are looking at 10-13% and maybe that is a better way to look at how they use per population. In the same ways, you can cut all these by year, by crime type in broad categories. This chart allows you to isolate counties that you want to see and then compare that by state. Again, we are looking at the total number but we can look at average length of stay, total prison use, the rate. What counties would you all like to compare? Multnomah, Marion and Lane are up there right now. Marion is the top and I told you that their rate is higher than

other places. We have been having this conversation since 2013, so let's look at all the years. We started back here and they have been consistently above the rest of the state. The state is represented by the black line. They are finally now recently below the state. This is something that they are actively working on with the programs that they invested in for justice reinvestment.

- 19:24 C. Lazenby What are the gray spikes?
- 19:25 M. Schmidt The gray spikes all represent different counties, so that is Sherman County.
- 19:30 C. Lazenby So, it's like two people, send one person and...
- 19:32 M. Schmidt Exactly right. When I clicked I changed the display method to average length of stay. I talked to you about how Lane County was disproportionately above the average length of stay and you can see that when we were having these conversations in 2013 their average length of stay, the black line is state, so they were doubling the state wide average. They are still above but the trend line is headed back towards where the state average. Multnomah County has consistently been below the state average length of stay and Marion is in between those. Then the other way can be total prison months. The top one is the state, how much prison the state uses in total versus each individual player. If we brought poor Sherman on here, that's how much prison Sherman County is using in total, it is pretty much zero. Around here, they found someone.
- 20:53 P. Levy I have a question. You say we have been having these conversations and then you show the line going down, you're not meaning to suggest that you are talking people out of using prison or is that what you are saying?
- 21:07 M. Schmidt Not on a case by case basis.
- 21:10 P. Levy Right, but I mean it is a correlation but to what do you attribute causation?
- 21:18 M. Schmidt We are actively talking to counties who are grant recipients and saying the four measures that we are going to be looking at in your investments are there those four things. Using less prison, decreasing recidivism and the other two are increasing public safety and holding offenders more accountable which are slightly more amorphous ways to think about. But, we are having those conversations. We meet with the LPSCCs regularly. We meet with presiding judges. We meet with district attorneys. We present at all of their association meetings. We are really talking with all of them both individually in their associations and in their local county public safety coordinating councils. We really are talking about using less prison.
- 22:06 T. Christ I was going to ask who you are talking to. Thanks.
- 22:13 M. Schmidt Prison intakes and length of stay, this one we are really focusing in on the justice reinvestment crimes. I told you that the legislation reduced sentences in very specific areas. These are all of those areas where there are specific reductions and then we added in vehicle burglary and theft because they are high usage areas for property crimes. This just shows you how many people get probation versus a jail sentence versus how many go to prison. You can look at that individually as well. You can focus in on crimes, regions or years. This is 2016, so let's get off that because it is not enough data to really see. When it says drug meth, this encompasses everything, this is PCSs, deliveries, manufacturing so it is all lumped in there. But, we are working on disaggregating that data in a different dashboard hopefully to be revealed soon. Change from baseline, this kind of gets to some of the questions. What we did here with the black line we looked at three years of prison usage on those property, driving and drug crimes and we came up with a baseline. We looked at a year and a half before this legislation was passed and a year and a half after his legislation was passed to come up with a three year annual average of prison usage. Then we said that now we are granting all the

counties money to invest in programs that are targeting these specific types of crimes, are you using more or less prison than your baseline and that is what this chart shows. If you are in the green, you are using less prison than your three year average. If you are yellow then you are zero to ten percent using more. If you are red you are using more than 10% prison than you were previously even after getting several years of grants at this point. This is a very quick snapshot. It gets very challenging when you talk about a Lake county for some of the same reasons. You have one case and then they have used more than. But, in some of the counties the caseload and the numbers are big enough that it is a pretty decent way to measure if they are going up or down.

24:52 (unidentified)

What does a year of prison cost?

24:55 M. Schmidt

I think it is around \$30,000 or around \$90 some dollars per day. I would have to do the quick math. Then, our justice reinvestment goals; last year, in 2015, we had the prison forecast which was released in October and it showed that we were really going to go up in prison and we hadn't anticipated that. We thought we were starting to make some end roads and this forecast came out and said 'actually, you're about to skyrocket.' Which, of course, would represent a major threat to the justice reinvestment program because if the legislature is not having to avoid building a new prison, they can't pay for this and for that. We got all the counties together. We sent out invitations to all 36 counties to their LPSCCs. We tried to get the word out to the associations that we work with. Some of you may have hopefully been in the room. We said that we are at a crisis point, a tipping point. If we follow this latest forecast we are going to be building a new prison a lot sooner than we thought we would be. In order to avoid that we need to have actual targeted numbered goals. So, we set out goals by region and said that each of these regions we need to see below this line in terms of the property, drug and driving cases. That is what this slide represents is those goals that we set out by region and you can see in November when we had this conversation the metro region had been consistently at or above the line and they have gone down. That is not just to say that we gave them a strict talking to and they changed their behavior, but this is exact same time when those 40 million dollars in programs were getting up and running. That is what the county said to us, 'it's happening, it's coming online, we are getting participants.' And, it has been reflected in the data. When you look at the most recent prison forecast, that previous one that I spoke about the October forecast, was overestimating prison intakes for property crimes by about 100 offenders which is significant. That means that the county has changed for property offenders that behavior in this time period as these programs were coming up and running. Now, these are the bulk right, this is the 60%. If you click on the other regions and they have not been as responsive as the metro region has. If you were to look at person crimes in the same way you will see the goal line disappears because there was not a goal line in the counties to decrease their use in person crimes prison based on the justice reinvestment legislation. That is why that disappears. You can look male and female and by year. This is the prison forecast. In 2013, the green line is the forecast the legislature was looking at and that was where we were projected to go. When we crossed these thresholds the red here was Deer Ridge and some of you following the news you realized that DOC made a move into the medium facility but left the minimum facility vacant. They did that transfer to increase their capacity by 200 beds but they are not operating both facilities simultaneously which is where we were projected to go on very short order in 2013. Then, by 2017-18 we were going to have to have a facility ready to accommodate the increase in Junction City. That was kind of the impetus, then what this does the black line shows you where we are. I am only looking at the male but you can see the female is below. The black line shows you what we have actually done since the passage of legislation and the blue line represents the very latest forecast. This is the April forecast. It just came out a few weeks ago. We have already incorporated it into the slides so when counties go to look here they can see exactly where we are along that path. You can see we are still projected to go into expanding Deer Ridge. This whole pink bar is reflective of the fact that Deer Ridge will expand in phases. Right now they have two pods that are empty in the medium facility. When those are full they will be able to expand in the

minimum facility and that is represented by that entire pink band. The harder red line is really where we need to have Junction City online if Junction City is the option.

29:53 J. Potter

This is assuming there are no legislative changes?

29:56 M. Schmidt

That's right. This forecast is assuming that everything we have seen today continues on into the future unabated. This is very changeable and one of the things the Public Safety Task Force who oversees and administers the justice reinvestment through the legislation has requested the Criminal Justice Commission to do is provide data on what if we expanded short term trans leave from 90 days to 120 days what would that do to these lines? We've done that analysis and can share that if you are interested.

30:30 J. Potter

So, there was an agreement with the DA's and the governor at the time not to do anything with Measure 11 for five years. They signed some document. Does that document have any legal significance?

30:45 M. Schmidt

Legal significance? Probably not. Whether or not this governor decides to honor this document, she has said she supports the agreement that was made in 2013. Down here you can see the female prison population forecast and what I was talking about with Coffee Creek, this dotted line is where we need to have the capacity to get women out of Coffee Creek and into a different facility. So, we are right there. Every single day the first email I look at in the morning is how many people are in our prisons and our women population is right there every day bumping up against this line. It takes about 6 months to get OSPM up and running and of course staff training and everything else, so that is a very dangerous place to be. Then, just some definitions. So, that is the data side. Probably some of your questions are what have the counties actually done with the money. What are their programs? Not necessarily just to answer that question but this is a way to answer that question is we came up with this Oregon Knowledge Bank. This is a joint project between the CJC and DPSST. Part of the 3194 legislation tasked us with getting information out to law enforcement about best practices and training and things like that. One of the ways that we have done that is to work with a program they started called The Center for Policing Excellence to have this online tool. It is over here. This is the Oregon Knowledge Bank and what this will show you are policing programs, correctional programs, research and a state agency directory. I will click on correctional programs first. These are all Oregon specific programs that are happening around the state. This isn't what is working well in Los Angeles or New York. You can click on a tab and see what some of the programs that are happening around the state. If you clicked on justice reinvestment you could go on here and look at all the different things that different counties have invested in with their justice reinvestment funds. Here is the MCJRP. I will click on that because it sounds like you might have talked about that. The whole idea of this is not to be a definitive answer to how it all works to the littlest detail. It is to give you a high level overview of what it is they are working on. It gives you the problem that they state, what the solution is, why it is a solution and how they did it and what has been their outcomes and advice. You can go on here and you can look at any of the counties that have submitted justice reinvestment programs. We don't have all 36 represented. Some of the counties got really small grant allocations around \$100,000 so their program might have been to add a probation officer. The counties that do have programs are up here and if you wanted to know who to get in touch with you can click on this and it will send an email to Abby Stamp and you can ask her a question and I am sure she would appreciate that. That is how you get to the justice reinvestment programs and I can click on any of these that you want or I can kind of show you the rest of this website if you want to see it.

34:16 J. Potter

The rest of the website.

34:17 Chair McCrea

Yeah, let's do the rest of the website please.

34:19 M. Schmidt

Okay. Again, the idea was to share information across different departments. You can click on policing programs. This is all user generated content. The CJC does not have the staff or the will power to go out to every county and say 'what are you doing, we'd like to write it up.' So, these are all sent to us from the agencies and they tell us what it is the issue was and what they are targeting. We take that information and we tag it so you can click on a program area if you wanted to learn more about what they are doing and then you can click on the program and it is exactly the same format; what was the problem, who can I contact to find more information, what's the solution that you came up with, what outcomes or advice to you have for us? It is all about connecting and sharing ideas that are working across the state. We do that for police. We do that for community corrections and correctional programs. We're starting to work with courts, for specialty courts and even adult drug courts operate in different ways and have different parameters. We can connect the professionals about how they are doing that. Then, there is the research tab. We have two links here, national and Oregon research. National takes you to a list of links to many websites that you are probably familiar with to look for research and studies. We are not trying to recreate this wheel. This already exists but what we are trying to do is find out what has been researched in Oregon. We are actively working with PSU and trying to get their students to look at what research exists in Oregon and it is the same exact format and you can click on what research has been done on hot spot policing and find out what and when and where it was. This gets a little bit more complicated because one of our challenges is being able to distill this down to laypersons terms. Our idea is that we want police officers in the field or correctional officers to click on this and they are not necessarily researchers. Part of our challenge is to translate this into a more accessible format so we try to do that here. I can see that this one is full of citations, so it is a work in progress. Then, the agency directory, we are building out a law enforcement agency directory across the state where you can click on any one of the law enforcement agencies. Hopefully, they are all at least represented whether or not they have gotten us their information is a different issue. It quickly tells you the agency size, what kind of a population they are dealing with and what programs and units they have available to them. If you are an agency and you are of a similar size and your community is similar you might look and see what programs they have and it gives you contact information. Everyone in my office is going out and talking to groups like yourselves and the associations and trying to get the word out because this website is only as good as we keep getting the information into it. It is a really easy submission form. It takes about 10 to 15 minutes to fill out and we will work with that and get it up on our website. Those are the two big things that I wanted to show you all and answer any questions about justice reinvestment that I could.

37:57 Chair McCrea

Does anyone have questions? Nancy?

38:00 N. Cozine

Of course I have questions. One of the things you and I talked about and I think it would be helpful for us in terms of looking ahead to the future which is really caseload. You and I talked about this a little bit and I know that when you are I were talking about caseload, what you were saying to me is that there is a delay but also that, in terms of violent crime rates, we are seeing this decline, but in charging we are seeing an increase in misdemeanor and felony cases. I think you explained to me about why some of this data doesn't necessarily reflect that and I was hoping you could refresh my reflection.

38:38 M. Schmidt

Good point and I should have said this when we were going through this. The data sources that we have here are state data sources. We have state LEDS, we are working with the courts and that has been challenging in their transition in data systems. We are working with them and Department of Corrections. That is where we are getting all of our data. We don't have good county sources of data, again another reason I am jealous of JJIS is because they are getting all of that data from the counties at every level and putting it into one unified system. We are pulling data from discreet systems and matching and doing that analysis ourselves to make sure we are talking about the same cases across systems. One of the things we don't have but we are working on is data at the case level of what is coming into the system. One of the criticisms that we have gotten rightfully so about how we are looking at prison is we are

not, other than this very first slide, looking at uniform crime reports. We are not really capturing what is happening in a community. Whether or not a county is using more or less prison may or may not be a function of what they are investing in as much as it is what is happening locally. That has been a criticism of our data because we are really only looking at what is going into prison and on probation and we are not capturing what is coming in from police reports and then into district attorney's offices. One of the things that we are working on right now with the Oregon District Attorney Association is getting data from each of the 36 county district attorney offices on what they are seeing come through the front door. We have, actually, the one office that we have been able to work with this on so far has been Clackamas County and we are getting data on what they have seen referred to their office and then what ends up going to prison. There are still gaps in the system in terms of what we have but we are trying to build that out which might be pretty helpful in the caseload analysis to see how things are fluctuating across time up or down. It still doesn't quite get us one step further into crime because the reported crime lags so much and even that its UCR data which is in bigger categories that we don't necessarily use so it is not a perfect match for us in Oregon. But, what gets referred to the district attorney's office is a decent proxy for the crime that is happening. We are hopeful to add that in and we are actively working on that so this will be a more complete chronological look at how a case goes through our system. Is that what you were getting at?

- 41:15 N. Cozine Yes, thank you so much. I just thought it was really interesting information and I felt the Commission would like to hear it too.
- 41:21 Chair McCrea This is really intriguing.
- 41:26 J. Potter On your research button that you have there, and you said you working with Portland State University, I know you have a submission process but is there a standard of criteria that you use before you publish research on your site? We heard today that a race and ethnic study was done, would that be research that could conceivably go on this site?
- 41:54 M. Schmidt Yeah, I don't see why it couldn't go on the site, for sure. If you go through these, a lot of what you will see are published papers that we have pulled from of studies that have happened in Oregon. I don't think we have run into a situation where somebody back of the napkin gave us research. They mainly publish stuff, but with something like that, I don't see why it couldn't be submitted. What we don't have here, this is a 'submit a program' button it is not 'submit a research' button. We are adding that functionality to the website because like we are doing on the program side where we are getting users to generate our content on the research side we are the ones trying to track it down and then do that work and we want to reverse that for the sustainability of the site. We want researches to get their stuff up to us so that we can format it and put it on the website. That is a work in progress and our idea on how to do that is to create like we are doing with the law enforcement agency directory to have an Oregon researcher directory of people who are doing research or associations doing research in Oregon. Then, we can credit their studies to their profile page so you can quickly see it especially if you are in a jurisdiction and you are interested in pursuing a study you could hopefully see who has done this kind of work in Oregon before and you can reach out to them to pursue your own studies.
- 43:20 J. Potter But not particular criteria? If ACLU were to do a study on something and it's research and they publish it but it has a slant to it or you might view it as a slant, could it still be research that could be published here?
- 43:36 M. Schmidt We haven't turned anything down yet. We would have to obviously look at but I think, we have a criminologist on staff and we two researches and we work with PSU and so our lens would be does this pass good academic research muster and if it does then what it says one way or the other doesn't really matter as much. Some of these research papers will tell you the

thing that they studied doesn't work and we want to get that out just as much as the things that do.

- 44:15 Chair McCrea Other questions or comments? Thank you Michael that was very informative.
- 44:40 M. Schmidt If you go on the website and play around and you see things, shoot me an email and I am happy to get you answers.
- 44:47 J. Potter Good. We are still on the record here but let's pretend we are not. When do you think the Criminal Justice Commission will have drug changes available to us for the sentencing guidelines so we can make necessary changes on that?
- 45:03 M. Schmidt Our commissioners are meeting Tuesday to finish adoption of all the changes that happened in 2015. The 2016 ones we are just showing them for the first time so they will be looking at the 2016 changes. Hopefully by this summer we will have all those changes. Obviously the marijuana changes are the biggest part of that. They will be looking at those and what the legislature did, having that discussion and will come back in the summer for formal adoption of rules. I am hopeful that by September the bill will have at least gone through their process and we will post online what they are going to do.
- 45:44 J. Potter Thank you.
- 45:46 M. Schmidt You are welcome.
- 45:48 Chair McCrea So, Nancy?
- 45:50 N. Cozine So Chair, and members of the Commission, I am going to suggest that we actually move our last three items onto the May agenda. We are being a little ambitious and we knew that, but the Juvenile Dependency Representation Task Force starts at 1:30 and we had agreed to conclude at 1:00 and I don't want to hold anyone passed the time that they can be here and I will have to be elsewhere myself. If you could ask if anyone wanted to make a comment.
- 46:27 Chair McCrea Is there anyone who wanted to make a comment quickly?
- 46:36 J. Welch I have a quick question, is there a date for the retreat?
- 46:40 N. Cozine We are still working on finding a date that everyone is available.
- 46:44 Chair McCrea So the answer is no?
- 46:46 N. Cozine I think we are pretty close.
- 46:51 Chair McCrea Alright, I entertain a motion to adjourn. **MOTION:** Commissioner Ramfjord moved to adjourn the meeting; Commissioner Potter seconded the motion; hearing no objection the motion carried: **VOTE 7-0**

Meeting Adjourned

Attachment 2

Tentative Agreement between OPDS and AFSCME Local 2435.

Wages

The Employer and Union agree to go to the Emergency Board to request an amount of money that will achieve parity with the Department of Justice and other state agency salary schedules as of January 1, 2017.

A new Appendix A will be drafted which reflects these salary amounts.

TA

4-4-2016

Kon Allen


Proposed by Office of Public Defense Services (OPDS)

Date: 3/31/16 Time: 9:30 a.m.

TA: KA [Signature]

Date: 3/31/16 Time: [Signature]

ARTICLE 24—DIFFERENTIALS

The Employer will pay a 5% differential of base pay when it assigns in writing:

- a. ~~In the Employee's position description, a~~An Employee to interpret a non-English language;
- b. Additional duties that the Employer recognizes as significantly more complex than the scope of duties assigned to the Employees' classification, such as parole duties, as currently assigned to a Deputy II.

Article 2 - TERM OF AGREEMENT

Following approval of the Public Defense Services Commission, this Agreement shall continue in full force and effect until the last day of October 2019 at which time this Agreement shall terminate. Negotiations for a successor agreement will commence as mutually agreed on or after May 1, 2019.

Either party may elect to reopen Article 23 (including Appendix A) by written notice to be delivered to the other party on or before ~~September~~ ^{June} 1, 2017 with the express purpose of ~~conducting~~ ^{starting} salary negotiations in ~~October~~ ^{July} 2017.

starting
KA CP

July
FA CP

TA

4-4-2016

Ken Allen
CP

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ARTICLE 1—PARTIES TO THE AGREEMENT/ RECOGNITION

This Agreement is made and entered into by and between the American Federation of State, County, Municipal Employees (AFSCME), (hereinafter “the Union”) and Office of Public Defense Services (hereinafter the “Employer”).

The Employer recognizes the Union as the sole and exclusive bargaining representative for all Appellate Division attorneys including but not limited to those in the classification of Deputy Defender 1, Deputy Defender 2, and Senior Deputy Defenders, excluding temporary, managerial, confidential, and supervisory attorneys.

ARTICLE 2—TERM OF AGREEMENT

This Agreement shall continue in full force and effect until the last day of the twelfth month following approval by the Public Defense Services Commission; at the end of that year, this Agreement shall terminate. Negotiations for a successor agreement will commence as mutually agreed on or after May 1, 2016.

ARTICLE 3—COMPLETE AGREEMENT/SEVERABILITY

Section 1. Complete Agreement.

This Agreement is the full and complete Agreement between the Employer and the Union resulting from negotiations held pursuant to the provisions of ORS 243.650 eq. seq. It is acknowledged that, during negotiations which resulted in this Agreement, each and all had the unlimited right and opportunity to make demands and proposals with respect to any subject or matter appropriate for collective bargaining, and that the understandings and agreements arrived at by the parties after the exercise of that right and opportunity are set forth in this Agreement. Therefore, the Employer and the Union, barring a change in controlling law, rule, or contrary Commission directive, for the life of this Agreement, each voluntarily waives the right, if any, and each agrees that the other shall not be obligated to bargain collectively with respect to any subject or matter whether or not it was discussed in these negotiations unless such right to mid-term negotiation is expressly created within this Agreement. In the event of such change in controlling law, rule, or directive, the affected party or parties is/are immediately relieved of the conflicting contract obligation(s), and the parties agree to meet and negotiate the effect of such change. This Agreement shall not be modified in whole or in part except by another written instrument duly executed by the parties.

Section 2. Severability

In the event any provision of this Agreement is declared invalid by any court of competent jurisdiction or by ruling of the Employment Relations Board, then only such portion or portions shall become null and void and the balance of the Agreement shall remain in effect. The Employer and the Union agree to meet as

soon as possible to negotiate and agree upon one or more substitute provisions to replace the portion or portions of the Agreement so affected and to bring their practice into conformance therewith as soon as practically possible aspiring to do so within sixty (60) days after notification. Any dispute or question concerning bargaining unit composition shall be resolved by the Employment Relations Board.

ARTICLE 4—NO STRIKE OR LOCKOUT

Section 1.

The Union agrees that during the term of this Agreement, the Union or its bargaining unit members shall not authorize, instigate, aid or engage in any work stoppage, slowdown, sickout, refusal to work or strike against the Employer, or strike on the Employer's property.

Section 2.

The Employer agrees that during the term of this Agreement, the Employer shall not cause or permit any lockout of Employees from their work. In the event Employees are unable to perform their assigned duties because equipment or facilities are not available due to a strike, work stoppage, or slowdown by any other Employees, such inability to provide work shall not be deemed a lockout.

Section 3.

The Union recognizes and agrees that the Employees continue to remain subject to the Rules of Professional Conduct and that they at all times remain subject to the responsibilities placed on them by the Oregon Rules of Professional Conduct, including after the expiration of the contract. No Employee may target, picket, strike, or engage in other disruptive activity at any personal space associated with a Commission member or Employer's management team member, or at any professional space associated with a Commission member.

Section 4.

Upon notification confirmed in writing by the Employer to the Union that certain bargaining unit Employees covered by this Agreement are engaging in any activity in violation of this Article, the Union shall advise such Employees in writing, with a copy to the Employer to return to work immediately. Such notification by the Union shall not constitute an admission that it has caused or counseled such strike activity.

Any alleged violation of this Article by either party may be referred to the grievance arbitration procedure or may be pursued in the Courts at the discretion of the moving party.

ARTICLE 5—EQUAL OPPORTUNITY

Section 1.

The Office of Public Defense Services (OPDS) offers equal employment opportunities

without regard to race, color, national origin, sex, sexual orientation, union orientation, gender identity or expression, religion, marital status, age, disability, veteran or other status protected under applicable local, state, or federal law. OPDS requires that all Employees cooperate fully to ensure the fulfillment of this commitment in all actions and decisions, including:

- Hiring, placement, promotion, transfer, and discharge;
- Recruitment, advertising, or solicitation for employment;
- Compensation and benefits; and
- Selection for training.

It is also the policy of OPDS that all Employees work in an environment where the dignity of each individual is respected. Harassment due to status protected under this policy is prohibited.

OPDS will make reasonable accommodations for the known physical or mental disabilities of an otherwise qualified applicant or Employee, unless an undue hardship would result. Any applicant or Employee who requires an accommodation in the hiring process or to perform the essential functions of a job should contact the Human Resources Manager.

Section 2.

The Employer and the Union are committed to a workplace that offers equal employment opportunity in keeping with the Employer's policy and both parties will affirmatively work to ensure that the workplace operates in accordance with this policy.

ARTICLE 6—MANAGEMENT RIGHTS

Section 1.

Except as expressly and specifically limited and restricted by a written provision of this Agreement, the Employer has and shall retain the full right of management and of the direction of the facility and its operations. Such rights of management include, among other things, but are not limited to: the right of the Employer in its sole discretion to plan, direct, control, increase, decrease, or diminish staffing in whole or in part; to subcontract work; to direct Employees and to determine job assignments and working schedules; to change methods, strategies, techniques, and the locations where Employees work; to introduce new methods, strategies, techniques, and locations where Employees work; to direct the work of its Employees, including but not limited to the right to maintain order and efficiency; to change or discontinue any procedure used in connection with quality of or scope of legal representation offered; to hire, select, reward, transfer, evaluate, promote, demote and discharge at will subject only to constitutional constraints as provided by the Commission; to determine hours to be worked; to determine whether the whole or any part of the Employer shall continue to operate; to suspend, discharge, or take other disciplinary action against Employees; to assign work including special projects to Employees; to determine the level of support for CLE, training, and education; to lay off Employees for any reason, including but not limited to lack of work or lack of funding; to recall Employees; to add or to reduce the production

expectations, the work schedule and method of work, and number of Employees that it shall employ at any one time and the qualifications necessary to any of the jobs it shall have; in its discretion, to assign or reassign Employees and/or to assign or reassign work to Employees within the bargaining unit; to rescind, enact, or change Employer work rules and regulations, or policies, provided that such rights shall not be exercised so as to violate any of the specific provisions of this Agreement.

Section 2.

The failure of management to exercise any rights shall not constitute a waiver of same.

Section 3.

It is further agreed that the rights specified herein may not be impaired by an arbitrator or arbitration even though the parties may agree to arbitrate the issue involved as provided hereafter.

Section 4.

Employer programs which are not provided for in this contract may be implemented, modified or eliminated without violation of this contract or negotiations with the Union. Mandatory subjects of bargaining that are expressly included in this Agreement may not be unilaterally changed.

ARTICLE 7—TEMPORARY INTERRUPTION OF EMPLOYMENT

When the Employer decides that furloughs will occur due to lack of funds, the Employer will develop a furlough plan and call a meeting of the Labor Management committee to consider the effects and alternative options, if any. Such meeting must occur within thirty days of the declaration. Absent mutual agreement to the terms of an alternative, the Employer's furlough plan will be implemented.

ARTICLE 8—OTHER LEAVES

Section 1. Leaves With Pay

- a. ***Pre-Retirement Planning Leave.*** A full-time Employee with five (5) or more years employment with a PERS-covered Employer shall be granted up to 28 hours of paid pre-retirement leave. Part-time Employees shall be granted pre-retirement leave on a prorated basis. Scheduling of pre-retirement leave is subject to prior approval of the Employer. Such leave may not be converted to vacation, sick or personal leave, or to cash remuneration. Pre-retirement leave not used before retirement shall be forfeited.
- b. ***Jury/Witness Leave.*** Subject to provisions of ORS10.061 and 10.090, an Employee shall receive full pay from the Employer while on jury duty or while appearing as a subpoenaed witness (other than as a party in the action). The Employee must waive any jury fees except for expense reimbursement. Employer may request and retain a copy of the jury summons and court release, if applicable, to support the leave.

- c. ***Military Training Leave.*** Subject to provisions of ORS 408.240, 409.290, 399.065, 399.075, 399.230, and 659A.086, an Employee who has served with the State of Oregon or its counties, municipalities, or other political subdivisions for six (6) months or more immediately preceding an application for military leave, and who is a member of any National Guard, National Guard Reserve, or of any reserve components of the armed forces of the United States and has provided advance written or verbal notice of the absence is entitled to receive pay during an absence for annual active duty training or active duty in lieu of training. The Employee's paid leave of absence will not exceed fifteen (15) calendar days or eleven (11) work days in any federal fiscal year. If the training time for which the Employee is called to active duty is longer than fifteen (15) calendar days, the Employee may be paid for the first eleven (11) days only if such time is served for the purpose of discharging an obligation of annual active duty for training in the military reserve or National Guard.
- d. ***Military Leave.*** An Employee who is a member of the Oregon National Guard or other reserve component may use vacation, personal business, comp time, or leave without pay at the Employee's discretion to cover the absence to perform this duty. The Employee will provide verbal or written notice of military service. The Employee shall return to work on the next normally scheduled work day following deactivation unless otherwise authorized by the Employer.
- e. ***Bereavement Leave.*** Notwithstanding the Donated Leave or Sick Leave eligibility criteria of Articles 13 and 15, herein, Employees shall be granted up to forty (40) hours paid bereavement leave for the death of a qualifying family member (as defined by OFLA) , part-time employees shall be granted prorated leave. Employees shall be eligible for twenty-four (24) hours of paid bereavement leave for any other relative or person residing in the household. If additional leave is needed, an Employee may request to use accrued leave, or leave without pay at the option of the Employee for any period of absence from employment to discharge the customary obligations. The Employee must have exhausted all available accumulated leave and qualify to receive donated leave as defined in Article 13 – Donated Leave.
- f. ***Service Award Leave.*** Employees who have completed at least five years of nontemporary service with OPDS are eligible for service award leave. Only nontemporary continuous service with OPDS shall count toward service award eligibility. For the purposes of this Article, continuous service in a nontemporary position shall count towards an Employee's service eligibility if either:
 - a. the Employee was employed by the State Public Defender on October 1, 2001 and transferred to OPDS, or
 - b. the Employee was employed with the Oregon Judicial Department and was transferred to OPDS on July 1, 2003, or
 - c. the Employee has been continuously employed by OPDS. Time worked for OPDS before and after a break in service will be considered in

determining eligibility. Service award leave is granted in one-time intervals to full-time Employees in accordance with the following schedule:

Years Employed Service	Award Leave Granted
5	5 hours
10	10 hours
15	15 hours
20	20 hours
25	25 hours
30	30 hours
35	35 hours
40	40 hours
45	45 hours

Part-time Employees shall be granted service award leave on a prorated basis.

Service award leave must be scheduled in advance with the Employer and may be accrued. Service award leave shall not be donated or converted to cash remuneration. Service award leave not used prior to termination shall be forfeited.

- g. ***Special Recognition Leave.*** At the discretion of the Employer, Employees may be granted up to 40 hours paid special recognition leave per calendar year. Use of such leave shall be scheduled in advance with the Employee's supervisor. Part-time Employees will be granted special recognition leave on a prorated basis. Special Recognition leave may not be accrued, converted to sick or vacation leave, donated, or converted to cash remuneration. Special recognition leave not used by December 31 of the year in which granted shall be forfeited.
- h. ***Domestic Violence, Harassment, Sexual Assault or Stalking Leave.*** Subject to provisions of ORS 659A.270 through 659A.290 an Employee who is the victim of domestic violence, harassment, sexual assault or stalking or is the parent or guardian of a minor child or dependent who is the victim of domestic violence, harassment, sexual assault or stalking may take up to 160 hours of leave with pay each calendar year as defined below. The 160 hours is in addition to any accrued vacation, sick, personal business or other form of paid or unpaid leave available to the Employee. An Employee must exhaust all other forms of paid leave before the Employee may use paid leave established by this policy. Use of leave will be used for the purposes defined in ORS 659A.272. Use of leave may be a block of time, intermittent or supplementing an altered work schedule. To the extent that an Employee's need for leave under this provision is also covered by FMLA and/or OFLA, the leave types will run concurrently.
- i. ***Parental Leave.*** A parent shall be granted leave in accordance with State and Federal laws. A new parent may request additional leave time in accordance with section 2c of this article.

- j. **Family Medical Leave.** The Employer will abide by the federal Family Medical Leave Act and the Oregon Family Leave Act. FMLA and OFLA will run concurrently. OFLA and FMLA leave need not be taken all at once and can be used intermittently when required by law or, when not required by law, at the discretion of the Employer.
- k. **Red Cross Disaster Relief Services Leave.** The Employer may grant leave for relief services in Oregon. Such leave may not exceed 15 work days in any 12- month period. To qualify for such leave, the Employee must be a certified disaster services volunteer of the American Red Cross and the disaster must be designated Level II or above by the American Red Cross.

Section 2. Leaves Without Pay

- a. **Military Leave.** Employees shall be entitled to military leave without pay as required by federal and state law.
- b. **Court Appearance Leave.** An Employee may request and shall be granted leave without pay for the time required to make an appearance as a plaintiff or defendant in a civil or criminal court proceeding that is not connected with the Employee's officially assigned duties. Such reduction in salary will be made in full work week increments where such leave causes an absence of one (1) of more full work weeks.
- c. **Other Leave.** At the discretion of the Employer when the work of the Agency will not be disadvantaged by the temporary absence of an Employee, the Employee may be granted a leave of absence without pay or educational leave without pay, subject to Employer's advance approval. Leave without pay shall result in a permanent adjustment of the Employee's recognized service date in accordance with ORS 238.650. Leave of up to one (1) year will not affect an Employee's salary eligibility date.

ARTICLE 9—CLASSIFICATION AND CLASSIFICATION CHANGES

The Employer shall give the Union notice when it creates a new bargaining unit position that is not listed in Appendix A of this Agreement, or substantially changes the description of an existing bargaining unit job classification. The Employer and the Union shall agree upon a pay scale for such job classification prior to its implementation. In the event that the Employer and the Union are unable to agree upon a pay scale for the newly created position prior to its implementation, the Employer may set the pay scale for that position and the Union can request renegotiation of that pay scale upon expiration of the Agreement.

ARTICLE 10—MILEAGE AND LODGING

When the Employer requires the Employee to travel, mileage and lodging reimbursements will be in accordance with the Oregon Accounting Manual, Policy No. [40.10.00PO](#), and its successors. Changes in this policy will be incorporated into this Article automatically.

ARTICLE 11—PAID HOLIDAYS

Section 1.

The Employer will observe all state holidays as defined in ORS 187.010 and 187.020:

- a. New Year's Day on January 1;
- b. Martin Luther King, Jr.'s Birthday on the third Monday in January;
- c. President's Day on the third Monday in February;
- d. Memorial Day on the last Monday in May;
- e. Independence Day on July 4;
- f. Labor Day on the first Monday in September;
- g. Veterans Day on November 11;
- h. Thanksgiving Day on the fourth Thursday in November;
- i. Christmas Day on December 25; and
- j. Every day appointed by the Governor of the State of Oregon as a holiday.

When a holiday falls on a Saturday, the preceding Friday shall be recognized as a holiday. When a holiday falls on a Sunday, the following Monday shall be recognized as a holiday.

Section 2.

If the courts are closed on the Friday after Thanksgiving, that day will be considered a Holiday. If the courts are open on the Friday after Thanksgiving, Employees will be expected to work a regular day and will be granted eight (8) hours paid leave to be used as a floating holiday between the day before Thanksgiving and January 31st of the following year.

Section 3. Holiday Eligibility

A full-time Employee shall be granted eight (8) hours time off with pay for each holiday. A part-time Employee shall be granted time off with pay on a prorated basis for each holiday. If a holiday falls on an Employee's regularly scheduled day off, the Employee may schedule the holiday for use on a different day during the holiday week. An Employee on leave without pay for more than 32 consecutive hours (prorated for part-time Employees) shall not be granted the paid holiday if the holiday falls during the period of leave without pay.

ARTICLE 12—VACATION

Section 1. Monthly Accrual

Full-Time Employees. Full-time Employees shall accrue vacation leave at a rate based on each full calendar month employed in accordance with the following schedule, which is based on the Employee's recognized service date.

Vacation leave shall accrue as follows

Through 5 th year	10 hours per month
After 5 th year through 10 th year	12 hours per month
After 10 th year through 15 th year	14 hours per month
After 15 th year through 20 year	16 hours per month
After 20 th year through 25 th year	18 hours per month
After 25 th year	20 hours per month

Part-time Employees. Part-time Employees shall earn vacation leave on a prorated basis.

Initial Trial Service Employees. During the initial trial service period, Employees are eligible to accrue vacation leave each month. Accrued vacation may be used at the completion of the initial trial service period. Use of vacation leave may be granted during an extension of the trial service period.

Partial Month Accrual. Vacation leave accrual for an Employee working less than a full calendar month in a period due to hire, termination, or leave without pay shall be computed on a prorated basis.

Section 2. Scheduling of Vacation.

The time when an Employee may take vacation leave shall be subject to the approval of the Employer with due regard to the Employee and the needs of the Employer.

Section 3. Vacation Pay Upon Termination.

Unless an Employee requests to transfer vacation to another State of Oregon agency, an Employee (or, in the case of death, an Employee's beneficiary or estate) shall be compensated for a maximum of 250 hours of accrued and unused vacation leave. The rate of pay for vacation payout shall be the Employee's pay rate at time of termination, exclusive of other types of compensation such as differentials.

Section 4.

Vacation credit shall continue to be earned while an Employee is using paid leave.

Section 5.

Vacation hours may accumulate to a maximum of three hundred fifty (350) hours. An Employee who has accrued the maximum vacation leave hours authorized may request use of vacation leave to prevent its loss.

Section 6. Donation of Vacation Leave.

Vacation leave may be donated to another Employee when requested and approved for sick leave purposes. See Article 13 - Donated Leave.

Section 7.

When an Employee is on vacation and circumstances arise that would qualify the Employee to use accrued sick leave, the Employee may charge that time as sick leave. If a holiday or office closure occurs while an Employee is on vacation leave, the holiday or office closure shall not be deducted from the Employee's accrued vacation leave.

ARTICLE 13—DONATED LEAVE

Section 1.

The Employer administers a donated leave program allowing Employees to support other Employees in serious need of leave by allowing donations of paid vacation leave. Employees may voluntarily donate accrued vacation leave in full-hour increments to another non-temporary Employee provided the requesting Employee requires leave for sick, bereavement, or military leave and meets the following requirements:

SICK LEAVE

The requesting Employee:

- a. Is absent due to his/her own FMLA and/or OFLA qualifying reason or to care for a qualifying family member (as defined by FMLA/OFLA) with a condition that qualifies as a serious health condition under FMLA/OFLA, and
- b. has exhausted all accrued paid leave, and
- c. is not receiving Workers' Compensation or Disability Income payments, and
- d. is not the subject of pending disciplinary action, and
- e. has met the sick leave requirements as determined by the Employer.

BEREAVEMENT LEAVE

The requesting Employee:

- a. meets the OFLA eligibility requirements, and
- b. is absent due to the death of a qualifying family member as defined under OFLA, and
- c. has exhausted all accrued, paid leave, and
- d. has met the bereavement leave requirements as determined by the Employer.

MILITARY DONATED LEAVE:

As prescribed in ORS659A.086, the requesting Employee:

- a. is a member of the organized militia of this state and is called in to active service of this state under ORS 399.065(1) or state active duty under ORS 399.075, or
- b. is a member of the organized militia of another state and is called into active status service by the Governor of the respective state, and
- c. holds regular status (i.e. has completed initial trial service), and
- d. is in a leave without pay status during active military duty status, and
- e. has met the military donated leave requirements as determined by the Employer.

Section 2.

Employees may donate leave in increments of one (1) hour or more to an eligible Employee's sick leave account, based on the conversion of the donor's base salary rate to sick leave hours at the donee's base salary rate.

Section 3.

Employees apply for donated leave in writing to the Agency Human Resources Manager or designee, accompanied by the treating physician's written statement or military leave orders.

Section 4.

Approval shall be subject to availability of donations from OPDS Employees to cover all donated leave costs. The Human Resources Manager or designee shall initiate and collect donations on a form(s) the Agency provides. The donated leave received for the illness or injury may be used intermittently, as appropriate, for related medical appointments/treatments.

Section 5.

The maximum amount of donated leave an Employee may receive is 480 hours per incident for sick leave purposes and 40 hours for bereavement leave purposes. For military donated leave purposes, the Employee may not receive more than the amount the Employee was earning in total compensation on the date the Employee began a military leave of absence.

Section 6.

The donor and recipient will hold the Employer harmless for any tax liabilities.

Section 7.

Unused donated leave will be retained by the donating Employee.

ARTICLE 14—PERSONAL BUSINESS LEAVE**Section 1.**

Full-time Employees shall be granted 24 hours of personal business leave on July 1 of each year. Use of such leave shall be subject to prior approval by the Employer. Part-time Employees shall be granted personal business leave on a pro-rated basis. Personal Business leave accrual will be pro-rated when an Employee is hired after July 1 each year.

Section 2.

Personal business leave may not be accrued, donated, converted to vacation or sick leave, or converted to cash remuneration. Personal business leave not used by June 30 of each year shall be forfeited.

Section 3.

When an Employee from another State of Oregon agency is employed by the Employer and the other agency grants personal business leave for a fiscal year, the personal business leave may be transferred.

Section 4.

When an Employee from another State of Oregon agency is employed by the Employer and the other agency grants personal business leave for a calendar year, the personal business leave may be transferred. Personal business leave granted by the Employer on July 1 of the calendar year in which the Employee was hired will be pro-rated so the Employee receives no more than 12 hours personal business leave for the 6-month period January through June or July through December. (See Appendix B.)

ARTICLE 15—SICK LEAVE

Section 1. Monthly Accrual

Full-time Employees shall accrue eight (8) hours of sick leave for each full-calendar month employed.

Part-time Employees and Employees working less than a full calendar month in a pay period due to hire, termination, or leave without pay shall accrue sick leave on a pro-rated basis.

Trial Service Employees. During the trial service period, Employees are eligible to accrue and use sick leave. An Employee, upon initial appointment to OPDS is eligible to use an advance of forty (40) hours of sick leave provided that the Employee signs an agreement to have any used but not yet accrued time taken from the Employee's final paycheck.

Section 2.

- a) It is the Employee's responsibility to notify the Employer of the need to use sick leave. The Employee, or in emergency situations the Employee's representative shall notify the Employer at the beginning of the next scheduled work day or as soon as possible but not later than 24 hours following the Employee's scheduled work time, of the Employee's absence.
- b) If the Employee's absence is anticipated or prescheduled, the Employee shall notify the Employer at least 30 days in advance in accordance with OPDS policy Family and Medical Leave.

Section 3. Use of Leave.

- a) **Personal.** An Employee who is absent because of their own physical illness or injury, or medical or dental appointment, must use accrued sick leave for the absence.
- b) **Family.** An Employee may request, and must be allowed to use, accrued sick leave to care for a qualified family member, as defined in OPDS policy Family Medical Leave, and the Family Medical Leave and Oregon Family Leave Acts.

Section 4. Exhaustion of Sick Leave

a) Personal.

- a. An Employee who is absent due to his/her own FMLA and/or OFLA qualifying condition, and who has exhausted accrued sick leave, may request and must be allowed to use, any other form of accrued paid leave or leave without pay during the FMLA/OFLA entitlement.
- b. An Employee who is absent and does not qualify for FMLA and/or OFLA may request use of any other form of accrued paid leave or leave without pay for their absence. The use of such leave is subject to prior approval by the Employer.

b) Family.

- a. An Employee who has exhausted accrued sick leave and is absent to care for a qualified family member as defined by the FMLA and/or OFLA may request, and must be allowed to use, any other form of accrued paid leave or leave without pay during the FMLA/OFLA entitlement.
- b. An Employee who is absent to care for a family member and the leave is not qualified as defined under FMLA/OFLA, must make alternative care arrangements within a reasonable period of time.
- c) Proof Required. Unless otherwise provided in Employer policy, state or federal law (e.g. FMLA, OFLA, ADA, Workers' Compensation), the Employer may require the Employee to submit substantiating evidence for the use of sick leave.
- d) After exhausting all paid leaves, an Employee may be granted paid sick leave which has been converted from vacation leave donated by other Employees as provided in Article 13 – Donated Leave.

Section 5.

If a holiday occurs while an Employee is on paid sick leave, the holiday shall not be deducted from the Employee's accrued sick leave.

Section 6.

When an Employee accepts an appointment in another agency of State service, the Employee's unused accrued sick leave shall be transferred to the new State of Oregon Employer.

Section 7.

A former Agency Employee hired to a position in the bargaining unit with the Employer within two (2) years from the Employee's date of separation shall have previously accrued and unused sick leave restored.

Section 8.

There shall be no compensation for unused sick leave upon termination of employment. Payroll will report unused sick leave to the Public Employees Retirement System.

Section 9.

Salary paid for a period of sick leave resulting from a condition incurred on the job and also covered by Workers' Compensation, shall be equal to the difference between the Workers' Compensation for lost time and the Employee's regular salary rate. In such instances, prorated changes will be made against accrued sick leave. Should an Employee who has exhausted earned sick leave elect to use vacation leave during a period in which Workers' Compensation is being received, the salary paid for such period shall be equal to the difference between the Workers' Compensation for lost time and the Employee's regular salary rate. In such instances, prorated charges will be made against accrued vacation leave.

ARTICLE 16—UNION SECURITY

Section 1. Union Orientation

Reasonable paid time shall be granted for a Union representative to make a presentation on behalf of the Union at new Employee orientation to identify the organization's representation status and to collect membership applications. The Employer will provide the Union reasonable notice of the place and time of meetings for the orientation of new Employees.

Section 2. Union Representation

The Union will notify the Employer's Human Resources (HR) Manager in writing of its representative of the Local and Council 75, American Federation of State, County and Municipal Employees, AFL-CIO.

The representative shall have reasonable access to the premises of the Employer during working hours to conduct Union business. Such visits are not to interfere with the normal flow of work.

Section 3. Bulletin Board

The Employer shall furnish the Union reasonable bulletin board space for communicating with Employees.

Section 4. Union Representatives

The Union shall provide the Human Resources Manager with the names of Union Representatives, including officers and board members.

Section 5. Lists

The Employer shall furnish to the Union, quarterly, a list of names, classifications and home addresses of new Employees in the bargaining unit and a listing of changes of address of bargaining unit Employees who have submitted such notice to the Human Resources Manager. The Employer shall furnish the Union with a listing of Employees who have terminated from the bargaining unit during the previous month.

Upon request and no more than once a quarter the Employer shall provide to the Union the names of any limited duration Employees subject to the bargaining unit who are hired, reason for the hire and expected duration of the appointment.

Upon request and no more than once a quarter, the Employer shall provide to the Union the names of all bargaining unit Employees in double fill positions, the reason for the double fill and the expected duration of the appointment if available.

Upon request, the Employer shall provide to the Union organization charts for the bargaining unit, showing management positions and the positions they supervise.

Section 6. Use of Facilities

The Union shall be allowed the use of the facilities of the work site for meetings when such facilities are available and scheduling has been arranged.

Section 7. Union Dues and Fair Share

- a. On the first pay period of each month, the Employer shall deduct from the wages of Employees in the bargaining unit who are members of the Union, and who have requested such deductions pursuant to ORS 292.055, a sum equal to Union dues. This deduction shall begin on the first payroll period following such authorization and shall continue from month to month for the life of this Agreement
- b. Employees in the bargaining unit who are not members of the Union shall make payments in lieu of dues to the Union. Payments for these non-members in lieu of dues shall be subject to Fair Share reimbursement. Effective the first of the month following the month in which this Agreement is executed and on each pay period thereafter the Employer will deduct from the wages of each bargaining unit Employee who is not a Union member the payments in lieu of dues required by this Section. Similar deductions will be made in a similar manner from the wages of new bargaining unit Employees who did not become members of the Union within thirty (30) days after the effective date of their employment. The Employer shall remit a payment of all said deductions to the Union by the 20th of the month after the deductions are made. Said payments shall be accompanied by a listing of the names and Employee Identification numbers of all Employees from whom deductions are made.
- c. During the life of this Agreement, the Union will notify the Employer periodically of individuals who have become members of the Union and to whom the Fair Share provisions of this Section will not thereafter apply.
- d. Any Employee who is a member of a church or religious body having bona fide religious tenets or teachings which prohibit association with a labor organization, or the payment of dues to it, shall pay an amount of money equivalent to regular Union dues to a nonreligious charity, or to another charitable organization mutually agreed upon by the Employee affected and the Union. The Employee shall furnish written proof to the Employer that this has been done. Notwithstanding an Employee's claim of exemption under this Section, the Employer shall deduct payments in lieu of dues from

the Employee's wages pursuant to this Section, until agreement has been reached between the Employee and the Union.

- e. The Union shall provide the Employer's HR Manager the Union application/authorization forms. The HR Manager shall supply said applications to prospective members upon request, and shall process completed applications, forwarding a copy to the Union within 5 business days.
- f. The Union agrees that it will indemnify, defend, and save the Employer harmless from all suits, actions, proceedings, and claims against the Employer, or persons acting on behalf of the Employer for damages, compensation, reinstatement, or a combination thereof arising out of the Employers implementation of this Article.

Section 8. Maintenance of Membership

All members of the bargaining unit who are members of the Union as of the effective date of the Agreement or who subsequently voluntarily become members of the Union shall continue to pay dues, or the Fair Share amount, to the Union during the term of this Agreement. This section shall not apply during the 30-day period prior to the expiration of this Agreement for those Employees who, by written notice sent to the Union and the Employer, indicate their desire to withdraw their membership from the Union.

Section 9. Email system

Union Board members may use the Employer's email messaging system to communicate with represented and Fair Share bargaining unit members about Union business. Employees using the Employer's email system shall have no right to or expectation of privacy regarding any message sent or received through the email system.

Section 10. Intermittent Union Leave

When Union members are designated in writing by the Executive Director of Oregon AFSCME to attend AFSCME Council 75 Biennial or AFSCME International Conventions, the following provisions apply:

- a. The Executive Director of Oregon AFSCME shall notify the Employer in writing of the name of the Employee at least thirty (30) days in advance of the date of the AFSCME Convention. No more than one bargaining unit member may be designated to attend AFSCME conventions.
- b. Subject to Employer approval based on the operating needs of the Employee's work unit, including staff availability, the Employee will be authorized release time with pay.
- c. The paid release time is limited to attendance at the conference and travel time to the conference if such time occurs during the Employee's regularly scheduled working hours up to forty (40) hours per calendar year.
- d. The release time shall be coded as Union business leave or other identified payroll code as determined by the Employer.
- e. The release time shall not be considered as work related for purposes of workers' compensation.

- f. The Employee will continue to accrue leaves and appropriate benefits under the collective bargaining agreement except as limited herein.
- g. The Union shall, within thirty (30) days of payment to the Employee, reimburse the Employer for all Employer related costs associated with the release time, regular base wage and benefits, for attendance at the applicable conference.
- h. The Union shall indemnify and the Union and Employee shall hold the Employer harmless against any and all claims, damages, suits, or other forms of liability which may arise out of any action taken or not taken by the Employer for the purpose of complying with these provisions.

Section 11. Names of Retirees

The Employer will send a monthly report to the Union of the names of Employees who have retired the previous month. For purposes of this Agreement, a retiree shall be defined as an Employee who has given the Employer written notice that he/she is separating from State service by retirement and that person has actually separated from State service.

ARTICLE 17—PERSONNEL RECORDS

Section 1.

An Employee may, upon request, inspect the contents of their official Employer personnel file except for confidential reports from previous employers. No grievance material shall be kept in the official personnel files. There shall be only one (1) official personnel file kept for each Employee.

Section 2.

Effective upon execution date of this Agreement, no information reflecting critically upon an Employee shall be placed in the Employee's official personnel file that does not bear the signature of the Employee. The Employee shall be required to sign such material to be placed in his/her personnel file provided the following or substantially similar disclaimer is included:

“Employee’s signature confirms only that the Employer has discussed and given a copy of the material to the Employee, and does not indicate agreement or disagreement.”

If the Employee is not available within a reasonable period of time or the Employee refuses to sign the material, the Employer may place the material in the file provided the material has been signed by two (2) management representatives and a copy of the document was mailed to the Employee at their address of record and a copy to the Union provided the Union has given the Employer a signed release from the Employee.

Section 3.

If the Employee believes that any of the above material is incorrect or a misrepresentation of facts, the Employee shall be entitled to prepare a written explanation or opinion regarding the prepared material or to file a written grievance.

This shall be included as part of the Employee's official personnel record until the material is removed.

Section 4.

Upon the Employee's written request, material reflecting caution, consultation, warning, admonishment or reprimand or any reports, correspondence or documents of an adverse nature, shall be removed from the file after thirty-six (36) months, unless the material is related to discipline for: criminal activity, substance abuse, violence, harassment, discrimination, or other such occurrences; or flagrant and repeated violations of the rules stated in the Attorney Manual or Personnel Policy. This section does not apply to performance reviews conducted pursuant to Article 21, Performance Review.

ARTICLE 18—GRIEVANCE PROCEDURES

Section 1.

A grievance shall be any disagreement or dispute which arises concerning the application, meaning, or interpretation of this Agreement raised by an Employee or by the Union. The parties agree to resolve issues at the most informal level possible. If informal discussions between the Employee and Employer do not resolve an issue, a written grievance will be filed. The written grievance shall be filed using the procedure in Section 2. A grievance shall not be expanded upon after being filed at Step 2.

Section 2.

Step 1. Any Employee, with notice to the Union, or the Union on the Employee's behalf may file a grievance in writing with the Administrative Authority, with a copy to the Human Resources Manager within thirty (30) calendar days of the alleged action or the date the Employee and the Union knew or should have known of the alleged action; however, appeals of discipline or discharge shall be pursuant to Article 19 (Discipline and Discharge). Grievances shall be submitted on the AFSCME Grievance Form and shall contain the Articles alleged to have been violated, the specific reasons why the Employee believes the Articles were violated, and the specific remedy requested. The Administrative Authority shall respond in writing to the grievance within fifteen (15) calendar days after receipt of the grievance to the Employee, with a copy to the Union and the Human Resources Manager.

Step 2. If the grievance remains unresolved at Step 1, the Union may advance the grievance in writing, with a copy of the written grievance to the Executive Director within fifteen (15) calendar days following the date the response at Step 1 was due or received. The Executive Director shall respond within fifteen (15) calendar days following receipt of this Step 2 appeal. In the event the response from the Executive Director is acceptable to the Union, such response shall have the same force and effect as a decision or award of an Arbitrator, and shall be final and binding on all and they will abide thereby.

Step 3. Submission to Arbitration. If a Union grievance is unresolved following Executive Director review, the Union may submit in writing the grievance to arbitration. To be valid, a request for arbitration must be in writing and received by the Executive

Director within fifteen (15) calendar days after the Step 2 response was due or received.

Section 3. Time Limits.

Time limits specified in the grievance procedure may be waived only by mutual written consent of the parties. Failure to submit the grievance in accordance with these time limits without such a waiver shall constitute abandonment of the grievance. Failure by the Employer to submit a reply within the specified time will constitute rejection of the grievance at that step and allow the Union to pursue the matter to the next step within the specified time limit. A grievance may be terminated at any time upon receipt of a signed statement from the Union or the Employee that the matter has been resolved.

Section 4. Selection of the Arbitrator.

In the event that arbitration becomes necessary, the moving party will request within fifteen (15) calendar days from the date the Step 3 response was due or received, a list of the names of five (5) qualified Oregon Arbitrators from the Employment Relations Board, and contact the other party to strike names within thirty (30) working days after receipt of the list. The parties will select an Arbitrator by alternately striking names, with the moving party striking first, from the Employment Relations Board list one (1) name at a time until only one (1) name remains on the list. The name remaining on the list shall be accepted by the parties as the Arbitrator. Either party may request the Arbitrator provide available dates to both parties. Within ten (10) working days of receipt of the available dates, the parties shall select a mutually agreeable date and shall inform the Arbitrator.

Section 5. Arbitrator's Authority.

The parties agree that the decision or award of the Arbitrator shall be final and binding on each of the parties and that they will abide thereby. The Arbitrator shall have no authority to add to, subtract from, change, or modify any of the terms of this Agreement, to change an existing wage rate or establish a new wage rate. The Arbitrator shall issue his/her decision or award in writing within thirty (30) calendar days of the closing of the hearing record.

Section 6.

The Arbitrator's fee and expenses shall be paid by the losing party. If in the opinion of the Arbitrator, neither party can be considered the losing party, then such expenses shall be apportioned as in the Arbitrator's judgment is equitable. All other expenses shall be borne exclusively by the party requiring the service or item for which payment is to be made.

Section 7.

Subsequent to a valid arbitration request and prior to the selection of an Arbitrator, either the Executive Director or the Union may request mediation of the grievance. If agreed by both parties, mediation will be scheduled and conducted by the Conciliation Service Division of the Employment Relations Board. Mediation is not a mandatory step of the grievance procedure.

Section 8.

Once a bargaining unit member files a grievance, the Employee shall not be required to discuss the subject matter of the grievance without the presence of the Union representative if the Employee elects to be represented by the Union.

ARTICLE 19—DISCIPLINE AND DISCHARGE**Section 1.**

The principles of progressive discipline shall be used except when the nature of the problem requires an immediate suspension, termination, reduction of pay, or demotion. The Employer may take the following disciplinary actions: reprimand, suspension without pay, reduction in pay, demotion or dismissal, only for just cause. Any discipline must be provided to the Employee in writing. Verbal reprimands, warnings, work plans, coaching, counseling, evaluations and other non-disciplinary communications between Employees and the Employer are not subject to recourse under this contract.

Section 2.

Prior to dismissal, the Employer shall provide the Employee with a written predissmissal notice, except when the nature of the problem requires an immediate termination. Such notice shall include the known complaints, facts and charges, and a statement that the Employee may be dismissed. The Employee must continue work after receipt of the predissmissal notice unless otherwise specified in the notice. The Employee shall be afforded an opportunity to refute such charges or present mitigating circumstances to the Administrative Authority at a time and date set forth in the notice, unless a different time is requested by the Employee and/or his Union representative and agreed to by the Employer.

Section 3.

The dismissal of a regular status Employee may be appealed by the Union within ten (10) working days of the effective date of the dismissal directly to the Executive Director. Failure to file the appeal within the ten (10) working day period shall constitute forfeiture of the claim and the case shall be considered closed by the parties. Within fifteen (15) working days of the receipt of the Union's appeal of a case, the Executive Director will respond. Once the response is received from the Executive Director, if the grievance is not resolved the Union may appeal the case to arbitration. The parties shall select an Arbitrator and the Union will notify the Arbitrator of his or her selection. The letter shall include a calendar of potential dates. The final decision and order of the Arbitrator shall be made within thirty (30) calendar days following the close of the hearing.

Section 4.

The Employer will provide an Employee who receives a reprimand, reduction in pay, demotion, or suspension written notice of the discipline with the specific charges and facts supporting the discipline. The reduction of pay, demotion and/or suspension of a regular status Employee may be appealed to Step 2 of the Grievance Procedure within ten (10) working days from the effective date of the action. Failure to file the appeal

within the ten (10) working day period shall constitute forfeiture of the claim and the case shall be considered closed by the parties. The Executive Director shall respond to the grievance within fifteen (15) working days. If the grievance is unresolved, the Union may submit the issue to arbitration within fifteen (15) working days after receiving the response from the Director.

Section 5.

Upon request, an Employee shall have the right to Union representation during an investigatory interview that an Employee reasonably believes will result in disciplinary action. The Employee will have the opportunity to consult with a local union steward or an AFSCME Council Representative before the interview, but such consultation shall not cause an undue delay.

ARTICLE 20—TRIAL SERVICE

Section 1. Initial Trial Service

All new Employees appointed to a position shall serve an initial trial service period of six (6) months with the Employer.

The Employer shall evaluate the Employee's work habits and ability to perform his/her duties satisfactorily within the initial trial service period. Where a performance deficit requires additional training time, the Employer may extend the initial trial service by written notice to the Employee. The Union will be notified of the extension by copy of the extension letter when an Employee has a release on file.

During the initial trial service period, the Employee may use accrued sick leave and/or accrued Personal Business Leave. Any other leave requires written approval by the Employer.

An Employee's trial service period may be extended in instances where an Employee has leave without pay for fifteen (15) consecutive days or more. Such a leave of absence shall extend the trial service period by the number of calendar days of the leave taken by the Employee.

Section 2.

Initial Trial service shall be considered an extension of the hiring process such that Management may remove the Employee without cause.

Decisions made by Management during the initial trial service period are not subject to the grievance/arbitration procedure or to any action or complaint to the Employee Relations Board

Section 3. Promotional Trial Service

All Employees promoted to a new classification shall serve a promotional trial service period of six (6) months.

The Employer shall evaluate the Employee's work habits and ability to perform his/her duties satisfactorily within the promotional trial service period. Where a performance deficit requires additional training time, the Employer may extend the promotional trial service by written notice to the Employee. The Union will be notified of the extension by copy of the extension letter when an Employee has a release on file.

Employees removed from promotional trial service shall be demoted to the classification previously held and the Employee's former salary eligibility date will be restored.

ARTICLE 21—PERFORMANCE REVIEW

Section 1.

An Employee's performance will be reviewed either once a year or once every two years. The evaluation will be based on the relevant performance criteria and the Employee's position description. When the Employer designates a review cycle that is less frequent than annually, the Employee may request to have an annual review.

Section 2.

Proposed changes to the current procedure will be discussed in the Labor-Management Committee.

ARTICLE 22—RETIREMENT

The Employer will offer the retirement plan or plans available to its Employees through PERS. In the event that the State's payment of a six percent (6%) employee retirement contribution must be discontinued, the Employer and Union agree to open mid-term bargaining as soon as practically possible over this change in a mandatory subject of bargaining.

ARTICLE 23—SALARIES

Section 1.

The parties agree to work together to achieve pay parity with the Assistant Attorneys General who work for the State of Oregon.

Section 2.

Salaries and annual step increases will be set according to the salary schedule in Appendix A.

ARTICLE 24—DIFFERENTIALS

The Employer will pay a 5% differential of base pay when it assigns in writing:

- a. In the Employee's position description, an Employee to interpret a non-English language;
- b. Additional duties that the Employer recognizes as significantly more complex than the scope of duties assigned to the Employees' classification, such as parole duties, as currently assigned to a Deputy II.

ARTICLE 25—HEALTH AND DENTAL INSURANCE

The Employer will offer the plan or plans and contribution amounts available to state Employees through PEBB: <https://pebb.benefits.oregon.gov/members/lpb.main>.

ARTICLE 26—SALARY ADMINISTRATION

Section 1. Salary on Demotion.

Whenever an Employee demotes to a job classification in a lower range that has a salary rate the same as the previous salary, the Employee's salary shall be maintained at that rate in the lower range.

Whenever an Employee demotes to a job classification in a salary range which does not have corresponding salary steps with the Employee's previous salary but is within the new salary range, the Employee's salary shall be maintained at the current rate until the Employee's next salary eligibility date. At the Employee's next salary eligibility date, if qualified, the Employee shall be granted a salary rate increase of one (1) full step within the new salary range plus that amount that the current salary rate is below the next higher rate in the new salary range. This increase shall not exceed the highest rate in the new salary range.

Whenever an Employee demotes to a job classification in a lower range, but the Employee's salary is above the highest step for that range, the Employee shall be paid at the highest step in the new salary range.

This section shall not apply to demotions resulting from official disciplinary actions.

Section 2. Salary on Promotion

An Employee shall be given an increase to the next higher rate in the new salary range effective on the date of promotion. The Employee's salary eligibility date shall be reset to equal the date of promotion.

Section 3. Salary on Lateral Transfer

An Employee's salary and eligibility date shall remain the same when the Employee transfers from one position to another which has the same salary range.

Section 4. Effect of Break in Service

When an Employee separates from the Employer and is rehired by Employer within two (2) years, the Employee's previous salary eligibility date shall be adjusted by the amount of break in service.

Section 5. Rate of Pay on Appointment from Layoff List

When an Employee is appointed from a layoff list to a position in the same class in which the Employee was previously employed, the Employee shall be paid at the same salary step at which such Employee was being paid at the time of layoff.

ARTICLE 27—TELECOMMUTE

The Employer will maintain a telecommute policy. Qualifying Employees may telecommute one day per week. Additional telecommute days are subject to approval by the Employer.

If the Employer believes that an Employee's work out of the office is negatively affecting case management, attendance at meetings, or the goals of the office, or if the Employee fails to abide by the rules for telecommuting, the Employer may temporarily or permanently suspend the telecommuting privilege for that Employee.

ARTICLE 28—SAFETY AND HEALTH

It is the intent of this Agreement that the parties will mutually strive to maintain a suitable and safe working environment for all Employees.

ARTICLE 29—LABOR/MANAGEMENT COMMITTEE

Section 1.

To facilitate communication between the parties, a joint labor/management committee shall be established.

Section 2.

The committee shall be composed of up to three (3) Employee members appointed by the Union and up to three (3) members of Management, unless mutually agreed otherwise.

Section 3.

The committee shall meet when necessary, but not more than two (2) hours per meeting or more than once per calendar quarter. The first meeting shall be ninety (90) days after the parties have executed a labor contract. Subsequent meetings shall be established by mutual consent of the parties. Meetings may be longer or more frequent by mutual consent. Nothing in this Article shall prevent the Administrative Authority and Union President from addressing issues less formally as

they arise.

Section 4.

The committee shall prepare a written agenda five (5) days in advance of any scheduled meeting.

Section 5. Employees appointed to the committee shall be paid during time spent in committee meetings. Approved time spent in meetings shall not be charged to leave credits.

Section 6.

The committee shall meet and confer on issues relating to the operations of the Employer. The committee shall not have the authority to negotiate on mandatory subjects of bargaining. The committee shall have no power to contravene any provision of this Agreement or to enter into any agreements binding on the parties to this agreement.

ARTICLE 30—POSTING BARGAINING UNIT VACANCIES

When the Employer seeks to fill a vacant bargaining unit position, the process will include an email from the Employer to the bargaining unit that announces the vacancy, describes the qualifications for the position, explains how to apply for the position, and identifies the closing date for applications. Management will make reasonable efforts to (1) interview every minimally qualified internal bargaining unit applicant for the position, and (2) meet with every minimally qualified internal applicant individually before announcing results.

ARTICLE 31—HOURS OF WORK

Employees are exempt from FLSA overtime provisions and are expected to work a professional workweek on a salaried basis. The parties recognize that business hours for law offices and for most governmental agencies, including the courts, are from 8:00 a.m. to 5:00 p.m., Monday through Friday.

Alternative work schedules are subject to approval by the Administrative Authority. Approval for alternate work schedules will not be unreasonably withheld. Alternative schedules may be adjusted or terminated only when, in the judgment of the Employer, the needs of the Agency so require.

ARTICLE 32—LIMITED DURATION APPOINTMENT

Any Employee who accepts a limited duration appointment in the bargaining unit is entitled to rights under the layoff procedure in this Agreement.

Employees accepting such appointment shall be notified of the conditions of the

appointment and acknowledge in writing that they accept that appointment.

ARTICLE 33—LAYOFF

Section 1.

The Employer agrees to make a good faith effort to provide thirty (30) days notice to Employees and to the Union of its intent to reduce its attorney workforce through layoff as a result of inadequate funding or for operational reasons. The Employer will attempt to provide sixty (60) days notice of any such layoff.

Section 2.

The Employer shall maintain a list of names of Employees in good standing who have been laid off from the Employer in the previous one (1) year period. When the Employer chooses to fill a vacant position from the same or lower classification, the Employer will recall Employees on the layoff list in the reverse order the layoff occurred. For example, the last Employee laid off will be the first Employee recalled.

If the Employer fills a vacancy that requires the performance of specialized duties, such as a JAS team vacancy, the Employer will recall out of order from the list the Employee who previously performed those duties for the Employer. In the event that no Employee on the list has previously performed those duties for this Employer, the Employer will post the position and notify Employees on the list of the vacancy.

ARTICLE 34—WORKERS' COMPENSATION

The Employer agrees to follow the provisions of controlling law in regard to both processing workers' compensation claims and to reinstating an Employee injured on the job.

ARTICLE 35—AGENCY PERSONNEL POLICIES

Upon request, the Agency shall provide the Union a copy of its personnel policies.

ARTICLE 36—EDUCATION AND TRAINING

The Employer will pay registration for Criminal Section Attorneys to attend the OCDLA Annual Conference in Bend or the OCDLA Winter Conference. The Employer will pay registration fees for JAS Attorneys to attend the Juvenile Law Training Academy.

In addition, subject to budgetary constraints, the Employer will make available to each Employee discretionary funds for payment of registration fees for conferences and CLE programs that are directly relevant to the mission of the Agency.

ARTICLE 37—BAR AND PROFESSIONAL MEMBERSHIP DUES

The Employer shall pay Oregon State Bar (OSB) and Oregon Criminal Defense Lawyers Association (OCLDA) membership dues for each Employee. Funding permitting, the Employer may pay annual membership dues for two (2) OSB sections related to the Employee's practice.

ARTICLE 38—SUCCESSOR NEGOTIATIONS

The Employer will allow up to four (4) Employees to attend collective bargaining sessions as members of the Union's negotiation team. The Employer agrees to pay the affected Employees their normal salary for this time, during which they must continue to satisfy the usual work expectations of the Employer. The Union agrees to notify the Employer in writing of its members designated as representatives for negotiations. The Employer is not responsible for travel, overtime, per diem, other benefits or compensation beyond that which the Employees would have received had the affected Employees not attended bargaining sessions.

APPENDIX A – Salary Schedule

Effective Date: January 1, 2015

Classification Title	Class	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
Deputy Defender 1	D9430	5,256	5,528	5,805	6,092	6,393	6,718		
Deputy Defender 2	D9431	6,268	6,578	6,912	7,254	7,615	7,997	8,395	8,813
Senior Deputy Defender	D9432	7,364	7,730	8,114	8,520	8,944	9,390	9,860	10,355

Effective Date: December 1, 2015 includes 2.25% Cost of Living Increase

Classification Title	Class	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
Deputy Defender 1	D9430	5,374	5,653	5,935	6,230	6,537	6,869		
Deputy Defender 2	D9431	6,409	6,726	7,067	7,417	7,787	8,177	8,583	9,011
Senior Deputy Defender	D9432	7,530	7,903	8,297	8,712	9,146	9,601	10,082	10,588

Effective Date: December 1, 2016 includes 2.75% Cost of Living Increase

Classification Title	Class	Step 1	Step 2	Step 3	Step 4	Step 5	Step 6	Step 7	Step 8
Deputy Defender 1	D9430	5,522	5,808	6,099	6,401	6,717	7,058		
Deputy Defender 2	D9431	6,585	6,911	7,261	7,621	8,001	8,402	8,820	9,259
Senior Deputy Defender	D9432	7,737	8,121	8,525	8,951	9,397	9,865	10,359	10,879

APPENDIX B - Personal Leave Chart

Personal Business Leave will be pro-rated when an Employee is hired after July 1.

<u>Employee starts employment in:</u>	<u>Personal Business Leave</u>
July	24 hours credited
August	22 hours credited
September	20 hours credited
October	18 hours credited
November	16 hours credited
December	14 hours credited
January	12 hours credited
February	10 hours credited
March	8 hours credited
April	6 hours credited
May	4 hours credited
June	2 hours credited

Attachment 3



Oregon

Public Defense Services Commission

Office of Public Defense Services

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

April 25, 2016

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

Dear President Courtney and Speaker Kotek:

Nature of the Request

The Public Defense Services Commission (PDSC) requests an increase in appropriation in the amount of \$541,014 to be used for 2015-17 biennium compensation plan changes.

Agency Action

The Public Defense Services Commission has a statutory directive to adopt a "compensation plan, classification system and personnel plan for the office of public defense services that [is] commensurate with other state agencies." ORS 151.216(1)(e). The agency adopted compensation plan changes in October 2015 in accordance with increases being provided to represented state employees in other state agencies. At that time, Office of Public Defense Services (OPDS) employee compensation was projected to be not more than 7% below comparable classifications in other state agencies. Subsequent to PDSC approval of these compensation plan changes, the agency became aware of changes adopted in other state agencies in excess of those provided to most represented state employees. These changes had the greatest impact on attorney classification comparisons. Effective January 1, 2017, attorneys at the Office of Public Defense Services will be 11-34% behind comparable classifications at the Department of Justice, and non-attorney positions will be 2-10% behind comparable classifications in other agencies.

The PDSC was also obligated to engage in contract negotiations in the spring of 2016 with non-management attorneys represented by AFSCME. During negotiations, both parties agreed to approach the emergency board with a request that would allow the agency to adopt a compensation plan commensurate with other state agencies, while also addressing compression issues among management classifications. In calculating the requested amount, the PDSC assumed that no compensation plan changes would take effect until January 1, 2017.

Comparable classifications for non-management and management positions within the appellate division are listed below.

OPDS Classifications	Other State Agency Classifications
Office Specialist 1	Office Specialist 1
Office Specialist 2	Office Specialist 2
Paralegal	Paralegal
Legal Secretary Supervisor	Principal Executive Manager A
Deputy Defender 1	DOJ Assistant Attorney General (AAG)
Deputy Defender 2	in-between the DOJ AAG & Sr AAG
Senior Deputy Defender	DOJ Senior Assistant Attorney General (Sr AAG)
Chief Deputy Defender	DOJ Attorney in Charge
JAS Chief Defender	DOJ Attorney in Charge
CAS Chief Defender	DOJ Deputy Chief Counsel

The amount needed to meet the statutory directive within the appellate division, including non-management and management classifications, is \$541,014. The cost for classifications in contracts, financial services and executive services, which will be covered with existing agency resources, is \$71,438. The anticipated roll-up personal services cost of adopting a compensation plan commensurate with other state agencies for all employees at OPDS is \$2,503,563 General Fund for the 2017-19 biennium.

Action Requested

The PDSC respectfully requests that the Emergency Board appropriate to the Public Defense Services Commission \$541, 014 to the Appellate Division General Fund appropriation for compensation plan changes, which will allow the agency to comply with ORS 151.216(1)(e).

Legislation Affected

None.

Sincerely,



Nancy Cozine, Executive Director
Office of Public Defense Services



Oregon

Public Defense Services Commission

Office of Public Defense Services

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

Emergency Board Subcommittee on General Government

May 24, 2016

8:30 a.m.

Nancy Cozine

Executive Director

PDSC Request – Funding for OPDS Compensation Plan Changes

ORS 151.216(1)(e) requires the Public Defense Services Commission to adopt a compensation plan that is commensurate with other state agencies.

The agency has struggled to meet this obligation since its inception. In November 2013 and January 2014, the PDSC testified before the Legislature that it was committed to evaluating the availability of resources throughout the course of the biennium, with the intent of reducing disparities toward the end of the biennium if existing resources were sufficient to allow modifications.

In December 2014 the agency again presented to the Legislature, indicating that it would use savings generated through retirements and an office reorganization to self-fund increases for classifications that were farthest behind. These classifications, where disparities ranged from 12-18%, included Deputy I, Deputy II, Senior Deputy, Juvenile Appellate Section Senior Attorney, General Counsel, and Deputy General Counsel. The agency was able to reduce disparity in these classifications to approximately 7%. Three other non-lawyer positions that were more than 7% below the comparator classifications were also corrected: Administrative Analyst, Legal Secretary Supervisor, and Paralegal. The agency reported then that it would continue to work toward fulfilling its statutory mandate for commensurate pay for all agency employees in the next biennium.

Unfortunately, compensation plan changes adopted in other state agencies and reported during November 2015 Legislative Days are creating new levels of disparity. The increases, which are being implemented throughout the year, create disparities in attorney classifications of 11-34% by January 2017. These wage disparities create an increased risk of attorney departures, which can impact agency productivity.

The PDSC's first Key Performance Measure (KPM) measures the median time to filing of the opening brief. During its brief period of relative parity, the agency did not lose a single attorney to a new job opportunity. And the agency made gains on its median filing date, finally reaching its previous target of 210 days. With that momentum, the agency began working toward its new target of 180 days.

Soon after the rise in disparity starting in January 2016, an experienced attorney left OPDS for another attorney position in state government. Because it takes four to five years for most new appellate lawyers to become qualified to handle a high-volume complex caseload, the loss of attorneys who have been with the agency four or more years is significant. Historical data shows that attorney departures are typically at the four-year mark. The recurrence of this trend, coinciding with the increasing disparity, is concerning.

The Public Defense Services Commission acknowledges that the funding will not be needed until January 2017. But without certainty in funding, we anticipate the agency's experienced lawyers will have more motivation to seek employment outside the agency, creating increased training costs, case delays, and damaging the agency's ability to efficiently serve its clients and meet its KPM.

For these reasons, the PDSC respectfully requests an appropriation of \$541,014 to reduce compensation disparities in January 2017.

Attachment 4

Public Defense Services Commission

Strategic Plan 2016 – 2021

June 2016

Background

The Public Defense Services Commission (PDSC) solicited input from over 17 separate stakeholder groups when preparing the 2016-2021 strategic plan¹ and dedicated significant time to public testimony regarding the future of public defense. Its October 2015 meeting was largely devoted to receiving input from public defense providers from around the state, and much of its December 2015 meeting was dedicated to the Commission's own discussion of the future of public defense in Oregon.

Several themes arose throughout the course of these discussions. One consistent theme revolved around the need for reduced caseloads among public defense providers so that clients get adequate time with their lawyers, and lawyers have sufficient time to prepare cases and meet performance standards. Also noted as a high priority was increased access to technology for improved data reporting and analysis, and effective case management (including the storage of increasing amounts of electronic discovery – particularly media files associated with body cameras and other video surveillance). Contractors, system partners, and Commission members also identified a need for better access to social services for clients, a greater percentage of whom seem to struggle with issues related to extreme poverty, mental health, and substance abuse. There was also discussion about the increasing need for expert services, particularly in the area of forensic science, in response to rapid advancements in brain science. With this and other advancements in data collection, science, and the law, many identified a need for more consistent training for public defense lawyers. There were multiple comments about the importance of improved representation and oversight at the trial level in all case types, but particularly in juvenile delinquency cases. Additionally, many commented on the continuing need to advocate for system efficiencies and improvements at state and local levels. As in past years, there was also an emphasis on the need for contract rates that allow contractors to meet rising costs of business, and improve their ability to attract and retain a diverse cadre of qualified lawyers. Finally, OPDS employees focused on the importance of maintaining excellence and

¹ The following entities were invited to provide feedback: public defense contract providers, Oregon Judicial Department, Supreme Court, Oregon Court of Appeals, trial Judges, legislators, Governor's policy advisors, Criminal Justice Commission, Department of Corrections, Department of Human Services - Child Welfare, Oregon Department of Justice, Oregon district attorneys, Oregon Youth Authority, Juvenile Directors, Community Corrections Directors, Public Defense Service Commission members, and Office of Public Defense staff.

competitive pay structures to attract and retain qualified lawyers, increasing its ability to provide statewide quality assurance, succession planning for experience support staff, alleviating crowded working conditions, and improved technology to support its contract and appellate functions.

The goals and strategies in this plan are informed by the input received, as well as the Commission's statutory responsibilities, and its vision, mission, values, policies, and standards. After discussion and consideration at the June 2016 PDSC meeting, the plan was adopted by the Commission at its [TBD] meeting.

Mission

The Commission ensures that eligible individuals have immediate access to quality legal services for all proceedings in which there is a statutory or constitutional right to counsel.

Vision

The Public Defense Services Commission (PDSC) is responsible for creating a statewide public defense system that provides quality representation to eligible clients in trial and appellate court proceedings in a manner that ensures the continuing availability of competent and dedicated public defense counsel. To that end, the PDSC is a

- visionary planner for the effective delivery of public defense services and administration of justice.
- responsive and cooperative policy maker in the state's justice system.
- responsible steward of taxpayer dollars devoted to public defense.
- vigilant guardian of the legal rights and interests of public defense clients and the public's interest in equal justice and due process of law.

Values

The PDSC ensures that the Office of Public Defense Services remains a model for other Oregon state agencies in terms of

- Leadership – PDSC is a responsible leader and cooperative partner with other state and local agencies in the administration of justice in Oregon.
- Accountability – PDSC is a results-based organization with employees and managers who hold themselves accountable by establishing performance standards and outcome-based benchmarks and who implement those measures through regular performance evaluations and day-to-day best practices. PDSC and OPDS award and administer public defense services contracts in an open, even-handed and business-like manner ensuring fair and rational treatment of all

affected parties and interests. The PSDC is accountable to itself, the Oregon Legislature, and the public.

- Cost-Efficiency - PDSC is a responsible steward of taxpayer dollars and consistently seeks tools to better administer public defense services in a way that promotes efficiencies and improved outcomes within Oregon's public safety and child welfare systems. PDSC's commitment to providing quality public defense services also promotes cost-efficiency by reducing the chances of legal error and the costs associated with remanded proceedings following appeals, post-conviction relief, retrials, and other costly actions.

Legislative Advocacy

As a general matter, the PDSC does not view its role before the Legislative Assembly to include advocacy for changes in criminal, juvenile, mental health or other areas of substantive law or procedure. The Commission may decide to take a position before the Legislative Assembly with regard to particular legislation proposing changes in substantive law or procedure only if such legislation is likely to substantially affect the quality of public defense services in the state, the cost-efficient operation of the state's public defense system, the continuing availability of competent and dedicated public defense counsel, or the fundamental fairness of Oregon's justice system. With this in mind, the PDSC views its role in appearing before the Oregon Legislative Assembly and committees of the Assembly to be primarily for the purpose of:

- providing information in response to requests from legislators or legislative staff;
- advocating for a state budget sufficient to ensure (a) the delivery of quality public defense services, and (b) the continuing availability of competent and dedicated public defense counsel;
- advocating for legislative and policy changes that will yield efficiencies and better outcomes in Oregon's public safety and child welfare systems; and
- informing legislators of (a) the fiscal impact on the public defense system of proposed legislation or existing laws relevant to public defense, and (b) any potential constitutional or other problems that might occur as the result of the enactment, implementation, or amendment of legislation.

The PDSC does not intend this policy to affect the ability of OPDS's Appellate Division (AD) or its attorneys to advocate positions before the Legislative Assembly that are designed to protect or promote the legal rights and interests of AD's clients.

Standards of Service

The PDSC embraces the following standards for all OPDS employees:

- deliver directly or contract for professional services in a manner that meets the highest applicable legal and ethical standards;
- conduct all legal, contracting, and business services in a rational and fair manner;
- address all requests for information and inquiries in a timely, professional, and courteous manner;
- implement policies and best practices that serve as models for the cost-efficient delivery of public services and the effective administration of government;
- utilize results-based standards and performance measures that promote quality, cost-efficiency, and accountability;
- ensure the continued success of the OPDS Appellate Division by following practices that support excellence.

2016-2021 Goals and Strategies

Goal I: Provide competent, client-centered representation at all stages of a proceeding.

Challenges Addressed by Achieving this Goal: By providing quality public defense services, the PDSC fulfills its statutory mandate and serves as a prudent manager of state resources. Quality representation at the trial court level reduces other costs to the public safety system, such as reversals following appeals or post-conviction relief proceedings, wrongful convictions in criminal cases, excessive prison bed use in criminal cases, foster care costs in juvenile dependency cases, and unnecessary commitment of allegedly mentally ill individuals through the civil commitment process.² Quality representation is also critical to protecting the statutory and constitutional rights of all Oregonians.

Strategy 1: Build legislative support for public defense funding and programs that ensure representation in conformance with state and national standards.

Strategy 2: Improve monitoring of contractor performance through use of increased reporting requirements, including results of client satisfaction surveys, and through analysis of available data demonstrating contract lawyer case activities, case outcomes, and caseload information.

Strategy 3: Increase OPDS presence across the state to provide training, support, and monitoring of contract providers, better coordinate services between

² PFAFFA, JOHN, *Mockery of Justice for the Poor*, The New York Times, April 29, 2016: http://www.nytimes.com/2016/04/30/opinion/a-mockery-of-justice-for-the-poor.html?smprod=nytcore-ipad&smid=nytcore-ipad-share&_r=0

trial and appellate practitioners, and improve coordination with system stakeholders at local levels.

Strategy 4: Establish and enforce Oregon-specific caseload standards.

Strategy 5: Develop juvenile delinquency expertise within OPDS to better support delinquency practitioners around the state.

Strategy 6: Work with OCDLA and others to improve diversity and cultural competency within public defense, and public safety and child welfare systems.

Strategy 7: Preserve, enhance, and recognize excellence.

Goal II: Maintain a sustainable, accountable, and integrated statewide public defense system.

Challenges Addressed by Achieving this Goal: The PDSC faces many challenges in its effort to provide quality public defense services, but creating a sustainable system remains one of the biggest. Low contract rates and correspondingly low rates of pay, high caseloads, court dockets that have multiple cases set at the same time, limitations on contacting in-custody clients, and lack of modernized computer systems create significant inefficiencies within Oregon’s public defense system. Providers struggle to attract and retain qualified lawyers due to comparatively low pay and increasing law student debt.³ Low rates of pay also make it difficult for providers to maintain manageable workloads that permit attorneys to discharge their ethical and constitutional obligations to clients.⁴ Especially in urban areas, new graduates take positions with public defense providers but leave once they have gained some experience in order to avoid low pay and high caseloads. Providers are in a constant cycle of hiring and training, without sufficient internal resources for mentoring. In rural areas, providers struggle to attract new lawyers, and experienced lawyers are retiring or relocating. These challenges are exacerbated by daily struggles with crowded court dockets and courthouses without dedicated space for public defense providers where failure to connect with a client can yield higher failure to appear rates and unnecessary delays. Lack of space for public

³ “A legal education can cost upwards of \$150,000, and students, on average, graduate from law school with \$93,359 in debt...” Hopkins, Katy, *10 Law Degrees With Most Financial Value at Graduation*, U.S. News & World Report, March 29, 2011.

⁴ “In 2012, the average law graduate’s debt was \$140,000, 59 percent higher than eight years earlier.” New York Times Editorial Board, *The Law School Debt Crisis*, October 24, 2015

defense lawyers also compromises confidential communications, and hampers lawyers' efforts to be productive between court proceedings.

Strategy 1: Adopt competitive pay structures, clear contract provisions, standardized reporting requirements, and regular audit procedures that incentivize quality practices and prevent excessive caseloads.

Strategy 2: Advocate for dedicated public defender space in Oregon courthouses to increase regular client contact, protect confidential communications, and encourage efficient use of lawyers' time between court proceedings.

Strategy 3: Actively participate in the development of public policy at state and local levels by providing accurate and reliable information about Oregon's public safety and child welfare systems.

Strategy 4: Adopt attorney qualifications requirements that reflect the knowledge, skills, and abilities necessary to do the work.

Strategy 5: Support increased access to social work experts, who can efficiently address client needs, so that lawyers can focus on legal work.

Strategy 6: Secure adequate, qualified staffing, and modernized data systems to support OPDS programs and services.

Background

Documentation



Office of Public Defense Services

2016-2021 Strategic Plan

Environmental Scan

&

Strengths, Weaknesses, Opportunities, and Threats Analysis

Introduction

The Public Defense Services Commission (PDSC) through its Office of Public Defense Services (OPDS) is developing its strategic plan for 2016-2021. This plan will guide the Commission's priorities and will form the foundation for developing its 2017-19 and 2019-21 Agency Budget Requests, Legislative Concepts and program priorities.

The research phase of the project included two important processes: An Environmental Scan phase, and a Strengths, Weaknesses, Opportunities and Threats (SWOT) analysis. The Environmental Scan, intended to help leaders better understand how current and emerging issues will likely impact PDSC and its programs, consisted of meetings with providers and interviews with public safety officials and justice system stakeholders. Each group was asked to answer four questions; each designed to capture current and anticipated public defense challenges.

The following entities were invited to give feedback as part of the strategic planning process:

- Contract providers
- Chief Justice of the Oregon Supreme Court
- Chief Judge of the Oregon Court of Appeals
- Trial Judges
- Legislators
- Governor's Policy Advisors
- Criminal Justice Commission
- Department of Corrections
- Department of Human Services Child Welfare
- Department of Justice
- Oregon district attorneys

- Oregon Youth Authority
- Juvenile Directors
- Community Corrections Directors
- Oregon Judicial Department
- Public Defense Service Commission members
- Office of Public Defense staff

The second process in the research phase, the SWOT, focused on an analysis of how well equipped the Office of Public Defense Services is to respond to the issues identified in the Environmental Scan. The OPDS Leadership Team and Staff completed the SWOT analysis after review and discussion of emerging issues identified in the Environmental Scan. OPDS's strengths and weaknesses analysis focuses on its internal assessment of how well it is equipped to deal with those issues. Opportunities and threats emerge from analyzing the issues identified in the Environmental Scan that will help or hinder OPDS in providing its services and accomplishing its statutory mission. The SWOT analysis is a useful tool in guiding PDSC and OPDS through the 2016-2021 Goal Setting process. It is set forth at the conclusion of this document.

Information from the Environmental Scan is summarized, in very raw form, below. In order to capture as much information as possible, people were given the opportunity to submit their thoughts in different formats – in-person meetings, telephone calls, as well as written comments. The information is presented here as it was captured, with very little editing, in order to provide context and meaning. It is further summarized and collated in the 2016-2021 Strategic Plan.

Identified Issues and Themes

October 2015 Contract Providers Meeting

OPDS facilitated regional breakout sessions with Contract Providers at the Oregon Criminal Defense Lawyers Association annual Management Conference in Bend, Oregon. Participants were divided into four groups representing:

1. Central and Eastern Oregon
2. The Oregon Coast and Southern Oregon
3. The Tri-Counties area
4. The Willamette Valley and remaining parts of Oregon

Each group was asked to consider the following four questions and consider the next 3 to 5 years from their perspectives as Contract Providers.

1. What changes do you expect in your operations due to foreseeable developments in the law and performance standards?
2. What challenges will you face in providing quality public defense services during the next three to five years?

3. What can PDSC and OPDS do to better understand the needs and better support the public safety community?
4. What can the public defense community do better in working with other justice system stakeholders to enhance public defense services?

The following are the major themes from those sessions:

- Need for Reduced Caseloads
- eCourt system, which makes for a largely paperless court, has increased the time that each case takes in court, as all of the paperwork now needs to be done online, which actually takes longer
- increased drug use, especially involving heroin, and the attendant mental health issues, pose a big challenge for providers in trying to manage cases and get appropriate help for clients
- difficulty communicating and visiting with clients in custody (comment was made specific to Douglas County jail, but exists in many jurisdictions)
- Cases are becoming more complex
 - Increased reliance on forensic science means there is increased need to involve investigators and experts
 - Meeting standards of practice takes more work
 - Increase in time each case will require at the front-end of a case as a result of the use of police body cams and the anticipated availability of grand jury recordings or transcripts
- Training and Oversight
 - There is a need for increased training and oversight to ensure lawyers are meeting practice standards
 - Effective supervision and training is a particular challenges for consortia
- Staff Support
 - Increased demand for expert assistance, and additional non-attorney paraprofessional support, to make use of new technology and manage evidence that arrives electronically.
 - More and better grand jury practice, and the challenge of managing significantly increased electronic discovery as a result of the proliferation of police officer body cameras, requires additional staff support
 - Huge volumes of discovery that must be downloaded or otherwise secured electronically must be consistently managed and reviewed in order to provide competent representation
- New Technologies
 - Funding for new technologies and assistance with implementation, efficient use, and on-going training

- Increasing reliance on electronic discovery presents technology challenges for providers, including the storage of massive amounts of data
- OPDS Support
 - OPDS visits to counties increase understanding of contractor challenges, and benefit providers because OPDS can help contractors navigate system challenges in the courts
- Contracting
 - Contract providers would like more communication during the RFP process, and would like to submit RFP responses that are consistent with available funding to increase “give and take” in the contracting process
 - Contracts that provide funding for increasing costs and caseload fluctuations
 - changes to federal rules governing the classification of employees who are exempt from overtime pay, which significantly increases the salary threshold for employees who are presently deemed exempt, may have a major financial impact on providers
 - increased overhead expenses
 - demands of holistic defense
 - case assignments fluctuate but overhead costs are constant
 - new technology costs
 - caseload standards require that providers take fewer cases, but case rates don’t increase rapidly enough to cover increasing costs of running a business
- Community Support
 - Importance of public outreach, both to legislators and the general community, to increase understanding about the importance of public defense.
- Recruitment, Retention, and Succession Planning
 - Recruitment and retention of attorneys will continue to be a challenge for rural counties which aren’t especially attractive to new lawyers
 - Attracting new attorneys to public defense is challenging given the law school debt load of new attorneys
 - Attorneys are finding it difficult to retire from public defense with any sort of financial security

Death Penalty Contractors

1. What changes do you expect to see in Oregon’s public defense system due to foreseeable developments in the law, performance standards, and the state’s economic environment?
 - I would expect that within five years the newly constituted SCOTUS will end the death penalty. It is reasonable to expect that the state legislature would respond

with mandatory life without for agg murder, though far from certain. Mitigation work would still be required, even if the legislature took this step. The audience would be the DA alone, rather than the DA and a judge or jury. This would make it somewhat less expensive. I imagine there would be pressure to reduce the cost of defense if the death penalty were eliminated. This would be a mistake. I suspect a few more cases would go to trial. In addition, under our current system, a death sentence means, for practical purposes, natural life without, spent in the hole. Basically the same sentence if death were eliminated. Perhaps some savings would come from eliminating the automatic appeal to the Supreme Court.

- 100,000 of pages of discovery in electronic format – charges can be \$5K; recently x2 (because there was a change of attorney –charges are being challenged)
 - No expectation that the death penalty will go away in next five years – costs will continue to climb
 - Volumes of information will increase
2. What challenges will you face in ensuring the provision of quality public defense services during the next three to five years?
- Over the next three to five years the temptation will remain to "cash in" rather than to continue to slog away at current relatively low rates. The ABA guidelines call for compensation at rates commensurate with civil lawyers doing equally complex cases. I never expect that, but half that might keep enough folks at it.
 - Difficulty attracting and retaining qualified lawyers, mitigators, and investigators – should consider addition of a state FTE office for trial-level DP work
3. What do you think the PDSC and OPDS could do to better understand client needs and better support the public defense community?
- OPDS is improving it's NRE and payment procedures after what appeared to be a rough patch. Continuing that trend would be great.
 - Stipend for DP trainings (Monterey & Colorado)
 - Colorado and Monterey should be required; is very difficult for mitigation experts to work with lawyers who are not properly trained
 - As the volume of information increases, attorneys need a way to manage discovery electronically, and they need training on how to use technologies to better manage e-documents, medial, and case files
 - Federal defender has IT person who will work with teams to determine what technologies will be most effective for the team
 - Think about having technology people who are on contract to provide support to public defense contractors who are managing complex cases
 - Consider bulk-purchase agreements for commonly-used software (lexis-Nexis, casemap, sugarsink, dropbox, sharepoint, other collaboration software, adobe, word)

4. What can the public defense community do better in working with other justice system stakeholders to enhance public defense services?
 - Getting the courts and DAs to understand that their actions or sometimes lack of action wastes huge amounts of money. I recently had a case in which a regular murder was charged as an Agg. We went to the DA early and pointed this out and offered to settle. We continued litigating an Agg for about a year, then settled for a regular murder, the result we would have got at trial. If the DA were not so interested in looking tough, a lot of money would have been saved.
 - Negotiate access to technology for DP clients
 - Access to clients – can be very difficult in some facilities; mitigation specialists refused access; inconsistent at some facilities

Responses from the December 2015 Public Defense Services Commission Meeting

On December 10, 2015, the members of the Public Defense Services Commission discussed the four questions listed below, as part of a larger strategic planning process.

1. What changes do you expect to see in Oregon's public defense system due to foreseeable developments in the law, performance standards, and the state's economic environment?
 - Mental Health
 - Law and criminal defense begins to treat mental health differently; expectation of defense providers is going to change – will be expected to deal with that in both a sensitive and a fair way.
 - Veterans population - diversion when that is an option
 - Shifting to a holistic defense model
 - Broader concerns about how to care for our mentally ill in all contexts – civil commitments, dependency cases, etc.
 - Substance Abuse
 - Incredibly high percentage of people in the criminal and juvenile justice systems have substance abuse issues
 - Consistent overlap between mental health and substance abuse, and the apparent dawning recognition that the punitive approach isn't working
 - Technology Trends
 - Increasing concerns about how technology will have a tendency to make the criminal systems sloppier when it comes to the individual rights; need to train lawyers to be aware of that and to advocate effectively in the face of quick technological disposition of people's matters
 - Increased use of body cameras by police officers and possibly grand jury recordings; there will be more instances where lawyers need lots of time to review hours and hours of video
 - Developments in forensic evidence will require different types of challenges to evidence and the different types of challenges to eye witness testimony which have been evolving over time.

- Urban-Rural Divide
 - Challenge for us to have a single system, but on the one hand you are dealing with population centers that collectively are in the millions and then you are dealing with very disperse population centers. I am not sure where that will take us but I think that divide is increasing not diminishing. Our system has worked well, but the population was at around two million when it started; now it is three million, so there has been a 50% increase. We need to watch how we deal with that because with the contracts system that can be a real challenge over time.
 - Diversity
 - Oregon is becoming more diverse; we've got to push ourselves to reflect that diversity in the defense system.
 - Batson challenges require advocating for more people of color on juries at the trial level and the pre-trial stage about the disparities that occur on the basis of race. That should be as much of a professional piece of advocating especially in criminal law work where people of color are over represented.
 - Training
 - All of the factors noted above point to the need for consistent and on-going training
 - Data
 - We must track information in order to know what the problems are, and where they are
 - One last little follow up on what you are saying, to think that all of these kinds of reforms when it comes to sentencing and treatment or other options for dealing with people will be looked at with much more of a budgetary eye. What is interesting is that the reason why sentencing reform is taking hold is because people oddly on the republican side are seeing that it's costing too much money to have these people in jail all the time. I think there will just be a greater focus over time on what is the most economically efficient way to handle a lot of these problems and that will require advocacy from us a group about needing to spend enough money to make things work but it will also require people having individual lawyers being able to advocate solutions that will be effective to their clients.
 - Economic Environment
 - Must continue to build relationships
 - Money may need to come out of other things like dropping capital punishment or perhaps sentencing reform, or preventative treatment and alternative treatment that doesn't require a defense lawyer
2. What challenges will the Commission face in ensuring the provision of quality public defense services during the next three to five years?
- Funding
 - Attracting new lawyers when student debt loads are very high

- Providing compensation that allows people to make a career in public defense
 - Student loan debt that deter lawyers from taking positions in public defense offices
 - The need for specialization w/in criminal/juvenile defense due to complexity of cases and case law - e.g. sex offense cases – without losing overall competence in practice
 - Identifying and capturing data that is needed to support any of the things that we want to accomplish, we have to do that.
 - Need for a structure that creates a career path (e.g. MDI farm team, MPD higher level) and transition opportunities (ways to translate what is learned into other legal careers)
 - Development of Oregon specific and evidence supported caseload standards and a strategy for a change in funding structure that will support those caseload standards
 - Funding for training in some of the new areas that we talked about before, and funding to accommodate evolving standards
 - Data-driven developments in standards and compliance with those new standards will mean both gathering the data and providing funding to provide the services necessary to comply with those standards as they evolve
 - Funding for investigators and experts
 - Pathways to retirement
3. What do you think the PDSC and OPDS could do to better understand client needs and better support the public defense community?
- Satisfaction of client needs is best measured through objective performance measures (need for data!) and client satisfaction surveys; the Commission has been careful to maintain an appropriate distance (as none of the people served are clients of the Commission) and should continue to do so. Minimum criteria that will help support a better understanding of our clients' needs:
 - actual time spent with your client
 - training standards, like mental health, drug and alcohol issues, unconscious bias or diversity issues
 - It is also important that the Commission continue to play a role in system improvement (e.g. lawyers for kids, no indiscriminant shackling)
 - Consistent visits by OPDS to Oregon counties
4. What can the public defense community do better in working with other justice system stakeholders to enhance public defense services?
- Commission members supported the idea of reaching out to several external entities as part of the strategic planning effort

March 2016 OPDS Staff Meetings

Three meetings were held with OPDS staff on March 30, 2016. Staff were divided into groups representing their major work areas. Each group was asked to consider what was likely to happen in the next 3 to 5 years and to discuss the following questions.

Contract Services, Financial Services, Executive Services

1. What changes do you expect to see in your work due to foreseeable developments in the law, performance standards, the state's economic environment, or other circumstances?
 - Increasing workloads will require improvements to technology and systems to streamline work and improve efficiency for OPDS, contractors and the courts.
 - Legislators will require more and different types of data to support OPDS budget requests.
 - OPDS will restructure its contracting processes and move to performance based contracts with contractors.
 - OPDS will continue to improve its ability to monitor the quality of client representation by contractors.
 - Competing and increasing statewide needs for General Fund will challenge OPDS' ability to fund its programs.

2. What challenges will you face in ensuring the provision of quality services for your customers during the next three to five years?
 - OPDS aging hardware, software and networks require investments to keep them up to date and fully functional.
 - OPDS staffing may not be sufficient to move toward increased quality standards, performance based contracting and regular field visits to contractors.
 - More interagency and external communication and collaboration will be needed for OPDS to improve quality standards and implement performance based contracting.

3. What do you think the PDSC and OPDS management could do to better understand customer needs and better support the public defense community?
 - OPDS needs to improve its communication and visibility.
 - Contracting and decision making processes should become more transparent while maintaining OPDS' discretion and flexibility to optimally allocate funds.

4. What can the PDSC and OPDS management do better in working with other justice system stakeholders to enhance public defense services?
 - OPDS needs to improve understanding with the courts, counties and contractors with respect to case counting.
 - OPDS needs to provide ongoing training with stakeholders so that they understand what OPDS does and doesn't pay for.

Legal Support

1. What changes do you expect to see in providing support for appellate lawyers due to foreseeable changes in the future?

- As legal documentation continues to be captured in many different ways and formats (i.e. written, audio, video) there will be significant OPDS workload impacts and the need to move to standardized formats.
 - Technology will need to change to make it more efficient to move documentation between public defense community partners.
2. What challenges will you face in providing support for appellate lawyers next three to five years?
 - The traditional model where appellate attorneys work in an office from 8:00 a.m. to 5:00 p.m. is changing and will continue to do so. This will significantly impact how legal support staff do their work and interact with their assigned attorneys.
 - Several seasoned OPDS legal support staff will be retiring over the next few years. OPDS will need to recruit and train new staff to meet appellate attorney case caseloads.
 - Appeals for juvenile cases are expected to increase.
 - The types of cases OPDS appellate attorneys work on are getting more difficult and will require ongoing training for legal support staff.
 3. What do you think the PDSC and OPDS could do to better understand the needs of appellate division clients?
 - Appeals are becoming more difficult, especially with respect to the differences between adult and juvenile cases. This will require more and ongoing training for legal support staff.
 - There may be a need to develop specialized legal support staff for adult and juvenile cases.
 4. What can the PDSC and OPDS management do better in working with the appellate division, stakeholders, or others to ensure excellent appellate representation?
 - OPDS technology and training support for the courts can be improved.

Appellate Division

1. What changes do you expect to see in Oregon's public defense system due to foreseeable developments in the law, performance standards, and the state's economic environment?
 - Increasing number of juvenile appeals
 - Increasing case complexity and additional merit briefs (as percentage of whole)
 - Potential developments to ORS Ch. 138 (through Oregon Law Commission process)
 - Potential for increased caseloads as a result of increasing population, increasing homelessness, and improvements in representation at the trial level
 - Upcoming Supreme Court decisions that change the legal landscape

2. What challenges will you face in ensuring the provision of quality appellate services during the next three to five years?
 - Retirement of legal support staff at OPDS and at the courts; loss of institutional knowledge and strong working relationships
 - Technology changes (e.g. challenges with proprietary software for media files)
 - Change of database
 - Slow technology (absent improvements)

3. What do you think the PDSC and OPDS could do to better understand client needs and better support AD lawyers?
 - More information about where to refer clients who need services other than an appellate lawyer
 - More support for client needs (e.g. social worker-type interventions; someone to facilitate better access to clients; someone to help inmates navigate complex corrections systems to get help with medications, time calc.; help for clients who have an appeal pending but are also proceeding pro se at the trial-level; etc.)
 - Better systems for communication with trial lawyers
 - More opportunities to work in Portland in the future
 - Alleviate crowded working conditions in Salem

4. What can the PDSC and OPDS management do better in working with other justice system stakeholders to enhance public defense services?
 - DOC is something of a black box; would help to have more information about how to navigate that system
 - County jails – can be hard to access clients (e.g. telmate – can't call into our system b/c it isn't a live person)
 - Work with courts to provide education to judges on issues that arise regularly (e.g. attorney fees), improve court forms, and create more uniformity statewide
 - Offer more CLE's outside the office to support trial bar

March and April 2016 Meetings with OPDS Stakeholders

During March and April, the OPDS Executive Director and Leadership Team members met with the Oregon Department of Justice, the Oregon Court of Appeals, Dependency Partner Groups and Trial Court Judges. Each group was asked anticipate what is likely to occur during the next 3 to 5 years and to discuss the following questions.

Oregon Department of Justice

1. What changes do you expect to see in Oregon's criminal and juvenile justice systems due to foreseeable developments in the law, performance standards, and the state's economic environment?
 - Recommendations for change in Oregon's dependency system seem inevitable; what will become of those is unknown. If DHS is consistently represented, practice

might be more formalized; could require parents and kids lawyers to be more prepared; more accountable.

- Plain error review is increasing
 - Next biennium budget could be a challenge; need to look at how to keep things balanced
 - Length of time required to get cases through the system; DOJ is assigning a maximum number of briefs now.
 - Strong representation of kids on appeal
 - Strong political support for public defense
 - Pay equity is a high priority
2. What challenges do you think OPDS will face in ensuring the provision of quality public defense services during the next three to five years?
- Statewide budget hurdle
 - Criminal justice reform; possibly sentencing
 - Pressures of organized labor that create unplanned changes
 - Changing leadership in other agencies (e.g. DHS) yielding changes in practice
 - There has been a significant improvement in PCR trial and appeal representation in recent years – Ryan and Jason do a great job; challenge of senior judges handling these cases at the trial level may create some challenges in the future
 - Dependency practice is developing, with additional layers and work; elevating the quality of practice to meet rising standards and expectations
3. What do you think the PDSC and OPDS could do to better represent clients and add value to criminal and juvenile justice systems?
- Wide range of skill and interest levels in trial-level juvenile representation; raising pay, adherence to performance standards, quality assurance – all important
 - Clear standards for when one attorney’s representation ends and another begins (e.g. interplay between trial/appellate/PCR counsel) – sometimes DOJ doesn’t know who to serve and both lawyers disclaim responsibility – if it is hard for DOJ lawyer to figure out, are clients also somewhat confused?
 - Appellate – some issues that continually raised (e.g. unanimous jury verdict) seem unnecessary.
 - Sometimes clients don’t seem to understand potential consequences of appeal (e.g. probation vs. jail) and experience DOJ lawyers sometimes point out risk to less experienced OPDS lawyers – assume is sometimes happens internally – but as more experienced lawyers retire, who will be gatekeeper for those issues?
4. What can the PDSC and OPDS do better in working with other justice system stakeholders?
- Consistently explain when OPDS/PDSC and OCDLA positions differ.
 - Should continue to do things already do well:
 - Positive dialog – seeing things in advance & communicating

- Looking for opportunities to collaborate
- Good accessibility
- Good communication and positive relationships
- Fostering relationships across the state with trial-level practitioners

Oregon Appellate Courts

1. What changes do you expect to see in Oregon’s appellate system due to foreseeable developments in the law, performance standards, and the state’s economic environment?
 - Fewer SC opinions last year; do expect SC review and opinions to increase in coming years
 - Case complexity – attorneys are well-prepared now; will need to continue to develop
 - Increasing number of dependency cases in appellate system (court will be leaving two argument “slots” for dependency cases on each docket day; could increase to 3 if needed in the future)
2. What challenges do you think OPDS will face in ensuring the provision of quality public defense services during the next three to five years?
 - Trial-level - baby-boomer retirements; increased need for training; need for increased compensation
 - Legislature – many changes – need new champions
3. What do you think the PDSC and OPDS could do to better represent clients and achieve success in the appellate system?
 - The appellate division provides good representation; need to focus on building seniority and increasing appellate lawyer’s exposure to trial practice
4. What can the PDSC and OPDS do better in working with other justice system stakeholders?
 - Continue to make positive efforts and engage in a collaborative manner; predecessors established strong understanding of the need for public defense and that has only grown over the years.
 - Need effective way to resolve issues at the trial level when possible.

Governor’s Office

1. What changes do you expect to see in Oregon’s appellate system due to foreseeable developments in the law, performance standards, and the state’s economic environment?
 - New DHS leadership, focus on safety, possibly implementation of a board/commission for oversight, hold steady re-investment in economic climate

2. What challenges do you think OPDS will face in ensuring the provision of quality public defense services during the next three to five years?
 - legislative buy in, safety, serving undeserved areas (effective representation for all), equity (attorneys of color); compensation for public defense providers needs to be increased – pay parity
3. What do you think the PDSC and OPDS could do to better represent clients and achieve success in the appellate system?
 - reduce caseloads, incentivize quality work, pre-petition work, parent mentor program, culturally responsive strategies
4. What can the PDSC and OPDS do better in working with other justice system stakeholders?
 - Connect with DHS on how to better connect with attorneys (training), possibly something to discuss with a new director.

DHS, Court, CASA

1. What changes do you expect to see in Oregon’s criminal justice & juvenile child welfare system due to foreseeable developments in the law, performance standards, and the state’s economic environment?
 - Impact of TF on Dependency Representation recommendations
 - Independent review of DHS & whether it will result in increased oversight by court; could impact workload or timelines
 - National standards highlight the importance of pre-petition attorney representation; a disproportionate number of Give Us This Day cases were cases with no attorneys (voluntaries).
 - Caseworker misunderstanding around laws requiring court hearings – increased training in this area
 - State budget deficit (\$1.3 or \$1.5 B)
 - Leadership changes at DHS; vision for the future will change; legislative changes (will be interesting to see how Legislature reacts). This impacts people at the line-level. DHS will start to focus on a few key performance areas. Safety is going to be key; substitute care crisis – residential facilities are closing (lost 400 foster homes in last 18 months). Will be looking for beds; increased focus on wrap-around services. Out-of-state placements – very expensive but being used.
 - More progress toward fewer placements in foster care;
 - Development of better options to detention of youth offenders;
 - Improved understanding and application of brain science, especially with juveniles;
 - Risk-based, not crime-based pretrial detention and broader pretrial justice;
 - Increased application of risk-needs assessment at sentencing and in application of probation conditions, treatment, etc.;
 - Progress toward reducing over incarceration of adult offenders;

- Perhaps some willingness to address over incarceration due to M11, M57;
- Perhaps re-abolition of capital punishment.
- I expect fewer cases will be filed, few kids will go to foster care, attorneys will get slightly more money, we will continue to professionalize our sector of the law.
- I don't see any increase in resources ahead, given the latest economic forecasts, so the only way to improve outcomes will be through better collaboration among agencies, and some re-allocation of existing resources to better meet the current crushing need for mental health treatment, especially secure mental health beds for youth. I believe the new emphasis on evidence-based practices is driving system improvements, but good programs require consistent funding.
- As to juvenile justice - it is now following the trend of adult corrections and becoming the dumping ground for the kids w/mental health issues that are harming others- I have more and more kids who physically react to their care givers and who harm therapists or peers in residential programs
- As has always been the case- the systems fight each other in the name of protecting budgets
- There is no ready access to needed services and so kids get worse rather than be stabilized
- The best thing the defense system could do is pay the attorneys a fair wage so they could do this work full time- get good at and afford to learn the nuances
- Also they could specialize- like the probation officers do
- They should also get paid to advocate with school systems to truly meet the kids' needs- appropriately
- Since school failure is the number one risk factor leading to addiction and delinquent behavior- why isn't that the first line of defense?
- The recommendations of the various committees about a continuation of medications and health care irrespective of placement would help
- There also should be more appellate lawyers on the defense side
- In my county alone- there is rarely an appeal and there are many good issues
- If the trial attorneys were better trained in making a record- and were coached in that - and someone could do the appeal- issues could get resolved
- They should be looking on a statewide basis at what issues need work- and find the right case - and get it up to the appellate
- There is so little help in the delinquency side
- More is being done on the dependency side- but still not enough
- They need to have the funds like public defenders offices do- for investigation- medical consults- records review and things that can help the lawyer
- It took me 5 years to learn all i really needed to know, so maintaining experience lawyers in the system is key
- The legislature will insist upon more "evidence based" practices including sentencing
- More appellate decisions further refining the law in various areas
- The legislature is unlikely to decriminalize anything else for a long time and we can expect a batch of new crimes to be added to the books every session

- Dealing with the implications of self-driving cars
 - They will increase in numbers rapidly now and raise all kinds of questions about lawful driving, DUII, liability for damage and injury, etc. Oregon is ill prepared for this new development and will need to adopt new laws to address it.
 - I have not seen any correlation between crime or dependency filings and the Oregon economy. During the strong economy of the mid 2000's (2000-2007) we saw some of the highest criminal filing rates and the highest filing rates for dependency cases. During the subsequent recession (2007-2013) both criminal filings and dependency filings in our court went down. Since then, as the economy has strengthened and unemployment is now down to 4.7% I see no significant change in either criminal or dependency workload.
 - There are many factors that have much more influence over these filings that the economy does. Demographics, the use of heroin and social changes are much more influential. No one can accurately predict where these trends will lead us.
 - With the DHS focusing on prevention and voluntary service plans, I suspect we will not again see the large number of filings in court that we saw in the mid 2000-2007 period.
2. What challenges will OPDS likely face in ensuring the provision of quality representation of parents and children during the next three to five years?
- Facing the challenges mentioned above as well as workload
 - Caseloads are not likely to be reduced. I suspect they hit absolute lows in the past five years or so. We should expect increased caseloads. Changes in the law and in expectation about practice will also make it more complex and require more time from attorneys to do their work. This will translate into these services costing more money
 - In Linn County we are very fortunate to have a very good defense bar. I would say the juvenile bar is outstanding and the criminal bar is generally very good.
 - I think it would be helpful to better educate the bench and the community about the standards the PDSC has created for attorney performance. I suggest the PDSC and OPDS ask to do a presentation on this at the next Judicial Conference and in the meantime perhaps send out information my email.
 - Funding and the need for better management of criminal defense funding
 - Improving quality and purpose of child representation
 - Attracting and training quality representation in all areas
 - Promoting further reductions in the application of sex offender registration
 - The legislature isn't likely to give much more money to the OPDS, so folks will have to make do with the same amount. I think there might be some benefit in deciding how to equalize the counties in regard to payment as I understand some public defenders offices receive much more money for services, e.g. mental health counsellors, peer supports, etc., than others. This doesn't seem equitable to me.

- Funding, funding, funding. Also, problems will persist with individual lawyers who either do not adhere to practice standards, or are inflexible regarding their roles in a system that works best when it is less litigious and more collaborative.
3. What could the PDSC and OPDS do differently to (a) ensure better representation for parents and children, or (b) contribute to the health of the dependency system?
 - Invest in fellowship for rural communities; get experienced attorneys to help supervise
 - More messaging re: good practices used across the state; incentive
 - Documentation of relationship b/n attorneys & CASAs
 - Support quality, incisive problem-solving role of DDAs, especially in juvenile matters.
 - Objective measures of performance.
 - Training for stronger advocacy at the pretrial release stage in criminal and delinquency matters.
 - More bi-lingual attorneys.
 - I believe both of these organizations are doing a good job in setting standards, doing reviews and helping lawyers improve their performance. I don't think anything "different" would be of much help, but just continue on the current path of review.
 - Continue to work for better compensation for attorneys, and provide leadership and training for them on best practices and proven strategies.
 4. What can the PDSC and OPDS do better in working with other justice system stakeholders?
 - I think you do a fine job with that.
 - Participation in collaborative criminal justice and juvenile justice problem solving such as Evidence Based Decision Making; Alternatives to Detention.
 - Help develop diversionary programs, especially for low risk offenders, adult and juvenile.
 - Continue the dialog which seems to have opened recently.

Juvenile Directors

1. What changes do you expect to see in Oregon's juvenile justice system due to foreseeable developments in the law, performance standards, and the state's economic environment?
 - I do not believe I am in a position to answer this question on a statewide level, but for Wasco County the risk to losing secure detention will change the practice of juvenile justice. There is a legislative concept approaching the State to partner with counties in the responsibility for detention of two particular populations – parole violations and Measure 11 offenders placed in detention. If juvenile detention closes the impact on public defense provider's ability to adequately represent youth will change in our region.

- Conditional postponements have been determined to be a legal course of action in juvenile court. In Washington County, this may result in more agreements to utilize a conditional postponement and thus decrease the number of cases that go to trial.
 - There is focus on increasing the appropriate response to youth mental health needs. Hopefully there will be an increase in the number of options available for youth.
 - The economic environment is so different for every county. It appears to be strong in Washington County, which can result in increased service options available to youth.
 - The immense changes that are occurring within the medical/mental health field with CCOs is impacting youth access to services. There has been an increase in access, but the inability of providers to service those referred. Youth that have private insurance have difficulty getting the services they need.
 - I believe all counties now have youth with M11 charges held in detention, rather than jail. This is greatly impacting the space available for juvenile offenders and is increasing the costs of detention for counties.
 - The changes in juvenile SO registration law has created a change in how all system partners address this issue.
 - There is a lot of education going on regarding adolescent development and how to have juvenile justice systems that are responsive to youth development. This is very important to integrate into our systems and may change how we do business.
 - Restorative Justice is an ideal philosophy for creating learning and growth opportunities for youth and for providing healing and restoration for victims.
2. What challenges do you think public defense providers will likely face in ensuring the provision of quality public defense services during the next three to five years?
- Quick answer is time and money – Explanation is that recruiting public defenders that are committed and passionate about juvenile law seems to require two things that are missing. The first is funding rates – this may be more pronounced in rural areas where public defenders serve several counties and travel is an issue. The second related topic is increasing the rates to draw more public defenders so they can have more time for cases.
3. What could public defense providers do differently to better represent clients or contribute to the health of the juvenile justice system?
- Wasco County has focused on developing a strong working relationship with the local public defender’s consortium. The key element that we need public defenders to continue to do as they represent clients is talk to them in advance of hearings. Youth really need to have the process and potential outcomes explained to them several times so they really understand juvenile court.
 - We really appreciate public defenders coming to the planning tables, such as LPSCC and JCIP because they represent a huge section of the system. Statewide communication between the Organizations (OPDA and OJDDA) may be helpful and enlightening – I am not sure that has happened in the past.

- Embrace opportunities for youth to participate in restorative Justice, rather than traditional legal efforts.
4. What can public defense providers do better in working with other justice system stakeholders?
- It would be a question for the State agency on what is funded for public defense providers in the way of training and ability to participate in system improvement meeting. The more involved the public defense providers are with the systems I would anticipate the better they would be able to represent clients. I would also assume that they could have an impact on policy at the local level too.
 - Participate with system partners in learning about emerging trends in Juvenile Justice and in opportunities to help integrate those things into our system. Specifically, restorative justice, adolescent development, services for youth with mental health issues.

Strengths, Weaknesses, Opportunities and Threats (SWOT) Analysis

Process

The OPDS Leadership Team met on November 19, 2015, to discuss several issues that currently or will potentially impact its ability to fully carry out its programs and services. On March 30, 2016, follow-up meetings were held with OPDS staff to further discuss these areas, and to review and respond to information received during the environmental scan.

Several themes arose throughout the course of the environmental scan. One consistent theme revolved around the need for reduced caseloads among public defense providers so that clients get adequate time with their lawyers, and lawyers have sufficient time to prepare cases and meet performance standards. Also noted as a high priority was increased access to technology for improved data reporting and analysis, and effective case management (including the storage of increasing amounts of electronic discovery – particularly media files associated with body cameras and other video surveillance). Contractors, system partners, and Commission members also identified a need for better access to social services for clients, a greater percentage of whom seem to struggle with issues related to poverty, mental health, and substance abuse. There was also discussion about the increasing need for expert services in the areas of forensic science in response to rapid advancements in brain science. With this, and other advancements in data collection, science, and the law, comes a need for more consistent training for public defense lawyers, and a continuing need to advocate for system efficiencies and improvements at state and local levels. Additionally, as in past years, many commented on the need for contract rates that allow contractors to meet rising costs of business and improve

their ability to attract and retain a diverse cadre of qualified lawyers. Finally, OPDS employees focused on the need for maintaining excellence and competitive pay structures to attract and retain qualified lawyers, increasing its ability to provide statewide quality assurance, succession planning for experience support staff, many of whom have indicated that they intend to leave in the next few years, alleviating crowded working conditions, and improved technology to support its contract and appellate functions.

The following chart summarizes OPDS’s perceptions of its strengths, weaknesses, opportunities and threats.

Strengths	Weaknesses
<ul style="list-style-type: none"> • People: OPDS has experienced, qualified, and productive employees in each of its functional areas. 	<ul style="list-style-type: none"> • Pay Disparity: OPDS appellate and contractor attorney compensation lags behind Oregon prosecutors.
<ul style="list-style-type: none"> • People: OPDS appellate staff produces excellent work and is highly respected by Oregon appellate judges. 	<ul style="list-style-type: none"> • Physical Space: OPDS has insufficient office, meeting, and training space for staff, contractors, and administrators.
<ul style="list-style-type: none"> • Quality: PDSC has adopted contract provisions that require attorneys to meet training and performance standards when representing public defense clients. 	<ul style="list-style-type: none"> • Staffing: OPDS staff is not able to spend time in outlying counties due to time and cost constraints.
<ul style="list-style-type: none"> • Quality: PDSC has launched the Parent Child Representation Program, which has had positive results for parents and kids involved in Oregon’s child welfare system, and addresses concerns regarding quality and consistency of representation. 	<ul style="list-style-type: none"> • Data Driven Decision Making: OPDS has access to some critical data but not everything needed to remotely monitor attorney performance and develop useful tools to aid in its communications with the Legislature and other stakeholders.
<ul style="list-style-type: none"> • OPDS has positive relationships and communications with system partners and the Legislature. 	<ul style="list-style-type: none"> • Budget Transparency: Contractors are dissatisfied with the limited opportunities for increasing contract rates and services during the contract negotiation phase.
Opportunities	Threats
<ul style="list-style-type: none"> • Physical Space: Once completed, the new Multnomah Circuit Courthouse will include dedicated space for OPDS, contractors, and public defense clients. 	<ul style="list-style-type: none"> • Pay Disparity: Lack of funding to close the compensation gap may result in attorney turnover.
<ul style="list-style-type: none"> • Physical Space: OPDS can look for additional office space, or determine whether the current space could be reconfigured to better serve OPDS business needs. 	<ul style="list-style-type: none"> • Student Debt: Many new attorneys with high amounts of law school loans may not be able to work for OPDS because of its compensation structure.
<ul style="list-style-type: none"> • Collaboration: OPDS staff and contractors can benefit and strengthen their working relationships through increased collaboration 	

in areas such as quality assurance, training, and the budget process.	
<ul style="list-style-type: none">• Technology: OPDS can improve the functionality and usefulness of information technology tools.	
<ul style="list-style-type: none">• Caseload Standards: OPDS can study, adopt, and enforce caseload standards.	

Attachment 5

PUBLIC DEFENSE SERVICES COMMISSION
2017-19 AGENCY REQUEST BUDGET DEVELOPMENT
DRAFT POLICY OPTION PACKAGES

TRIAL LEVEL PUBLIC DEFENSE PROVIDER POLICY OPTION PACKAGES				
			Cost Detail	Estimated Total Cost
1	Parent & Child Representation Program Expansion	Phase 1: approximately 33% of caseload	\$10,648,893	\$35,683,146
		Phase 2: approximately 29% of caseload	\$10,594,715	
		Phase 3: approximately 38% of caseload	\$13,915,338	
	PCRCP OPDS Staffing	2.0 FTE PCRCP Attorney Managers	\$524,200	
2	Public Defense Contractor Parity			
	Contractor Parity with DA's*	Contractor Rate Increases		TBD
	Increased Hourly Rates	Increase in rates for hourly paid Attorneys, Investigators & Mitigators		\$14,697,716
	Capital Contract Attorneys; \$100 to \$175		\$5,969,025	
	Capital Contract Mitigators; \$62 to \$75		\$1,155,420	
	Hourly Attorneys; Capital Lead Counsel \$61 to \$100 Capital Co-Counsel \$46 to \$75		\$531,250	
	Capital Hourly Investigators; \$40 to \$50		\$620,528	
	Non-Capital Hourly Attorney; \$46 to \$75		\$3,920,269	
	Non-Capital Hourly Investigators; \$29 to \$40		\$2,501,224	
3	Statewide Case Management System	Consistent data reports, regular and reliable quality assurance at state and local levels, efficient data exchanges with other state systems (e.g. court dates, discovery)		\$1,450,800
Total Trial Level Request:				\$51,831,662

OPDS POLICY OPTION PACKAGES				
			Cost Detail	Estimated Total Cost
4	Employee Compensation ORS 151.216	OPDS agencywide parity with other state agencies		\$1,989,990
5	PCRCP Staffing & Quality Assurance			\$808,099
	PCRCP Staffing	OPDS staff: 0.5 FTE Research Analyst	\$92,225	
	Quality Assurance	OPDS staff: 0.5 FTE Research Analyst & 1.0 FTE Deputy General Counsel - Criminal	\$356,522	
	Juvenile Delinquency Appeals	OPDS staff: 1.0 FTE Deputy Defender 2 & 0.5 FTE Paralegal	\$359,352	
Total OPDS Request:				\$2,798,089

Agencywide Policy Option Package Requests: \$54,629,751

* If POP #1 is funded to expand PCRCP, then POP #2 for Public Defense Contractor parity costs will be reduced in the new PCRCP counties.

PUBLIC DEFENSE CONTRACTOR COMPARISONS FOR 2017-19 PARITY POP

Comparator County PD in **BOLD** and *Italics*

SEMI-URBAN	METRO AREA
<p>7th Circuit Attorney Group Columbia County Indigent Defense Corporation Jackson Juvenile Constorium Josephine County Defense Lawyers, Inc Klamath Defender Services, Inc Los Abogados, LLC Morris, Starns & Sullivan, PC <i>Southern Oregon Public Defender, Inc</i> James A. Arneson, PC Richard Cremer, PC Roseburg Defense Consortium Umpqua Valley Public Defender</p>	<p>Clackamas Indigent Defense Corporation Hillsboro Law Group, P.C. Independent Defenders, Inc Juvenile Advocates of Clackamas Karpstein & Verhulst Liebowitz & Associates <i>Metropolitan Public Defenders</i> <i>Multnomah Defenders Inc</i> Oregon Defense Attorney Consortium, Inc. Portland Defense Consortium Portland Juvenile Defenders, Inc. Ridehalgh & Associates, LLC Sage Legal Center Troy & Rosenberg <i>Youth, Rights & Justice</i></p>
VALLEY	RURAL
<p>Benton County Legal Defense Corporation Lane County Defense Consortium Lane County Juvenile Lawyers Association Linn Defenders Inc <i>Public Defender Services of Lane County Inc</i> Chris Lillegard, PC Harris Matarazzo Juvenile Advocacy Consortium Marion County Association of Defenders Polk County Conflicts Consortium Public Defender of Marion County Susan Isaacs Justice Alliance Center</p>	<p>Blue Mountain Defenders <i>Intermountain Public Defenders</i> David R. Carlson Douglas J. Rock Grande Ronde Defenders Stoddard & Denison Stunz Fonda Kiyuna & Horton, LLP</p>
COASTAL	CENTRAL
<p>Coos County Indigent Defense Consortium Curry County Public Defense, LLC <i>Southwestern Oregon Public Defender Services</i> Lincoln Defenders & Juvenile Advocates Clatsop County Defenders Association Mary Ann Murk McIntosh & Long/Connell Consortium</p>	<p>22nd Circuit Defenders Bend Attorney Group <i>Crabtree & Rahmsdorff</i> Madras Consortium The DeKalb Group</p>

Oregon Demographics

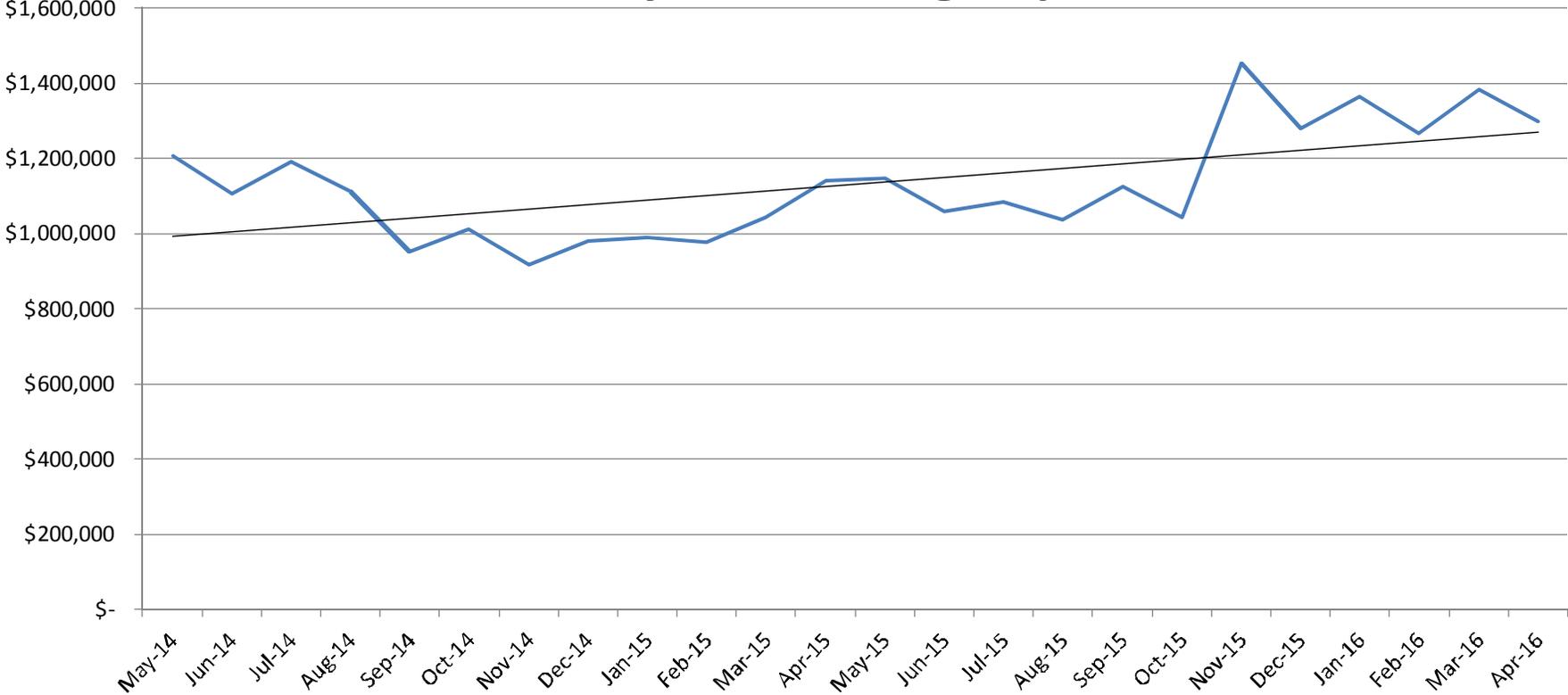
City	Population (2015)	Median Home Prices			Min. Wage (2017)	DA Salary (2016)
		2016	Percent change in past year	Expected change in next year		
Bend	87,014	\$348,500	12.9%	-0.9%	\$10.25	\$148,025
Coos Bay	16,182	\$162,600	6.5%	None	\$10.00	\$115,520
Eugene	163,460	\$247,500	6.9%	2.7%	\$10.25	\$153,171
Grants Pass	37,088	\$219,300	10.4%	None	\$10.25	\$122,679
Medford	79,805	\$225,600	10.8%	3.5%	\$10.25	\$143,474
Pendleton	16,881	\$150,800	-0.5%	None	\$10.25	\$106,404
Portland	632,309	\$368,800	21.6%	6.2%	\$11.25	\$175,712
Roseburg	22,114	\$173,400	2.1%	None	\$10.00	\$143,229
Salem	164,549	\$201,800	8.7%	4.9%	\$10.25	\$146,702
Hillsboro	102,347	\$305,800	14.4%	4.4%	\$11.25	\$175,712

Population: US Census Bureau

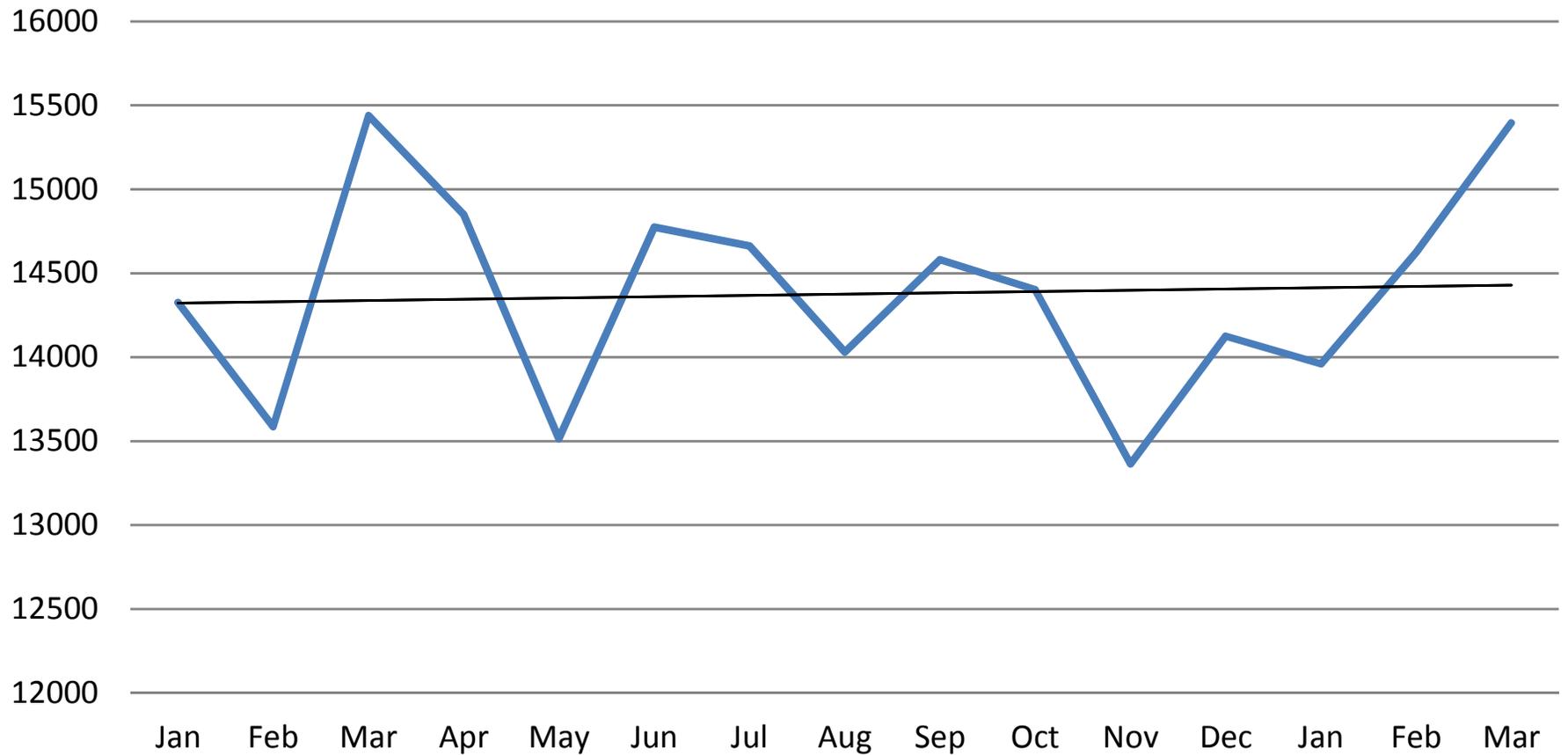
Median Home Prices: Zillow

Attachment 6

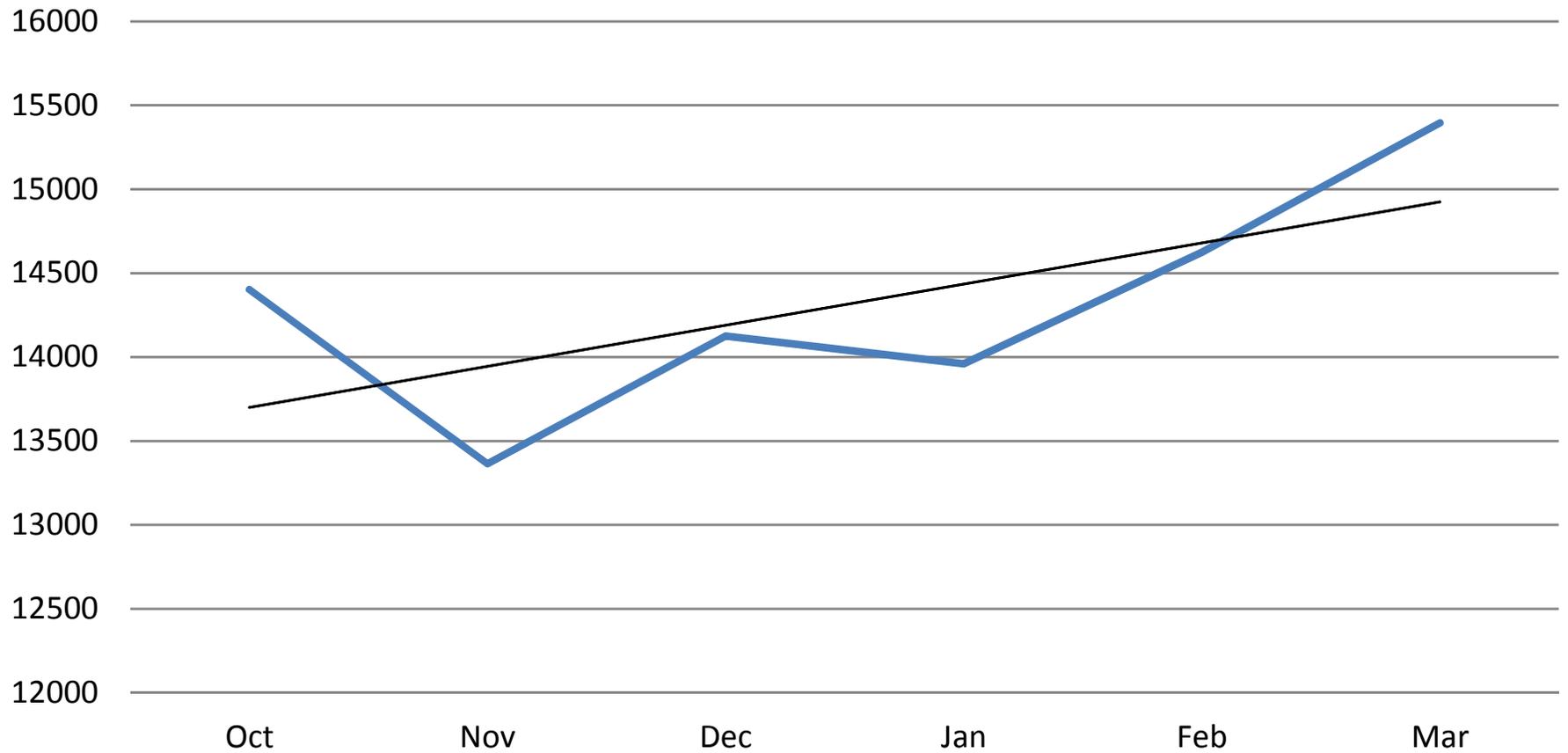
Capital Expenditures May 2014 through April 2016



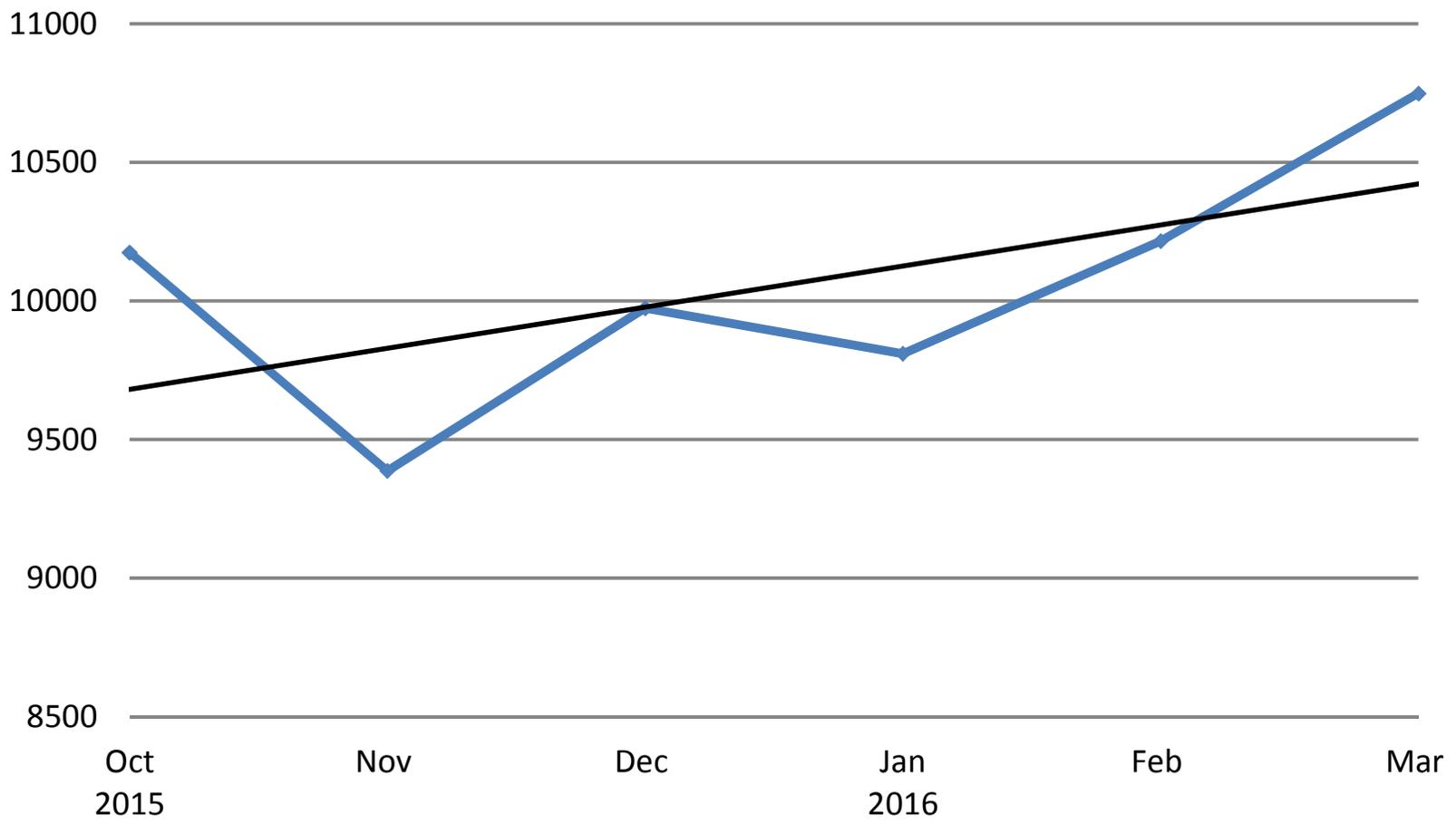
Statewide Non-Capital Caseload Credits for January 2015 through March 2016



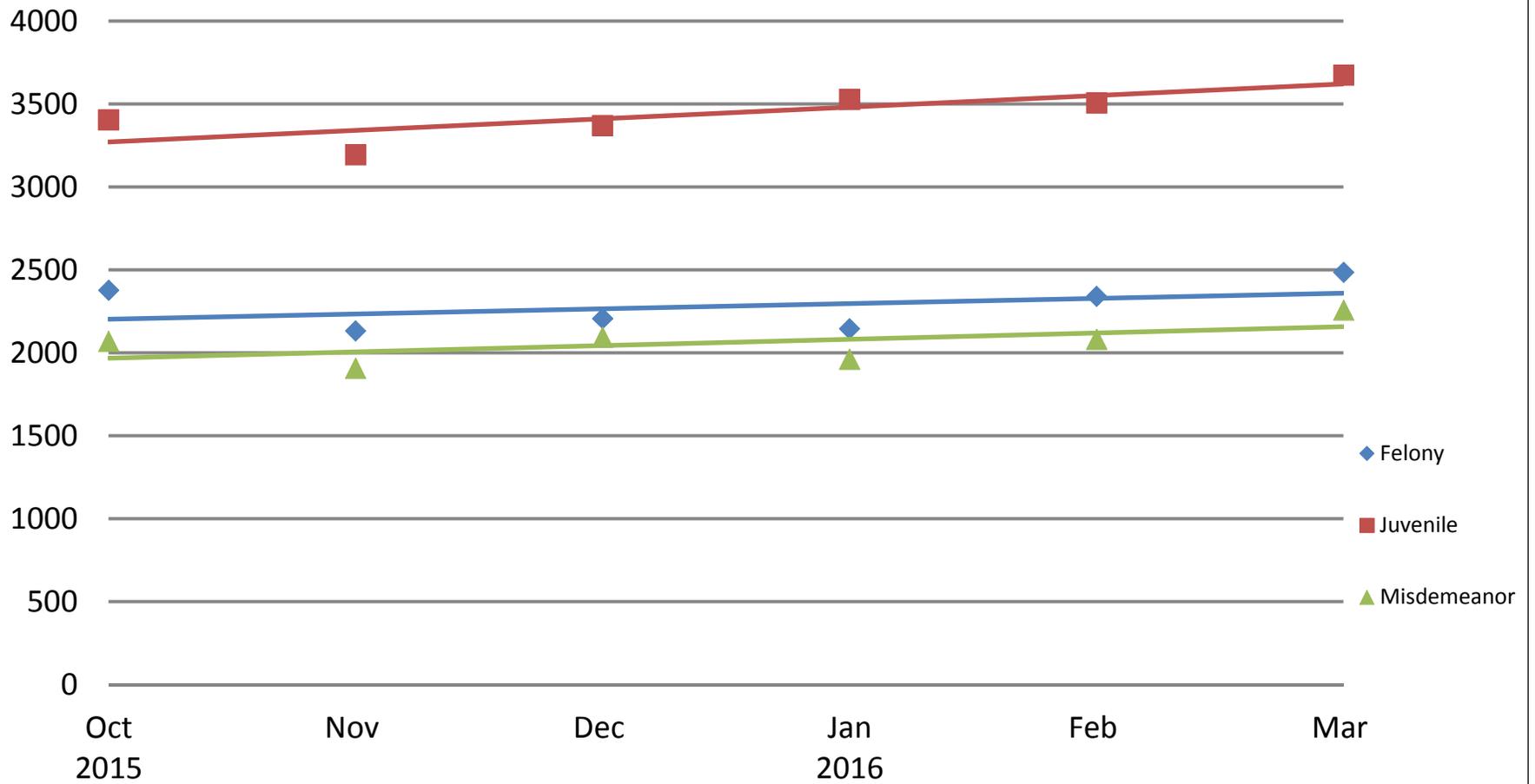
Statewide Non-Capital Caseload Credits for October 2015 through March 2016



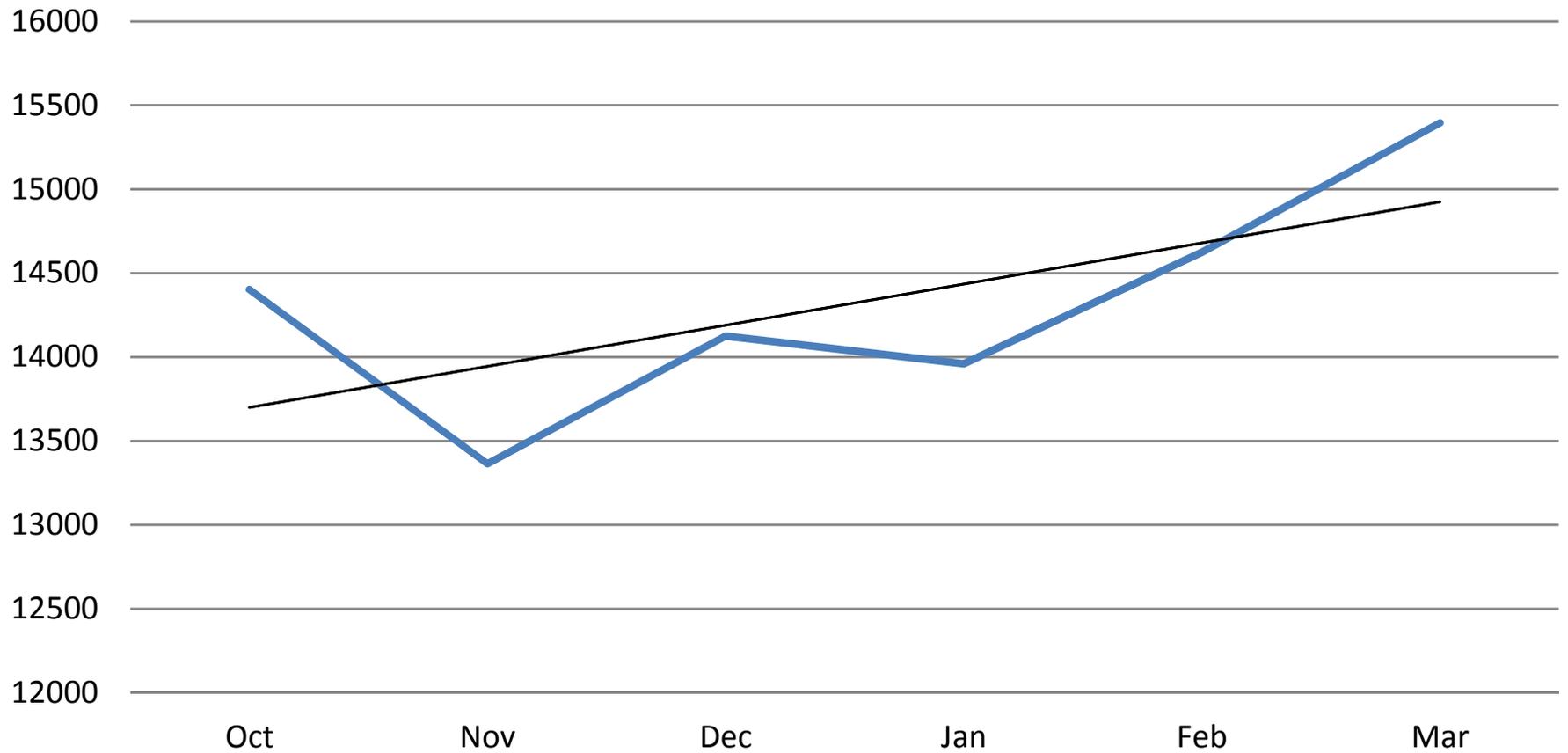
Caseload Credits in 10 Largest Counties October 2015 through March 2016



Caseload Credits in 10 Largest Counties October 2015 through March 2016



Statewide Non-Capital Caseload Credits for October 2015 through March 2016



Attachment 7



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Time to Update the 'ABA Ten Principles' For the 21st Century

In 2002 the American Bar Association House of Delegates approved the ABA Ten Principles of a Public Defense Delivery System (Ten Principles), which were prepared and sponsored by the ABA Standing Committee on Legal Aid and Indigent Defendants (SCLAID).¹ Although the Ten Principles is a brief document, in printed form consisting of only two pages of recommendations and two pages of footnotes, it is surely among the most influential policy statements about how defense services should be provided in the United States. Not only are the Ten Principles often cited

in court documents,² but several years ago, speaking at SCLAID's Annual Summit on Indigent Defense Improvements, former Attorney General Eric Holder referred to them as having "quite literally set the standard, and developed a framework for progress."³ The Ten Principles even have influenced United Nations policy on providing defense services for the poor worldwide.⁴

Clearly, the Ten Principles are in many respects an excellent collection of recommendations that, if fully implemented, can substantially improve public defense services throughout the country. *But since it has been more than 13 years since the ABA adopted the Ten Principles, it is now time to revisit their content in order to (1) incorporate the most progressive thinking about how best to deliver defense services and (2) revisit certain subjects in the current version that are neither sufficiently emphasized nor as clearly stated as they should be.* While not everyone may agree with the specific changes to the Ten Principles proposed in this article, its preparation will have been well worth the effort if the suggestions presented here engender discussion about the most important policy statements to be included in a Ten Principles update.

Editor's Note: Professor Norman Lefstein serves as a Special Advisor to the ABA Standing Committee on Legal Aid and Indigent Defense (SCLAID), which enables him to participate in committee meetings and to express opinions about defense issues that the committee addresses. Special advisors to American Bar Association committees are appointed by the president of the ABA. Professor Lefstein worked with SCLAID in the past as a consultant and served at various times as a committee member totaling 12 years, including in 2002 when the Ten Principles were approved by the ABA. However, the views expressed in this article are solely his and not necessarily those of SCLAID members or its staff.

BY NORMAN LEFSTEIN

Purpose and Structure of The Ten Principles

The “Introduction” to the Ten Principles explains that they are substantially based upon the ABA’s more extensive standards dealing with defense representation, i.e., the ABA Standards for Criminal Justice on Providing Defense Services (ABA Providing Defense Services).⁵ These standards, like all chapters of the ABA Criminal Justice Standards, are prepared and periodically updated by the ABA Section of Criminal Justice and submitted for approval to the ABA House of Delegates.⁶ While it is possible to update the Ten Principles so that they do not conflict with the current edition of ABA Providing Defense Services standards, an update of the Ten Principles may contain recommendations that are not in the current edition of these standards but could be included in a fourth edition when they are next updated.⁷

The purpose of the Ten Principles is explained in its Introduction:

The Principles were created as a practical guide for governmental officials, policymakers, and other parties who are charged with creating and funding new, or improving existing, public defense delivery systems. The Principles constitute the fundamental criteria necessary to design a system that provides effective, efficient, high quality, ethical, conflict-free legal representation for criminal defendants who are unable to afford an attorney.

An update of the Ten Principles should serve a similar purpose, especially given the widespread acceptance of the current version. Accordingly, any update of the Ten Principles should be a relatively short document just as it is now. Nevertheless, it is worth asking if it is possible to capture in 10 single, black-letter discrete sentences “the fundamental criteria necessary ... [for] a system that provides effective, efficient, high quality, ethical, conflict-free legal representation.”

The delivery of public defense services involves many issues, which are addressed in numerous court decisions, law review articles, as well as various standards, guidelines, and other documents. In addition, state and local jurisdictions have developed a variety of models for providing defense services. So the task of deciding upon the 10 most

critical principles for providing defense services is an extremely difficult task, if not completely impossible.

In the booklet published by SCLAID containing the Ten Principles, there is a division between “black letter” and “commentary.” However, this was the result of an editorial decision that was made when SCLAID’s booklet was published. The resolution that SCLAID submitted for adoption to the ABA House of Delegates did not contain either the words “black letter” or “commentary.” The first sentence of each of the Ten Principles submitted to the House of Delegates was in bold, but there was nothing beyond this in the resolution to suggest that the language following the first sentence was commentary or should be deemed less important.⁸

As an alternative to the current presentation of the Ten Principles, would it not make sense for its update to have 10 subject headings followed by not just one sentence, but instead by three, four, or even five sentences, all of which are printed in bold? With this format, the Ten Principles would still have 10 black-letter subject areas consisting of recommendations, such as “Independence,” “Workloads,” “Training,” etc., and under each of these there would be several sentences just as there are now. This approach would enable each subject of the Ten Principles to be developed in slightly greater depth. Now, in contrast, the first sentence of each of the Ten Principles is printed in bold and thus receives the most substantial attention, whereas the material that follows each first sentence of the Ten Principles, labeled “commentary,” is undoubtedly considered less significant.

Regardless of the format used in an update of the Ten Principles, footnotes should be retained so that the basis for each of the principles is documented and those interested in public defense research can readily explore the subject. No matter how the next edition of the Ten Principles is presented, their preparation will require substantial time and consultation with various ABA entities and other organizations interested in the effective delivery of defense services.

The following examples illustrate concerns with the way in which the Ten Principles are currently presented. Principle 1 appropriately emphasizes the importance of the “public defense function” being “independent,” and the second sentence of the “commentary” recommends that to secure independence “a nonpartisan board should oversee defender, assigned counsel, or con-

tract systems.” Thus, despite the enormous importance of having independent boards or commissions to oversee the defense function, this recommendation is designated as “commentary,” thereby undercutting its importance. In reality, a nonpartisan oversight body for defense providers is an indispensable prerequisite in order to achieve genuine independence, not simply a matter of “commentary.”

Another important recommendation for delivering public defense services is addressed in the last sentence of “commentary” to Principle 2, which deals with the need to have “mixed systems” consisting of defenders and private lawyers. The commentary to this Principle urges that in each state there be “a statewide structure responsible for ensuring uniform quality statewide.” In other words, much like the need to have nonpartisan boards to secure independence, the importance of statewide structures for defense is buried in “commentary,” making it more likely that the recommendation will be regarded as insufficiently important to be deemed worthy of “black letter.” Moreover, the recommendation of a statewide structure for defense representation is not actually commentary to Principle 2, which deals with having mixed systems of public defenders and private lawyers. But mixed systems for defense can also be achieved through local structures for defense services. A statewide system is not a prerequisite.

In the following sections of this article, five discrete subjects pertaining to public defense are discussed, and each should be part of any update of the Ten Principles. There are likely a number of additional changes that should be part of an update, but at a minimum the subjects discussed below should be addressed. This article, however, does not focus on specific language to be used in a Ten Principles update. The goal here is to advance ideas, not how they should be articulated in a second edition.¹⁰

Recommendation 1

‘Mixed Systems’ of Public Defense

Principle 2 of the Ten Principles states that “[w]here the caseload is sufficiently high, the public defense delivery system consists of both a defender office and the active participation of the private bar.” The commentary that follows provides that “private bar participation may include part-time defenders, a con-

trolled assigned counsel plan, or contracts for services.”¹¹ Unfortunately, there are several problems with the way this principle is expressed.

Does the quoted language mean that there should always be a public defender and then, if the caseload is sufficiently high, participation of the private bar? Or is it the other way around? Should there always be private lawyers serving either as assigned counsel and/or pursuant to contracts and a public defender added to the delivery system if the “caseload is sufficiently high”? The answer, of course, is the latter, i.e., there should always be private lawyers involved in representing defendants unable to afford counsel, though this is not clear from the language used. Principle 2 is based upon the ABA’s criminal justice standard that requires “[e]very [legal representation] system include the active and substantial participation of the private bar”¹² and a “full-time defender organization when population and caseload are sufficient to support such an organization.”¹³

Concern with Principle 2 is more than a pedantic quibble about language, but an extremely important substantive point, critical in assuring that public defense services are delivered adequately. Only if private lawyers are substantially involved in providing defense representation is it usually ever possible for full-time defenders to maintain reasonable caseloads. Accordingly, the language of Principle 2 should be changed, and the reason for the change made clear.

Throughout the United States, defender organizations far too often have been asked to accept the overwhelming majority of eligible criminal and juvenile delinquency cases in their jurisdictions. This has been done in the belief that public defenders can deliver defense services more cheaply than private lawyers, which becomes a self-fulfilling prophecy when public defenders are assigned huge numbers of cases, thereby reducing the average cost per case represented. And, just as caseloads of defender organizations have become unmanageable, the private bar’s participation in public defense has been reduced.¹⁴

The book *Securing Reasonable Caseloads: Ethics and Law in Public Defense* included a profile of three very different defense programs that were delivering impressive services while controlling their lawyers’ caseloads.¹⁵ One was a large statewide public defense program — the Massachusetts Committee for Public Counsel Services; the second

was a citywide public defender agency — the District of Columbia Public Defender Service; and the third was an assigned counsel program overseen by a small staff of lawyer administrators who reported to a committee of the local bar association — the San Mateo County, California, Private Defender Program. Not only do all three programs have structures that secure their independence, they have another major characteristic in common. In each, including the two public defender programs, there is an ample supply of private lawyers available to accept cases, which enables the public defenders and the private lawyers in San Mateo County to maintain reasonable caseloads.

In comparison to most state public defense systems, defense representation in the federal courts has long been regarded as a national model for delivering effective representation. Among the most important features of Criminal Justice Act (CJA) plans for federal defense services is the requirement that private “panel lawyers” be appointed in a “substantial” number of each federal district court’s cases.¹⁶ In fact, panel lawyers in the federal courts receive approximately 40 percent of the cases nationally with federal public defenders appointed to the rest.¹⁷ Panel lawyers in the federal courts are also far better compensated than private assigned lawyers in state courts.¹⁸ As a result, the problem of overwhelming caseloads is one that afflicts state public defense systems, but not federal public defenders.

Recommendation 2

First Court Appearance And Pretrial Release

Principle 3 of the Ten Principles states that “defense counsel is assigned and notified of appointment, as soon as feasible after the clients’ arrest, detention, or request for counsel.” The one sentence of commentary to this black-letter statement provides that “[c]ounsel should be furnished upon arrest, detention, or request, and usually within 24 hours.” *But the language of Principle 3 is inadequate, because it does not require (1) that counsel be assigned promptly after a defendant’s custody begins; (2) that counsel should interview the defendant in advance of initial court proceedings; and (3) that counsel should be present and serve as the client’s advocate when pretrial release conditions are determined. This is what should be provided in an update of the Ten Principles.*

The black letter of ABA Providing

Defense Services, approved in 1990 more than a decade before adoption of the Ten Principles, contains this sentence: “Counsel should be provided to the accused as soon as feasible and, in any event, after custody begins, at appearance before a committing magistrate, or when formal charges are filed, whichever occurs earliest.”¹⁹ Arguably, this language is preferable to that contained in Principle 3, but it still does not explicitly address defense counsel’s role at defendant’s initial hearing on pretrial release, which should include the defense lawyer interviewing the client in advance of the release determination and serving at the hearing as defendant’s advocate when bail is fixed or other release conditions imposed. Instead, the commentary to the standard contains this sentence: “Where the accused is incarcerated, defense counsel must begin immediately to marshal facts in support of the defendant’s pretrial release from custody.”²⁰

Apparently because the above standard does not adequately address the need for defense counsel when pretrial release conditions are determined, in 1998 the ABA Criminal Justice Section successfully proposed a resolution to the ABA House of Delegates addressing the subject. The resolution recommends “that all jurisdictions ensure that defendants are represented by counsel at their initial judicial appearance at which bail is set.”²¹ Although not as far-reaching, this ABA recommendation is consistent with those recently approved by the National Right to Counsel Committee organized by the Constitution Project.²² The first two of its recommendations urge the appointment of counsel “prior to the initial bail and release hearings” and the “opportunity for defense counsel ... [at the hearings] “to present information supporting the least onerous pretrial release conditions appropriate.”²³ A comment in support of these recommendations summarizes what should occur after a defendant’s custody begins:

An assigned defense lawyer should be appointed at the earliest possible time to ensure that he or she has the opportunity to interview the defendant prior to the first appearance hearing and to provide adequate opportunity to prepare an argument. Preparation includes access to a telephone to call family members, friends and other individuals who can verify information needed to

establish a defendant's community ties, and access to a defendant's prior criminal history and appearance in court.²⁴

Similarly, in 2012 the Board of Directors of the National Association of Criminal Defense Lawyers adopted the following resolution: "NACDL urges all states and U.S. territories to adopt such constitutional provisions, laws or regulations necessary to guarantee that every accused person, irrespective of financial capacity to engage counsel, shall be guaranteed counsel at the first appearance before a judicial officer at which liberty is at stake or at which a plea of guilty to any criminal charge may be entered."²⁵

In many states, defendants unable to afford counsel routinely appear without a lawyer and, left to represent themselves, are ill-prepared to marshal facts favoring their pretrial release on nonfinancial conditions and to present effective arguments for their release to a judicial officer.²⁶ Even though the law favors pretrial release of defendants pending an adjudication of guilt, defendants charged with nonviolent offenses, who are not flight risks or dangerous to their community, routinely remain in jail due to money bonds that they cannot afford, sometimes losing their employment as a result.²⁷ On the other hand, "empirical evidence confirms that counsel's effective advocacy and offering of credible information have succeeded in gaining pretrial release on recognizance for two and a half times as many defendants charged with misdemeanors and nonviolent crimes than those defendants without a lawyer."²⁸ Moreover, the absence of counsel at the beginning of a defendant's case "may irreparably damage an accused's ability to investigate, speak to witnesses, evaluate the charges in a timely manner, and prepare a defense."²⁹ Also, for defendants who are not released, extensive jail costs are borne by governments. And, to make matters worse, jailed inmates frequently are charged fees for being locked up, thereby adding to the problems of impecunious defendants.³⁰

The Supreme Court could have resolved the issue of the right to a lawyer at pretrial release proceedings when in 2008 it decided *Rothgery v. Gillespie County*,³¹ but the Court failed to do so. Instead, it held only that the right to counsel attaches at a defendant's initial court appearance where he or she learns of the state's charges and liberty is sub-

ject to restriction. Nevertheless, the holding was narrow since, as the Court explained, "[o]nce attachment occurs, the accused at least is entitled to the presence of appointed counsel during any 'critical stage' of the postattachment proceedings.... Thus, counsel must be appointed within a reasonable time after attachment to allow for adequate representation at any critical stage before trial, as well as at trial itself...."³² After *Rothgery* there was some increase in the presence of counsel at initial hearings at which pretrial release conditions are decided, but today there still are only 14 states and the District of Columbia that require lawyers at such hearings.³³

Recommendation 3

Determining Excessive Caseloads

As discussed in regard to Recommendation 1 dealing with "mixed systems" of public defense, public defenders frequently have greatly excessive caseloads.³⁴ And sometimes even private lawyers serving as assigned counsel or contract defenders have too many cases.³⁵ As a result, defendants are not adequately represented and lawyers simply cannot provide competent and effective legal representation as required by rules of professional conduct and the Sixth Amendment.³⁶

Excessive amounts of work for defense lawyers who represent the accused are addressed in several ABA Criminal Justice Standards³⁷ and in a discrete set of guidelines dealing with excessive workloads in public defense, all of which are approved ABA policy.³⁸ There also is an important ethics opinion on the subject issued by the ABA Standing Committee on Ethics and Professional Responsibility, which emphasizes that a defense lawyer's duty to provide competent and diligent representation is absolute: "[t]he [Model] Rules of Professional Conduct provide no exception for lawyers who represent indigent persons charged with crimes."³⁹

Principle 5 of the ABA Ten Principles states that "[d]efense counsel's workload is controlled to permit the rendering of quality representation." This is based upon ABA Providing Defense Services, which states that "[n]either defender organizations, assigned counsel nor contractors for services should accept workloads that, by reason of their excessive size, interfere with the rendering of quality representation or lead to the breach of professional obligations."⁴⁰ But the material labeled

"commentary" to Principle 5 provides that "[n]ational caseload standards should in no event be exceeded," citing in a footnote the numerical caseload limits recommended in 1973 by the National Advisory Commission on Criminal Justice Standards and Goals (NAC).⁴¹ According to these limits, maximum numbers of cases per lawyer per year of a public defense office should not exceed 150 felonies, 400 misdemeanors, 200 juvenile delinquency cases, and 25 appeals.⁴² Because of the ABA's endorsement of the NAC's maximum caseload numbers, the NAC's caseload limits are often referred to as the ABA's national caseload guidelines.⁴³

However, the NAC's 1973 recommended national caseload guidelines were not based on empirical study.⁴⁴ "Instead, the caseload numbers were 'accepted' by the NAC based upon the work of 'the defender committee of the National Legal Aid and Defender Association, which '[a]t a recent conference' had 'considered the matter of caseloads ...'."⁴⁵ Nor did NLADA's defender committee do any empirical research in support of its recommendations. The committee's maximum caseload numbers were decided upon in a meeting of defenders that occurred more than 40 years ago and well before numerous changes that have impacted the defense of criminal cases. In the early 1970s, for example, defense lawyers did not have to be concerned about a vast array of collateral consequences of criminal convictions, the prosecution of sexually violent offenders, and a wide range of new types of forensic evidence.

It is also quite doubtful that any national maximum caseload numbers should be recommended given the many differences among state criminal justice systems. In fact, in accepting NLADA's caseload numbers, the NAC repeated NLADA's warning of "the dangers of proposing any national [caseload] numbers."⁴⁶ For prosecutors, the research arm of the National Association of District Attorneys concluded after several years of study that because of "external, and internal, and individual case factors ... [respecting] ... overall workload ... it was impossible for [national caseload] ... standards to be developed."⁴⁷

But if the NAC caseload numbers do not merit continued ABA endorsement — and they most certainly do not — and national caseload guidelines are not sensible, what should the Ten Principles say about determining reasonable caseloads? For planning and budgetary purposes, defense providers

and governments that fund defense services need to be able to make reliable estimates about the number and various types of cases that defenders can competently and effectively represent.⁴⁸

In answering the “caseload numbers question,” an ABA Ten Principles update should recommend that those who provide defense services undertake weighted caseload studies that are methodologically sound and utilize a Delphi panel.⁴⁹ The primary components of such a study are illustrated by a new breed of recent defender workload studies conducted in Missouri and Texas.⁵⁰ In both of these studies, lawyers tracked their time electronically to determine the amount of time they were devoting to their various kinds of cases and to the different tasks performed on their cases, such as client interviews, discovery, etc. Thus, time data revealed what *is* being done in the jurisdiction by defenders on their cases so that the data compiled could be compared to the amount of time that *should* be devoted to the defense of various kinds of cases and their tasks in order to provide reasonably effective representation according to prevailing professional norms.⁵¹

To answer the latter question — *what should be done in order to provide reasonably effective assistance of counsel according to prevailing professional norms* — both the Missouri and Texas studies assembled Delphi panels of highly experienced public defenders and private lawyers. As explained in the Missouri report, researchers of the Rand Corporation introduced the Delphi method in 1962, and the methodology has now been applied in a wide variety of disciplines.⁵² Moreover, when Delphi methodology has been used by experts, it has been demonstrated to be effective “in reducing variances in opinion and judgment, thus indicating that greater consensus had been achieved.”⁵³

Initially, using online surveys and guided by prevailing professional standards for defense representation, Delphi panelists were asked to consider individually and without consulting others the amounts of time required for the principal types of cases handled by defense lawyers (e.g., homicide and sexual offense cases, lesser felonies), the amounts of time required for the various tasks required to be performed in these cases (e.g., client communication, discovery, investigation), and the necessary frequency of their performance. After completion of the first survey

round, the cumulative results were tabulated and Delphi panelists were asked once again to consider their initial responses in view of the cumulative responses of the entire Delphi panel. After completion of the second round of online surveys, Delphi panelists convened for a day-long meeting in which they made final determinations about the amounts of time required for tasks in different kinds of cases and the necessary frequency of their performance. And, not surprisingly, in both the Missouri and Texas studies, the Delphi panels concluded that public defenders and private lawyers were not devoting nearly sufficient time to representing their clients, which meant that current caseloads in these jurisdictions needed to be substantially reduced in order to assure reasonably effective assistance of counsel according to prevailing professional norms.⁵⁴

An update of the Ten Principles should also recommend that defense programs institute permanent timekeeping among their lawyers because it will facilitate the replication of weighted caseload studies as needed and is an invaluable management tool.⁵⁵ Defense programs with permanent timekeeping can demonstrate to funding sources just how hard their lawyers are working while also documenting the wide range of critical tasks their lawyers lack sufficient time to perform. And, just as importantly, permanent timekeeping will convey to those who fund defense services that the defense agency is more transparent and conscientious about its duties than any of the other criminal justice programs in the jurisdiction.

Recommendation 4

Declaring Unavailability And Defender Referrals To Private Lawyers

The preceding discussion of excessive caseloads does not address what lawyers and/or defender programs should do when confronted with too much work and insufficient time, other than instituting permanent timekeeping and conducting methodologically sound weighted caseload studies. Completion of such studies should furnish strong support for litigation when defense programs resist court orders that require lawyers to represent too many clients. This should be especially true if the caseload study is supplemented by expert opinion and other testimony in which lawyers explain that

they cannot provide, consistent with prevailing professional norms, competent and effective representation. Whether courts will find persuasive such caseload studies and other evidence of too much work and provide prompt caseload relief remains to be seen since there has not yet been litigation that has relied upon the new breed of caseload studies discussed.

But since not every jurisdiction always will have a recent, persuasive weighted caseload study, it is important to consider other alternatives in dealing with excessive caseloads. The commentary to Principle 5 of the Ten Principles states that when caseloads are so large that they “interfere” with “quality representation” or require “the breach of ethical obligations, counsel is obligated to decline appointments....” This is consistent with ABA Providing Defense Services, which admonishes defense organizations and their lawyers to refuse additional appointments when they cannot provide quality defense representation or will lead to a breach of professional obligations.⁵⁶ Similarly, rules of professional conduct require that lawyers seek to avoid representation when they cannot provide “competent” services.⁵⁷

However, experience in recent years demonstrates that filing motions with trial courts citing excessive caseloads and seeking prompt caseload relief often does not succeed and, even when it does, it invariably leads to protracted litigation over a period of years during which defense caseloads remain high and defendants are inadequately represented.⁵⁸ But there are two possible alternatives to this scenario that may serve to resolve excessive caseloads much more promptly, and these deserve recognition in an update of the Ten Principles.

The first of these is already contained in approved ABA policy since it is specifically mentioned as a possibility in the ABA’s Eight Guidelines referenced earlier.⁵⁹ Guideline 5 provides that when “workloads ... are or about to become excessive,” public defense providers notify “courts or other appointing authorities that the Provider is unavailable to accept additional appointments.”⁶⁰ In other words, the defense provider does not file a formal motion in court, but simply advises the judge or other appointing authority, preferably in writing, that the provider will not accept additional assignments due to case overload. If the trial court is appointing counsel and does not accept the defense program’s declaration of “unavailability,” the

court is then forced to become the moving party and may have to threaten lawyers or the head of the defense program with contempt if additional cases are refused. But having already been informed by the defense provider that new appointments will require defense lawyers to violate their ethical duties to current and future clients as well as their constitutional obligation to provide effective assistance of counsel, at least some courts — hopefully many — will be exceedingly reluctant to resort to contempt and instead seek alternatives for handling the caseload crisis. In the face of such objections by defense programs, at least some judges are likely to seek alternatives to the caseload problem and, in any event, the matter is apt to attract needed publicity about the plight of defense programs and lead to prompt adjudication of the matter. The commentary to the Eight Guidelines explains that “[t]his approach [which has been used successfully in some California counties] is seemingly based on the implicit premise that governments that establish defense programs never intended that the lawyers who furnish the representation would be asked to do so if it meant violating their ethical duties pursuant to professional conduct rules.”⁶¹

A second alternative that should be included in an update of the Ten Principles is a recommendation that defense providers be authorized to refer cases directly to private lawyers when the provider is unable to accept additional assignments due to excessive caseloads. Guideline 5 of the Eight Guidelines hints at this course of action, stating that when “workloads ... either are or about to become excessive,” the defense provider should be “arranging for some cases to be assigned to private lawyers in return for reasonable compensation for their services.”⁶² Of course, unless there is an adequate supply of well trained and reasonably compensated private lawyers willing to accept assignments, as urged in Recommendation 1 of this article, this recommendation is not likely to succeed. Nor is this course likely to be a viable option for defense programs unless specific statutory authorization exists for defense providers to refer cases directly to private lawyers.

The language of Guideline 5 quoted above does not expressly reference laws authorizing defense providers to direct cases to private lawyers. However, authorization of this kind has been enacted in several states, including Maryland and Wisconsin.⁶³ Although the

idea of defense providers being able to assign cases directly to the private bar makes enormous good sense, the statutes have not always worked as contemplated because of insufficient funds to compensate assigned counsel.⁶⁴ On the other hand, if the defender is able to refer cases to the private bar and there are adequate funds to pay private lawyers, the statutory structure solves the problem of excessive caseloads with which defenders are so often burdened and removes the judiciary from the process, thereby securing the independence of the defense function consistent with Principle 1.

Recommendation 5

Holistic or Comprehensive Defense Representation

Neither the Ten Principles nor ABA Providing Defense Services standards mentions “holistic” or “comprehensive” representation. When the ABA approved the black-letter standards of Providing Defense Services in 1990, holistic defense as practiced today was uncommon among public defender offices. However, community-oriented defense programs, long regarded as a component of holistic defense practices, started as early as the 1970s. Examples of such early programs include the Youth Advocacy Project in Roxbury, Mass., the Criminal Defense Consortium of Cook County, Ill., and the Neighborhood Defender Service of Harlem.⁶⁵ The Bronx Defenders, which has proposed fundamental holistic defense principles, was not established until 1997.⁶⁶

In August 2012, 10 years after the Ten Principles were approved, the ABA House of Delegates adopted a detailed resolution on the subject of “comprehensive representation,” which recommends that defender organizations and defense lawyers provide services that include “client-centered and interdisciplinary models of defense that address the circumstances driving poor people into the criminal justice system and the consequences of that involvement.”⁶⁷ The report in support of the resolution explains that it contains principles “that seek to broaden the defense function to include holistic and comprehensive strategies...”⁶⁸ In other words, like any truly effective and conscientious advocate, lawyers representing persons unable to afford counsel need to be mindful of the full range of legal and social issues confronting their clients and seek to address them. Now, in revis-

ing the Ten Principles, the time has come to include the prescription for defense services contained in the ABA’s 2012 resolution.

Robin Steinberg, the longtime director of the Bronx Defenders, who has done much to develop the concepts of holistic defense, outlined its purposes in a 2006 law review article:

[T]he criminal case is often not the most challenging, the most complex, or involving the most pressing issues in the lives of our clients. Everyday issues abound: How do I make sure my family and I have enough to eat? How can I find and keep a job? How do I get my child back now that she has been removed from my home? These are the questions clients ask again and again, and if “take a plea” is part of the solution, they are happy to oblige. After all, pleading guilty...seems an easy solution amidst these much harder, often unanswerable questions. This is what I call “holistic advocacy.” It is this model — social service-related, collaborative, long-term, and intensive — that has helped public defenders radically transform their function in the criminal justice system. ... [M]oving away from a traditional model of representation toward a more holistic one enhances advocacy, satisfies clients, and is an all-around good policy....⁶⁹

Universally, the goal of every defense lawyer is to get the best case disposition for a client. Indeed, securing an acquittal, less jail time, or avoiding prison altogether will always be a core goal of any criminal defense lawyer. Holistic representation does not change this fundamental and compelling value. But the added goal in the holistic defense model is to make a long-term difference in the life of a client.⁷⁰

The report accompanying the ABA’s 2012 resolution also presents the case for defense involvement in activities that go beyond the client’s criminal case, noting that “[e]ven a short period of incarceration can lead to a loss of housing and material possessions, com-

plicate applications for public benefits, and result in job loss.”⁷¹ Moreover, there are countless collateral consequences applicable to defendants convicted of misdemeanor or felony offenses, and these require the attention of defense lawyers and those working with them.⁷² The report further explains the rationale for its recommendation:

[Comprehensive representation] seeks to build upon a decade of advocacy in which criminal defense practitioners across this country have engaged in methods of interdisciplinary, client-centered representation that proactively address the root causes of a person’s involvement in the criminal justice system. A client-centered commitment to comprehensive defense representation recognizes that to be effective, defense counsel must attempt to address both the causes and the consequences of criminal justice involvement. By identifying the full range of a client’s legal and social services needs, defense counsel can build better client relationships, identify concrete client goals, and achieve better criminal case results and client life outcomes.⁷³

The black-letter recommendations in the ABA’s resolution include several components. First, criminal defense lawyers and defender organizations are urged to “establish ... linkages and collaborations with civil practitioners, civil legal services organizations, social service program providers and other non-lawyer professionals who can serve, or assist in serving, clients in criminal cases with civil legal and nonlegal problems related to their criminal cases, including the hiring of such professionals as experts, or where infrastructure allows, as staff.”⁷⁴ Second, criminal defense lawyers and defender organizations are “encouraged to provide re-entry and reintegration services to clients in criminal cases including expungement, re-establishment of rights and certificates of relief of civil disabilities.”⁷⁵ Third, criminal defense lawyers and defender organizations are urged to create training programs and to develop resources in order “to serve clients with civil legal and nonlegal problems related to their criminal cases.”⁷⁶ Finally, to achieve these ends, the ABA “urges governments,

foundations, and other funders of legal services to support, with increased funding, defenders in their efforts to effectively address clients’ interrelated criminal, civil and nonlegal problems.”⁷⁷

In order to implement comprehensive representation, the 2012 resolution recommends “six cornerstone” principles or steps that defender organizations and criminal defense lawyers should pursue. The first of these is training and education for both lawyers and nonlegal staff aimed at “building a client-centered defense practice where the legal and nonlegal issues (including social services needs) facing clients are treated equally and addressed in tandem.”⁷⁸ Second, the initial client interview must assess the criminal issues involved in the defendant’s case and the other problems that may be confronting the defendant, including addiction and mental health issues, collateral consequences of conviction, and social services needs.⁷⁹ The third step in implementing comprehensive representation — investigation — follows from the in-depth client interview. Accordingly, not only must the client’s criminal case be investigated, but “the civil and social services needs that were brought up in the client interview.”⁸⁰ The fourth step is to “advise and refer the client where appropriate.”⁸¹ Thus, in the event of a guilty plea, the client needs to be told “of the full range of consequences that could flow from the possible dispositions of the case.”⁸² And a guilty plea should not be recommended “to the client without discussing the serious and likely consequences of that plea with the client. Counsel should also work with social services staff to meet clients’ social service needs, recognizing that program and treatment solutions (when chosen by the client) benefit the client and improve outcomes in the criminal case.”⁸³ The fifth step pertains to negotiations with the prosecutor in which defense counsel urges “consideration of all penalties and consequences, ... including decisions on bail or bond, charging, ... criminal dispositions and sentences...”⁸⁴ And, finally, the sixth step deals with “proactively preparing the defendant for re-entry into society after completing a sentence of imprisonment.”⁸⁵

Several studies of holistic defense are now underway and potentially will shed important information on practices that are most effective.⁸⁶ Meanwhile, from surveys conducted by the Bronx Defenders, it is clear that its comprehensive approach to criminal defense has resulted in client satisfaction, positive “life outcomes,” and suc-

cessful trial results. In a recent survey in which 132 clients charged with various crimes were randomly selected, 84 percent rated the services that they received as “excellent” or “good,” and 91 percent “said that they would want the Bronx Defenders to represent them again.”⁸⁷ As for life outcomes, in a recent year the agency “prevented the eviction of over 150 families with more than 400 household members, and ... prevented over 100 deportations, affecting over 200 family members, ... preserved jobs and licenses for over 100 clients ..., and obtained health insurance for more than 70 families.”⁸⁸ Meanwhile, the felony trial acquittal rates for Bronx Defenders have been about 70 percent for the past three years, whereas for other Bronx criminal defense practitioners it has ranged from 43 percent to 57 percent.⁸⁹

Conclusion

Three of the updates to the Ten Principles recommended in this article address the most vexing problem in public defense. The two additional recommendations seek to expand the reach and quality of the defense services provided.

First, consider the most vexing problem: inadequate funding resulting in excessive caseloads of public defenders, which prevents the delivery of effective and competent representation. During the past 50 years, there has been significant growth of defender programs in state courts but inadequate attention paid to having well-trained and adequately compensated private criminal defense lawyers. State public defense systems need to be more like the federal criminal defense system, which relies substantially on a private criminal defense bar that is better trained and paid at much higher rates than private defense lawyers in state criminal courts. (See Recommendation 1: Mixed Systems of Public Defense.)

Also, persuasive data derived through workload studies is needed to try to convince appropriation authorities to fund defense services adequately and, if litigation is necessary, to persuade courts that relief must be granted to assure compliance with the Sixth Amendment and rules of professional conduct. (See Recommendation 3: Determining Excessive Caseloads.) Also needed are procedures that enable defense programs to declare their unavailability to accept additional cases and refer cases that they cannot repre-

sent to private defense lawyers. (See Recommendation 4: Declaring Unavailability and Defender Referrals to Private Lawyers.)

Even while recognizing that defense programs are too often struggling to keep up with the current number of cases thrust upon them, the criminal justice system needs to do far better in providing defense lawyers at initial pre-trial release hearings, thereby reducing the likelihood of incarceration due to conditions that arrestees cannot meet. (See Recommendation 2: First Court Appearance and Pretrial Release.) Last, an update of the Ten Principles should embrace “comprehensive representation” because for many defendants a wide range of legal and social problems exists that requires prompt attention following their arrest and detention. (See Recommendation 5: Comprehensive Defense Representation.)

The updates to the Ten Principles recommended in this article raise the bar for what is necessary in order to have quality public defense delivery systems. But the bar needs to be raised if defense programs are ever consistently going to be able to achieve the just results necessary for all of their clients.

Notes

1. The Ten Principles can be accessed at the section of SCLAID’s website that deals with indigent defense. See www.indigentdefense.org. SCLAID began in 1920 and is the ABA’s oldest standing committee.

2. See, e.g., Amici Curiae Brief of the National Association of Criminal Defense Lawyers and Pascal F. Calogero, former Chief Justice, Louisiana Supreme Court, in Support of Petitioner, *Boyer v. Louisiana*, 2012 WL 7687860, at 17-18 (U.S. Sup. Ct. Nov. 26, 2012).

3. Press Release, Attorney General Eric Holder Speaks at the American Bar Association’s National Summit on Indigent Defense, Feb. 4, 2012. Also, the Bureau of Justice Assistance of the U.S. Department of Justice has used the ABA Ten Principles as the standard for applicants seeking grants for the improvement of public defense services. “Under Smart Defense, BJA is seeking applicants who are interested in developing innovative, data-driven approaches to improve their public defense delivery systems guided by the Ten Principles of a Public Defense Delivery System.” *Smart Defense Initiative Answering Gideon’s Call: Improving Public Defense Delivery Systems FY 2015 Competitive Grant Announcement*, available at <https://www.bja.gov/Funding/15SmartDefenseSol.pdf>. However, a recent national sur-

vey of defender offices, assigned counsel, and contract defenders indicated that nearly half the respondents were unfamiliar with the Ten Principles prior to receipt of the survey. See Caroline S. Cooper, *The ABA Ten Principles of a Public Defense Delivery System: How Close Are We to Being Able to Put Them Into Practice?* 78 ALBANY L. REV. 1193, 1197 (2015).

4. David Carroll, SIXTH AMENDMENT CENTER, *The United Nations Takes the Ten Principles International*, Jan. 11, 2013, available at <http://sixthamendment.org/2013/01/page/4/>.

5. See ABA STANDARDS FOR CRIMINAL JUSTICE, PROVIDING DEFENSE SERVICES [hereinafter ABA PROVIDING DEFENSE SERVICES] (3d ed., 1990).

6. The ABA Standards for Criminal Justice dealing with a wide variety of subjects, including ABA Providing Defense Services, are available at http://www.americanbar.org/publications/criminal_justice_section_archive/crimjust_standards_defsvcs_toc.html.

7. Although the ABA does not approve policies that conflict with existing policy, it does sometimes adopt recommendations that complement previously approved policy. For example, provisions of the ABA Defense Function Standards complement provisions of the ABA’s Model Rules of Professional Conduct. Similarly, provisions of the ABA’s Eight Guidelines of Public Defense Related to Excessive Workloads complement provisions of the ABA Model Rules of Professional Conduct, ABA Providing Defense Services, and the ABA Defense Function Standards.

8. The resolution in support of the Ten Principles submitted to the ABA House of Delegates is on SCLAID’s website, available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/20110325_aba_resolution107.authcheckdam.pdf. In SCLAID’s booklet containing the Ten Principles, following the first black-letter sentence, there are four principles followed by one sentence of commentary; two principles followed by two sentences of commentary; two principles followed by three sentences of commentary; one principle followed by four sentences of commentary; and one principle followed by six sentences of commentary.

9. In contrast, the National Right to Counsel Committee deemed a statewide public defense structure sufficiently important that they made it the second of its 23 black-letter recommendations: “States should establish a statewide, independent, nonpartisan agency headed by a Board or Commission responsible for all components of indigent defense services.” JUSTICE DENIED: AMERICA’S CONTINUING NEGLECT OF OUR CONSTITUTIONAL RIGHT TO COUNSEL 185-88 (The

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Constitution Project 2009) [hereinafter JUSTICE DENIED].

10. Recommendations 1, 3, and 4 advanced in this article are also discussed in NORMAN LEFSTEIN, SECURING REASONABLE CASELOADS: ETHICS AND LAW IN PUBLIC DEFENSE, AMERICAN BAR ASSOCIATION (2011) [hereinafter LEFSTEIN, REASONABLE CASELOADS] and in a separate publication, NORMAN LEFSTEIN, EXECUTIVE SUMMARY AND RECOMMENDATIONS: SECURING REASONABLE CASELOADS, AMERICAN BAR ASSOCIATION (2012). Both publications are available at www.indigentdefense.org.

11. The inclusion of “private bar participation ... [through] part-time defenders” should be deleted in any update of the Ten Principles. ABA Criminal Justice Standards on Providing Defense Services, approved in the early 1990s, rejected part-time defenders as a means of delivering defense services: “Defense organizations should be staffed with full-time attorneys. All such attorneys should be prohibited from engaging in the private practice of law.” ABA PROVIDING DEFENSE SERVICES, *supra* note 5, 5-4.2. The commentary to this provision explained: “The work of defenders is exceedingly demanding, normally requiring that they devote as much effort to their cases as time permits. Where part-time law prac-

tice is permitted, defenders are tempted to increase their total income by devoting their energies to private practice at the expense of their nonpaying clients. Even more important, the expertise required of defense counsel is less likely to be developed if an attorney maintains a private practice involving civil cases." *Id.* at 57.

12. ABA PROVIDING DEFENSE SERVICES, *supra* note 5, 5-1.2 (b).

13. *Id.* at 5-1.2(a)

14. This problem was well recognized early in the 1990s when the ABA's Standards for Criminal Justice dealing with defense services were approved: "In some cities, where a mixed system has been absent and public defenders have been required to handle all of the cases, the results have been unsatisfactory. Caseloads have increased faster than the size of staffs and necessary revenues, making quality legal representation exceedingly difficult. Furthermore, the involvement of private attorneys in defense services assures the continued interest of the bar in the welfare of the criminal justice system." ABA PROVIDING DEFENSE SERVICES, *supra* note 5, commentary to 5-1.2, at 7.

15. See LEFSTEIN, REASONABLE CASELOADS, *supra* note 10, Chapter 8, at 192-228.

16. The CJA statute states that "[p]rivate attorneys shall be appointed in a substantial proportion of the cases." 18 U.S.C. 3006A § (a)(3). For a recent report calling for improvements in federal defender services, especially the need for greater independence from the federal judiciary consistent with Principle 1 of the Ten Principles, see FEDERAL INDIGENT DEFENSE 2015: THE INDEPENDENCE IMPERATIVE (Nat'l Assoc. of Criminal Defense Lawyers 2015), available at <https://www.nacdl.org/federalindigentdefense2015/>.

17. The Office of the United States Courts reports that "[i]n those districts with a defender organization, panel attorneys are typically assigned between 30 percent and 40 percent of the CJA cases, generally those where a conflict of interest or some other factor precludes federal defender representation. Nationwide, federal defenders receive approximately 60 percent of CJA appointments, and the remaining 40 percent are assigned to the CJA panel." Administrative Office of the United States Courts, Defender Services, available at <http://www.uscourts.gov/FederalCourts/AppointmentOfCounsel.aspx>.

18. "Today, panel attorneys are paid an hourly rate of \$127 in noncapital cases, and, in capital cases, a maximum hourly rate of \$181. These rates are effective for work performed on or after Jan. 1, 2015. The rates include both attorney compensation and office overhead. In addition, there are case

maximums that limit total panel attorney compensation for categories of representation (for example, \$9,900 for felonies, \$2,800 for misdemeanors, and \$7,100 for appeals). These maximums may be exceeded when higher amounts are certified by the district judge, or circuit judge if the representation is at the court of appeals, as necessary to provide fair compensation and the chief judge of the circuit approves." *Id.* Recently, even these rates for CJA panel lawyers have been increased, so that they are now \$129 per hour except for capital cases, which are now \$183 per hour. See <http://www.uscourts.gov/services-forms/defender-services> (last visited Feb. 12, 2016).

In contrast, the fees paid to private indigent defense counsel in state court criminal proceedings continue to be abysmal. A recent report summed up the situation: "This survey reveals the staggeringly low rates of compensation for assigned counsel across the nation. A combination of low hourly wages combined with limits on the amount of compensation make it difficult, if not impossible, for members of the private bar to actively participate in assigned counsel systems. The average rate of compensation for felony cases in the 30 states that have established a statewide compensation rate is less than \$65 an hour, with some states paying as little as \$40 an hour. That rate of compensation does not take into account the various overhead costs associated with the practice of law, which include the costs of reference materials, office equipment, rent, travel, malpractice insurance and, for most young attorneys, student loans. The 2012 Survey of Law Firm Economics by ALM Legal Intelligence estimates that over 50 percent of revenue generated by attorneys goes to pay overhead expenses." JOHN P. GROSS, RATIONING JUSTICE: THE UNDERFUNDING OF ASSIGNED COUNSEL SYSTEMS: A 50-STATE SURVEY OF TRIAL COURT ASSIGNED COUNSEL RATES 8 (Nat'l Assoc. Crim. Defense Lawyers 2013), available at <https://www.nacdl.org/gideonat50>.

19. ABA PROVIDING DEFENSE SERVICES, *supra* note 5, 5-6.1.

20. *Id.* at 79.

21. The resolution was adopted in August 1998 and is available at http://www.americanbar.org/content/dam/aba/migrated/legalservices/downloads/sclaid/20110325_aba_112d.authcheckdam.pdf.

22. See DON'T I NEED A LAWYER? PRETRIAL JUSTICE AND THE RIGHT TO COUNSEL AT FIRST JUDICIAL BAIL HEARINGS, Report of the National Right to Counsel Committee (The Constitution Project 2015) [hereinafter DON'T I NEED A LAWYER?].

23. *Id.* at 36-8.

24. *Id.* at 37.

25. The resolution and comments in support of its adoption are available at

<http://www.nacdl.org/resolutions/2012mm1/>.

26. See generally DON'T I NEED A LAWYER? *supra* note 22, at 9-19.

27. *Id.* at 19-24. Only four states have banned the use of bail bondsmen: Kentucky, Illinois, Oregon, and Wisconsin. *Id.* at 12 n.43.

28. *Id.* at 11.

29. *Id.* at 5. As early as 1932 in *Powell v. Alabama*, 53 S. Ct. 55 (1932), the Supreme Court recognized the importance of the defendant's need for counsel during pretrial stages of a criminal proceeding. The defendants in that famous case, known as the "Scottsboro Boys," were provided defense counsel just before their trial began, and thus the defense representation provided was pro forma at best. In response to counsel's late entry into the defendants' case, the Supreme Court explained that "during perhaps the most critical period of the proceedings against these defendants, that is to say, from the time of their arraignment until the beginning of their trial, when consultation, thorough-going investigation and preparation were vitally important, the defendants did not have the aid of counsel in any real sense, although they were as much entitled to such aid during that [pretrial] period as at the trial itself." *Id.* at 59-60.

30. See generally LAUREN-BROOKE EISEN, CHARGING INMATES PERPETUATES MASS INCARCERATION (Brennan Center for Justice 2015). "[C]ounties and states continue to struggle with ways to increase revenue to pay for exorbitant incarceration bills. In 2010, the mean annual state corrections expenditure per inmate was \$28,323, although a quarter of states spent \$40,175 or more. Not surprisingly, departments of corrections and jails are increasingly authorized to charge inmates for the cost of their imprisonment." *Id.* at 1.

31. 128 S. Ct. 2578 (2008).

32. *Id.* at 2591. The Supreme Court further explained that "[w]e merely reaffirm what we have held before and what an overwhelming majority of American jurisdictions understand in practice: a criminal defendant's initial appearance before a judicial officer, where he learns the charges against him and his liberty is subject to restriction, marks the start of adversary judicial proceedings that trigger attachment of the Sixth Amendment right to counsel." *Id.* at 2592.

33. The 14 states are California, Connecticut, Delaware, Florida, Hawaii, Kentucky, Maine, Maryland, Massachusetts, New Hampshire, New York, North Dakota, Vermont and Wisconsin. See DON'T I NEED A LAWYER? *supra* note 22, at 16 n.70.

34. See, e.g., JUSTICE DENIED, *supra* note 9, at 65-70.

35. See, e.g., Brian Rogers, *State Commission Recommends Case Limits for Lawyers Defending the Indigent*, HOUSTON CHRON., Jan. 16, 2015: "Based on information collected from defense lawyers statewide, the Texas Indigent Defense Commission recommended guidelines on the number of cases an attorney can handle, saying it would help ensure that court-appointed lawyers have enough time to devote to each client. 'Texas has a problem with attorneys handling so many criminal cases that they cannot provide effective representation to their indigent clients,' said Sen. Rodney Ellis, D-Houston. 'Taking over 1,000 appointed cases in a year, for example, makes effective representation nearly impossible.'"

36. ABA MODEL RULES OF PROF'L CONDUCT R. 1.1 requires that every lawyer provide clients "competent representation," defined as "the legal knowledge, skill, thoroughness, and preparation, reasonably necessary for the representation." Similarly, in every state rules of professional conduct require that lawyers provide "competent representation." As for the Sixth Amendment, the Supreme Court perhaps said it best in *United States v. Cronin*, 466 U.S. 648, 659 (1984): "[T]he adversarial process protected by the Sixth Amendment requires that the accused have 'counsel acting in the role of an advocate.' . . . The right to counsel is thus the right of the accused to require the prosecution's case to survive the crucible of meaningful adversarial testing. . . . [I]f counsel entirely fails to subject the prosecution's case to meaningful adversarial testing, then there has been a denial of Sixth Amendment rights that makes the adversary process itself presumptively unreliable."

37. See ABA STANDARDS FOR CRIMINAL JUSTICE, DEFENSE FUNCTION, Std. 1.8 (4th ed. 2015) [hereinafter ABA DEFENSE FUNCTION]; ABA PROVIDING DEFENSE SERVICES, *supra* note 5, Std. 5-5.3.

38. See ABA EIGHT GUIDELINES OF PUBLIC DEFENSE RELATED TO EXCESSIVE WORKLOADS (2009) [hereinafter ABA EIGHT GUIDELINES], available at www.indigentdefense.org.

39. ABA Committee on Ethics and Prof'l Responsibility, Formal Op. 06-441, 3 (May 13, 2006). For an analysis of the opinion, see Norman Lefstein & Georgia Vagenas, *Restraining Excessive Defender Caseloads: The ABA Ethics Committee Requires Action*, 30 THE CHAMPION 10 (Dec. 2006).

40. ABA PROVIDING DEFENSE SERVICES, *supra* note 5, Std. 5-5.3(a).

41. NATIONAL ADVISORY COMMISSION ON CRIMINAL JUSTICE STANDARDS AND GOALS: COURTS 276 (1973) [hereinafter NAC STANDARDS]. The National Advisory Commission was a government-sponsored body that made numerous recommendations for improve-

ments in the operation of the nation's criminal justice system. In 2007, the American Council of Chief Defenders (ACCD), which is affiliated with the National Legal Aid & Defender Association, also adopted a resolution urging that the NAC caseload maximums not be exceeded. However, the statement in support of its resolution contained material suggesting that the NAC maximum caseload numbers may be too high. See LEFSTEIN, REASONABLE CASELOADS, *supra* note 10, at 46-7. The Washington Supreme Court has adopted for Washington lawyers who provide public defense representation annual maximum caseload numbers substantially similar to those approved by the NAC. See In the Matter of the Adoption of New Standards for Public Defense and Certification of Compliance, Order No. 25700-A-1004, June 15, 2012, Supreme Court of Washington, available at <http://www.courts.wa.gov/content/publicUpload/Press%20Releases/25700-A-1004.pdf>.

42. The NAC maximum caseload numbers were not intended as maximums for every lawyer in a public defender office, but maximums on average for the office as a whole.

43. For example, a recent article in a Minnesota bar journal began with these sentences: "Minnesota's chronically underfunded public defender system is looking for more resources at the Minnesota Legislature this year in hopes of increasing staff and reducing caseloads. It is part of a six-year funding plan designed to get Minnesota PDs closer to the ABA's national standards for public defenders." Jennifer Vogel, *In Defense of Public Defenders*, BENCH & BAR OF MINNESOTA (April 13, 2015), available at <http://mnbenchbar.com/2015/04/in-defense-of-public-defenders/>.

44. See LEFSTEIN, REASONABLE CASELOADS, *supra* note 10, at 45.

45. *Id.*, quoting NAC STANDARDS, *supra* note 41, at 277.

46. *Id.*

47. HOW MANY CASES SHOULD A PROSECUTOR HANDLE? RESULTS OF THE NATIONAL WORKLOAD ASSESSMENT PROJECT 27 (American Prosecutors Research Institute 2002).

48. The answer to this inquiry is impacted by a wide variety of factors, including the adequacy of essential support services such as investigators, social workers, paralegals, and secretaries; the number of different courts in which lawyers must appear; and distances required to be traveled to attend court proceedings and to visit clients.

49. Similarly, the National Association of Public Defense (NAPD) has concluded that "the time has come for every public defense provider to develop, adopt, and institutionalize meaningful workload standards in its juris-



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dition" and that the standards developed be "evidence-based." *The Necessity of Meaningful Workload Standards for Public Defense Delivery Systems*, Adopted by NAPD Steering Committee, March 19, 2015 (NAPD Statement on Workload), available at http://www.publicdefenders.us/sites/default/files/Exhibit_A_-_NAPD_Workload_Statement.pdf.

50. THE MISSOURI PROJECT: A STUDY OF THE MISSOURI PUBLIC DEFENDER SYSTEM AND ATTORNEY WORKLOAD STANDARDS (Rubin Brown on behalf of the ABA Standing Committee on Legal Aid and Indigent Defendants 2014) [hereinafter MISSOURI PROJECT]; GUIDELINES FOR INDIGENT CASELOADS: A REPORT TO THE TEXAS INDIGENT DEFENSE COMMISSION (Public Policy Research Institute of Texas A&M University 2015) [hereinafter REPORT TO TEXAS COMMISSION].

51. Providing "reasonably effective representation according to prevailing professional norms" requires that Delphi panel experts consider the requirements of national and state performance standards for defense representation. In both Missouri and Texas, Delphi panel members were asked to consider both ABA Criminal Justice Standards for the Defense Function

and state specific performance guidelines adopted in Missouri and Texas. Among the most important of the ABA Defense Function standards is the duty to investigate a defendant's case. At the time of the Missouri study, the third edition of ABA Defense Function standards provided the following at 4-6.1 (b): "Defense counsel may engage in plea discussions with the prosecutor. Under no circumstances should defense counsel recommend to a defendant acceptance of a plea unless appropriate investigation and study of the case has been completed, including an analysis of controlling law and the evidence likely to be introduced at trial." Similar provisions are now contained in the recently approved 2015 ABA standards. See ABA DEFENSE FUNCTION, *supra* note 37, Standards 4-4.1 (b), 4-6.1(b), and 4-6.2(d).

52. MISSOURI PROJECT, *supra* note 50, at 9-11.

53. *Id.* at 10.

54. See MISSOURI PROJECT REPORT, *supra* note 50, at 21-2; REPORT TO TEXAS COMMISSION, *supra* note 50, at 27-37. Workload studies using a Delphi methodology are currently underway in Colorado, Louisiana, Rhode Island, and Tennessee. The Colorado and Louisiana studies are being conducted by SCLAID, whereas in Rhode Island and Tennessee, NACDL, the prime grantee, is working collaboratively on the studies with SCLAID. These studies are expected to be completed in 2016 and their findings published.

55. In 2015, the National Association for Public Defense recommended the use of permanent timekeeping for public defender programs. See NAPD Statement on Workload, *supra* note 49. The many advantages of permanent timekeeping by defender programs are discussed in LEFSTEIN, REASONABLE CASELOADS, *supra* note 10, at 154-56. Two of the most important are the data and analytics necessary for budgeting and presentations to government funders of defense services and the utility of time data in the event of litigation seeking judicial relief from excessive caseloads.

56. ABA PROVIDING DEFENSE SERVICES, *supra* note 5, 5-5.3 (a).

57. See *supra* note 36 and ABA MODEL RULES OF PROF'L CONDUCT R. 1.16 (a), and 6.2.

58. See LEFSTEIN, REASONABLE CASELOADS, *supra* note 10, at 161-189. The Florida and Missouri litigation discussed in this source ultimately resulted in favorable decisions of the Florida and Missouri Supreme Courts, in which it was made clear that defender programs can challenge excessive caseloads without waiting for convictions in criminal cases and claiming ineffective assistance of counsel. See *Public Defender, 11th Judicial Circuit v. State*, 115 So.3d 261 (Fla. 2013); *Missouri Public*

Defender Commission v. Waters, 370 S.W.3d 592 (Mo. 2012) (en banc). But to prevail in such litigation, defender programs need persuasive, evidence-based data not only to support their claims of excessive case-loads, but to assist courts in deciding upon appropriate relief.

59. See *supra* note 38 and accompanying text.

60. See ABA EIGHT GUIDELINES, *supra* note 38, at 9.

61. *Id.* at 11.

62. *Id.* at 9.

63. See LEFSTEIN, REASONABLE CASELOADS, *supra* note 10, at 239-40 and n.48.

64. *Id.* at n.48.

65. See Robin Steinberg, *Heeding Gideon's Call in the Twenty-First Century: Holistic Defense and the New Public Defense Paradigm*, 70 WASH. & LEE L. REV. 961, 978-84 (2013) [hereinafter Steinberg, *Heeding Gideon's Call*], in which Ms. Steinberg discusses early efforts to develop community-oriented defense programs. See also MELANCA CLARK & EMILY SAVNER, COMMUNITY ORIENTED DEFENSE: STRONGER PUBLIC DEFENDERS (Brennan Center for Justice 2010), which outlines the Brennan Center's "Ten Principles of Community Oriented Defense." These include, among others, creating a client-centered practice, addressing the civil legal needs of clients, and pursuing a multidisciplinary approach in defense representation.

66. See the website of the Bronx Defenders, available at <http://www.bronxdefenders.org/who-we-are/>. On its website, the Bronx Defenders sets forth "the following core principles, or pillars, [that] underlie and form the foundation of any successful Holistic Defense practice: 1. Seamless access to services that meet clients' legal and social support needs; 2. Dynamic, interdisciplinary communication; 3. Advocates with an interdisciplinary skill set; 4. A robust understanding of, and connection to, the community served."

67. Resolution 107C, American Bar Association, adopted by the House of Delegates, August 6-7, 2012, at 2 (ABA Resolution 107 C). The resolution was sponsored by the ABA Section of Criminal Justice.

68. *Id.* at 5.

69. Robin G. Steinberg, *Beyond Lawyering: How Holistic Representation Makes for Good Policy, Better Lawyers, and More Satisfied Clients*, 30 N.Y.U. REV. L. & SOC. CHANGE 625, 627 (2006).

70. *Id.* at 628. For additional articles on holistic defense, see, e.g., Kyung M. Lee, *Reinventing Gideon v. Wainwright: Holistic Defenders, Indigent Defendants, and the Right to Counsel*, 31 AM. J. CRIM. L. (2004); Brooks Holland, *Holistic Advocacy: An Important But Limited Institutional Role*, 30 N.Y.U. REV. L. & SOC. CHANGE 637 (2006).

71. ABA Resolution 107C, *supra* note 67, at 1.

72. See ABA DEFENSE FUNCTION, *supra* note 37, at Standards 4-5.4 (Consideration of Collateral Consequences) and 4-5.5 (Special Attention to Immigration Status and Consequences). However, the ABA Defense Function standards do not address either "comprehensive" or "holistic" representation.

73. ABA Resolution 107 C, *supra* note 67, at 3.

74. *Id.* at cover page.

75. *Id.*

76. *Id.*

77. *Id.*

78. *Id.* at 5.

79. *Id.* at 5-6.

80. *Id.* at 6.

81. *Id.*

82. *Id.*

83. *Id.*

84. *Id.*

85. *Id.* at 7. In a recent article about holistic representation, Robin Steinberg of the Bronx Defenders rejects what are probably the three most common criticisms of the practice, i.e., that funding social service needs deprives defender program of needed funding for lawyers and caseload reductions, increases the workloads of public defenders, and leads to defenders failing to take cases to trial. See Steinberg, *Heeding Gideon's Call*, *supra* note 65, at 1002-1007.

86. See Cynthia G. Lee, Brian J. Ostrom & Matthew Kleiman, *The Measure of Good Lawyering: Evaluating Holistic Defense in Practice*, 78 ALBANY L. REV. 1215, 1233 (2015).

87. Steinberg, *Heeding Gideon's Call*, *supra* note 65, at 1007-08.

88. *Id.* at 1009.

89. *Id.* at 1008. ■

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