

## 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

Monday, July 25, 2016  
12:00 p.m. – 4:00 p.m.  
Tuesday, July 26, 2016  
9:00 a.m. – 4:00 p.m.

Best Western Hood River Inn  
Riverview Room  
1108 East marina Way  
Hood River, Oregon 97031

### MEETING AGENDA

#### Monday

1. **Action Item:** Approval of minutes - PDSC meeting held on June 16, 2016 (*Attachment 1*) Chair McCrea
2. National Juvenile Defender Center Self-Assessment Tool (*Attachment 2*) Amy Miller
3. September Commission Meeting Update Nancy Cozine
4. Customer Satisfaction Pilot Survey Project Report; Basic Data Every Defender Program Needs to Track (*Attachments 3 & 4*) Nancy Cozine
5. **Action Item:** Commission Best Practices (*Attachment 5*) Chair McCrea
6. **Action Item:** Policy Option Packages (*Attachment 6*) OPDS Staff Commission
7. **Action Item:** Updated Guideline Rates (*Attachment 7*) Angelique Bowers
8. Caseload Projections (*Attachment 8*) Caroline Meyer
9. OPDS Monthly Report OPDS Staff

## Tuesday

### 1. PDSC Composition Changes & Discussion of Priorities

The Public Defense Services Commission has enjoyed remarkable stability, with very little change in membership since its creation in 2001. Five of the original members of the Commission – Barnes Ellis, Shaun McCrea, John Potter, Janet Stevens, and Henry H. “Chip” Lazenby – have dedicated fifteen years or more to the work of the Commission. The retirement of Barnes Ellis, Commission Chair, at the end of 2015, truly marked the end of an era. The current Commission Chair, Shaun McCrea, has taken a new position as the Executive Director of OCDLA. She will step away from her volunteer position on the Commission, as she will no longer be “a bar member and who is engaged in criminal defense representation,” a criteria required for the Commission’s composition under ORS 151.213(2). With this, and the potential for additional change in coming months, the time has arrived for Commission members to take stock and establish priorities in order to prepare for the inevitable years of transition and help set the stage for consistency and excellence in the future.

#### Commission Business

What makes the PDSC an effective Commission, and how can that be preserved and improved? As a volunteer Commission, what makes the job easier or harder, and how can OPDS staff better support the work of the Commission?

#### Meeting Frequency (*Attachment 9a*)

The Commission has typically met eight to nine times per year - sometimes more often, if needed. With four-hour meetings and often a full day retreat each year, members of the PDSC dedicate a minimum of 40 hours per year, just for meetings. Their total volunteer time is much more significant, as the work requires travel and meeting preparation time. The level of commitment demonstrated by these individuals is extraordinary and invaluable. There have been discussions about trying to meet less frequently – perhaps six times per year – to make the commitment less demanding. But it has also been suggested that the Commission should visit local communities more frequently. What is a reasonable meeting schedule, and what do Commission members prefer?

#### Meeting Content

The Commission’s statutory mandate is to provide “public defense services in the most cost efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice.” OPDS staff provides regular updates regarding constitutional law and Oregon and national standards of justice. Does the Commission feel that it gets enough information on this topic? Do Commission members receive enough training regarding laws governing public meetings, public records, and public officials? Are there other topics the Commission would like covered?

### Commission Mission, Vision & Values (*Attachment 9b*)

The new PDSC strategic plan has a slightly revised mission statement, and minimally revised vision and values sections. Do they adequately reflect the Commission's mission, vision, and values?

### Legislative Advocacy

The revised strategic plan contains a slightly revised statement on legislative advocacy, opening the door for the Commission to be slightly more proactive (rather than reactive) in its communications with the Legislature. Does the legislative advocacy section give appropriate direction to OPDS staff? Does it require further revision?

## 2. Goals & Strategies

The 2016-2021 PDSC Strategic Plan has two goals that align with the PDSC's statutory mandate. Each goal is supported by seven strategies. OPDS staff will provide an overview of each strategy – what is it, why it is important, and what steps could be taken to address the strategy. The Commission will be invited to provide additional suggestions and direction as the agency develops a more concrete path for the next five years. (*Attachments 10, 11, 12, 13, handouts*)

## 3. Wrap-up and Next Steps

***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: September 22, 2016, 12:00 p.m. – 4:00 p.m., Office of Public Defense Services, Salem, Oregon. Meeting dates, times, and locations are subject to change; future meetings dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>***

# Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, June 16, 2016  
9:00 am – 12:00 pm  
Mt. Bachelor Village  
19717 Mt Bachelor Dr.  
Bend, OR 97701

MEMBERS PRESENT: Shaun McCrea  
John Potter  
Hon. Elizabeth Welch  
Chip Lazenby  
Per Ramfjord (by phone)  
Janet Stevens

STAFF PRESENT: Nancy Cozine  
Ernie Lannet  
Paul Levy  
Caroline Meyer  
Rachel Woods  
Shannon Storey  
Billy Strehlow  
Amy Jackson

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The meeting was called to order at 9:03 am.

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

Chair McCrea called the meeting to order and asked for approval of the minutes for the PDSC's April 2016 meeting. **MOTION:** Commissioner Potter moved to approve the minutes; Commissioner Lazenby seconded the motion; hearing no objection the motion carried:  
**VOTE: 6-0**

**Agenda Item No. 2 Approval of the AFSCME Contract**

Ernie Lannet, Chief Defender, asked the Commission to approve a new collective bargaining agreement between the union representing attorneys in the Appellate Division of the Office of Public Defense Services and the agency's management. He explained that the first contract had a duration of only one year so that any adjustments could be made before a longer duration contract was agreed to. He reported that very few adjustments were needed, and that he was asking the Commission to now approve a three year contract. The main feature of the new agreement is a salary scale reflecting parity with Department of Justice attorneys which requires funding by the legislature. A recent request for such to the Emergency Board was deferred.

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

**Agenda Item No. 3**

**Budget Update**

Nancy Cozine, OPDS Executive Director, gave a brief budget update, elaborating on the request to the Emergency Board for salary parity for Appellate Division attorneys, as called for by the AFSCME contract. While the request was deferred to the September meeting of the Emergency Board, she explained that it received significant support from House Speaker Kotek and Senator Steiner-Hayward. She said that if the Appellate Division salary matter is resolved in September, then much greater focus can be on supporting trial level providers during the legislature's upcoming regular session.

**Agenda Item No. 4**

**Strategic Planning Update; PDSC Retreat; September meeting date**

Nancy Cozine previewed some of the issues to be discussed at the Commission's July retreat concerning the strategic plan included in the materials for this meeting. Some of the potential topics for discussion, she said, could include the type and extent of OPDS staff presence around the state; the nature of and extent of OPDS legislative advocacy; and expanding OPDS direct support and involvement in delinquency cases.

Ms. Cozine also polled the Commission on when best to meeting in September. OPDS is planning a four-hour CLE on procedural justice and holistic defense, to be presented in conjunction with the Legislature's meeting days in September. It would be optimal, she said, if the Commission could also hear from the CLE presenters. The Commission tentatively agreed to meet on September 22, the day before the presentation to the legislature.

**Agenda Item No. 5**

**Approval of 2017-19 Policy Option Package Concepts**

Nancy Cozine began the discussion of possible Policy Option Package (POP) requests by clarifying that even though the matter was on the agenda as an "action item," there would be time to simply discuss the topic and receive input from providers at this meeting and finalize approval at the July meeting. Before briefly outlining each of the proposed POPs before the Commission, Ms. Cozine explained that one additional technical adjustment POP may be added that would roll up into the agency's base budget the amounts allocated by the Emergency Board that cover shortfalls when contract and other expenses exceed projections. She explained that these allocations are not presently part of the current service level budget, so that the agency essentially begins each biennium with a built-in deficit. The technical adjustment would fix that.

As to the other POPs, Ms. Cozine explained that the Parent Child Representation Program (PCRP) POP represents a major expansion of the program, which may be one of the recommendations of the Governor's Dependency Task Force and enjoys good support among legislative leadership. But it will also require strong Commission support in order to move forward. The trial level contractor parity POP includes increases for hourly paid contractors, based upon guidance from market rates for their services, and for contractors paid based upon case rates. She explained that the latter costs are "to be determined" as staff finalizes appropriate comparisons; that the case management system POP would allow contractors to utilize a system that will enhance OPDS quality assurance responsibilities and enable contractor efficiencies; and that the OPDS employee compensation POP may be addressed by the Emergency Board in September 2016 and would fulfill the agency's responsibilities under the contract with AFSCME. And she said that the PCRP and quality assurance POP would meet agency staffing needs that address monitoring and oversight of both the PCRP and other trial level representation, and permit expanded involvement in delinquency cases.

Caroline Meyer then discussed two documents related to how staff intends to calculate the cost of the trial level provider parity POP. One document set out demographic data for cities in which public defender offices are located, including median home prices, minimum wage, and district attorney salary information. The other document set forth six proposed regional groupings of public provider for purposes of establishing parity targets for those providers. Ms. Meyer invited input from providers on how the groupings should be established.

In response to questions from commissioners, Nancy Cozine said that although further work needs to be completed to establish a number for the cost of the parity POP, a rough estimate would put it at around \$28 million dollars. She also explained that the grouping of consortium providers into regions with public defense providers is necessary because, unlike public defense offices, consortia don't have pay scales. So for the purposes of establishing case rates for consortia, they need to be grouped with the public defender offices that are most similar in terms of local demographic. The public defender pay scales can be compared with the pay scales of their DA office counterparts for the purpose of establishing case rates for the regional groupings.

Chair McCrea referenced Ms. Cozine's introductory remarks and suggested that the Commission is not in a position to take action on POP recommendations without seeing the calculated cost of the trial level provider parity POP. She asked, though, if Ms. Cozine had any preliminary recommendations for how the POPs should be prioritized. Ms. Cozine said that the budget environment will be very competitive in the coming legislative session and that the Commission should focus on a few priority packages. She said that because they have been the focus of so much attention and work already in the legislature, the parity and PCRPP expansion POPs should probably be given priority. The Chair then invited input from those attending the meeting.

Jennifer Nash, the consortium administrator in Benton County, questioned the grouping of her consortium in the "Valley" region where the public defender office in Lane County is the relevant comparator. She asserted that home prices and the cost of living in Benton County is more similar to those in the Portland "Metro Area" region. She also observed that the priority of the Commission in the coming legislative session should be to not lose ground given what is expected to be a very difficult legislative funding cycle.

Mark McKechnie, Executive Director of Youth Rights and Justice in Portland, said he wanted to make his regular pitch for juvenile funding, noting that with the work of the Governor's task force there is now an historic opportunity, with an expansion of the PCRPP, to move to a rational way of funding representation in juvenile cases. In response to questions about how a rollout of that expansion would proceed, if funded, Mr. McKechnie said that he understood that was still subject to discussion in the task force but would also depend significantly upon Commission recommendations. Ms. Cozine echoed that response and said she hoped to have more relevant information at the Commission's July meeting.

Tom Crabtree, Executive Director of Crabtree and Rahmsdorff, the public defender office in Deschutes County, urged strong support for the trial level parity POP. He asserted that the salary gap between prosecutors and defenders was the greatest in his county, with a roughly \$19,500 difference for similar work. He noted that the parity POP doesn't even touch on salaries for support staff or for benefits, where he noted a \$10,000 difference between his office and the local DA's office. He also questioned the accuracy of the demographic data on home prices in Bend.

Commissioner Welch questioned the appropriateness of including, in the demographic data, the salary of the elected DA, noting that the DA in Portland, for instance, had greater management responsibilities than his counterparts in the Portland public defender offices. Ms. Cozine explained that this information was provided for illustrative purposes and that, in fact, the parity POP is built using the far more relevant information from DA offices comparing

relevant steps in the pay scales for deputy district attorneys and public defender attorneys with comparable experience.

Eric Deitrick, an attorney at Multnomah Defenders, Inc., said that he was speaking for himself and not MDI. He noted that during his time working with the Legislature in Judiciary Counsel's office, he was exposed to how and why certain things get prioritized and funded. He urged support for the PCR expansion POP, because it fundamentally changes the public defense funding model to one with adequate compensation and caseload limitations and moves away from a system that undermines stability and predictability but creates incentives to take on large caseloads.

Alex Bassos, one of the directors at the Metropolitan Public Defender, spoke on behalf of the firm's executive director, who was unable to attend the meeting. He noted the need for changes in how juvenile representation is funded, noting that his firm currently "subsidizes" juvenile work by moving attorneys from criminal to juvenile caseloads, with the consequence of larger per-attorney caseloads for the attorneys handling criminal cases. He recognized that this will be a lean budget environment, but urged strong support for the statewide parity POP to ensure that a vehicle exists to seek whatever additional funding might be available. He also urged strong support for a caseload study and the establishment of hard caseload limitations.

The Chair then noted, to the applause of those attending, that she was proud of the work of public defense providers and wanted to see the funding they deserve.

Olcott Thompson then spoke as a member of a consortium. He urged strong support for full funding of the trial level parity POP and said it should be prioritized higher than the POP seeking increased compensation for OPDS attorneys.

Dan Bouck, Executive Director of the public defender office in Douglas County, suggested that comparing public defenders to district attorneys is misguided because DAs also are underpaid. He also said that DAs are the wrong comparators for most juvenile dependency work since the adversary in those cases is usually an Assistant Attorney General. He also noted a flaw in the current method of funding juvenile cases, which allows additional credit for hearings held, saying that a recent change in how his county manages juvenile cases resulted in a decrease in compensation when the workload hasn't actually changed.

Jim Arneson, whose firm contracts to do public defense work in Douglas County, noted a particular challenge for firms that provide public defense representation. Unlike DA offices and attorneys in public defender office, law firm attorneys are not eligible for loan deferment programs, he said. Commissioner Potter said that Rob Raschio, who heads both a consortium and a law firm, is exploring ways to address that problem.

## **Agenda Item No. 6**

### **Caseload Projections for 2017-19**

Caroline Meyer introduced a discussion of what staff is projecting for the statewide caseload in the 2017-2019 biennium for budget-building purposes. She introduced Billy Strehlow, contract analyst for death penalty cases, who said that the value and expenditures for those case types are increasing. He said some of that increase in expenditures is attributable to increased costs of conducting mitigation investigation and preparation, including costs associated with evaluating defendants for fetal alcohol spectrum disorder and other brain disorders where developments in brain science can now trace certain adult behaviors to trauma suffered in utero. He also said that the required mitigation investigation can be especially complex and costly when the defendant grew up in another state or, perhaps, another country.

Ms. Meyer said that statewide, based upon current trends, staff is seeing a slight increase in both criminal and juvenile cases. This trend, she said, is especially apparent when data from

the past six months is examined. Some of the factors affecting an increase include an improved economy, which permits counties to devote more resources to law enforcement and prosecution, and changes in charging practices in drug cases, such as increased prosecution for heroin-related offenses and the prosecution of cases where only drug residue is found. In response to a question from Commissioners Lazenby and Potter, Ms. Meyer said she could have updated trend data available for the July Commission meeting.

**Agenda Item No. 7      National Association for Public Defense Conference**

Alex Bassos and Dan Bouck reported on their attendance at a recent leadership conference of the NAPD. Mr. Bassos said that he is very involved in the organization's activities and serves as its treasurer and secretary. He said that in a few short years the organization has grown to 13,000 members and has served public defense providers through a strike force, an amicus committee, system builders support, letters of support, and over 100 webinars. A member's only page includes the archived videos and presentation materials for all of the webinars. Recently NAPD began work to remove the imposition of fines and fees, which is a major source of warrants, as is now evident in the examination of conditions in Ferguson, Missouri. The recent leadership conference, he explained, was geared toward mid-level managers, and how they can inspire client-centered representation. The heart of the program was intense day-long small group discussions. A prior leadership conference focused on executive level leadership. Dan Bouck said that the conference was intense and hard work but invaluable in exploring ways to create client-centered representation through leadership. He gave the example of how defender offices handle the issue of office security and the impressions that security barriers, such as Plexiglas walls in reception areas, make on clients coming to the office. Mr. Bouck said that he hopes NAPD will bring such a conference someday to Portland, which Commissioner Lazenby encouraged him to pursue. Alex Bassos also clarified that the organization serves all public defense providers, not just those in public defender offices and not just attorneys. He also said, in response to questions from commissioners, that the organization is filling a need not served by existing organizations but that it also will partner with the National Association of Criminal Defense Lawyers and with the Oregon Criminal Defense Lawyers Association.

**Agenda Item No. 8      MPD Efforts to Create Holistic Defense**

Alex Bassos began his discussion of holistic defense work at the Metropolitan Public Defender with the comment that "we have a poverty-to-prison pipeline in this nation." He said it is no surprise that people in prison are concentrated in the bottom 10% of income before they enter prison and suffer from many of the elements that cause poverty, including a high rate of trauma and abuse, for both men and women, mental illness, addiction, unemployment, and housing instability. Often a criminal case is a signal of these larger problems, he said, and unless the larger problems are addressed in the course of representing a person facing criminal charges, simply handling the criminal case will do nothing to keep the person from "churning" in and out of the criminal justice system. The holistic representation model seeks to address the full array of social service and civil legal needs that a person might have, he said.

Mr. Bassos said that he was not asking the Commission to fund this work, noting that MPD has been able to do much of its work in this area through small grants and volunteers. He gave as examples its work on veterans' homelessness, fighting evictions, helping client access available benefits, removing barriers to employment, and working with the Portland public housing authority to get clients housing or help them keep housing. The firm runs an expungement clinic, will seek relief from sex offender registration for clients, and runs a program that seeks to convert burdensome fines and fees to some more manageable obligation. A key to this work, he said, is a project to "map" programs and resources in the community and establish relationships with those resources. The firm can then do a "warm handoff" of a client to a needed program or service, rather than simply make a referral, which

experience shows is less successful in making the connection of client to service than if an MPD volunteer takes the client to the program.

He said the firm is careful to undertake this work without adding to the burden of attorneys and legal assistants, since the work is largely performed or coordinated by volunteers and other grant-supported staff, including civil attorneys working with the firm. He said this work “ultimately creates relief for attorneys” rather than adds to their burden, especially since it helps promote the long-term success of the client. In response to a question from Commissioner Welch, Mr. Bassos said that the firm’s insurance carrier has not been concerned about the firm’s expanded scope of representation. He also said that he would like to see less reliance on volunteers, but that would require obtaining more stable long-term grants and other fundraising. He also said that the firm is work with Professor Chris Campbell, at Portland State University, to establish a study of the efficacy of the firm’s holistic defense model.

## **Agenda Item No. 9**

### **National Public Defense Developments**

Paul Levy, OPDS General Counsel, discussed several national public defense developments. First, he applauded the work of the National Association for Public Defense, described earlier by Alex Bassos and Dan Bouck, reminding the Commission that NAPD has produced a series of webinars specifically focused on the work of public defense boards and commissions. He also described a new amicus brief filed by the U.S. Department of Justice as part of its Access to Justice initiative begun by then-Attorney General Eric Holder and continued by AG Loretta Lynch. He reminded the Commission that the DOJ, through Statements of Interest and amicus briefs, has been supporting the position, in lawsuits around the country, that a cause of action should be recognized for the systematic denial of the right to counsel where a lawyer is appointed in a criminal case, but “in name only,” where the traditional markers of representation are absent. Those traditional characteristic of representation, the theory goes, are meaningful client consultation, case investigation and preparation, motion practice, and all the other indicia of an adversarial system, which are absent where systematic and structural barriers prevent the appointed lawyer from engaging in them. The plaintiffs in these cases, supported by the DOJ, have advanced the theory that these claims can be presented and litigated pre-conviction, and that waiting to address them case-by-case in post-conviction relief litigation is inappropriate. Mr. Levy reminded the Commission that he previously briefed the Commission on the successful advancement of this theory in the *Wilbur v. Mt. Vernon* litigation in Federal Court in the State of Washington and the *Hurrell-Harring* case in state court in New York. Very recently, Mr. Levy said, the DOJ has filed an amicus brief in the Supreme Court of Idaho seeking to reverse a trial court ruling, in a systematic denial of the right to counsel case, where the trial court ruled that such claims are not justiciable and that denial of the right to counsel claims must proceed in post-conviction litigation.

Mr. Levy then drew the Commission’s attention to an article by Professor Norman Lefstein, included in the meeting materials, that recommends a number of updates to the ABA’s *Ten Principles of a Public Defense Delivery System*. He reminded the Commission that this is one of the foundational documents that has guided the Commission’s work since its inception as it seeks to fulfill its statutory mandate to maintain a cost-efficient public defense system that is consistent with state and national standards of justice. The document, he said, encapsulates many of the standards of justice that the Commission has sought to fulfill. Thus it is important to keep abreast of recommended updates to those standards. One of those recommendations, he noted, is the embracing of holistic defense, about which the Commission had just heard from Alex Bassos. Another is the insistence upon meaningful representation at a defendant’s first appearance in a criminal case, which is a subject to which the Commission and OPDS staff have devoted a great deal of attention. The recommendation, though, encompasses more than simply having a lawyer present at an arraignment, but includes insuring that the lawyer has had access to the prospective client sufficiently in advance of the first appearance in order to be prepared to provide meaningful representation there.

The recommendation that requires significant attention for the purpose of this meeting, Mr. Levy said, is the call for the establishment of jurisdiction-specific caseload limitations. He reminded the Commission that they have previously seen reports from projects to establish caseload standards in Missouri and Texas, both of which followed the methodology discussed in Prof. Lefstein's article. He also reminded the Commission that Prof. Lefstein had described these studies and their methodology to the Commission at its October 2015 meeting and to the annual public defense management conference that preceded it. He mentioned that such studies were underway in Colorado, Louisiana, Rhode Island, and Tennessee, and that others were in the cue for Indiana and New Mexico. Mr. Levy said that he was happy to announce that after discussions with the ABA, which coordinates the studies, and with Prof. Lefstein, who serves as a consultant to them, Oregon is now also in the cue for such a study.

Mr. Levy said that a methodologically defensible caseload study is a major undertaking, requiring the cooperation and involvement of public defense providers from across the state. The effort will be led by the ABA through the guidance of Steve Hanlon, a retired partner in the Washington DC office of Holland and Knight, who is now on the faculty of the Saint Louis University School of Law and who also serves as General Counsel to the National Association for Public Defense. Mr. Levy said that Mr. Hanlon will speak this year about the methodology and importance of these studies to the public defense management seminar in October and then meet with the Commission the following day.

Commissioner Potter said he understood that time keeping is a required component of the studies, and asked how that has been received by those participating in them. Mr. Levy said he did not know how that has played out other than having read that timekeeping has not proved as burdensome as some feared, especially when the benefits are understood. A key to this, though, is providing a case management system that allows for timekeeping with relative ease. He also said that he understands that a great deal more in the way of explanation and buy-in will be required before anyone is required to do it.

#### **Agenda Item No. 10**

#### **OPDS Monthly Report**

Paul Levy informed the Commission that the annual statewide public defense performance survey had recently closed, and that staff was now in the process of analyzing the responses and following up with persons who left their names and specific comments that warranted further inquiry. The survey launched this year in May, rather than January, so that respondents could have more relevant experience with new contractors. The survey was also significantly revised in order to solicit more relevant comments from respondents. The Commission will receive a more formal briefing on the survey at an upcoming meeting. Mr. Levy also said that work has begun on revisions to the minimum qualifications and certification procedure for those wishing to provide public defense services. And he said that the next peer review is now scheduled in Deschutes County.

Caroline Meyer announced that the agency's customer satisfaction survey, which is a component of the Commission's key performance measures, launched recently. Unlike previous surveys, this one went to every attorney who is part of a contract with PDSC. Ms. Meyer urged providers in the audience to respond.

Shannon Storey, the Chief Defender, Juvenile Appellate Section, announced that Emily Shortes, a paralegal, had begun employment in her section. She also said that Tiffany Keast, until recently an attorney in the Attorney General's office, has been added to the panel of attorneys to whom OPDS refers juvenile appeals that the agency cannot handle. She also described the issues in a number of cases her unit is working on in the Court of Appeals.

Ernie Lannet, Chief Defender, Criminal Appellate Section, informed the Commission that the firm held its annual MayDaze CLE, which featured a discussion from a number of people

involved in the *J.C. N.-V.* case, addressing the circumstances in which a juvenile can be remanded to adult court, which had just been decided by the Oregon Supreme Court on the morning of the CLE. The participants included Judge Egan, from the Court of Appeals, Angela Sherbo, from Youth Rights and Justice, Dr. Orin Bolstad, and Kathy Berger, who handled the case in the trial court. Mr. Lannet said the agency has begun the hiring process to replace an attorney who took a position in the State Court Administrator's office. He also told the Commission that he will be participating in a workgroup to rewrite ORS Chapter 138, which governs appeals, and that he is also participating in a workgroup convened by the Governor to look at the practices of the Oregon State Police crime lab. Finally, he described the Appellate Division's very active practice in the Oregon Supreme Court, where 12 cases are under advisement and eight cases are in the briefing stage.

**Meeting Adjourned**

**MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Ramfjord seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, June 16, 2016  
9:00 am – 12:00 pm  
Mt. Bachelor Village  
19717 Mt Bachelor Dr.  
Bend, OR 97701

MEMBERS PRESENT: Shaun McCrea  
John Potter  
Hon. Elizabeth Welch  
Chip Lazenby  
Per Ramfjord (by phone)  
Janet Stevens

STAFF PRESENT: Nancy Cozine  
Ernie Lannet  
Paul Levy  
Caroline Meyer  
Rachel Woods  
Shannon Storey  
Billy Strehlow  
Amy Jackson

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The meeting was called to order at 9:03 am.

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

0:04 Chair McCrea Good morning and welcome to the Public Defense Services Commission meeting. We have one Commissioner present by phone. We are going to try and get through some of the initial agenda items quickly because Mrs. Cozine has to get back to Salem for a meeting and I don't want to delay her. Let's start with our first action item, approval of the minutes. Are there any changes, notations or corrections? If not, I would entertain a motion. **MOTION:** Commissioner Potter moved to approve the minutes; Commissioner Lazenby seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

**Agenda Item No. 2 Approval of the AFSCME Contract**

0:42 Chair McCrea Action item number two, approval of the AFSCME Contract, Ernie?

0:51 E. Lannet Good morning, Chair McCrea, members of the Commission. I have been asked to present on the AFSCME contract. As you know, we went through the first contracting cycle. We agreed to do a one year term because we wanted to be able to revisit anything we may have missed on this first effort.

1:13 P. Ramfjord Could you speak up just a little bit more please?

1:15 E. Lannet Yes, I can try to find the microphone too. We were pleased when we sat down with the bargaining unit at the end of March and beginning of April and largely there weren't any adjustments that were identified. At the beginning of the materials there are three documents, one is an agreement for wages that we would go to the emergency board to request parity and we did make that effort and it has been deferred and we will continue to make that effort. The next one is an adjustment to differentials that the assignment of duties does not have to be in the employee position description, they can be in writing otherwise. The third change is changing the term of the agreement to be a three year contract this time, with the possibility of reopening on salary. That highlights the changes for you and we ask for your approval.

2:31 Chair McCrea Any questions by the Commission? Are there any downsides for us that we should know about?

2:36 E. Lannet No.

2:38 Chair McCrea Okay I entertain a motion. **MOTION:** Commissioner Lazenby moved to approve the AFSCME contract; Judge Welch seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

**Agenda Item No. 3 Budget Update**

2:45 Chair McCrea Nancy, budget update.

2:50 N. Cozine Thank you Chair McCrea, members of the Commission, the agreement with the AFSCME represented employees included a provision that we would approach the emergency board to request funds to achieve parity in this biennium. We did approach the legislature. We actually submitted a letter in February, there was no action taken on that letter. We submitted a letter again in May and we had a hearing before General Government. During that hearing, both Speaker Kotek and Senator Steiner-Hayward expressed significant concern that the funding wasn't being allocated in May and they indicated that the issue should be brought back to them in September and that they hoped that funding would be available at that time to provide it for the rest of the biennium. If we can achieve this it actually drastically changes the way that we are able to talk with legislators when we go into the next full session. It would be one less item that we have to convince legislators to fund next biennium. We are hopeful that this September we can move this forward so that in the full biennium we can concentrate very heavily on our trial level providers.

4:08 Chair McCrea Sorry, I missed the last part.

4:11 N. Cozine We are hoping that during the full biennium we can concentrate almost exclusively on our trial level providers.

4:16 Chair McCrea The trial level providers. Are there any questions from the Commission?

**Agenda Item No. 4 Strategic Planning Update; PDSC Retreat; September meeting date**

4:23 Chair McCrea Let's segue into number four, our strategic planning update and the PDSC Retreat and September meeting date.

4:32 N. Cozine Thank you, Chair McCrea, members of the Commission, you have a draft strategic plan in this packet. I would envision that a lengthy discussion about the strategic plan and whether it adequately encompasses all of the feedback that we received be a topic for our July retreat. I think it is something that warrants a lot of discussion by this Commission and a lot of thought. There are only two goals that are listed and those two goals line up directly with our statutory mandate. We discussed as a management team having more goals but decided that ultimately every single one of the strategies that we were discussing fell within one of those two goal areas. The bigger question, I think, for the Commission to discuss, though you may want to

weigh in on if we have a sufficient number of goals, is really do the strategies get at the issues that we really want to get at, and if so what are the tasks that you would like our office to undertake? As an example, one of the strategies is having a larger presence across the state. We have discussed that in the Governor's Task Force and there was a suggestion that the PDSC establish regional offices. That would be one way to increase our presence across the state. Another way would be to get out to counties more frequently, to have more staff in Salem to go do the visits. Those are some pretty meaty topics that I think warrant extensive discussion by this Commission. Some other items from the strategic plan that I think warrant focus are things like legislative advocacy. The legislative advocacy section of the strategic plan is almost identical to what it has always been. It is organized slightly differently but it is really similar. Really, the legislative advocacy position of the PDSC has, for the most part, been a commitment to pursuing and being responsive to the legislature, not so much to being an advocate and we may be at a juncture to think about whether or not that suits the Commission's role. We have a legislature that is very proactive and they appreciate agencies that are very proactive and I think the question is, are we fulfilling the legislature's need for information if we are only responsive and not slightly more proactive? Again, it is sort of a meaty question and I think it is one that we need to spend some time on. In terms of a few other items that we have already identified, there was comment not only by this Commission but some of our external stakeholders about the need for improving delinquency representation across the state. We put into the Policy Option Package request a suggestion that we have one FTE in our office focused on delinquency appeals so that we can at part be a resource statewide like we are on the dependency side. That is a topic for discussion and it may be one that we want to tackle further in the retreat setting. Aside from that, I think that another question from this Commission is, are there issues that you see in the strategic plan that you would like to discuss in the retreat? So, if you have any thoughts that you have already identified and want to share them now I would be happy to list them and include them and would be happy to take your suggestions and add them to the agenda for the July retreat.

8:41 C. Lazenby

So, the change in how you are approaching the legislature, my understanding is that would need a statutory change. I thought our situation was that we would advise the legislature and advocate for our own budget but as individual issues come through we are by statute supposed to be neutral.

9:05 N. Cozine

I don't know that our statute requires neutrality. Again, I think it is a very lengthy discussion because I think there are pitfalls to taking more of an advocate role and this Commission has, part of what our legislative advocacy position authorizes is advocacy on particular issues that the Commission has endorsed because they really advance the interests of the public defense clients system wide. For example, Amy Miller has talked to this group about shackling and we participated in the shackling hearing at the legislature. I think the challenge with having an issue by issue authorization for advocacy is that sometimes issues arise now that the legislature is meeting yearly and having interim hearings so frequently, issues arise and we don't want to get caught where the legislature wants our advocacy and we are feeling like we need to be more neutral. So, it's just whether we need to reframe things slightly so that we can step forward a little more frequently. We may not want to. It may be that the answer is that we should continue with the current language and that that is sufficient.

10:32 Chair McCrea

I agree with you Nancy, that while the document that you prepared on the surface looks deceptively, I hesitate to use the word 'simple.' It's more elegant the way that it is set out with the two specific goals, but reading through it, it becomes incredibly complex in terms of how we would implement certain things. For example, I am looking at goal number one, strategy four, establish and enforce Oregon specific caseload standards which could include a lot of different issues and subtopics, everything from how we count cases to how lawyers get paid and so I agree with you. I think it is a good idea to address this at the retreat in July.

11:25 N. Cozine Yes, I agree and I wanted to get a draft out there so that you could all see it and so that our providers could see it and we had time to collect feedback on the draft. So, we will be having a very long discussion, I suspect, at the July retreat.

11:39 Chair McCrea Any other comments by other Commissioners? Okay, let's move to our big action item number five.

11:48 N. Cozine Chair, I'm sorry, if I might, there is one more issue number four that I want to just touch on. The September meeting date. We have a September meeting date and I am sorry I am not going to remember it off the top of my head, it's in the teens.

12:07 Chair McCrea I think it is September 15<sup>th</sup>.

12:09 N. Cozine Thank you. We have been asked by the Legislature to plan what will be a four hour CLE for legislators during legislative days. Legislative days are September 21, 22, and 23. The CLE would be on September 23 and that CLE would focus on the defenders role in creating procedural justice and creating holistic defense. In order to provide the legislature with the information they need it really will require us to bring in some people from out of state and I would like to make sure that this Commission hears the same information. So, the Chair and I had discussed the possibility to moving the PDSC meeting to either the 22<sup>nd</sup>, the day before the proposed CLE or to be held in conjunction with the CLE on September 23<sup>rd</sup>. I am looking for guidance on that and wondering if we can make one of those two dates work or if you think that would be helpful or not.

13:20 J. Potter The seminar is half a day?

13:22 N. Cozine The seminar is half a day, it is four hours.

13:25 J. Potter In the afternoon?

13:27 N. Cozine I don't know yet whether it will be morning or afternoon on the 23<sup>rd</sup>, that's a Friday. September 22<sup>nd</sup> is a Thursday.

13:41 Chair McCrea I am available either one of those days and it is actually better for me because I have a conflict with our current date on the 15<sup>th</sup>, so I am waiting the pleasure of other Commissioners.

13:53 J. Stevens If it matters at all, I can to Friday meetings a lot more easily than I can get to Thursday meetings. This is our busiest day of the week.

14:07 P. Ramfjord It would work for me.

14:14 J. Welch I can't do it that Friday.

14:20 C. Lazenby I can go either way.

14:22 J. Welch I have another question. It would be nice for the Commission to be able to hear that, but I am wondering if it should be a choice. Can it be recorded?

14:39 N. Cozine Presumably if it is at the legislature it can be recorded and actually live streamed.

14:53 Chair McCrea So we have two Commissioners who have indicated that Thursday is better, one that would prefer Friday. I think we have to go with numbers, so I would say why don't we move it to the 22<sup>nd</sup>. Is that all you need on that?

15:12 N. Cozine I think it is and I think the only other thing that I have to do is I know we will be making a presentation to general government which is usually at 8 am so I will work around that. I will communicate further by email on the date. Thank you.

15:35 Chair McCrea Anything else on number four Nancy?

15:36 N. Cozine No, thank you.

**Agenda Item No. 5 Approval of 2017-19 Policy Option Package Concepts**

15:38 Chair McCrea Okay, then let's move to number five, the action item on approval of the 2017-19 policy option package concepts.

15:55 N. Cozine Thank you Chair McCrea, members of the Commission. You have in your packet five potential policy option packages. I want to start that I put it on as an action item in case you want to move forward with these five packages. We also have room to discuss and approve in July. I am anticipating that the July retreat will actually start with a fairly regular type meeting agenda and then move into a retreat mode. All of these packages are intended to address both things that came up with the strategic planning feedback process and longer ongoing goals that this Commission has had for several biennia. It is also, you'll notice, we have fewer packages that last time and that is strategic as well. What we are hearing right now is that if IP28 does not pass it will be a very very lean budget cycle and I am sure you are all reading the same information. In our discussions with legislative fiscal office, we have explored a few different options. We are also exploring an option that is not on here that we may well need to include and that package would be something to help really adjust our budget. Every single biennia for the last three, and there were more before that, we have had to go to the legislature to ask for funding because contract and NRE expenditures end up exceeding projections. We are in that posture again. When the legislature authorizes that funding after the legislatively approved budget has already been set, it doesn't get built into our base budget for the next biennia. So, typically, you have your full budget and that full budget is used to create continuing service level for the next biennia but when we are given a big chunk mid biennia it doesn't get built into the one moving forward. So, we have talked to LFO about what effect this is having, essentially it is creating a backslide every time because we are not getting this chunk built into the base budget. I think LFO agrees that it is a problem and that we should build a policy option package that would allow the legislature to create a fix for that. It would be a onetime fix. But then, from there on out it would roll forward with our budget. That would be one we may want to add and it would be more of a technical adjustment than a policy issue. But, of course, it would probably be relatively large and would be a commitment from the legislature. That is not listed here, that is something we have to continue talking about.

18:55 C. Lazenby Would we be an exception if they did that for us or are other agencies facing the same problem? Are they going to do this system wide as far as budget is concerned?

19:04 N. Cozine I don't think other entities have this issue, I think this is unique to us. In terms of the packages, are there any other questions for right now?

19:16 J. Welch Why isn't that something we do now?

19:22 N. Cozine Right, it is and it should be and that is because we are still working with LFO on this particular package. It was suggested at one point. We stepped away from it and we had another meeting with LFO and I think we have come to an agreement that happened last week, after the agenda and materials went out.

19:48 J. Potter Clarify this for me Nancy, is this a technical fix that would go in regardless of what we do here. Is it going to be a policy option package standalone that we are going to vote on and prioritize or is it going to happen if we just vote on it?

20:08 N. Cozine It has to be built as a policy option package. In our ideal world it would just get built into the base budget as a technical adjustment. We have not been able to get agreement to proceed in that way. So, it has to be a policy option package and it would realistically compete with other packages potentially.

20:30 J. Potter You had mentioned that you thought it was going to be a relatively large number, do you have any sense at all?

20:35 N. Cozine I think it would probably be around six million but that is still under discussion.

20:46 C. Lazenby That would take the 54 number to a 60 number?

20:49 N. Cozine Yes, and we still have a big 'to be determined' there on the pay parity, you'll notice, and there is a reason for that too. Let me run through these quickly before we take feedback. The Parent Child Representation Program Expansion, this is something that we have been working on extensively through the Governor's Dependency Task Force. We have had meetings with legislative leadership, we have had meetings with legislators on the human resources side, on the public safety side and there is a lot of support for moving forward with this. That said, there is also a competing package for improved resources on the government side. Getting this funded will take a policy option package and advocacy on our side. I don't think it is realistic to assume it would float through without the PDSC's endorsement. In other words, it is not going to ride on the coat tails of the governor's task force. It may, that would help, but I do think it needs the endorsement and prioritization of the PDSC. Public Defense Contractor Parity is package number two. You may recall that after contracting in October we had some feedback from providers that there wasn't enough opportunity to provide input on how they were compared and to whom in terms of addressing whether or not they were at parity. Caroline will talk a little bit more about that, but that is essentially why we had the TBD because we want to make sure we have made some adjustments to the county comparisons and we want to make sure that everybody has a chance to weigh in and everybody understands what counties are being compared to each other. With regard to the hourly rate increases, each one of those was decided upon really in looking at what is happening in the private market and in other agencies. If you look, for example, at the capital contract attorneys, they are currently paid \$100 an hour and this package would bump them to \$175. That would be equivalent to what department of justice lawyers are being paid at an hourly rate and it would be more consistent with what is happening in the federal system. Moving down from there, the other rates flow from that but are also based upon what is happening in the private market. As an example, when we did the research it looked like investigators were typically charging 40-50 dollars an hour on the private side. The amount we have chosen is lower than that but it is as a percentage similar to the other increases that we are choosing. On the hourly rate for non-contract lawyers, \$46-75, I will tell you that we are having a terrible time finding anyone who will do these cases at the 46 dollar an hour rate. It is not realistic. This Commission may need to increase that rate even if we don't get this POP because it just is not possible to get people to take it at that rate. Are there any questions on that one before I move to the statewide case management system? We will loop back to this one because Caroline wants to provide a little more information on the county stuff. The statewide case management system would simply allow us to offer a case management system to everyone across the state. We are still in development of the system but we would like to be able to offer it to everyone and we would like to be able to get them something that they don't have to pay extra for that we really can handle as part of the contractual agreement. That would help with both data collection and quality assurance analysis. It would also streamline things for our providers because we ask them to provide to us every month spreadsheets of information and it is not always provided in a consistent fashion and when there are changes

in case counters within the firms, things tend to get tricky again. This would provide consistent reporting all across the state. Moving on then to OPDS policy option packages, there is employee compensation. We have talked about that. That is something we are pursuing actively in September and then the PCRCP staffing and quality assurance. There are three pieces to this. The PCRCP staffing would really be necessary as part of our ability to assess the efficacy of the program, that is package number one and really part of our ongoing PCRCP program. The quality assurance package would allow us to have another half research analyst which we need in order to better use data to do quality assurance from afar. We can take the data that our providers have and we can take data from the court system and it will help us better understand what is happening at the county level without having to go to the county every month to find out. The other piece in that quality assurance package is one FTE general counsel for criminal. It would essentially be building in the position that Amy Miller has on the juvenile side but on the criminal side so that we can do more direct support for providers if they are struggling or if they have questions. Really, our current general counsel does an exceptionally good job, but between reviewing NRE's, responding to complaints about the quality of providers on the criminal side and other day to day questions, his plate is very full and there isn't a lot of time for him to get out into the counties and one of these things we are struggling with is how do we have more time to get out in the counties to resolve problems and this would really help us to have more capacity to do that work. Finally, I touched on earlier the juvenile delinquency appeals, having one staff person in the office to do this work would be helpful. We are starting to receive more appeals in this area and we are having a hard time finding enough panel lawyers to do the work. We also want to make sure that we have some internal expertise in this area. We have talked about the importance of delinquency representation for a very long time and Amy Miller is working, I think some of her time because in the PCRCP program some of those lawyers are doing delinquency work as well as dependency work. Some of her time is clearly devoted to delinquency issues. It would be helpful for her to have someone in our office with whom she can collaborate on these issues. Those are the proposed packages and Caroline is going to tell you a little more now about the pay parity package and the questions yet to be determined.

28:36 C. Meyer

Good morning Chair McCrea, members of the Commission. The document that I am passing around was not included in your hard copy printed materials but it was in the emailed version that went out to everyone, so the audience should have it in their materials. It was a document that we created to help us compare PD's and DA's in terms of PD rates and how they should be compared by county. It was additional information, some of which we used in our comparison last budget cycle. We had a little bit more time to look at it in greater depth. There are really two documents that I would call your attention to, the demographic information that you have in front of you and the document entitled Public Defense Contractor Comparisons for the 2017-19 parity pop. This is a listing really. They are groupings that we used to better determine where our county contractors should land and who they should be compared to. It's very similar to what we used last time for our budget comparison and parity pop but we did combine a couple of areas that made more sense. For example, the valley area, the Lane County and Marion County grouping, there wasn't enough of a difference for us to keep them separate. It made more sense to combine them. The PD's really had the same rates. That was one area we were able to condense. It made sense to as we looked at the demographic information. This is the exercise we went through and we would certainly welcome input from contractors if they feel like they are not compared appropriately. After looking at everything, this made the most sense. I am happy to answer any questions you have about it.

30:31 J. Potter

The DA's salary for 2016, what does that number mean? Is it the head DA, the boss's salary or the chief?

30:42 C. Meyer

It is the elected DA.

30:45 J. Potter

That's with the county supplements added in?

30:47 C. Meyer Yes.

30:52 C. Lazenby Housing prices in Portland are changing so fast that as soon as you write it up it is out of date. I just read a new story yesterday that said that Portland median home prices are over four hundred grand. So, that is going to keep marching on as near as we can tell.

31:08 C. Meyer Right, and you can see it has, if you look at the percent change from the past year and what will be happening over the next year, certainly Portland has the highest percentage in both of those categories.

31:27 J. Potter Can I ask a question about the 'to be determined?' That is the big number here. I see your asterisk and footnote and it strikes me that you will end up coming up with four numbers on the 'to be determined.' You will have a number without policy option package one being funded, just pretend like it's not funded and you're going to come up with a contract parity number. If the policy option package is funded in part, the first part or the second or third part, that is going to affect different counties and that will reduce that number. So there could be four different numbers depending on what the legislature does in a way of funding, if they were to fund policy option package one. Am I understanding that correctly?

32:18 C. Meyer. That is correct, that is our understanding and I think that was the case last time as well.

32:23 J. Potter Do you have any sense at all what the big number is?

32:30 C. Meyer My understanding is that it will be a little less than last time.

32:37 N. Cozine Nancy, for the record. I think that the number last time was 21 million and with the increases that we have seen I think the number is closer to 28 this time, but it is still a projection and it is based upon some of the shifting that we have done based on the comparisons that we have made. One county in particular that came to us and said that they were in the wrong category was Benton County and when we looked at it we shifted that particular county. As we shift these groups it does have an effect on that total number because to whom you are compared does make a difference and we really do want people to look at this and we want people to be appropriately compared, but it does shift that number slightly. That is still a tentative number and we are going to have to figure out if package number one is funded it will potentially reduce substantially the pay parity number.

33:36 Chair McCrea Are we then using your chart, Caroline, the Oregon Demographics with the elected DA's salary as our guide in terms of what the contractor rate increases would be for parity in those locations?

33:55 C. Meyer The demographic chart is really used to help us determine which county, when we started this exercise two years ago it was essentially looking at every county that had a public defender and then the contractors in that county were compared to that public defender. That is what made sense at the time. It was clear. If you didn't have a public defender in your county then we looked to see which public defender made sense for you to be compared to both regionally and with some of these other criteria. If your question is whether the exact numbers are, I mean these are the numbers, for example the elected DA gets compared to our public defender executive directors. We have far more numbers behind the scenes in terms of the low and the high for each of the DA's offices and that gets compared to our low and high of attorneys in our PD's offices, if that helps.

34:55 Chair McCrea Not really.

34:58 N. Cozine I think what you are asking is whether or not the district attorney numbers drive the pay parity package.

- 35:08 Chair McCrea Yes, that's part of my question. I guess to state it another way if we are estimating the possible 28 million which is what the policy option package would be, where are we getting that number from? How do we get to that number?
- 35:28 N. Cozine It is in the counties where there is a public defender, public defender offices have to be the comparator because they actually have pay scales. Our consortium providers don't have pay scales. They don't have step one, step two. There is just no way to compare. We don't have that information whereas at a public defender office, much like a district attorney office, typically has a defender level one, defender level two and steps that go along with each of those classifications. When we make that comparison that is the starting point. Let's say we have a county like Clackamas where it's just a consortium group, we look at the demographic information about Clackamas County and then we look at our sheet, which are all the counties that have public defender offices, and we determine which county is most like Clackamas County which currently only has a consortium. Then, we take the rates for that public defender and we plug them in, the rates that would get the public defender to parity are the rates that get used for the comparison county that only has a consortium. Does that make sense?
- 36:54 Chair McCrea Yes.
- 36:57 C. Lazenby I guess the question is for, let's take Clackamas where it is just consortia, is that fair to the consortia? Are you comparing apples and oranges or apples and apples?
- 37:12 N. Cozine Commission Lazenby, members of the Commission, we have tried to make it as close to apples to apples as we can. We took out the investigation overlay that used to be a part of the contract rate so that everybody has the same rate and there is a different line item for investigation. That, as we head into contracting, will be another discussion I am sure. But, we have tried to make the basic rates the same for everyone. That is what we have been working toward is creating a system where people know what to expect and one of the things that we have talked about is that in the RFP process what we can actually do is include information. If you are in a county that is listed in the semi-urban group these are the current rates that we offer in that region and here is what the rate would be if they funded parity and then they can know that they will probably land somewhere between there. If the legislature cuts, we know that is a dreadful situation and it could go down, but for the most part they know they will land somewhere between what the current rate is and what the rate would be if we got parity funding. That way, heading into it there is a sense of certainty.
- 38:38 C. Meyer To Commissioner Lazenby's comment in asking if it's fair to compare someone, if you are compared to a public defender and it would reduce your rates, we are not reducing the rates. We have some exceptions. We have counties in the far eastern portion of the state where, one of the things that is not on the demographic chart is the difficulty in recruiting and retaining good lawyers. That is a factor that is really hard to quantify and if we have had to increase rates for that purpose in some of those counties it is really difficult then to compare them to a public defender and say 'your rates have to go down now.' I hope that helps in terms of the fairness. In every case, the rates are either going up or staying the same.
- 39:27 J. Potter I think I understand what you are trying to do but in the metro area you have listed three public defenders you're comparing them too and all three are highlighted but in the semi-urban and in the valley you have chosen Southern Oregon Public Defender over Umpqua and you have chosen Public Defender Services of Lane County over Marion County.
- 39:50 C. Meyer I believe we would have chosen, in Multnomah County the rates are the same for all three of those public defenders which is why they were all three highlighted. The highlighted public defender would be the rates that were the highest in that region. Umpqua Valley Public Defender and I know Dan Bouck is here and would correct me if I am wrong but I am certain

this would be an increase. It may not be much of an increase but it wouldn't and we wouldn't reduce their rates. The same thing is true for Marion County and Lane County and I believe that Marion County Public Defender doesn't include juvenile rates and so I think we chose Lane County simply because they have a whole range of rates and it better applied to everyone doing boing juvenile and criminal.

- 40:39 Chair McCrea Other comments or questions by the Commission? As an observation, you gave us an out at the beginning Nancy and I am going to say that we are going to need to take your out. I don't see how we can make this an action item today given that we don't have the policy option package regarding the build in on the budget and we don't actually have, this is not a criticism nor a judgement but just an observation, four of the figures for the 'to be announced' public defense contractor parity because there is a lot here. My sense is that we want to take comment from contractors and people in the audience and have some more discussion among the Commissioners and probably defer this to the retreat since we can. It appears to me, and I am willing to be overruled by the other Commissioners if you so choose, but it is pretty complicated and important to try and rush through it today. I am not getting any argument from any of the other Commissioners.
- 41:55 N. Cozine Chair McCrea, I am in complete agreement. If you don't post it as an action item and then someone wants to move forward, you can't, so I just wanted to build in the option but I think it is a wise choice to take feedback and come back to it in July.
- 42:10 Chair McCrea Do you have, at this point, any recommendations or observations for us that we should consider?
- 42:20 N. Cozine I think the last thing, and I just started to talk about this, I just think that this budget cycle is going to be very competitive and the more focused we are on a few priority packages I think the greater chance we have of success. Some of the things that we have stripped out that we really wanted to put in were things like expanded office space for OPDS because we have people doubled up in offices. We are going to have to find another way to do that. It's going to be competitive enough that if we can go to legislators with a palate of a few policy option packages that this Commission really wants funded I think we will have better conversations. And, because we have been talking with legislators already so much about pay parity and the Parent Child Representation Program there is a lot of momentum there. Those are big numbers and I would like to give the legislature every reason possible to fund those.
- 43:26 Chair McCrea Caroline, is there anything else you want to say to us at this point.
- 43:31 C. Meyer No, I don't think so, not on the pop.
- 43:34 Chair McCrea Is there anything else you'd like to say right now on anything else?
- 43:37 C. Meyer Well I am going to be talking about caseload in just a little bit.
- 43:40 Chair McCrea Then, at this point, thank you both. I would like to invite members of the audience who may want to comment on the policy option packages proposed. Nobody has any thoughts this morning? Okay, Jennifer.
- 44:00 J. Nash I am going to talk about Benton County of course. Chair McCrea, members of the Commission, Jennifer Nash. For the next two weeks I am still the consortium administrator for Benton County but then not so much. I wanted to speak specifically about the demographic comparison charts for the grouping of public defense entities. As either Ms. Cozine or Ms. Meyer, I can't remember which one, talked about during our last contracting cycle, Benton County got carved out and put in a different category. I noticed in the chart that was provided we are back in with the valley again. I just wanted to point out that the median home value according to Zillow for Benton County is \$298,000 which is significantly higher

than Lane County which is listed in the chart. We are in a really unique situation in Benton County. The cost of living is significantly higher than it is in the surrounding counties. It really is more comparable to the tri-county area than Polk and Certainly Linn County and Lane County. Again, I won't be involved necessarily in the next contracting cycle but I would urge the Commission to continue to consider that. In terms of the overall policy option packages, this is going to be a very difficult legislative funding cycle next time around given all of the competing requests as well as the shortages in money more than anything. I think that the most important thing, unfortunately this time around, may be not to lose money. I think it will be difficult for us to get additional funding but it is very critical that we don't lose it so that we are not in a situation where people are taking a step backwards. We added people to our group this time around and we are still overloaded. I don't mean necessarily that we are taking too many cases but comfort level wise we are working too hard for not enough pay and I think everybody in this room feels the same way. It is very important that everyone who does this work, as I said many times, has a commitment to public service and it is hard to maintain that commitment when you are not being compensated for it in a manner that at least allows you to have a decent standard of living. Thank you.

- 46:40 J. Potter I have one question. I understand, what was the number?
- 46:49 J. Nash \$298,000.
- 46:51 J. Potter Do you happen to know what the DA is making there?
- 46:53 J. Nash I don't. I don't know. I was going to try and look that up really quickly but I don't know off the top of my head.
- 47:03 Chair McCrea Thank you Jennifer.
- 47:04 J. Nash Thank you.
- 47:05 Chair McCrea Mark, you look like you want to make some comments.
- 47:14 M. McKechnie I do. Thank you Chair McCrea, members of the Commission, Mark McKechnie from Youth Rights and Justice. I am here to make my at least annual or possible semi or quarterly pitch for the juvenile funding. I want to echo Nancy's comments that I think we have a unique opportunity this session with the support from the governor's office and the task force chaired by Justice Brewer to finally get improved funding for juvenile representation. The current governor proposed funding ten years ago. In the 2007 session there was a bill that her gang of four proposed that would have added 23 million dollars to juvenile representation. We have been trying ever since then to make it happen. I feel like if there ever was a time, this is the time to prioritize this pop in particular. When we talk about parity there is a disparity even within the trial level public defense between compensation for criminal cases and compensation for juvenile cases. I believe you have heard that some contractors who do both find that they effectively subsidize the juvenile work with the money they receive for criminal cases in order to make things work and be able to pay juvenile attorneys the same rates that they pay criminal defense attorneys. That causes a problem with maintaining reasonable caseloads. There has been a lot of work done and there is experience in Washington State and other jurisdictions that caseloads really, really matter in juvenile cases and I can tell you first hand that we have experienced that. We have had enough fluctuation in our caseload in our office to experience what it is like to have caseloads that are within the national standards for a brief period of time and it really does change practice and it changes and improves the morale of the people that are doing the work to feel like they are on top of their cases and being effective and doing the things that they need to do. When the caseload picks up again I think it is even harder for them when they realize that they are no longer able to do the work that they had been able to do at one time. One of the things that I have learned going through the task force process is that the current contracting model for juvenile cases is, how should I

put this, it was developed decades ago. I think that somebody came up with a way to try and reflect the fact that dependency cases in particular are these ongoing cases unlike criminal cases that are resolved in a discreet period of time. But, that system has many flaws and one of the biggest flaws is that none of us really know what the caseloads are. You can't compare caseloads from provider to provider or county to county because of this bizarre credit model and the differences in county to county in terms of how many new cases are filed, how many review hearings occur based on the court's capacity and interest and having frequent review hearings versus less frequent longer review hearings versus what the local bar demands and is capable of asking for in terms of reviews and other types of hearings basically means that we don't know what the caseload or the workload is statewide for juvenile cases and that means that we have not been able to adequately calculate what a sufficient budget for juvenile cases is. So, not only would the pops give us the money to have reasonable workloads and be more effective for our clients, it would create a new and more rational basis for funding juvenile defense going forward. It would give us a much more solid basis for developing a budget from biennium to biennium going forward. So, there are many benefits to making this change and I think there were decisions made not to prioritize the juvenile pops last session and I don't know if that made a difference. We didn't get extra funding so I don't know if that made a difference or not but I certainly want to emphasize that we have a unique opportunity this session and we certainly don't want to miss it. Thank you. I am happy to answer questions.

52:08 J. Potter

I don't have the information at my fingertips, I am sure I have seen it, but where is Multnomah County in the hierarchy of phase one, two and three?

52:18 M. McKechnie

That has not been determined or disclosed. I will say, in terms of a roll out, I think in the conversations in and outside of the task force I think we all recognize it is realistic to have a rollout of at least two or three and hopefully no more than three biennia partly because I don't think we are going to see 35 to 40 million dollars added all at once. Also, I think the capacity of OPDS and of providers and counties and courts to see this change happen all at once all over the state in a two year period I think is unrealistic. In terms of selecting the counties, I think it is important to look at some criteria to choose the counties. I think population and how many families, kids and parents will be affected is important. So far, the amount of money that we have had has been very small so the pilots have been in small counties that altogether account for seven to seven and a half percent of the foster care population. Certainly, in the next phase, assuming it happens, we hope to see a much bigger portion of the population affected by those changes. I think there should be some larger counties in the next phase. I think readiness should also be assessed in terms of the local court structure. If we are going to have a more active juvenile practice, are all of the pieces in place to help facilitate that? I also think we should acknowledge the tension between some counties that have extremely high caseloads and the need to reduce those versus counties that are actually poised to move their caseloads where they are essentially lower to begin with but still above the national standards. That would make it easier to shift those caseloads. We could hire enough attorneys relatively quickly to bring our caseloads in line and I am not sure all counties are in a position to do that quickly. I think all of those factors need to be assessed in terms of readiness and impact. The bottom line is to have better outcomes for the clients that we serve and that should be the focus.

54:53 J. Potter

So, is it the task force's job to make that determination as to where that money will go first, beyond the counties that we already serve?

55:00 M. McKechnie

My understanding at this point is that the task force isn't going to get into that level of detail of choosing counties. But, I think that will occur partly in terms of the Commission's work and OPDS's work as well as the governor's office and the legislature deciding how much money will be available during the first biennium versus subsequent biennia and figuring out how many counties and which ones can be added to the PCRCP based on the amount of money available. It's a chicken and the egg kind of discussion.

55:40 J. Potter Nancy is hovering.

55:47 N. Cozine I am hovering. Commissioner Potter, members of the Commission. I wanted to provide a little bit of information on this because you see it is laid out in three pieces. We did have to price out in each county and lump them in some way and we did work closely actually with the governor's task force to determine what counties would be in what grouping. It is still fluid. We had to provide information to get that ball moving forward. My understanding actually is that there is going to be a recommendation perhaps at today's meeting for a subcommittee that would work through how each of the improved representation models would be implemented and that would create more discussion around which counties would land where. That is something I think we can talk about more in July. I think there are several pressures that will lead to the ultimate grouping of counties both in terms of what is happening in our counties, where we have the greatest need to make significant change, how able are we to get to each county. There are so many factors that drive what makes sense in terms of grouping. I don't mind having a richer discussion with the commission. I think it makes sense. It is just still in progress.

57:17 J. Potter I appreciate that and I thought your points were well taken and thoughtful. But, whatever happens and is decided by whomever makes the decisions will affect this policy option package number two for us and it will affect people differently in different counties. So, at some point we are going to need to know that information.

57:42 N. Cozine Right.

57:44 C. Lazenby Are we, as we ramp up to provide more money and resources to deal with this, are we ahead of the challenge of a population demographic bulge in juveniles that we can see or are we chasing a problem in the face of maybe declining juvenile populations? My sense has always been that you have that big bulge of people between the ages of 15 and 29, there is a bump in the crime correlated with that population. What are the projections saying demographically about the, I mean are we getting ready for the future flood or are we doing mop up?

58:25 N. Cozine Commissioner Lazenby, members of the Commission, what you're hitting at is a little more on the delinquency side. There is a dependency side too and we have been seeing, and Caroline will talk with you more about our projections for the coming biennium, we've been seeing over the last several years a dramatic decline in the number of dependency filings and that is changing. We are seeing an uptick again. We don't know all of the reasons why but at this point both criminal and juvenile caseloads are on the rise. With the PCRCP our experience has been that once we get in there we actually start affecting caseload. You may recall this but in our two pilot counties there was a reduction in the number of kids in foster care of 11 and 14 percent while the statewide average was an increase of a half percent. In both of our Linn and Yamhill counties we were able to reduce those contracts by one lawyer. I'd like to think that this gives us a mechanism for at least influencing caseload because the representation and the system improvements that come along with the improved representation really do impact the length the case stays in the system. That said, there are so many dynamic factors that I certainly couldn't promise that it will forever hold steady. I hope that answers your question.

1:00:03 C. Lazenby If Portland is successful in getting all of their new police officers, we can expect a rise in crime, right?

1:00:15 Chair McCrea Questions from Mark? Comments? Thank you.

1:00:22 P. Ramfjord Shaun, I am going to have to step outside for about five minutes and take a quick call. I will be back on.

1:00:28 Chair McCrea Thank you Per.

1:00:34 T. Crabtree Chair McCrea, members of the Commission, Tom Crabtree. I am the executive director of the Crabtree and Rahmsdorff Defense Services, the public defender in Bend. I want to urge you to support the pop for parity along with what Mark has said. In Deschutes County we have the highest gap between our pay scale and the district attorney's pay scale. They are getting a 1.5% increase as of the first of the month. So, the difference will be roughly \$19,500 for doing the same work. Another thing that is important to remember is that when we talk about parity here in the parity package we are only talking about parity of attorney salaries. I did some research on differences between our office and the DA's office in terms of benefits. They pay \$28,000 and change per employee in benefits a year and we pay \$18,000. None of us, none of the defense providers in the state get PERS and they do. We haven't even looked at parity for pay for staff members. So, it is really important to get this step accomplished so that we can move on to the others. Some of us, in order to get the pay levels that we have, have higher caseloads than other offices around the state and that is out of survival after having a revolving door situation where you can't keep employees because the pay is so low because the cost of living is so high. I noticed the figures that were provided to you apparently according to Zillow. In Bend, the median home price is supposed to go down nine tenths of one percent in a year. I don't know what they are smoking but in an article in the Bend Bulletin last week I believe the median price this year through April is already up to \$375,000 per home. It is going up at the rate of %12-16 a year. It is getting more expensive, not cheaper, to live in Bend. I don't know if that impacts how things are calculated but it is important to apply the parity, whatever we do get, equally across the state. The last time, two sessions ago when there was parity for public defenders, I know the folks in Multnomah County got a large chunk of that. We got 2% and that came right at the time the DA's got a 2.75% COLA. So, our parity caused us to go down even further. It's really important to make this priority number one. We have been doing the same work as the DA's for years. We have not kept up with their levels. It would be as if we are getting paid, in the legislature the prevailing party gets 25% more per legislator than the minority party and that is essentially what we are dealing with. I strongly urge you to support the pay parity packages and insist on nothing less. Thanks.

1:05:10 Chair McCrea Thanks Tom. Any questions for Tom?

1:05:12 C. Lazenby No real question for you Tom and you can stay for it if you want to, it's just an observation. One of the things that I have struggled with and this is just me, I don't have a point of view at this point I am just asking. I noticed that when the governor's minimum wage plan came out she tiered it to the different realities around the state so when you say parity across the state are you saying a Multnomah County rate across the entire state?

1:05:40 T. Crabtree No, I am not saying that at all. I am saying that presumably the Commission is going to say that we are supporting a policy option package of X amount of dollars with represents 100% pay parity for everybody in the state. If the legislature comes back and says, 'we will give you half of that,' that you give everybody halfway towards their parity and not pick regions and say, 'this region we are going to give you 80%, and this region we will give you 20%.'

1:06:25 C. Lazenby Okay, I understand.

1:06:27 J. Potter What I do hear you challenging is the chart we have in front of us on the demographics that are showing median house prices going down in Deschutes County, you would suggest that maybe some more research needs to be done?

1:06:39 T. Crabtree Yes. It looks like somebody took one source, Zillow, and for whatever reason they are going to go down and Commissioner Stevens will tell you that that's not reality in Central Oregon. I don't know if that figure relates to any calculations of parity and what you expect but if you are betting on house prices going down in Bend, I've got some swamp land in Florida I would love to sell you.

- 1:07:27 Chair McCrea Nancy?
- 1:07:31 N. Cozine Chair McCrea, members of the Commission, I just wanted to comment on the suggested structure of how to disseminate pay parity dollars should they be received. I want to make it clear that the way we are building the package is to get everyone to parity and that our goal last time, as I would endorse this time, is to get everyone at least to the same level of parity. So, if there are entities that are 5% behind and we can get everybody to that 5% behind, that is what we would want to do. But, to have a structure where everyone gets the same dollar amount is not going to work because then you would have some people that are paid more than the district attorneys and some people who are still paid dramatically less. In July we will have a chart for you that will show which counties are farther behind and which counties are closer and we want to be really careful to make sure that when we look at pay parity we are looking at the percent behind in each jurisdiction and trying to achieve some level of parity or disparity that is at least equal, unless there is good reason to do otherwise and that is a conversation we can have. We are still collecting. Not all of the district attorney offices have implemented their 2016 compensation plan increases and so that is another piece of this that is slightly in flux. We just want to make sure that we have the best and most recent data possible to make the comparison with the knowledge that by the time the 2018 contracts start, there will have been changes to the pay structures already.
- 1:09:08 J. Welch I don't you to explain why this is the way it is, but I really don't understand what this chart is supposed to convey other than median housing prices in a variety of counties. The DA's salary is irrelevant. The head person has a lot of responsibilities that are not comparable to defenders. Look at Multnomah County. How many staff people are being managed? It is a great big number. Any way, if this is going to be used outside of our walls I hope that some more thought would be given to what it conveys.
- 1:09:57 N. Cozine Right. Commissioner Welch, and members of the Commission, that is really just sort of a snapshot of different variable factors of each county. It is not actually what drives the parity numbers. What drives the parity numbers is what the deputy district attorney one is being paid, what the DDA2 is being paid. Those were the publically availing pieces of information that allowed us to compare different counties, their population and demographics. It was just an example of some of the things that our analysts took into consideration in addition to things like recruitment and other challenges that we have out there in the counties. Thank you.
- 1:10:38 Chair McCrea Thanks Nancy. Other comments? Come on up.
- 1:10:48 E. Deitrick Chair McCrea, members of the Commission, my name is Eric Deitrick. I work at Multnomah defenders in Portland, although I am just here personally, I am not speaking on behalf of MDI. I have been tracking this stuff for the last few years and I really wanted to endorse policy option package number one, the juvenile dependency and expansion of that program. Just listening and participating in conversations about pay parity is so problematic when talking with legislators just because of the way that our model is set up, this pay per case structure. It creates these economic incentives to take on more cases than you can because you get paid per case and so littler per case. You are incentivized. The economics of the model says to take on more cases. In terms of our more broader conversation in terms of getting more indigent defense funding, as you have heard with these charts when you have these non-profits that have one model, and for profits and consortia that have a different model, it makes comparing people who participate in the system salary just really difficult when you have some public defender offices that have a salary system and others that don't. So, the best thing about the juvenile pilot program, from my perspective, is it changes the model going forward and builds in my office's concerns which what the attorneys talk about in my office on a day to day basis is caseloads. With the juvenile pilot program what you have is a system where they've adopted what has been traditionally been regarded as a decent caseload standard and you get paid a compensation package to do that caseload. That eliminates the economic disincentive to take on more cases than you need because that incentive is no longer there. It

makes talking about indigent defense funding going forward much easier because you can have an apple to apples conversation about what an attorney gets paid to cover a caseload versus what a DA gets paid to cover a caseload. So, going forward knowing there is going to be limited budget money available, if we can get this done in dependency then going forward it can be expanded to the other areas of indigent defense, to criminal, delinquency, etc. That is why I think it is a great package. Thank you.

- 1:13:16 C. Lazenby Eric, how do you deal with the piece that Mark brought up that in defense cases it is hard to tell what your caseload is because some drag on and some get over real quickly, so how does that figure into our problem?
- 1:13:29 E. Deitrick I think it was Caroline Meyer and Ms. Cozine when they were up there earlier talking about their need to be a meaty conversation going forward about caseloads. I think there are academics who study this issue. I think there is a professor at Portland State and there certainly have been studies done nationally. I don't think there is a quick answer, and I don't even practice dependency my wife does. I have no idea what a reasonable caseload is or should be going forward.
- 1:14:02 C. Lazenby I understand. I am always in search of smarter people.
- 1:14:15 N. Cozine Chair McCrea, members of the Commission, I did want to just offer that in the PCRCP model it is actually open caseload. So, that is how you tackle that some cases are open a long time and some a short time. You are always taking a snapshot of your current open caseload and there is a cap on what that open caseload could be and Mr. Deitrick is correct, you could apply that in the criminal setting. As we move forward with the discussion about caseload standards that may be something we want to tackle. No other state that I am aware of has a caseload standard that is an open caseload standard. I may be wrong though and we will talk more about that. We would want to do our own caseload assessment. In the criminal context it is cases per year and that is what makes it difficult because you have some that linger and some that don't. But, in PCRCP with the open caseload you can really balance out people's work effectively.
- 1:15:11 E. Deitrick Thank you.
- 1:15:15 Chair McCrea Thank you. Alex?
- 1:15:26 A. Bassos Chair McCrea, members of the Commission, my name is Alex Bassos. I am one of the directors at Metropolitan Public Defender in Multnomah and Washington counties. I just wanted to echo a few comments, actually I didn't want to echo but I am here for Lane Borg who couldn't be here, he as the meeting in Salem. We want to echo a few things that have already been said. One, I guess this is my comment; I want to confirm that at the rates that are currently being paid for juveniles, they do need to be subsidized. We tried very hard for the last six months to abide by the number of attorneys that we could get with the rates that we are being paid and ultimately we got to a breaking point and we recently in both counties had to subsidize by shifting folks over from the criminal section in order to just get to the point of being able to adequately represent our clients. But, that means higher criminal caseloads so that we can have adequate representation in juvenile caseloads. What Lane wanted me to pass on was that first of all it is imperative that we have a pop for parity statewide and his reasoning among the others that have been echoed here is that we need a vehicle should something unexpected happen the last time we were able to get more money we did not think that going into that legislative session that money would be available. I know that this year we expect it to be lean at the legislature but who knows what will happen? If we don't have a vehicle in there for statewide parity then ultimately it can't be funded and it was that vehicle that we didn't expect to be funded that was used to increase parity, though we are now in Multnomah County we are back to the same disparity that was there several sessions ago. Lane also wanted me to pass on that we fully support the Commission determining and

advocating for hard case caps and the sort of work load studies that Paul Levy will be talking about later in this meeting. As Mr. Deitrick said it is our strong position that if we can get to an FTE model it would allow us to provide for significantly more stability and better representation. The current method, this has just been written about nationwide there was just a big case in New Mexico, flat fee funding is problematic because it both incentivizes the turning over of cases very quickly and incentivizes taking as many cases as possible. Whatever we can do, however we can help to get to a point where we have an FTE model and hard case cap with the sort of work load studies that we have seen in other places around the nation, we are more than willing to go there. I presume that means time keeping at some point which I know that won't make our staff very happy but we are ready. Whatever will get us there. Thank you.

- 1:19:00 Chair McCrea Thanks Alex. I am going to make a comment. I just feel compelled to do this and this is not a judgement, this is not, this is just my comment from me having been on this Commission since its inception I understand that every time we go to the legislature there are limited resources. There is always issues about if we want to go to them and be realistic, do we want to take a chance because who knows what may happen kind of thing and I just have to say I am tired of us apologizing for who we are and what we do. The DA's go in, let me go back to the example. I think I have talked about this in the past. The first time I saw the t-v program *Law and Order* and they come on and say 'the people are represented by two parties' and I was like 'yeah, the prosecution and the defense!' But that is not what they say, right? They say the police and the prosecution, and I am like 'wait, what about us?' Because we are in the constitution. We all know from the BRAC ["Budget Reduction Advisory Committee"] back in 2003 they finally got it, they can't do it without us. I am just saying that I think that in terms of our discussion in July I think we have come a long way from back in the meeting we had in Medford, John, where the defense attorneys were coming in and saying, at least one of them was, 'you know it's okay, I go see my clients at night and on the weekends at the jail and I manage to get everything done.' And, it's like no you shouldn't have to be doing that. I know I am looking at you, Alex, this is not on you it's just something that I have struggled with over the years because I am so proud of who we are and what we do and I am tired of us feeling like we have to apologize for it. That is just my little rant for the day.
- 1:21:21 A. Bassos Chair McCrea, members of the Commission, Amen.
- 1:21:25 Chair McCrea Thank you for your comments.
- 1:21:27 A. Bassos Thank you.
- 1:27:28 C. Lazenby This has been a great choir probably.
- 1:21:33 Chair McCrea Who else wants to talk about that, come on up.
- 1:21:42 O. Thompson Chair McCrea, members of the Commission, I am Olcott Thompson. I am sort of the trickle down person here, I am here as a member of a consortium, not in any way am I suggesting, and I recognize the realities as Ms. Cozine presented on how you compare salaries and consortia don't work that way, absolutely. You said a lot of what I wanted to say Chair.
- 1:22:08 Chair McCrea Go ahead and say it anyway.
- 1:22:10 O. Thompson Go for it. It's passed the time of being realistic. We can be realistic internally. We will only get part of what we asked for but go to the legislature and tell them, 'this is what we need. We absolutely have to do it, we are not a second share.' They may say, 'we only have this much money.' That's fine. Deal with it at that point, but don't cut back on what we want and what we need just because we don't think there is going to be enough money. The other agencies don't as far as I know. On that, echoing what Tom Crabtree said, make sure that when you go to the legislature or we go to the legislature about pay parity, this is pay parity looking at

salaries only, because district attorneys get PERS. All the deputy DA's do. They have staff they pay. Consortia have staff that we have to pay. PD's offices have staff that they need to pay because if we go to the legislature and tell them we want pay parity they are going to say 'great, when you get it we're done, we don't need to give you any more money percentage wise. You've matched the DA's office salary, you've got parity, what are you complaining about?' Make sure they get the message that this is parity numbers for salary of people only, not benefits, not staff, nothing but people only. One comment on the strategic plan, the draft, I have not been to as many meetings as you have Chair or most of the members of the Commission, but I have been to a fair number of these meetings and one thing that has always struck me and I am not criticizing is that the agency looks out for its own employees, great, but that's the first priority, great. We need more money to get parity with the AG's office, great. But, when they talk about the contractors it's we need to get them doing better things, they need to do better work, they need caseload reductions, oh and by the way they need money. Reverse goals one and two. One, goal two talks about getting parity, you've got to get to parity and get more money for the contractors. That is going to drive, as you know, goal number one and meeting that goal. Quite frankly, yes we have all gotten much better over the years thanks to the Commission but there is a limit to how much more we can do without any more money. Flip the goals. Be honest about it folks. Legislature, we need the money, because we can't do anything without the money. Thank you.

1:25:13 Chair McCrea

Who is next? Dan?

1:25:23 D. Bouck

Daniel Bouck at the public defender for Douglas County. Just a few observations, I had to retain an attorney recently to review a construction contract for our firm and he charges more than double what the county death penalty attorneys are paid. We are comparing ourselves to the wrong people. District attorneys are the third lowest paid, we are the second lowest and the only thing lower than us is legal aide. We are comparing ourselves in the wrong way when we go to legislature. We need to be showing just how little we are making compared to our colleagues. In Douglas County we shouldn't be asking for comparison to the DA, at least on dependency cases or termination because those are represented by the AG's office which is more than double the pay rate of our DA. So, we should be comparing for dependencies, at least in terminations, who we go up against which is double the rate. I believe somebody else is going to be talking about caseloads and case counting. Dependencies cases have changed significantly on what we need to do and how they are done and there needs to be a complete reanalysis of what is a case credit. When do we get a case credit? Our juvenile court judge and our presiding court judge just recently decided to change how we are doing things, so we are not getting as many case credits but we are still doing the same amount of work. There is a problem but it is sort of complex, but we need to look at the bigger picture because what is happening in Douglas County isn't how it's done in Salem or anywhere else, so we need to get you in on that. Just for those points, and yes, we need more money of course.

1:27:17 Chair McCrea

You highlight one of the issues that the Commission has struggled with over the years and that is whether we try to make a one size fits all for providers across the state or whether we look at individualized situations. As a policy proposition, we have generally taken the position that it is not a one size fits all and as you also say it is complicated. These problems are not simple; I mean that is why we are lawyers, right? If this stuff was black and white, people could just go into court and they wouldn't need a lawyer. I agree with you.

1:28:04 C. Lazenby

A lot of times in this element I feel like I am rock climbing and I am clinging to the wall when we have these things we are working with. We don't really have the luxury of looking behind us and seeing how far we have come. I think the BRAC changed a lot of that. Somebody said, it was you [Chair McCrea], said I am really tired of us going in and acting like we are undeserved. I think what the BRAC really did institutionally was that it taught the legislature as an institution. You don't have any of the same people that were there in 2003, for the most part they are mostly all gone. The legislature, now, has the reaction of we have got to fund public defense because if we don't something bad happens. They can't remember what it is.

Whereas before the BRAC it was like, 'well judge, you take those salaries out of your judges salaries to pay those people that defend all those guilty people.' And, there has been a fundamental shift in the way the legislature approaches the industry. As a result of what you all have done and what we have been an instrument of yours in doing. I don't think we should lose track of that. I think more money is the case. These conversations we are having about how the system can be understandable and accountable is really the hard problem because when you look at other state agencies DHS can go in and say 'we had this much money last year and we had these many more people with addictions that we had to treat and therefore we need more money and we have these things coming in,' we have a difficult time explaining what the bang for the buck is that they're paying us to do this work. I am saying the system makes it hard. Dependency cases and what is in a caseload, this case can be done in five minutes and this case will take a year and a half to do. Help us as we struggle with that basic dynamic in the legislature and that is 'this is why you are spending the money.' That is truly the fundamental question when I deal with legislators over the past 15 years. There is another piece to that if you are saying it right is also helpful which is, 'and if you don't...' That is the dynamic. Things are not generally done in the legislative process because it is the right thing to do. Coming at it from 'what is the right thing to do?' That's the struggle that I see in this whole conversations that we have a very difficult system to quantify for people that think in much different concrete terms and to the extent that practitioners of all the different stripes whether you are a contractor, or PD, or appellate or what you do or juvenile or dependency, you have got to help us frame it in a way around those questions of 'this is why you spend the money, and it is a good thing that you are spending the money and it prevents bad things from happening.' The justice part where its right and we are paid less than prosecutors, all of that is imbedded in a system that we have no control over changing, but that is the basic argument for the legislature. I have watched this group since I have been on it from its inception too wrestle with that for 15 years. And, some of you, I am looking right at Jim Hennings, have been wrestling with this for a century. Speech over.

- 1:32:00 Chair McCrea That's good Chip. Who else wants to comment? Come on up. This is our time so I appreciate you coming up and talking. Hi Jim.
- 1:32:16 J. Arneson Madam Chair, members of the Commission, Jim Arneson from Roseburg, private firm contractor. One thing that hasn't been mentioned that maybe only applies to the private firm contractors is the disparity that occurs with hiring new lawyers. Both DA's and public defenders get loan deferment, or at least they believe they are getting loan deferment. And, it is a substantial factor when you are attempting to hire or retain folks when the public entities can get deferments and the private firms can't. I have no idea what the solution is but I would like it to be on the horizon when you are talking about disparity because it is a huge one.
- 1:33:09 Chair McCrea That's a good point.
- 1:33:14 J. Potter Possibly, Rob Raschio can provide us the solution to that problem. Now, as a private law firm he is attempting to set up within the private law firm and standalone public defender's office so that his lawyers would work for the public defender and qualify for loan deferment.
- 1:33:47 Chair McCrea Thank you Jim.
- 1:33:48 J. Arneson You're welcome.
- 1:33:52 Chair McCrea Any other comments or observations? Anybody else want to rant? Any Commissioners want to comment further? Okay then, Per? Are you there?
- 1:34:06 P. Ramfjord I am here. I have been here, I was only on for just a couple of minutes.
- 1:34:12 Chair McCrea I believe you. Did you want to make any comments?

1:34:15 P. Ramfjord No, I support your comment and I was very appreciative of the Chair's comments. I thought they were very apt and appropriate.

**Agenda Item No. 6 Caseload Projections for 2017-19**

1:34:22 Chair McCrea Thank you Per. I pay him to say that. Then, last chance. Okay, let's go ahead and move onto number six, the caseload projections for 2017-2019 and then I promise we will take a break. We will keep Nancy in on this, and also keep Per. I know it's hard, Per, being on the phone.

1:35:03 P. Ramfjord It's not that bad actually. It's a good conversation.

1:35:19 C. Meyer Chair McCrea, members of the Commission, we are back to talk to you about caseload which as you have been hearing is a huge driver in our budget. Of course, when we get to statewide caseload we will talk about how the model is based on credits. We talk about open caseloads versus cases and our model for funding is of course still based on credits. Billy is going to start by talking to you about capital cases and what is happening there and then we will come back to statewide caseload.

1:35:51 B. Strehlow Madam Chair, members of the Commission, we have a chart here that is I suppose elegant, as I heard earlier. We see that the value and the expenditures of capital cases are going up. This starts back in May of '14 and you can see that it is clearly rising. I would say that there are three areas where we see a significant amount of this increase and that is in the exploration of fetal alcohol spectrum disorder, changes in the brain science. Really it has evolved where they can go clear back in utero and see the impact of trauma that occurred back then and the impact it has on an individual. The third thing is mitigation. They have to explore the childhood environments. That can be a simple thing or at least simpler when crime that was committed in Portland and for their whole childhood was in Gresham, but what do you do when most of the time those childhoods were in a different part of the state or another state or even another country and by the ABA guidelines you have to go and explore that. So, those are really the three areas where we have really seen a driving of these expenses going up and we anticipate that going forward.

1:37:33 C. Meyer Back to statewide caseload, for the 2017-19 biennium we are projecting a slight increase. Nancy mentioned that for several biennia we had projected a flat caseload; previously there had been a fairly consistent decline in juvenile. We are seeing a slight increase in both criminal and juvenile. This particular slide shows a 15 month snapshot and as we scroll down to the next slides you will see that as you condense that time frame you get a little bit of a different picture. But you can see the gradual increase in the slide. The next slide shows just the past six months. We typically look at a longer trend, which is why we sort of start with a 15 month period, 12 month period, 9 month period, but we really needed to drill down to a six month period because it really highlights what has been happening more recently. There has been a much higher and steady increase in the caseload. Again, I say caseload and it is credits but it is based on how we currently pay for these cases. Then, the next slide is the caseload credits for our ten largest counties. If you look at the statewide caseload and you say 'what does that really tell us because you've got some really small counties and you've got some really large counties.' So, we took a snapshot of our ten largest counties as it is fairly representative of the state and, again, you can see a steady increase over a six month period of time.

1:39:32 Chair McCrea I have a couple of questions and I should know this but I don't. When is a caseload credit given? Is it at when a case is assigned or when a case is completed, or when?

1:39:48 C. Meyer For contract credits, the credit is given at the beginning when it is assigned. Juvenile can be a little bit different. New dependencies are paid at the beginning at appointment. They then claim review credits at the time of the review hearing. Hourly is paid typically at the close of the case, but we are talking about the majority of contract.

- 1:40:09 Chair McCrea My second question is on your 15 month chart and then with the six month chart there was a significant uptick in both March of 2015 and March of 2016 as well as a significant dip in November. Can we pinpoint with any certainty or even have any idea why that is? Is it anything systemic or the way that things get allocated, or is it just that is what it is?
- 1:44:46 C. Meyer It is more the cyclical nature of caseload. We do see trends in the summer sometimes. We typically see a dip in December when the courts aren't open as much because of holidays. We do have, going back it is not on any of these slides because it was back in 2014, but there are a significant dip in that particular month to where we looked at it and said 'something must be wrong.' We drilled down and caseloads were just down across the state significantly. So, you do see those and you go in and look and wonder if something was wrong with the data or if caseload was just down in that month and we did that. But, it was so significant that you have to look at it and say 'are we missing data?' We confirmed that wasn't the case. It simply was that caseload was down. Often times you will see that caseload will be down in December but then ramp up in January, but that is not necessarily what happened this January.
- 1:41:51 Chair McCrea Okay, I was just curious so go ahead.
- 1:41:53 C. Lazenby So there is a timeline in this data there so, the November low dip represents cases you were paying that closed in September or October? It's not real time right?
- 1:42:05 C. Meyer Again, this isn't, that is somewhat correct. They report credits on the 20<sup>th</sup> of the following month to us. On their monthly caseload reports they report credits a month after they do them. But, when you are looking at a period of time it is representative of a caseload during that period. The other thing that I wanted to mention about the ten largest counties is that it represents 70% of our statewide caseload so it is the bulk of our credits. Last slide. This one has the same caseload and same time period but this slide breaks it out by felony, juvenile and misdemeanor cases to give you an idea what each of those case types individually is doing. Again, although juvenile at this point seems to be at the greatest incline, the other two as well are at a gradual incline. For all of those reasons, we are projecting about a 1% increase in our statewide caseload. I want to get to factors that affect caseload. In terms of what we know, getting back to what causes any fluctuation in caseloads. In terms of criminal we know that an improved economy results in additional DA positions for deputy DA's. We certainly have examples of that with Lane County being one of them where we actually met with the DA and they don't see any, they are going to continue to hire is my understanding, so to continue to charge more cases. Charging patterns change, increased jail beds in some counties. I know Jackson County we understand recently changed their practice of residue cases which increased that caseload. We have also seen a rise in C and B felony cases depending on drug charges. Lane County mentioned that heroin charges have gone up and that directly correlates to more C and B felonies being filed. On the juvenile side we see that differential response didn't necessarily dramatically affect the caseloads like it was expected. More recently, they put differential response on hold in some counties. Agency priorities have shifted. There is a heightened focus on child safety. All of these things have an impact. I understand there is a backlog of assessments that are now being processed resulting in additional filings, then just DHS being in the middle of reprioritizing and restructuring can all impact the juvenile caseloads. We have no reason to think that this trend is going to go away. We expect it to continue at this level. Any questions that you have for us, either about death penalty or statewide caseload?
- 1:45:27 J. Potter At our July meeting, will you have April numbers?
- 1:45:30 C. Meyer Yes, we certainly can update that and bring those.
- 1:45:35 J. Potter We just might be able to see if this trend that started in January goes for four months, which would be a significant trend.

- 1:45:42 C. Meyer We actually had most of our April numbers in and it looked like that month in particular might be more in line with between the January and February number. It definitely didn't look like it was going to be any higher. But, in terms of what we have projected for the actual mandated caseload number, it was still very much in line with what we projected for that.
- 1:46:06 C. Lazenby Can you include case numbers in the capital expenditures data? You are measuring it by dollars but I would like to see how many cases this reflects.
- 1:46:26 C. Meyer Billy actually has those numbers, would you like those now?
- 1:46:31 C. Lazenby No, I am a visual learner. I can wait until July.
- 1:46:34 C. Meyer Okay, sure. We can add that.
- 1:46:37 Chair McCrea Other questions or comments? Okay, thank you. Alright, we are going to take a ten minute break and then we will come back and complete the agenda. Per, do you want to stay with us?

### **Back From Recess**

#### **Agenda Item No. 7 National Association for Public Defender Conference**

- 0:24 Chair McCrea Okay, we are back. Let's go with agenda item number seven, National Association of Public Defender Conference, Alex and Dan.
- 0:37 A. Bassos Chair McCrea, members of the Commission, Alex Bassos. I am the director of training and outreach of the Metropolitan Public Defender in Multnomah and Washington counties. I am also on the executive committee and I am the treasurer and secretary for the National Association for Public Defense. I also chair a committee and I am on three other committees for NAPD and I assisted in the conference that we will be talking about and I was on the faculty of that conference. NAPD started out of discussions in 2013. By 2014 it was a legitimate organization and in just a couple of years we have grown into a pretty decent sized organization with a lot of momentum. We have 13,000 members across the nation, members in every single state. We have done hundreds of direct interventions with our strike force, our amicus committee, our systems builders committee, letters in support, education. We have really tried to focus on not just attorneys but leaders, social workers and investigators and in juvenile and dependency cases and really trying to be well rounded and get at those folks that maybe don't have as direct access to education around the nation. We have done over 100 webinars, three major conferences including the one that we will be talking about a little bit today. I head up the committee that organizes our website called My Gideon. You can go onto My Gideon for free and you can see every speaker at each of our conferences with a video with their materials and their PowerPoint but we also are trying to organize all the public defense policies and standards from across the nation and any other resources. Particularly for leaders we are really trying to put together a package of resources that allows us to across the nation participate with each other and become more powerful by acting together. That sharing of resources and information across the nation makes us all better attorneys and better offices. For example, there has been a lot of cross participation with finds and fees. The momentum of this kind of started out of Fergusson but Thomas Harvey, who is in Fergusson, has been a key part of NAPD but he has been participating and helping attorneys from Colorado, Texas and Washington to really try to create a national movement around finds and fees, we get a white paper through NAPD. But, you can see that this participation that we are able to facilitate has allowed us to share ideas and litigation and momentum in a way that we weren't seeing previously. This particular conference is the second leadership conference that we have put on. The last one was for executive leaders and this one was specifically for coaching and management, or midlevel leaders. More specifically, it was focused around the question of how you really create client centered representation through client centered leadership. There

were a ton of great speakers, some of the top folks around the nation, but the heart of the conference as with the executive leadership conference were a series of small groups. I led one of those small groups with eight people and we met for almost 12 hours of the conference and we were really able to get in deep with some of the issues that people were having in terms of their ability to lead on a small level, to coach, and just understanding that folks around the nation are having similar kinds of problems and being able to talk them out is enormously helpful, as is making those partnerships with people across the nation. Also, there are some basic solutions and ideas that we have for solving some of these coaching and basic leadership problems that we were able to impart and talk through and we still keep in touch with everybody in the small group that I lead and I expect those relationships to continue for as long as I am practicing public defense. I am going to let Dan get into some of the specifics about how those ideas played out within his office.

6:08 D. Bouck

Chair, I almost said Ellis. Sorry.

6:12 Chair McCrea

I hope I don't look like him.

6:14 D. Bouck

No. I think it was an earlier presentation a few years back that it was stated that most of the directors of the public defender's office came to be the directors just because they were the most senior attorney in the firm and they had no idea, really, on how to run a firm, at least in my case that is correct. I don't know what I am doing, I am still learning. We do go to the management conference that OCDLA puts on but that is a pretty minor slice of time as to what is going on and it was trying to address all contractors. I came across just by accident while I was killing time waiting in court that was running very late and it was for a public defender and how to run your firm. That is what it was. It was divided into two different areas. There was a large group dealing with what they called Client Centered Practice, asking us 'are you doing this for the benefit of the client or is this the benefit of the attorneys, is it making their lives easier? Are you making it because that is how the judge wants you to do things?' It was a very different way to look at cases. Then we also had multiple tracks. I took my assistant director with me and my office manager and we all sat in different groups where the assistant manager dealt with other middle management. I was working with other directors and we sort of got off topic at times and dealt with what the issues were that we really needed to deal with. It was really invaluable to hear from other directors nationwide that we had the same problems and hearing some of their ideas. The one that came up to me just thinking of one issue that popped up was client security with our office. How should we be dealing with that? Since I was working on the designs for our new office, it was interesting to hear from firms that were huge and that were smaller than mine on how they address it and they addressed it by 'is what we are doing client centered?' If you went to a standard practice, would there really be a plexi-glass wall protecting you from the receptionist and such? Are we treating our clients differently than a private firm would? Going through that we analyzed that it wasn't fair, that is not how we should be treating our clients. We should be treating them like any other firm would. But, it was also nice to hear from all the other directors that they had analyzed that problem and they do have security in the office and it happens that they are using a similar system that we are doing and feel that their employees are as safe as we can make them. We went through that whole process. The program started at five o'clock on Sunday and went into the evening, all day Monday, Tuesday. Finally on Wednesday afternoon at about three o'clock the gentleman in charge said, 'is everyone exhausted?' He was and we were and everyone just stopped, we just couldn't take any more information but it was all really useful. We took back the client centered practice, how do you review cases, how do you monitor your caseload, how do you deal with the attorney that is not performing well? There were things that only a public defender would deal with; a consortium attorney doesn't have to deal with. It was really worth the time. Now, our contract says that we cannot spend money in our contract without approval to go out of state, so we had to get approval to go to this and I would encourage, and it would mean lobbying in the next contract cycle that this just be a line item at least for the public defenders to be able to send them to this program. The last few years there has been a real push on two different things from the state and those

are to get parity which is really nice but also the quality of representation in Oregon. I think this training is really what is going to be needed if you want to see that quality. I think you can go to Salem and say 'hey, we are paying our public defenders more and we are asking for more but look at what they are doing, they go to national trainings, they do quality control on their attorneys, they check up on what is going on.' I think it will be easy to justify or at least have a good argument on why we deserve more because of the effort we are going through to have quality representation that is only available by having this programming. Yeah, OCDLA does do some but we only have a handful of public defender directors in Oregon and managers, whereby doing it national they were able to draw in speakers throughout the nation and experts throughout the nation that we just can't draw in Oregon. It would be nice but I think it is a quality program that we really need to be supportive of.

- 11:00 Chair McCrea Where was the program held?
- 11:03 A. Bassos Valparaiso, Indiana. Andrea Lyons is a sort of demi-goddess of criminal defense. She is the dean of that law school and was able to not just give us her entire school for that week, but also somehow came up with a stipend for the conference as well.
- 11:23 D. Bouck They warned us though, this was spring break and it may be a snow storm when we arrived and it was nice weather but there was a lot of snow on the ground.
- 11:32 J. Potter So Dan, I listened to that and I think, maybe it has a broader application than just public defender heads. It seems to me that consortium folks would be concerned about underperforming lawyers, security issues would be of concern to small law offices.
- 11:50 D. Bouck I think there would be a lot of overlap but right at the moment I think membership is limited to the PD's. I would have to look at the membership rules.
- 12:00 A. Bassos You can assign people who are doing public defense as assigned counsel are definitely public defenders under our definition in really any model. There are some states where that is all there are.
- 12:16 C. Lazenby You may want to think about teaming up with OVA or some of the other Portland, Oregon visitors associations. Everybody wants to come to Portland and have conferences here. Everybody likes the wine country and all that. I mean, you may want to pitch to them on coming. Maybe we could attract a conference.
- 12:37 D. Bouck We might be able to host this conference but I think it is a challenge for OCDLA to host that large of a conference and that many speakers. I mean, it would be great and it will be something for the new director to look at.
- 12:50 C. Lazenby I was just suggesting pull up with us. They will kick in. Oh, did they steal your announcement?
- 13:00 Chair McCrea Paul?
- 13:02 P. Levy I wanted to follow up on Commissioner Potter's question and observation. The item on the agenda is actually miswritten. It is not the National Association of Public Defender it is for Public Defense. My understanding, I am not as intimately involved as Alex is, is that that was chosen specifically to broaden it beyond your institutional public defender offices and that it is absolutely an organization that would include consortia providers.
- 13:35 A. Bassos And, to broaden it passed just attorneys. We really want, not just social workers or investigators but anybody who is a public defense professional to feel like they are getting something out of the organization.

13:48 D. Bouck I have my office manager there and she took a lot back on how to just run a firm. Dealing with trial attorneys is very different than dealing with other types of employees.

14:06 Chair McCrea Does NAPD do any kind of interface with NACDL?

14:15 A. Bassos There is some work with them. NACDL is a very large organization that seems to be awash in money and we are a very new organization. So, we have partnered on some policy initiatives and some issues but we are still staking out our ground at a national level and NACDL still has a lot of Koch Brother's money still as I understand it.

14:47 Chair McCrea I just was asking Alex. It just seemed like if there was a way to tap into NACDL as a resource for assistance that might be helpful. That's all.

14:59 A. Bassos As I understand it, the organization was founded to split off from both NACDL and NLADA to create a place for public defense professionals specifically and that there was even an offer from NACDL to wrap NAPD into NACDL and it wasn't accepted.

15:28 Chair McCrea I understand that. I mean having served on the NACDL board for five years a long time ago, it was always my observation that NACDL did not have the same view of public defense that I held so I certainly understand that, I was just curious.

15:49 J. Potter And, beyond NACDL and NLADA there was also the Chief Defender's Association that this sort of morphed out of as well. So, the folks that were part of the Chief Defenders, or whatever they called it, they got together and said we need to broaden our base and neither of those organizations were meeting their specific needs.

16:09 A. Bassos I thought that was under the broad umbrella of NLADA.

16:13 J. Potter The Chief Defenders?

16:14 A. Bassos That is correct, yeah.

16:15 J. Potter I don't think so.

16:16 A. Bassos Okay.

16:19 Chair McCrea Other questions, observations or anything else you want to add?

16:24 A. Bassos Just that I expect you will be hearing a lot more about NAPD as the years go by.

16:27 Chair McCrea Good, thank you.

16:31 A. Bassos And, we have done some partnering with OCDLA as well and I expect that to continue and grow as well.

16:38 J. Potter I would encourage the idea that Chip mentioned that bringing an NAPD to conference to Portland is not a bad idea. It would allow Oregon people better easier access and Seattle folks, putting them on and moving those conferences around. We can play some role in helping coordinate that.

17:07 D. Bouck There was some discussion amongst a few people there that it would be nice to have a regional conference, whether it is Seattle or Portland. It would be a little bit easier for the people that were in driving distance of Chicago than the rest of us that took a day to get there. And there was a lot of interest. It would be nice to have a regional one. This was only the second conference of its nature, so it was like let's just figure out how we are doing the program and we will take it from there.

**Agenda Item No.                   MPD Efforts to Create Holistic Defense**

- 17:33 Chair McCrea                   Okay, thank you. Alex, you are still going to be at the table on the MPD efforts to create a holistic defense, and Jessica?
- 17:44 A. Bassos                       She wasn't able to be here. She was giving some other folks a ride here, so it is just me today. I am never going to leave this table.
- 17:57 Chair McCrea                   Be careful what you wish for Alex.
- 18:00 A. Bassos                       I am at your disposal Chair. Chair McCrea, members of the Commission, we have a poverty to prison pipeline in this nation. If you look at the people in prison you can see no big surprise that they are concentrated in the bottom 10% of income. What goes along with that are all the things that poverty causes and all the causes of poverty. Chief among them is trauma. There have been some recent studies that show that there is much more trauma and abuse that our clients have suffered than what was previously thought. Even recent abuse, something in the nature of 85% of men who are in prison, for example, report significant abuse just in the previous year and it is more than 90% for women. Then, of course, mental illness for example, our misdemeanor caseloads in Multnomah County more than 40% are acutely mentally ill. Even setting aside things like PTSD and depression, we are talking about extremely high levels of psychosis and enormous amounts of our cases that we have to deal with competency issues before we ever move along to thinking about the defenses in the case. But addiction, housing, employment, education, civil legal needs like parent representation, immigration, eviction. Often, especially in misdemeanor cases, the criminal case is more of a signal of a bigger problem than the actual problem itself. If we simply deal with the criminal case, get a good result on that misdemeanor case and get the person out or even on many felony cases, you will see the person churning back in before too long because none of the underlying problems were addressed, simply the bare criminal case. So, we are in the process of trying to shift to a more holistic model. Holistic meaning that it is not just client centered in terms of putting the client at the center of representation, but it is holistic in terms of thinking about the full array of social service and civil legal needs that the person might have and seamlessly connecting that person, the client, to whatever needs they have. Ideally in-house, but if not in-house then in the community. That means that we are in the business of housing and employment and education and it is not enough, in our opinion, to simply say that it is not our job and there is only so much we can do as public defenders. We need to do this. We need to do this for the clients because that is what successful representation is in the long term. But to my mind, and now I am speaking for me more than MPD, to my mind this is how we make the shift. I heard during the break two separate conversations about how hard it is to convince the legislature to be concerned about protecting the constitutional rights of citizens or in thinking about our clients as innocent and in need of representation. It is more of a necessary evil to folks at the legislature. We have grown that idea. It is getting better as Commissioner Lazenby pointed out but it is still a real problem of convincing them of how important it is. What we want to do is shift that focus so that we cannot just make the argument but have the data that good criminal representation increases public safety, decreases recidivism, that what we are doing is both excellent criminal defense representation but also getting this person on a path to long term success. So, the legislature, the county, the city should think of us as a community and a public safety program just as much as criminal defense. Public defense is more than just criminal defense because of the full array of problems that go along with it. So, how do we do this? We're not here, I am not here asking for this Commission to fund all of these programs. There is a lot of money out there for funding these programs. There is not money for funding more criminal defense attorneys but there is funding for holistic defense and civil legal work. For example, we have a veteran's project that is part of a larger project and veteran homelessness. That is mostly evictions work, benefits work but also housing, employment and other kinds of things. What we do is we back up the social workers and case managers. We reduce whatever barriers we can for folks that are going through that project.

That means we have civil legal attorneys in the office. We have experts who are able to advise folks in the rest of the office which allows me to bring in volunteers or get small grants to bring other people in and we already have that body of expertise there but we also have an established foothold in the community, a partnership with TPI one of the largest social service organizations in the Portland area. We are known in the community that we are established in the community as providing that direct work. Another example is a grant we have with Home Forward, the housing authority in the Portland area. What we are doing there is reducing legal barriers for anyone who has been associated with the criminal justice system in any way and is now living in Home Forward housing or voucher assisted housing. We are doing expungements but also reducing felonies to misdemeanors, correcting orders and judgments and OJIN and doing sex offender registration relief. We are doing anything we can to reduce barriers and make their path forward as friction free as possible. We are running the Clean Slate Program which in Multnomah County converts fines and fees to something else. In the past it was to community service but what we want to do is partner with programs throughout the community so that we are converting those fines and fees to the work that a person has done in changing their life around. For example, there is a wonderful program called the Service Coordination Team in Portland that is a partnership between the courts and the police and Central City Concern, the largest social service organization in the area and they take folks who have been churning in and out of the criminal justice system over and over sometimes hundreds of times and they do what they can do get those folks out of the system and back on their feet. One of the things is that they are providing direct addiction treatment but also they have housing for that purpose. Then, the hook them in to whatever services we can. Well, the fines and fees that people had were really getting in people's way. It prevents you from getting your license back. It prevents you from getting any kind of expungement. It destroys your credit and it creates these barriers that are hard to get over. So, if you are in that program for six months it means that you have put in hundreds of hours of work already. We partner with that program and once the person hits that benchmark we simply get rid of their fines and fees. But, the real point here is those aren't the only programs we have. We have additional ones as well through private grants, foundations, fellowships, volunteers, students, however we can do it we want to increase our ability to provide social services to our clients in-house and create that civil legal capacity so that we can meet the full array of our clients' needs. That is not enough either. We are also doing several other things that I think are really important and that have really come home to me as we have mapped the resources in the community and created partnerships. That is another thing that I didn't mention, mapping resources in the community and creating partnerships with those social service organizations is incredibly important. In the past, what we would do if somebody needed an ID, for example, is refer that person to TPI or somebody else who helps the person get an ID and what you see is an enormous drop off of 80-90% when you just make a referral. But, when you are able to make a warm hand off and you have a relationship with Elyse who runs that program at TPI and you can walk the person over there, then instead of an 80-90% drop off you are seeing a 5 or 10% drop off. It is just a matter of knowing those people, knowing the program, being able to explain it, make the introductions. But, that means a lot of work in terms of the mapping and building of relationships. But, in building those relationships we were also able to discover additional problems. For example, in working with the re-entry center in Portland they told me 'there is a lot that you can do a head of time to help us out at the re-entry end.' We don't think of ourselves as part of the re-entry system. We get the best deal we possibly can, the best result on our criminal case and when the person gets out they have re-entry issues. Well, it turns out that there is a lot we can do. For example is child support. Hardly anyone statewide is putting people's child support in abeyance during a period of incarceration. But, it turns out its pretty easy. It only takes about ten minutes. There is a form, there is on OAR, there is a statute. It's really quite easy. But, people just aren't thinking about it because we aren't thinking about long term success. We aren't thinking about re-entry at that point where we are getting the best result on a criminal case. We were thinking about that as opposed to long term success. Another thing that we have started doing is checking in with clients a week or so after their sentencing because what we found was that people are flooded with emotion and anxiety at the time of sentencing and just aren't able to

fully understand what it is they're supposed to do. So, when you check in with them a week later a nontrivial portion of them just don't understand at all what they are supposed to do and are essentially deer in headlights. But, then another 50% or so don't fully understand all of their obligations and the steps as to how to get there. Often in court even the attorneys and judges don't understand what it means to just go get a mental health evaluation. But, then the costs and where you are supposed to go and how to navigate that system end up being really difficult. Doing that post-sentencing navigation is technically not part of what we are supposed to be doing but if you expand to thinking about how do we make our clients successful over the long term as part of our public defense function then it becomes really obvious that we ought to be doing this pre-entry work and the navigation and thinking about those other sorts of social service and legal issues that a person has. We've been careful to do this without putting any additional burdens on the attorney's or legal assistant's plates. This is all coming from volunteers, students, grants and fellows and all the other paths I described. But, by weaving them together what we have found is that when we are able to do it successfully it reduces the burden on the criminal defense attorney because of course when the person is saying that their primary need is housing then we were seeing our public defenders, attorneys, staying late after work trying to contact housing folks or any of these other issues which is much more difficult because they don't know the housing market, as you could say. There is housing in the Portland area despite the crisis particularly if you fall into a particular niche but you have to see it rising and falling on an almost daily basis. You have to know about the various niches and what will get your particular client into housing and for that you need people who are essentially experts in that area. So, the extended information that we get from TPI which is essentially a housing program and the experts that we have as a function of that program and our partnership that we have with Home Forward end up being really valuable in pushing that information back into the office and it all works in a virtuous cycle. We are still early in this process. It is growing but I am excited about where we are going.

33:01 Chair McCrea

Wow. How long has this been in play?

33:08 A. Bassos

About a year that we and I have really been focusing on it and maybe two years that I have been thinking heavily about it and planning it. I am sort of in charge of this area as the director of training and outreach, how to get that money and pull in the fellows and students and build and support the rest of the office.

33:28 J. Potter

Alex, a number of years ago you may recall we brought Robin Steinberg out from The Bronx Defender Project who was doing one of the early holistic trainers and turning the PD office into what you are describing. At the time there was some hesitancy by defenders in embracing the role that you are describing in using volunteers and students and what not. Do you see that breaking down? Are defenders saying, 'there really is merit to this and we will change our thinking here in the office, I am not just here to get a deal?'

34:09 A. Bassos

A couple of thoughts come to mind. The first is that it feels within our deep culture to be doing this work which is part of why our attorneys end up staying late sometimes to try and do it even without the resources. There is an academic article I read recently where the two holistic defense offices mentioned in the nation were Robin Steinberg's and our office. That information that they were working from regarding our office was about 20 years out of date where we apparently at one time had a legal assistant and an additional person, a sentencing alternatives advocate, dedicated to every attorney and so we really were doing that kind of work but we haven't had those kinds of resources for 20 years. So, it feels within our deep culture to be doing it, but yeah absolutely. I think there is some anxiety line defense attorneys both within our office and outside that they are already pushed to their limit and if we somehow set this as an expectation that they will be pushed even further and more beyond their limit. What Robin Steinberg says, and I talk to her regularly at this point, she has given me an enormous amount of her time as we have thought through these issues. What she says and what my experience is, is that it ultimately creates relief for the attorneys. It doesn't

create more work if you do it the right way. It ultimately is a much more joyous way to practice public defense that you feel like you are able to genuinely help people and make a dent in their lives, not just on a criminal case but with their long term success and it feels much more valuable. But, on a bigger level I think is where I started which is if we can demonstrate that we are not just utilizing less resources by keeping people out of prison but also increasing public safety and reducing recidivism, to me that is the key and the lynch pin to really opening up the kind of dollars that public defense needs.

- 36:40 J. Welch I have a question. Some years ago there was an effort made to do some of the stuff you are talking about, particularly on the civil legal issues that you raised, and the big stumbling block was its not covered by malpractice insurance, we can't give people advice about anything other than a criminal case because of the malpractice insurance. Has that been identified as an issue?
- 37:16 A. Bassos It has been identified. We talked to our insurance carrier and our insurance carrier was not concerned with the civil legal issues. They were concerned that the population that we would be dealing with was indeed low income and that they weren't able to hire a private attorney. Our insurance carrier has allowed us to expand into evictions work; we were already doing the immigration work as part of an OPDS funded project. We were already doing the parent representation as part of juvenile work. So, there is the evictions work, benefits work, expungement work and sex offender registration relief. We had always done that as well, it is not new we just have done it on a very limited basis.
- 38:22 J. Welch I am surprised to hear that, but it's nice to know.
- 38:26 A. Bassos I guess I was a little surprised as well.
- 38:28 J. Potter Are you going to be able to sustain volunteers for some of this program or will you have to shift to paid staff and if so, what happens?
- 38:37 A. Bassos I would love to shift to paid staff. That means getting more stable long term grants and maybe doing some fundraising, but it is also my experience that the more volunteer programs and programs that we are able to set up that the more volunteers we have and the more grants we successfully go forward with, the more data we have which allows us to do even more grants. The more fellows we have, certainly. After the first successful fellowship I have more students from top law schools wanting to be fellows with us than we have spots available. So, we have three set up for next year. One will be starting in October that will be focusing on mental health issues and that is a whole additional body that will be dedicated to misdemeanors focusing on mental health issues. We have next year coming in and doing civil legal. There are ways to create long term stability, that will be part of our new system is that we will need to continually replenish that funding as most non-profits do.
- 39:54 C. Lazenby Alex, it is really refreshing and exciting approach to work with people. To the judge's insurance question you might bounce it off the PLF and see what they think because the deceit to the extent the private practitioners may be able to join or develop a thing like this. I am currently in another life wearing another hat doing a lot of work on the Spring Water corridor on homelessness issues and this coordination you are doing with social service agencies in terms of their resources and aligning them and figuring out how to connect people with that is incredibly lacking. As part of my work I was talking with the rangers and got a count of the number of tents that they had and had a meeting the next day with Transition Projects or TPI and we were talking about the population and said well 'we had this count and did some rough back of the envelope and figured there are about 500 people living there,' and they said 'you have the best numbers in town.' That is not funny. The problem is that for Transition Projects it is out there every day and for everybody else including law enforcement who have no idea how many people are living houseless along the corridor other than that a lot of them have drug and alcohol and mental health problems. Without identifying who they

are and what services can be brought to them when they get moved off the corridor, this kind of coordination that you are doing around the client's needs so that those folks are finally talking to each other and seeing the formula for success is really what we need to do. It is commendable. I would just say that you have only been doing this for a year and I know you know this but it is going to be critically important to have bullet proof data where you can look at the people who went through your program and have maybe a control group of people who are maybe similarly situated and look at their recidivism rates and what the additional costs were so that people can make an investment in this process. I have always thought that public defenders and criminal defense lawyers are limited by that lawyer role but this is a way of marshalling resources around clients and can be really beneficial in the long run for the client's benefit. Great work, I really appreciate it.

42:10 A. Bassos Thank you. Two really quick comments. To your first point, I couldn't agree more. It is incredible how little data there is out there in terms of what the need is for housing even as everyone knows that we are in a crisis. But, not just on the demand side but on the supply side as well. It is incredible how little organization there is between the various social service organizations, how little we can say overall about what supply there is and who is able to provide what need. It's incredible how disorganized the information is or completely lacking. To your second point, we are working with a professor at PSU to try and put together a study that would compare similar populations. It is difficult to put together a control group but in the public defense world there are models that have come out just in the last year or two that have made it easier to create those kinds of studies. So, we are in an exciting new world where we are able to try out all kinds of new things and see what works and what doesn't. But, data is very important certainly if we are going to get to a point where we are able to demonstrate where we reduced recidivism and increased public safety, the kinds of things I hope we can do in a few years.

43:39 C. Lazenby Who are you working with at PSU?

43:42 A. Bassos What is his name, his first name is Chris. Chris Campbell, thank you whoever that was.

43:53 C. Lazenby Of the famous Campbell family, no doubt. I am done Madame chair.

43:58 Chair McCrea Thank you Alex.

44:00 A. Bassos Thank you Chair.

**Agenda Item No. 9 National Public Defense Developments**

44:10 Chair McCrea Paul, you are going to talk to us about national public defense developments.

44:14 P. Levy I am and you have actually just heard a bit about that so I think it is a good segue. I want to talk about three things, two of which are not in your materials. First briefly, the NAPD. It is an important development that there is this organization for public defense and not just public defenders. I did alert the Commission to a series of webinars that NAPD has been presenting for public defense boards and commissions. I know Commissioner Potter attended one of those. I have only attended that one as well. My understanding is that these are archived and available without membership. I thought the first one which was a broad overview of public defense was good and perhaps for the experienced commissioners here it would be information that you largely are familiar with but as we have transition on the commission I will be reminding folks of the availability of that presentation in particular. But the organization itself is great for public defense in Oregon and all of the types of providers that we have. The other thing I want to talk about briefly that is not in your materials; we have been updating you over the years now about the access to Justice Initiative of the United States Department of Justice which was initiated under Attorney General Eric Holder filing statements of interest and amicus briefs in public defense cases around the country where they

have been advancing a theory of cause of action for what are viewed as systemic denial of the right to counsel where one is appointed as they term it in the lawsuits a defense attorney in name only and where the traditional of markers of representation are not present, client consultation, investigation, preparation, motion and all of the indicia of an adversarial process are absent because of the systemic and structural barriers in a state local system. They have been advancing a theory that these claims can be presented and litigated pre-conviction as a denial of the right to counsel under the Sixth Amendment. I wanted to just let you know that most recently in May the Department of Justice filed an amicus brief in the Idaho Supreme Court where they advanced these claims in Idaho, not federal court, and the judge says ‘no, you do not have a justiciable claim, you must file relief case by case through post-conviction,’ where there is a different standard for relief and it is not an effective way to address systemic changes. So, that is not in your materials. I can provide you with a link to it. DOJ is arguing as are the other plaintiffs in the case that there should be such a cause of action and that it has been recognized. You are familiar with the Wilbur v. Mt Vernon case in Washington. We have talked to you about the Hurrell-Herring litigation in New York, these are two cases where these claims were recognized either the basis for an order in Washington or a consent decree in New York. But, it is important that that work has continued under the new Attorney General Loretta Lynch and we don’t know what will happen in the next presidency but we are hoping she will continue this. What I want to draw your attention to and talk a little bit more about which is in your materials is the update or a recommended update to the ABA Ten Principles for public defense systems. I draw this to your attention because this one of the foundational documents that this commission has used to guide its work. You’re statutory mandate after all is to provide public defense in a cost efficient fashion that is consistent with state and national constitutional requirements and standards of justice. This document encapsulates many of the standards of justice that have guided the commission and should continue to do in an updated fashion and you have not have had the opportunity to read the article yet by Norm Lefstein who appeared before you last October I recommend it to you. You will hear a cogent discussion and advancement of the idea of holistic defense. So, really what you are hearing from Alex and I hope we will continue to hear from others is that this is becoming part of the standard of justice that the commission should measure its work by. It becomes part of what it means to provide criminal representation and in other fields that come within public defense. There are other recommendations here. You will see a detailed discussion for the need of representation at first appearance. Obviously, that is something we have been pressing for but the discussion here really emphasizes that representation really needs to be not that you stand up with the defendant who’s case is called but you actually have some contact and know something about that person before the cases is called. What I want to draw your attention to specifically though is the recommendation on the need for jurisdictions to determine jurisdiction specific caseload limitations. We have talked to you in the past about the efforts to do this and given you the materials that follow the model that is described in this recommendation in Texas and Missouri. Norm Lefstein was here and talked to the management conference about this in October and then to the Commission. These studies, in addition to Texas and Missouri, are underway in Colorado, Louisiana, Rhode Island, Tennessee, and others are in the que for Indiana and New Mexico. And, I am happy to tell you that we have talked with the ABA and Norm Lefstein and we are now in the que as well to have a case, a methodologically defensible useful caseload study here in Oregon. It is a major undertaking. It will require the cooperation and involvement of providers across the state. It will involve dealing with vexing the problems that the chair is already identifying, what is a case and how it should be counted. It is an effort that will be led by the ABA and as in other states Steve Handlin who is a retired partner in the Washington DC office of Holland and Knight and on the faculty of St. Louis University Law School, also General Counsel to the National Association for Public Defense. They have been honing in each of these evaluations their methodology. That methodology was described to you in October. It is described to you again in this article that you have. It does a number of things that are important. It arrives at meaningful jurisdiction specific caseloads and gives us something other than a completely outdated and archaic, it was even at the time it was formulated, set of caseload limitations that are misnamed as the ABA standards when they grew out of the

NLADA. It gives good standards. It also provides a much more valuable tool for legislative advocacy, for funding because you not only know what your caseloads should be, which are invariably lower than what they are now, but that you have to pay for them. But, it also, for purposes of legislative advocacy, provides a way to show what goes into handling a case and it provides defender organizations and our organization a way to meaningfully limit caseloads and to understand what work is being done. You will hear a lot more about this. Steve Handlin will be here in October to talk at the management conference and to talk to the Commission about the effort. I would say it is probably about a year off before we get started on this, if it's that soon. It is very exciting and we are excited that they are willing, able and wanting to do it and that we are able to see that it be done after talking about it for a long, long time. I think that is what I have on this item. Questions? Comments?

55:40 J. Potter

As part of that study there will be time keeping requirements on part of the defenders. Other states that have done this and done it successfully, have they figured out a way to get over the hurdle of convincing defense lawyers that time keeping is really in their best interest and is really not that big of a burden?

56:02 P. Levy

Alex mentioned that time keeping is a part of this process, it certainly is absolutely necessary for the study and implied in that and really understanding when the study is done is that it will continue. I don't know how it has played out. What I understand and what you read is that it turns out not to be as burdensome as some fear and the benefits of it are apparent and understood so that people are willing to take on some additional burden. A key to this is providing the mechanism to keep time in a relatively easy fashion and that is part of what we are trying to do with and build into the caseload management system that we are working on developing.

57:12 Chair McCrea

I just want to go back, so there will be time keeping during the study and then it will continue meaning it will continue after the study?

57:21 P. Levy

Yes, and it may be mentioned in this article. Keeping time is now one of the recommendations, a standard that is embraced and advocated by the National Association for Public Defense. I understand I was around when there was an effort to do this 25 years ago and it was met with a great deal of upset and resistance. I can't remember then what the reasons were for the study but the benefits, the rationale and the explanation I think can be set forth now quite cogently especially if it can be done in a way that doesn't measurably increase the burden on the lawyers doing to work. That is down the road. We understand there has to be a great deal of explanation and buy in before anybody says this is required of you. There are good reasons to do it however.

58:37 Chair McCrea

Okay, we will leave it there.

58:40 P. Levy

Let's leave it there for now because this is a subject that will obviously be one that you will hear a lot more about. The methodology for doing the studies, and these studies have helped get money into systems, helped to control caseloads, it helped improved the lives of defenders. The methodology requires it. Whether and how that time continues is another question.

59:22 C. Lazenby

I am sure madam Chair, that Oracle has a program that can help us.

#### **Agenda Item No. 10**

#### **OPDS Monthly Report**

59:27 Chair McCrea

Thank you all. Okay, let's go on to the final subject on the agenda, the OPDS monthly report.

59:37 P. Levy

I am sure others have things to say. I have a couple brief items so I will just share those with you right now. Then get out of the hot seat here. First of all, we have just completed our annual statewide public defense performance survey. It is usually launched for the past nine

years in January. We delayed it to give new contractors some time to press people who would be commenting on their performance. So, we have just closed the survey at the end of May. We are in the process now of looking at the results and hope to have something more formal to present to the Commission at the next meeting. It was a significantly revised survey largely in response to Commissioner Ramfjord's comments about how the survey could be improved which we absolutely endorsed and we have gotten a lot more comments on this survey. You will hear a lot more about that. We have begun the process of revising our qualification standards, our certification form, how that will be submitted, when, how it will be renewed. We've got a rough draft. It is going to be a process. We will talk more with the Commission maybe at the next meeting about that. We will certainly share drafts and ideas with the public defense community about where we are going with that but it is in the works. Also, just so you know, we are in the planning stages now for our next peer review which will be here in Deschutes County. It will be looking at criminal defense providers. There are three here. They are all cooperating very nicely and helpfully with the effort as is the court. You will hear more about that too.

1:01:59 Chair McCrea Okay. Thank you Paul.

1:02:09 C. Meyer Chair McCrea, members of the Commission, I just wanted to mention briefly on the heels of the survey that Paul was mentioning that we on June 9<sup>th</sup> sent out our customer service survey and that feeds into one of our key performance measures that we report you may recall and this is sent out every two years. This is the 2016 survey and we are in the process of getting responses. We have had a pretty good response rate so far but we did extend it. I think in the past one of the groups of individuals that we missed were actual contract attorneys because we didn't have an easy way to identify them in our database but we have corrected that and so I hope that everyone in this room that is a defense attorney received that survey and will respond. That information is really helpful. It tells us about timeliness in terms of paying our bills and also our non-routine expense requests how quickly we are responding, how available is the information. There are five or six questions. It closes on the 30<sup>th</sup> of June and we are hoping for good responses.

1:03:12 Chair McCrea Okay, thanks Caroline. Ernie and Shannon, any report to make?

1:03:30 S. Storey Chair McCrea, members of the Commission, Shannon Storey with the OPDS juvenile appellate section. I am pleased to announce that we have two new additions. Emily Shortes has joined our section as a paralegal. She moved up from Florida where she worked as a paralegal in their criminal appellate section there. I think she is going to be super helpful for us as we move forward and become a larger unit. Then, Tiffany Keast has recently joined the juvenile appellate external panel and we are super pleased to have her. She has many years of appellate experience doing juvenile cases as she worked at the AG's office for years and recently left there. As far as the work of our unit, we have had a steady stream of Court of Appeals arguments, the most recent issues presented are the appeal-ability of judgments entered after the juvenile court has tried our client in absentia and the sufficiency of evidence in regard to whether the department and juvenile courts involvement is necessary in the first instance or continues to be necessary when a parent raises an objection to continue jurisdiction. One of those case has recently taken en banc and that is a Marion County case TL. That case deals with the issue, its well settled now in Oregon law that notwithstanding a parent's individual unfitness or incapacity to care for their child independently, the juvenile court may not assert jurisdiction and authorize removal of the child from the parent's care if the parents have the assistance of family or friends or have delegated the caretaking of their children to a family member. The underlying principles of that rule of law are that if there is a family safety net there is no need for the government to intervene and be mucking with the family situation. The question in TL is the applicability of that rule of law in a case where the procedural posture is the juvenile court had previously changed the child's permanency plan to adoption and the parent now is raising a motion to dismiss or objection to continued jurisdiction. In TL, our client's sister the aunt is well suited to care for the child and as a

factual matter it is undisputed that she will do so if jurisdiction is terminated and the juvenile court struggled with the idea of whether there was some different standard for terminating a ward ship once the permanency plan has been changed or not. In our view whether the court has jurisdiction as a peer of legal issue and what other things have transpired don't have any bearing on that rule of law. Other than that our unit participated in the first joint motion for reversal in the Court of Appeals which is exciting for appellate people. Our client was the father, was a Mexican national. He is prohibited from entering the country. The juvenile court denied his request to appear telephonically at the trial on the petition to terminate his parental rights and terminated his parental rights in absentia. We appealed and filed an opening brief and were able to with the AG's agreement agree to a reversal of the juvenile court's ruling. That's about all I have unless there are some questions.

1:07:00 Chair McCrea

Okay, thank you.

1:07:03 E. Lannet

Good afternoon now, Ernie Lannet of the criminal appellate section. Chair McCrea, members of the Commission I think we last spoke to you in March so there have been a number of things that have happened. We completed our attorney performance evaluations that we undertake every year. We had our internal CLE, May Daze, last month and the focus on that was representing juveniles in criminal matters which is a small portion of our cases but we do run into that. Coincidentally we had Judge Egan speaking, Angela Sherbo who brought Dr. Bolstad and it was the same morning as the decision came out in J.V. N.- C. which was a big decision on remanding from juvenile to criminal courts. It was interesting to hear their impressions when they hadn't even read the opinion yet. We did lose a deputy two attorney who after eight years decided to try something new and has gone over to the trial court administrator's legal counsel. We are in the process of hiring a deputy one. We have conducted interviews and checked references and should have some decisions made on that next week. We will be starting our panel review. We are waiting for the juvenile appellate section to finish their panel review. We have not taken that exercise in a number of years. We are waiting to see them complete it and since we haven't done it in so long look at the success they had and the methods they used. We're now involved in the Oregon Law Commission on the appellate commissioner Jim Nass put in a proposal to do a re-write of chapter 138 which governs criminal appeals. The Oregon Law Commission did approve that project. Judge Stephen Bushong is chairing it and it seems to have good representation from all the institutional players. I will attend those meetings and then if I can't make them Marc Brown will be attending them for our office. Also, it has been kind of long standing now, the governor did come up with a task force for the Oregon State Police crime lab because you may remember because there was some criminality that occurred there. That has been slow to start but mostly because the Oregon State Police didn't want to get into everything until the prosecution had proceeded to further along. That has pretty much happened and we have had a few meetings and one of them was a great overview of their internal processes that was put on by the deputy director of operations and then their director of quality control for all their labs across the state. So, it was a good view of the processes. The task force has not made any kind of decisions or recommendations on what it will be doing but definitely looking at the possibility of external audits to look at their processes.

1:10:22 J. Potter

Is that presentation recorded for viewers?

1:10:27 E. Lannet

It was not but we do have power point presentation that I will check into about getting those available.

1:10:41 Chair McCrea

That's the other question, if you were sworn to secrecy.

1:10:46 J. Potter

It might be interesting for the defense community.

1:10:49 E. Lannet

Yes, and I think that Kevin Sali is also on that task force and he is also there representing the defense community and I know he has a real interest in the forensic side of it. I think he is

presenting later on defense experts later in the conference. Marc Brown continues to do the monthly podcasts. Hopefully you may have run across those covering basically major decisions from the Oregon Supreme Court or the Oregon Court of Appeals. I won't go through the laundry list of Oregon Supreme Court cases that we have but I will offer you a few numbers to show you what you have been doing. Since I have talked to you there have been four opinions, two of which came out today. Two cases were dismissed, actually one was dismissed after the opinion that was favorable and one was dismissed when we were arguing that it should be dismissed. Consider those wins, but two of the other four are a little bit disappointing. But, we have 12 cases that are under advisement right now. So, they have been briefed and argued and are awaiting decision. Four of those are new that we have argued since I spoke to you in March. We have eight cases that are in briefing so they will be argued either in September and some set for November already and two new ones as of today. They are allowing review in a couple of cases and that may have changes already. There are plenty of issues and work to do there under a wide array of issues. That's all I have.

1:12:35 Chair McCrea

Okay. Thank you. Any other staff reports? Alright then, unless there is anything else for the good of the order I would entertain a motion to adjourn. **MOTION:** Commissioner Potter moved to adjourn the meeting; Commissioner Ramfjord seconded the motion; hearing no objection the motion carried: **VOTE: 6-0**

**Meeting Adjourned**

# Attachment 2



NATIONAL JUVENILE DEFENDER CENTER



# Juvenile Defense Self-Assessment Tool

Dear Public Defense Leader:

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

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

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

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

Sincerely,

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

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



Dear Colleagues:

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

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

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

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

Sincerely,

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

**Paul DeWolfe**  
*Public Defender*  
State of Maryland

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

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

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

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

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

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

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

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

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

**While many defender offices have objective standards for promotion and advancement, those standards may include factors that will not fall equally on adult and juvenile defenders.**

**...juvenile defenders should be provided with not only a healthy career path, but an office environment which is client centered and focused on providing quality representation for all clients.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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**...the ABA has resolved that jurisdictions should not only ensure adequate resources for appellate representation in juvenile cases, but should be tracking the number of juvenile appeals to ensure that such resources are utilized.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



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



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

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

# Attachment 3

# **Final Report**

**Hamilton County Public Defender's Office**

*Customer Satisfaction Pilot Survey Project*

**May 31, 2010**

**Washington State University**

Washington State Project Personnel:

Christopher Campbell

Mike Gaffney

Wesley Maier

## EXECUTIVE SUMMARY

Since the US Supreme Court decisions of *Gideon v. Wainwright* and *Strickland v. Washington*, the ability to provide defendants sufficient public defense has been a growing concern for many jurisdictions at both the state and local levels. Among those jurisdictions that are significantly struggling, one of the most notable is the Hamilton County Public Defender's Office (HCPD) in Cincinnati, Ohio. The problem in Hamilton County has become so bad in fact, that its severe shortcomings has been discussed in two official reports assessing indigent defense; one at the state level and the other at the national. To fill this gap in research focusing on the need and benefits of client-centered representation by public defenders, as well as to develop a base from which to construct a larger, national model of indigent defense training and practice, a pilot study exploring mixed methodologies in assessing client attitudes toward public defenders. This paper reports the findings of a pilot study where we operationalize and analyze the overall landscape of client perceptions of public defender performance, attorney-client participation, and overall satisfaction based on respondent experience with the HCPD. Several indicators of client-centered representation are discussed including the use client satisfaction, perceptions of defender performance in time efficiency and investigation efforts, as well as client participation factors such as being informed of possible consequences and whether or not the client is listened to. The results of this pilot study show that client satisfaction, trust, and participation are important elements of supplying effective defense counsel for indigent defendants. Implications and future areas of research are discussed.

## ACKNOWLEDGMENTS

Thanks go to Janet Moore and the Ohio Justice Policy Center for supplying us with the opportunity to explore this area in court research and for providing the needed resources to develop a quality pilot study to lay the foundation for a potential national model in client-based representation and evaluation.

I would like to acknowledge the aid of Deborah Wilcox whose diligent work in the implementation of this data collection on short notice was essential in making this a successful pilot project. Special thanks also go to Wesley Maier who had a large part in the collection of literature and analysis of the data. Without the efforts of Deborah and Wesley, this pilot project's successful completion as well as its full potential, would not have been realized. Jacob Day should also be acknowledged for his help in the transcription process, which supplied ample time in the final stages of analysis and reporting.

Last and certainly not least, I would like to thank Mike Gaffney for his support and guidance throughout the implementation of this project. His aid was vital in the construction, administration, and reporting of the survey instrument and its data. Without his help the project's quality would have been sacrificed.

## TABLE OF CONTENTS

Executive Summary .....	<a href="#">2</a>
Acknowledgments.....	<a href="#">3</a>
Background on the Hamilton County Indigent Defense Project .....	5
Recognizing the Significance of Client-Centered Representation.....	<a href="#">7</a>
Methodology .....	<a href="#">9</a>
<i>Sample and Methods</i> .....	<a href="#">9</a>
<i>Quantitative Variables</i> .....	<a href="#">10</a>
<i>Variable Scales</i> .....	<a href="#">11</a>
<i>Focus Group</i> .....	<a href="#">12</a>
Results.....	<a href="#">13</a>
<i>Quantitative Findings</i> .....	<a href="#">13</a>
<i>Table 1: Demographic Breakdown</i> .....	<a href="#">13</a>
<i>Table 2: Breakdown of Primary Measures</i> .....	<a href="#">14</a>
<i>Table 3: Correlations Between Primary Variables</i> .....	<a href="#">15</a>
<i>Table 4: Crosstabulations of Overall Satisfaction and Case Description</i> .....	<a href="#">16</a>
<i>Qualitative Findings</i> .....	<a href="#">16</a>
Conclusion .....	<a href="#">22</a>
<i>Implications</i> .....	<a href="#">22</a>
<i>Future Research</i> .....	<a href="#">23</a>
Works Cited .....	<a href="#">25</a>

## **Background on Hamilton County Indigent Defense Reform Project**

Since the US Supreme Court decisions of *Gideon v. Wainwright* and *Strickland v. Washington*, the ability to provide defendants sufficient public defense has been a growing concern for many jurisdictions at both the state and local levels. Among those jurisdictions that are significantly struggling, one of the most notable is the Hamilton County Public Defender's Office (HCPD) in Cincinnati, Ohio. The problem in Hamilton County has become so bad in fact, that its severe shortcomings has been discussed in two official reports assessing indigent defense; one at the state level and the other at the national. In 2006, under the ruling of Chief Justice Thomas J. Moyer, the Supreme Court of Ohio appointed the Task Force on Pro Se and Indigent Litigants to assess state and local methods and performance of indigent defense counsel (OJPC 2010). According to the task force's report, the HCPD received some of the worst notoriety in the state. Similarly, when the Hamilton County Board of Commissioners asked the National Legal Aid and Defender Association (NLADA) to do a study on their indigent defense system, in the wake of many recommendations for both the state and the county, the NLADA deemed it as an unconstitutional system (NLADA 2008; OJPC 2010).

As it is typically the case with such evaluations, public defender's offices are often held to a relatively loose standard of operational minimums involving more instrumental or functional characteristics such as expenditures and administrative resources (see work by Spangenberg Group: Spangenberg et al. 2002; 2004; 2008; Beeman and Spangenberg 2004; Sauberman et. al. 2006). Since the mid 1990s however, there has been a political push by some law scholars, practitioners, and activist groups to incorporate a more holistic, client-centered representation (Flemming 1986; ABA 1993; Nelson 1996; Winick 1999; Steinberg and Feige 2002). This

approach involves a focus on attorney-client relations including client trust and satisfaction. Similarly, the evaluations by the Ohio Task Force and the NLADA have emphasized the need for performance based measures as well as development of more client-centered representation (Per Se Task Force 2006; NLADA 2008). Although there have been mission statements and report recommendations written about it, client-centered representation has perpetually been an abstract notion of indigent defense practice and has therefore, rarely been empirically studied with exception to the work done by Boccaccini and Brodsky (2001; 2002; Boccaccini, Boothby and Brodsky 2002; 2004).

To further fill this gap in research focusing on the need and benefits of client-centered representation by public defenders, the Division of Governmental Studies and Services<sup>1</sup> (DGSS), in conjunction with the Ohio Justice Policy Center (OJPC), implemented a pilot study to test methodology with the client population and to develop a base from which to construct a larger, national model of indigent defense training and practice. This paper reports the findings of the pilot study where we operationalize and analyze the overall landscape of client perceptions of public defender performance, attorney-client participation, and overall satisfaction based on respondent experience with the Hamilton County Public Defender's Office. Methodologies used

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<sup>1</sup> The *Division of Governmental Studies and Services* (DGSS) is jointly sponsored by WSU Extension and the College of Liberal Arts to promote the Land Grant mission of the University. DGSS works with faculty from diverse disciplines, departments and colleges to provide expertise and capacity for a varied mix of services provided on a grant and contract basis. DGSS provides applied social science research (mail and online surveys, field interviews, observation studies and focus groups), program evaluation research, technical assistance (consultation, assessments, data analysis), and training for government entities and non-profits throughout the Northwest. DGSS is affiliated with or has provided training for the Northwest Area Foundation, the Northwest Municipal Clerks Institute, the Western Regional Institute for Community Oriented Public Safety (WRICOPS), and the Natural Resources Leadership Academy (NRLA). DGSS provides this broad array of services through cooperative agreements, contracts and grants. DGSS has extensive experience in grant and contract management, and has the personnel and organizational structure to manage complex and demanding projects. A more detailed description of DGSS activities and services can be found on the DGSS website: [www.dgss.wsu.edu](http://www.dgss.wsu.edu).

to examine these areas include mixed modalities of quantitative and qualitative data collection. Client satisfaction surveys as well as focus group interviews with past indigent clients were used to gain a deeper understanding of the level of expectation and job performance based on views of people directly experiencing the public defender's office. Data from these methodologies not only yield great value in recognizing the importance of client-centered representation empirically but may also produce an informative manuscript detailing the essential needs for maintaining a sufficient county indigent defense system.

The following sections present a brief discussion on background information regarding the current state of literature and research on the client-centered representation approach as well as research justifications for the methodology. Next, the design, scope and implementation of the study will be explained followed by the quantitative and qualitative results and then the report will conclude with implications of this research and a proposed plan for future research.

### **Recognizing the Significance of Client-Centered Representation**

Traditionally, client input in defense counsel duties and procedures has been viewed as an unnecessary, normative element that does not have a direct affect on the performance of an attorney and the outcome of a case (Friedman 1986). In recent decades however, there has been a slowly increasing supply of empirical evidence and subsequent recognition of the necessity and benefit provided by a positively strengthened attorney-client relationship, including that of publicly paid defense attorneys (Blumberg 1967; Casper 1971; Friedman 1986; Flemming 1986; Exum et al. 1993; Nelson 1996; Winick 1999). In the majority of the work done before 2001, the operationalization, or the organized methodology used to measure a specific variable, for client-centered representation among public defenders was relatively weak.

For instance, Flemming (1986) investigated the public defender's perceptions of their clients' ability and willingness to afford them legitimacy and cooperation. Though Flemming focused on the importance of legitimacy and recognized that there is a disconnect between the public defender and his/her client based on perceptions of trust, this basis was not thoroughly explored nor was it tied to client satisfaction and its benefits. Similarly, the American Bar Association published a report of criminal justice standards regarding prosecution and defense functions in which the establishment of trust and confidence are recognized as an essential tool to the defense attorney as well as an expected element of professionalism (Exum et al 1993).

Since 2001, Boccaccini and Brodsky published a number of articles that further sought to empirically explore the connection of trust between the client and public defenders (2001; 2002; Boccaccini, Boothby and Brodsky 2002; 2004). Aside from establishing the connection showing that trust predicts client satisfaction of public defender performance and case outcome (2004), one of the more unique contributions they made was the inclusion of client participation measurement in a process they call the congruent model of trust development (CMTD). Ultimately, in accordance to their CMTD, they concluded that the level of client participation (i.e. inclusion in the plea agreements, decisions to move forward to trial, etc.) was a main predictor of the client viewing the public defender as trustworthy. Therefore, if the willing client was not allowed to participate or was not included in the process of his/her own case, then the client will likely view the public defender as untrustworthy and will subsequently be unsatisfied with the experience (Boccaccini, Boothby and Brodsky 2004).

Also in their studies, Boccaccini, Boothby and Brodsky found much support for Nelson's research (1996), indicating that perceptions of respect and trust are not only significant components in predicting the client's level of satisfaction with the public defender's performance

and overall outcome of the case, but they are also key in gaining general cooperation from the client (Boccaccini, Boothby and Brodsky 2004). Each of these studies stressed the important practice implication of respect and trust variables, stating that if a client is reluctant to cooperate when the defense counsel is perceived as disrespectful or untrustworthy, and the client is subsequently unsatisfied with the public defender, then there is a high probability that the defense counsel will not obtain the necessary information needed to win the case in court (Nelson 1996; Boccaccini and Brodsky 2002).

## **Methodology**

### *Sample and Methods*

Due to the fact that this was a pilot study and time was an adverse factor, a convenience sample was thought to be the most efficient and quickest way of obtaining the needed data. In conjunction with the HCPD a randomly selected address list was compiled consisting of 568 clients' names, addresses, and phone numbers from which we administered the mail surveys, postcards with the survey's internet link, and telephone surveys. Other methods included face-to-face administration as well as paper-pencil handouts. The different types of data collection methodologies were used in an attempt to maximize our resources in similar future studies. With the aid of Dr. Deborah Wilcox of Confluency Consultants and Associates: Multicultural Education & Organization Development And Professional Development Services, we were not only able to collect a total of 156 responses through face-to-face, telephone, and pencil-paper handouts, but we were also able to conduct a focus group including the detailed testimonies of seven former clients of the HCPD.

The face-to-face method of administration was the most successful method of collecting the survey responses with a total of 73 respondents. This method was the only one which took

place in two venues. Each included the display of signs directing HCPD clients to where the survey was being administered: 62 completed forms came directly from the court house and 11 from Cincinnati Metropolitan Public Housing Authority (CMPHA). Next was the paper-pencil handout method with 55 respondents as the survey was informally handed to clients of the HCPD and promptly collected if the individual filled it out. The least effective methods included the mailed surveys through which only 12 responded out of the 300 mailed. However, this was to be expected as this population has a high probability of lacking a permanent address. Also among the least effective were the telephone and internet methods where we recorded only 10 responses for the telephone and zero recorded responses for the internet via postcards. Like the postal method, these were to be expected due to the nature of the population.

Of the surveys that were collected, the average respondent was male between the ages of 29 and 35 years, was a high school graduate, and reported that his most recent case for which he was a HCPD client was a misdemeanor. The complete breakdown of the demographics can be found in the results section below.

### *Quantitative Variables*

In this pilot study, we sought to gain further perspective on trust, participation, and overall satisfaction as we administered mixed-methodologies including surveys and focus group interviews. While there was not a direct attempt to duplicate or test the CMTD, there are measures which will allow an indirect assessment of the model; however, this was not the main goal of the pilot study. The objective of this study also did not focus on the connection between case outcome favorability and the client's overall satisfaction with the public defender. Although this may seem counter intuitive based on the assumption that people will be more satisfied with an experience that yields a positive outcome, several instances throughout the literature show

that satisfaction is not based on outcome favorability (Casper, Tyler and Fisher 1988; Lind and Tyler 1988; Tyler 1990; Tyler and Lind 1992; Greenberg 1993; Tyler 1997; Tyler and Braga et al. 2007). In the research on procedural justice, citizen perceptions of legitimacy and fairness in criminal justice processes and its agents has been proven to mediate the relationship between outcome favorability and the individual's overall perception of satisfaction. Simply put, outcome favorability has little to do with the individual's sense of satisfaction regarding the process and its agents.

Variables that were accounted for included five, client-centered performance measures that were prescribed by the OJPC as being essential to providing adequate representation and are based on the client's perceptions: 1) client satisfaction with attorney's performance, 2) client feels as if he/she is being listened to, 3) attorney is investigating client's case, 4) attorney is using time efficiently, and 5) attorney is informing client of possible outcomes. These variables were measured through scales that incorporated the following questions which used a five point Likert scale of strongly agree, agree, neutral, disagree, and strongly disagree:

**Satisfaction with Attorney:**

- Overall, I am satisfied with the way my attorney handled my case.

**Clients feel as though they are being listened to (participation):**

- My attorney wanted to know all of the details of my case.
- My attorney asked for my opinion on issues regarding my case.
- My attorney listened carefully to what I said.

**Attorneys are investigating clients' cases (expectations of performance):**

- My attorney investigated my case.
- My attorney looked into the prosecutor's evidence.

**Is time being used efficiently (general performance):**

- Every time my attorney met with me, we focused on my case.
- My attorney always used our meeting time efficiently.

**Attorneys are explaining possible outcomes to clients (participation):**

- My attorney told me about everything that could happen with my case.
- My attorney explained what the consequences were for each possible outcome of my case.

Each scale utilized more than one question for reliability purposes, ensuring that the questions used are targeting the variable being measured.

*Focus Group*

As mentioned, a focus group was also included in the data collection for two essential reasons. The first reason is due to the fact that there is little research in the area of client satisfaction and evaluation of public defenders. Because of this, qualitative methods such as focus groups have been recognized as a strong mechanism of exploratory research as it poses potential for yielding information not yet realized in the field's literature (Creswell 2003; Patton 2008). Secondly is the fact that qualitative research can supply data that exceeds the limited scope of quantitative methods. By not limiting the data collection to certain variable constraints we allow for the participants to expand on their experiences thereby gaining information that would have been overlooked in quantitative research alone (Patton 2008). The focus group in this study included seven former clients of the HCPD who completed the quantitative surveys as well as participated in the qualitative discussion performed by Deborah Wilcox. The group findings will be included in the following qualitative results section.

## Results

### *Quantitative Findings*

Quantitative findings from this study indicated that from the 156 respondents, the majority were young to middle-aged males who reported having been a client of the HCPD due to a misdemeanor. As shown in Table 1, 24 percent were felony cases and 10 respondents indicated that their case was reduced from a felony to a misdemeanor.

Table 1

<i>Demographic Breakdown</i>		<i>N=156</i>	
		Frequency	Percent
Age	19-24	32	21%
	25-30	30	19%
	31-35	15	10%
	36-40	19	12%
	41-45	11	7%
	46-50	22	14%
	51-55	15	10%
	56-70	12	8%
Gender	Male	120	77%
	Female	35	23%
Highest Education Completed	Grade School	5	3%
	Some High School	51	33%
	High School Graduate	48	31%
	Some College/Trade School	32	21%
	College Graduate	19	12%
	Advanced Degree	1	0.6%
Recent Case Description	Felony	36	24%
	Misdemeanor	106	70%
	Reduced: Felony to Misdemeanor	10	7%

\*Percents may not add to exactly 100% due to rounding and some missing values.

Table 2 shows that though a fair amount of respondents fell into the neutral or indifferent category on the questions, the majority of respondents indicated that they were satisfied with their attorney's performance, attorney's interest in their case, allowance to participate in their

own case, and were informed of the possible outcomes and consequences. In accordance with Boccaccini, Boothby and Brodsky's (2004) research, this is not surprising. As participation is the key factor in the CMTD, which subsequently accounts for the levels of trust and satisfaction an individual has with their public defense attorney, the level of willingness to participate decreases with the severity of the charge. Those who lack the desire to participate in their case and are not asked to participate are generally satisfied with the fact that their lawyer was able to take care of everything without further effort given by the client. Therefore, as prescribed by the CMTD, the frequency of satisfaction among respondents should be positively correlated to the frequency of misdemeanors and felonies. In other words, because there are more misdemeanors where clients are less likely to care to participate in their case, we should expect a similar frequency in satisfaction among respondents.

Table 2

<i>Breakdown of Primary Measures</i>	<i>N=156</i>		
	Agree	Neutral	Disagree
Satisfied with Attorney Performance	53%	15%	32%
Attorney Listened to Client	57%	12%	31%
Attorney Investigated the Case	57%	20%	23%
Attorney used Time Efficiently	52%	20%	28%
Attorney Informed Client of Possible Outcomes	54%	21%	25%

Also in accordance with the CMTD, the data indicates that there is a significant correlation between the performance and participation variables and the satisfaction of the respondent. Crosstabulations and correlation analyses, shown in Table 3, indicated that each of the four variables involving the client's perception of the attorney's investigation and efficiency as well as the client inclusion were significantly correlated with the respondent's satisfaction

level. Thus, those respondents who were pleased with their attorney's performance and their inclusion in the case, were much more likely to be satisfied with their public defender overall.

Table 3

<i>Correlations Between Primary Variables</i>		Overall Satisfaction	Informed of outcomes	Time used Efficiently	Investigated Case
Informed of outcomes	Pearson Correlation	.669			
	Sig. (1-tailed)	.000			
	Sum of Squares and Cross-products	71.795			
	Covariance	.463			
Time used Efficiently	Pearson Correlation	.740	.719		
	Sig. (1-tailed)	.000	.000		
	Sum of Squares and Cross-products	79.949	66.436		
	Covariance	.516	.429		
Investigated Case	Pearson Correlation	.722	.777	.793	
	Sig. (1-tailed)	.000	.000	.000	
	Sum of Squares and Cross-products	75.449	69.436	71.484	
	Covariance	.487	.448	.461	
Client felt Listened to	Pearson Correlation	.769	.708	.824	.795
	Sig. (1-tailed)	.000	.000	.000	.000
	Sum of Squares and Cross-products	82.030	64.579	75.811	70.666
	Covariance	.529	.417	.489	.456

A final noteworthy quantitative finding is also in support of Boccaccini and colleagues' research on participation and charge severity. As portrayed in Table 4, those who reported that they had a felony case were more likely to indicate that they were also dissatisfied with their attorney overall. This suggests that there may be evidence that the individual with the more severe charge seeks to be involved more often in his/her case and therefore if the person is not involved then he/she is left unsatisfied with the experience.

Also in Table 4 is potential evidence for the notion that outcomes mean very little when assessing an individual's satisfaction of a criminal procedure and its agents. As the reduction of a felony charge to a misdemeanor can often be viewed as a "very good" or "favorable" outcome, the overwhelming majority of respondents should be satisfied with their attorney's overall performance if the outcome truly predicts one's satisfaction level. However, this is not the case. Respondents who reported that their case had been reduced from a felony to a misdemeanor suggested that they were just as likely to be unsatisfied as well as satisfied. This suggests that there are other criteria by which people base their perception of satisfaction when it comes to public defender performance.

Table 4

<i>Crosstabulation of Overall Satisfaction and Case Description</i>		<i>N=152*</i>			
		Overall Satisfaction			Total Row Frequency
		Agree	Neutral	Disagree	
Case Description	Felony	36%	14%	50%	36
	Misdemeanor	59%	17%	24%	106
	Reduced from Felony to Misdemeanor	50%	10%	40%	10
Total Frequency Per Column		81	24	47	152

\*N equals 152 due to missing values.

### *Qualitative Findings*

Discussions from the focus groups supplied experiential testimony that provided background to that found in the quantitative data. Though the focus group is an open-ended trade of thoughts and experiences, the dialogue was facilitated and coded to mirror the variables investigated by the survey to allow further insight into why a client may be satisfied or unsatisfied with their public defender. Among the variables listed above, a few were viewed as the most important according to the interviewed clients: not being listened to or considered in the

case process, not being informed of the case proceedings and outcomes, and a lack of investigation by the public defender.

Several participants in the focus group emphasized frustration with the fact that the public defenders they experienced simply do not listen to them. Such irritation was characterized by the perception of a lack of care on the part of the attorney. One respondent even mentioned that the feelings of indifference experienced from the public defender lead him to feel defeated and apathetic toward the process and the attorney:

They don't care.... Whatever he suggests, that's what you probably should go with, you know. I mean had I been in a position where I had maybe not been wrong and maybe had something to justify my actions, then maybe I would have a different attitude about how I was treated by the public defender. But me going in the door feeling defeated I just kinda accepted that, you know. They don't really care what's going on with you man, you know? You're another number, you a paycheck, whatever, so most of my answers on that sheet [survey] was just neutral 'cause I ain't really know how I felt and I still don't really.

Others state that there is a lack of effort and lack of time for public defenders to talk with their clients. One even proposes the idea that it should be an option to choose one's defense lawyer because of this issue:

When I go down to the public defender office, I mean you spend five minutes in his office, or in her office, and that's it... If he's with me, then he's on my time. Am I right? It's like a paid lawyer. 'You pay for this time so what you want to do? I wanna do this.' He gonna sit back and listen. He ain't gonna say nothing to you. He's going to sit back and say nothing and after you tell him what's going on, he's gonna tell you our best route...interest...Public defender ain't gonna do that. You come in there and sign a paper and he tell you 'I'm gonna see you in court.' You look at him like 'OK.'

Well I think they should spend more time, come see you, have more visits. Like when you're incarcerated because most of the time you get locked up, you in there for at least a week or two or whatever before your court date comes up and I think there's adequate time for him to come see you. Like he said... you don't see him until the court date. So, I think you should see him, sit down and talk with

him individually to see if that's who you want to represent you. I see a lotta young guys say, 'no I don't want him, he's doin' it just because.' But I think you should have a choice if you want that public defender to represent you or not because I don't think they do enough visits so you don't get to spend enough time to talk about your case. They pretty much just go on what the police report is and bam they gonna show up on court date and it is what it is.

I feel like I was sold. I was sold to the judge. Know what I'm sayin'? We didn't really sit down and talk about the case or nothing. Next thing I know when I came to court – 'sign this,' which says no contest. That's sayin' guilty for real. Next thing I know I done got the time and he was out the court room so quick I think the judge done sentence me. So like I said, they need some public defenders that's gonna represent some people. Gonna sit down, gonna talk to people about their cases, and even though we ain't rich, we don't have the money, we have feelin's... so fight for us. Don't make us go up there, stand up there and say no contest. [other man: We deserve a fair trial.] Yeah, a fair trial. Yeah, fight for us a little bit, at least make us feel a little good.

Much of the diminished inclusion of the client was also portrayed in testimony stating that they were never told what would happen during and following the court proceedings.

Courtroom workgroup processes seem to remain a hidden aspect in the public defender – client relationship:

Once they see what you in there for, they already know, they just come down there with a paper and it's got your name on it, all your charges, all your history on it, and he's tellin' you 'we gonna plead this.' Wait a minute, dude, we ain't even talk. 'And if we plead this the judge already said that he would do this.' When did that happen?! Where was I at?!

Still others discuss how there should be more investment by the public defenders as seen in the performance of paid lawyers.

It seemed like they [public defenders] really didn't explain to you what your rights were and what you could and couldn't do even though you were guilty, you know? A paid lawyer don't make you feel that way.... whereas a public defender, they don't put no emphasis on that, just like he said, another number.

The only time you see him is when you get locked up. The next time you see him you're standing in front of the judge and he's telling you to 'sign this.' Like what

is this? He'll whisper to you, 'I already talked to the judge, we gonna...' because you're standing there in front of the judge, it ain't like he took you outside. I can remember looking at the dude like 'you act like that's gonna be over tomorrow.' It ain't gonna be over tomorrow. Like three years from now, you know, we ain't gonna talk about nothing. And you going back to your family and I'm going back up here to ship up the street based on my signature here... I'm signing away my life. I mean, is there any way I could have got this reduced or maybe even got it dismissed? Because I don't know. How would you know that if you don't have any dialogue with your public defender about what's really going on and what's in your best interest for you to do with this thing? Though you may be guilty of the crime, a lot of people paid lawyers and got 'em out.

Similarly, another former client indicated that the most important factor is getting the same equal treatment and fair trial that those who pay for an attorney receive.

Again, my statement is due process and equal justice under the law. I mean come on man. I understand I don't have the money to pay for this lawyer, and the state's payin' it, but I still deserve to be treated like anybody else, like he said, black, white, rich, yellow, it doesn't matter, you know what I mean? Fair is fair. And you all want me to state that I'm willing to give you the uh maximum where this other guy comes in with a paid lawyer he get probation. Wait a minute, hold up, back up.

In many situations the individual clients indicate that they did not realize that they were allowed to question what was going on with the evidence of their case as well as what the prosecutor had found or would use in court, as it is expressed by this participant:

What about suppression of evidence, right? He'll say he already did it. How you know he took care of that or not? Because they always say 'I took care of that. I already did that.' Well how do I know if you did that or not? But now I guess on my part my problem would be being intimidated to say 'well let me see the paper work where you did that.' I guess we have a right to do that. I never said show me you did that, I always accepted when they said well I already did that. I always said 'OK.' I filed that...the motion for...whatever it is. 'Did you file that motion?' Because the guys in the county [lockup] talking about well maybe you get him to file for this and file for that so when I go see the public defender I don't know nothing about this stuff. 'You file that?' And he said, 'yeah, I took care of that.'

Further positions of distrust and frustration came from the recognition that there is very little investigation being completed by the public defender in the participants' felony cases.

Another participant stressed the idea that if the public defenders made an effort to investigate the case by merely visiting the incarcerated client and talking with him then they might find there is something in the case worth working with that may not be in the report:

Does the public defender office, on account of what you're saying, do they have the time to investigate you personal individual case? Ok, so then you say, well, there's ... some injustice in there that could help me have a chance in not getting as much time or maybe getting off the case, period. Does this person have the time to investigate that, or the training? I haven't seen that. Will one of them to take the time and say that, this is what I see we can do? Come to the cell block, talk to me and say, 'uh, ok, what happened here?' Have me explain exactly what happened, so he can get an idea of, 'hey I might actually have something to work with here.' That don't happen.

I used to look at them guys and wonder what he really done on this case. Did you talk to anybody? Did you ask anybody anything? Even though most of the time I was guilty so I didn't have a lot of fight in me, but did you try to do anything to figure any of this out that might get this a little lesser or something? Did you talk to the police? Or did you question any of the witnesses? See the report they wrote down and see if there was anything in there that shouldn't have been there or may should have been there or something they put there that shouldn't have been there because I'm not seeing the police report, none of us, so how can you contradict or even fight that?

Yeah, I would say definitely more investigation on, like he was saying earlier, did you do this? Can we do this? And show me the work. You know, stuff like that, because it shows me that you are at least interested in my behalf and try to get me the best result out of this because it may be again, some type of way, some type of small way, in getting this charge reduced, that I may not know about, and if you're not, what, concerned. If you're not willing, and I'm not important to you to even concern yourself with it, again it's a lot of things.

So I would say that part of that is that in cases, they really need more investigation... Why does a guy, have a felony that he gets convicted on and he goes to the penitentiary and he goes to the law library and he seeks out information and then he turns right around and beats the case that the public defender didn't take the time to try to beat?... Evidently the public defender didn't take the time to do that.

Other issues which often reoccurred in discussion included the realization of the crime control and due process approach to the job. This was typically emphasized when talking about the difference between new, young attorneys fresh out of law school versus experienced attorneys who were among those who view the process systematically.

Though I do have a lengthy record, I have felt once or twice that they had my best interests at heart. I'm not gonna tell you that everybody in there is like that. You have some of them that pretty much just get started, you know public defender just getting started in his job. He wanna do his job right, he wanna prove himself, so might catch that guy or that girl, but after they been there a while, [laughs], it's just a [ching-ching sound, laughs], after 8, 9 to 5, I'll see you in the morning. It's over you know?

I have felt that way once or twice in all the times that I've been in and out of jail by the public defenders office or a public defender the represented me and that was probably because I caught a fresh one that was trying to make a name for himself or trying to learn the business, you know, so, he needed that case or to win that case or to even prove himself in that case to society at large that he deserves to get his...

To some these approaches included the potential influence of race and class factors as so many of defense attorneys are middle-class Caucasians whereas a large portion of public defender clients are impoverished African Americans.

I'm standing in front of a Caucasian guy looking at me basing my life on that record, that thing that he got there, not looking at the circumstances, the situation that put you there, and they know it, but they're not willing to look at it. Then I got this other guy over here, same color, I'm like uh-oh [laughter]. He already don't like me, this guy don't seem like he care about me at all and he's telling me to sign my life away.

However, it should be pointed out that the former clients are not oblivious to some of the hardships that face public defenders. There was a reoccurring recognition of very high case loads

afforded to public defenders as well as financial strains implied toward jobs in the current economy.

And you may get represented. He may come in with a different attitude. You know like, look, I'm with a firm, I'm gonna get paid, I'm not worried about it, you know, so I can represent you and maybe help you out for real. Where if you got a public defender that, I think it's a lot about money. Well he's not making as much money, he's got a case load that's ridiculous, he doesn't have the time and I think it comes down to time. They don't have the time to put into an individual.

There's not enough of 'em to go around to all the guys that can't afford attorneys so they're using one public defender for a whole pile of people. That's why I say he's got a bunch of cases he gotta do because they're just ain't enough because everybody can't afford a lawyer.

## **Conclusion**

The primary purpose of this assessment was to gain empirical perspective on the need and benefit for client-centered representation among public defenders. Several indicators of client-centered representation were discussed including the use client satisfaction, perceptions of defender performance in time efficiency and investigation efforts, as well as client participation factors such as being informed of possible consequences and whether or not the client is listened to. The majority of the limited research, consisting also of this pilot study, has shown that client satisfaction, trust, and participation are important elements of supplying effective defense counsel for indigent defendants. Without these elements, there is a high probability that the client will not fully cooperate or confide in the public defender and therefore is likely to lead to inadequate defense in court.

## *Implications*

Other implications and benefits of ensuring a better client-centered approach among public defenders involves decreased overall recidivism among clients. Research on procedural

justice as well as previous research on client perceptions of trust of public defenders has shown that increased perceptions of legitimacy and fairness of a criminal justice process and its agents leads to a higher overall satisfaction level with the process as well as a higher likelihood to obey the law (Winick 1999; Lind & Tyler 1988; Tyler 1990; Tyler 1997; Tyler and Braga et al. 2007; Johnson 2007; etc.). By increasing the client's level of satisfaction with the public defender, it can be logically deduced that the individual's perception of legitimacy, fairness, and satisfaction of the criminal justice system as a whole will also increase, and therefore enhance the person's propensity to adhere to laws as well as court orders in the future (Lind & Tyler 1988; Tyler 1990; Tyler 1997; Tyler and Braga et al. 2007; Johnson 2007; etc.).

Yet another noteworthy finding and implication from the qualitative component of this pilot study is the mention of a potential need for better training for incoming public defenders. Such training is recommended to include elements of a client-centered representation approach that emphasizes an efficient use of the courtroom workgroup and procedures while still including the willing client in processes and strategic decisions. Iterated in the literature, utilizing training techniques for young public defenders as well as periodic recertification seminars for experienced attorneys is an effective mechanism to relay the importance of the attorney-client relationship and how to better achieve it (Boccaccini, Boothby, and Brodsky 2002). In the same regard, the encompassing of client satisfaction, trust, and attempted participation may be a strong tool of ongoing assessment in performance measures within the public defender's office as well as in evaluation research focusing on indigent defense systems.

### *Future Research*

Future areas of research should focus on the further connection between the procedural justice literature, private defense research and that of public defense. Though these studies have

mirrored scopes and variable investigations, they do not fully recognize the potential benefits in research and policy implications, some of which are mentioned above. Concentration on variables such as perceived fairness, legitimacy, and distinctions in specific satisfactions of the clients toward processes, individual public defenders and their performances are all key in bridging the gap in these areas and subsequently strengthening the support of client-centered representation.

Lastly is an important aspect of indigent defense that is often overlooked in evaluation research and other literature on public defense – the factors of race and class. As it was suggested in the qualitative portion of this pilot study, there is a factor of perceived intimidation and patronization that is associated with the fact that the clientele is often characterized by lower socioeconomic status as well as a membership of a minority race or ethnic group. Though this may only be limited to the individual perception of the circumstances, the perception will inevitably influence the client's level of trust and satisfaction toward the public defender. Measuring cultural competency of public defenders as well as including training methods which focuses on increased awareness of this perception may further strengthen the research and realized benefits of client-centered representation.

### Work Cited

- Adkins, John, Mary Asbury, David Bodiker, Beth Bray, Becky Carpenter, Marc Dann, Timothy DeGeeter, Lenny Eliason, Daniel Hannon, Bill Harsha, Phyllis Henderson, Jim James, Jim Jordan, Mary Kovack, Paul Kutscher, Kent Markus, William Mason, Lynne Maseika, Sharon Ray, Laura Rstivo, Nancy M. Russo, Kimberly C. Shumate, Thomas Weeks, John Willamowski and Mark Wall. 2006. *Report and Recommendations of The Supreme Court of Ohio: Task Force on Pro Se & Indigent Litigants*. Columbus, OH: The Supreme Court of Ohio.
- Beeman, Marea L. and Robert L. Spangenberg. 2004. *A Review of Wichita County Indigent Defense System--Findings and Recommendations*. West Newton, MA: The Spangenberg Group.
- Blumberg, Abraham S. 1967. "The Practice of Law as Confidence Game: Organizational Cooptation of a Profession." *Law & Society Review* 1(2):15-40.
- Boccaccini, Marcus T., Jennifer L. Boothby and Stanley L. Brodsky. 2004. "Development and Effects of Client Trust in Criminal Defense Attorneys: Preliminary Examination of the Congruence Model of Trust Development." *Behavioral Sciences and the Law* 22:197-214.
- , 2002. "Client-Relations Skills in Effective Lawyering: Attitudes of Criminal Defense Attorneys and Experienced Clients." *Law and Psychology Review* 26:97.
- Boccaccini, Marcus T. and Stanley L. Brodsky. 2002. "Attorney-Client Trust Among Convicted Criminal Defendants: Preliminary Examinations of the Attorney-Client Trust Scale." *Behavioral Sciences and the Law* 20:69-87.
- , 2001. "Characteristics of the Ideal Criminal Defense Attorney from the Client's Perspective: Empirical Findings and Implications for Legal Practice." *Law and Psychology Review* 25:81-117.
- Casper, Jonathan D. 1971. "Did You Have a Lawyer When You Went to Court? No, I Had a Public Defender." *Yale Review of Law and Social Action* 4:4-8.
- Casper, Jonathan D., Tom R. Tyler and Bonnie Fisher. 1988. "Procedural Justice in Felony Cases." *Law & Society Review* 22:483-508.
- Creswell, John W. 2003. *Research Design: Qualitative, Quantitative, and Mixed Methods Approaches*. Second ed. Thousand Oaks, California: Sage Publications.
- Exum, James G. J., Norman Lefstein, Sheldon Krantz, Michael L. Bender, Andrew L. Sonner and Neal R. Sonnett. 1993. *ABA Standards for Criminal Justice: Prosecution Function and Defense Function*. Third ed. Washington, DC: American Bar Association.

- Flemming, Roy B. 1986. "Client Games: Defense Attorney Perspectives on Their Relations with Criminal Clients." *American Bar Foundation Research Journal* 11(2):253-277.
- Friedman, Ronald I. 1986. "The Creation of the Attorney-Client Relationship: An Emerging View." *California Western Law Review* 22:209.
- Johnson, Jennifer. 2007. "When the Poor Police Themselves: Public Insecurity and Extralegal Criminal-Justice Administration in Mexico." Pp. 167-185 in *Legitimacy and Criminal Justice*, edited by T.R. Tyler. New York: Russell Sage Foundation.
- Lind, E. A. and Tom R. Tyler. 1988. *The Social Psychology of Procedural Justice*. New York: Plenum Press.
- National Legal Aid & Defender Association. 2008. *Taking Gideon's Puls: An Assessment of the Right to Counsel in Hamilton County, Ohio*. Washington, DC: NLADA.
- Ohio Justice Policy Center. 2010. "Indigent Defense Project." Labrat Webdesign, Retrieved 02/15, 2010 (<http://www.ohiojpc.org/main.html>).
- Patton, Michael Q. 2008. *Utilization-Focused Evaluation*. 4th ed. Thousand Oaks, CA: Sage Publications.
- Saubermann, Jennifer M., Robert L. Spangenberg, David J. Newhouse and Ross M. Shepard. 2006. *Initial Interim Report to the Texas Task Force on Indigent Defense: An Analysis of the Newly Established Bexar and Hidalgo Public Defender Offices*. The Spangenberg Group.
- Spangenberg, Robert L., Dennis Murphy, David J. Newhouse, Michael R. Schnider and Jennifer W. Riggs. 2002. *A Study of Indigent Defense in Pierce County: The Performance of the Department of Assigned Counsel*. The Spangenberg Group.
- Spangenberg, Robert L., Jennifer W. Riggs and Rebecca A. Jacobstein. 2008. *Proposal to Conduct a Weighted Caseload Study of the Washoe and Clark County Public Defender Offices*. West Newton, MA: The Spangenberg Group.
- Steinberg, Robin and David Feige. 2002. "Cultural Revolution: Transforming the Public Defender's Office." *Public Defense: Papers from the Executive Session on Public Defense*, pp. 1.
- Tyler, Tom R. 1990. *Why People Obey The Law*. New Haven: Yale University Press.
- Tyler, Tom R., Anthony Braga, Jeffrey Fagan, Tracey Meares, Robert Sampson and Chris Winship. 2007. "Legitimacy and Criminal Justice: International Perspectives." Pp. 9-29 in *Legitimacy and Criminal Justice*, edited by T.R. Tyler. New York: Russell Sage Foundation.

Tyler, Tom R. and E. A. Lind. 1992. "A Relational Model of Authority in groups." *Advances in Experimental Social Psychology* 25.

Winick, Bruce J. 1999. "Redefining The Role Of The Criminal Defense Lawyer At Plea Bargaining And Sentencing: A Therapeutic Jurisprudence/Preventive Law Model." *Psychology, Public Policy, and Law* 5(4):1034-1083.

# Attachment 4

# Basic Data Every Defender Program Needs to Track

*A Toolkit for Defender Leaders*



**NLADA**

National Legal Aid &  
Defender Association

Why do defender leaders need to track data?

What data do they need to track?

How should they do it?

What should they do with it?

Prepared by Marea Beeman  
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# Toolkit Contents

- 4** Introduction
- 5** Why Track Data?
- 6** What is Data Tracking?
- 7** What to Measure? A Suggested, Uniform Approach
- 14** How do I Collect Data?
- 15** How do I Use Data?
- 21** Conclusion
- 22** Resources Mentioned
- 23** Appendix A: National Research & Data Analysis Advisory Committee Members
- 25** Appendix B: Examples from South Carolina Office of Indigent Defense's Case Management Systems for Assigned Counsel and Public Defenders

# Introduction

In today's environment of big data and performance-based budgeting, it is an incontrovertible reality that data drives decision-making. Within the criminal justice context, indigent defense providers have been relatively late to the practice of employing data to inform and improve performance. Since the 1990s, law enforcement agencies, for example, have been employing Compstat practices to better identify patterns of criminal activity, allowing them to concentrate resources in hotspot areas for greatest impact.<sup>1</sup> Similarly, policy makers are increasingly relying on empirical evidence about what does and does not work in driving down recidivism, and are funding programs in accordance with those findings.

Today, data-informed decision-making is a fundamental component of smart defender management. Failing to use data will handicap efforts to do the most you can for your clients.

The goal of this paper is to answer basic questions of why defender leaders should collect data and what type of information should they collect. It also offers suggestions for how to collect and utilize that information. The intended audience includes managers of all types of indigent defense programs, including public defender offices, assigned counsel programs, and contract counsel programs. The paper recognizes the wide variety in size, resources and administrative capacity among defender organizations across the country. Depending on an organization's capacity, the answers to what data and how to collect them will vary somewhat. But all organizations, regardless of size, should prioritize core data collection.

This paper was prepared as part of the Justice Standards, Evaluation and Research Initiative (JSERI). JSERI is an effort by the National Legal Aid & Defender Association (NLADA), in conjunction with the North Carolina Office of Indigent Defense Services, to build the capacity of public defense agencies across the country to conduct in-house research and data analysis to improve their programs. JSERI's work includes development of defender tools and resources, provision of training and technical assistance, and developing and testing methodologies in pilot sites.

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1 CompStat, or Comstat (short for computer statistics, or comparative statistics), is a strategic management philosophy used by police to approach crime reduction. First used in New York City and replicated in jurisdictions throughout the country, CompStat is not a software package but rather a methodology for collecting, analyzing, and mapping crime data and other essential police performance measures on a regular basis.

# Why Track Data?

## Data Collection and Use Will Make You a Better Manager and a More Effective Advocate

Data make a defender manager's job easier by adding certainty and reducing guesswork. Data-informed decision-making is based on empirical information, not hunches. Regularized data collection and analysis is a practice that will help defender managers carry out their core managerial functions more effectively, assess progress in meeting organizational goals and objectives and, in turn, help improve their program's effectiveness. The collection and use of data can help defenders be more responsive to staffing issues, advocate more persuasively for budgets and resources, and produce better outcomes for clients. Performance indicators provide feedback on how well you are achieving your organizational goals. The data, or performance indicators, you track should be quantifiable measurements that reflect the critical success factors of your organization.

At their core, defenders are advocates. Data can support advocacy efforts on multiple fronts, including individual client advocacy, advocacy for your program and advocacy for criminal justice policy that is fair, just and cost-effective.

### Client Advocacy

Objective information about case activities and outcomes enhances defender managers' abilities to supervise staff and evaluate performance in order to improve client representation. Examples include case activity information, such as the nature and frequency of client contact, investigator and social worker usage, or motion practice considered in conjunction with case outcomes.

### Program Advocacy

There are many applications of data for program advocacy, chief among them budget and resource justifications. Whether making a convincing case that you serve your clients well or that you are overloaded and need more resources, you can substantiate your argument with data. Coupled with performance standards for your own program, or nationally accepted standards and principles, data on workload levels for your office are objective information that funders are better able to understand than anecdotes alone. And any effort to secure supplemental funding, such as from a foundation, will require substantiation of need. Beyond resource advocacy, data are also essential to evaluate effectiveness of any internal changes to practice, such as a pilot project.

### Policy Advocacy

Many public defenders practice in climates that are far from just or effective, and their voices are essential to the call for smarter policies. Data, coupled with first-hand observations, are necessary when advocating for changes to criminal justice system practice or policy.

# What is Data Tracking?

Data tracking is documentation: documentation of what you do for clients, and how you do it. Data tracking and analysis allow you to quantitatively measure things rather than rely on intuition to know how things are going.

What documentation should defenders collect? Defender programs should collect multiple points of information about their cases and clients. When considered with other bits of information, through comparison or statistical analysis techniques, these data points, or indicators, help paint a picture or tell a story.<sup>2</sup>

Consider the following data points about a defender program:

1. case type, caseload, case outcome

Or these:

2. client age, client gender, client race

And how about this one:

3. number of attorneys.

Any one of these data points on its own fails to tell much of a story about a defender program yet, if collected over time and viewed comparatively, can tell quite a dramatic story. Consider a fictional example of the Acme Defender Program:

***In 2012, three attorneys at the Acme Defender Program were assigned 590 juvenile delinquency cases, a workload considered acceptable according to the program's caseload standards. Late in the fiscal year, new legislation was enacted requiring defenders to represent all juveniles, whether indigent or not, at first appearance. No new resources were provided to the Acme Defenders. At a hearing for the law, the Chief Defender testified that the change would put an unmanageable burden on her office but, as one legislator said, "This body is not going to be cajoled into appropriating funds over opportunistic and unsubstantiated whining."***

***In 2013, the three juvenile defenders were assigned 740 cases. The average amount of time to dispose cases within the unit has increased to 12 weeks compared to nine weeks. One of the three defenders, who has 10 years of experience and carries a disproportionate number of cases compared to the other two, less experienced attorneys, is threatening to leave unless her workload moderates.***

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<sup>2</sup> When reading about research practices or study results, you often see the terms “indicator,” “metric,” and “measure” used interchangeably. To avoid any potential confusion in this toolkit, we will be referring to the data you need to collect (e.g., charge type, number of client phone conversations) as “data points” or “indicators.” If you come across the term “Key Performance Indicators” or “KPIs” in other toolkits or research reports, keep in mind that KPIs are simply referring to a list of the most important indicators that can be used to track performance. They are usually presented in the form of averages or percentages.

The next step, of course, would be for Acme’s Chief Defender to return to the legislature and advocate again for additional resources. This time though, armed with empirical information about consequences to clients, to the overall justice system’s efficiency and to program staffing stability, she could not be characterized as being opportunistic or whining.

### How are these Indicators Tracked?

Data points are tracked by counting, *consistently and over time*, the same information about every case you touch. To count, and make sense of those counts, you need an electronic case-tracking platform.

Today, there are commercial case management systems available for every budget, and it is not the purpose of this paper to recommend one system or another.<sup>3</sup> Invest in the best system you can afford, but keep in mind that the system is only as good as the data you actually enter and use. Avoid selecting a system that requires staff or technical support you do not have.

## What to Measure? A Suggested, Uniform Approach

To guide the JSERI work, the NLADA established a national Research and Data Analysis Advisory Committee (RDA Committee) consisting of defenders, researchers, policy experts and others who support the creation of a strong foundation for indigent defense research.<sup>4</sup> One goal of JSERI is to provide tools that increase capacity of defender agencies across the country to assess and make improvements to their programs. As part of that work, RDA Committee members set out to develop a list of key indicators, or data points, that every defender program should track. The list that follows (Figure 1) was the result of much discussion. The list is supplemented with collection rationale for each category.

The RDA Committee considers the items on the list to be essential, fundamental data points that every defender agency should track. Data on a common set of indicators will give defender agencies a reliable set of data from which they can review and assess performance over time. Another rationale for uniform data collection is the creation of a powerful source of material from which to compare performance among divisions, across offices, and from state to state. The list is not intended to be exhaustive; there are always additional data points that can be considered depending on your program’s needs.

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3 For information on what type of CMS to select, see the section, “Ways to Track, Your Case Management System,” p. 6, in *Using Data to Sustain and Improve Public Defense Programs*, by Marea Beeman, prepared for the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (August 2012).

4 See Appendix A for a list of RDA Committee members.

# DATA POINTS EVERY DEFENDER AGENCY SHOULD TRACK

NLADA Research and Data Analysis Advisory Committee

Variable	Category	Rationale
Cases Handled by the Office	<ul style="list-style-type: none"> <li>a. Number of charges                             <ul style="list-style-type: none"> <li>i. Opened</li> <li>ii. Closed</li> </ul> </li> <li>b. Charge Type                             <ul style="list-style-type: none"> <li>i. Felony</li> <li>ii. Misdemeanor</li> <li>iii. Juvenile</li> <li>iv. Dependency</li> <li>v. Other</li> </ul> </li> </ul>	Creates separate counts of cases handled according to type
Defendant Characteristics	<ul style="list-style-type: none"> <li>a. Sex</li> <li>b. Race</li> <li>c. Age</li> </ul>	Creates separate counts of clients according to distinguishing characteristics
The Process of Case Management/Case Events	<ul style="list-style-type: none"> <li>a. Was client detained or released</li> <li>b. Bail                             <ul style="list-style-type: none"> <li>i. Bail amount</li> <li>ii. Type of bail</li> </ul> </li> <li>c. Motions filed                             <ul style="list-style-type: none"> <li>i. Number of motions filed</li> <li>ii. What stage in the process filed</li> <li>iii. Was there a hearing for the motion                                     <ul style="list-style-type: none"> <li>1. Motion argument upheld/denied</li> </ul> </li> </ul> </li> <li>d. Client Contact                             <ul style="list-style-type: none"> <li>i. In Person (number of visits and total time spent)                                     <ul style="list-style-type: none"> <li>1. While detained</li> <li>2. Office visits   <ul style="list-style-type: none"> <li>a. Court</li> </ul> </li> </ul> </li> <li>ii. Phone conversations (number of times)                                     <ul style="list-style-type: none"> <li>1. While detained</li> <li>2. When released</li> </ul> </li> <li>iii. Email conversations (number of times)                                     <ul style="list-style-type: none"> <li>1. While detained</li> <li>2. When released</li> </ul> </li> </ul> </li> </ul>	Identifies the nature and quantity of case-related activities undertaken

Variable	Category	Rationale
The Process of Case Management/Case Events	<ul style="list-style-type: none"> <li>e. The use of investigators               <ul style="list-style-type: none"> <li>i. Requests made                   <ul style="list-style-type: none"> <li>a. Granted</li> <li>b. Denied</li> </ul> </li> <li>ii. Time spent on investigation</li> <li>iii. Number of witnesses contacted/interviewed                   <ul style="list-style-type: none"> <li>1. Number of times canvassed for witnesses</li> </ul> </li> <li>iv. Photographs taken</li> <li>v. Did the investigator testify</li> </ul> </li> <li>f. The use of social workers               <ul style="list-style-type: none"> <li>i. Request Made                   <ul style="list-style-type: none"> <li>1. Granted</li> <li>2. Denied</li> </ul> </li> <li>ii. Time Spent on Social Work</li> <li>iii. Did the social worker testify</li> </ul> </li> <li>g. The use of other experts</li> </ul>	
Case Disposition and Sentence	<ul style="list-style-type: none"> <li>a. Plea</li> <li>b. Dismissal               <ul style="list-style-type: none"> <li>i. Type of dismissal</li> </ul> </li> <li>c. Probation               <ul style="list-style-type: none"> <li>i. Length of probation</li> </ul> </li> <li>d. Sentence length               <ul style="list-style-type: none"> <li>i. Local sanctions or prison</li> <li>ii. Was client detained during time of conviction                   <ul style="list-style-type: none"> <li>1. Length of time prior to conviction</li> </ul> </li> </ul> </li> <li>e. Restitution</li> </ul>	Identifies client outcomes
Who Handled Case	<ul style="list-style-type: none"> <li>a. Attorney</li> <li>b. Years of experience</li> </ul>	Identifies attorney experience level

Figure 1. Data Points Every Defender Agency Should Track List

The data collected should be disaggregated<sup>5</sup> in the following categories:

1. Statewide
2. By Jurisdiction
3. By Office
4. By Attorney Type
  - a. Public Defender
  - b. Appointed Counsel
  - c. Contractor
5. By Attorney
6. By Year
7. By Quarter
8. By Month

Data from the RDA Committee’s recommended list will equip defender programs to do significant work (see “How Do I Use It” below). Ultimately, deciding exactly which data points you want to track depends on the goals and capacity of your local program. Prioritize capturing accurate data on all cases. Your office, for example, may find it does not have the capacity to record the amount of time spent by investigators or social workers on a case, but you can capture whether an investigator or social worker was engaged.

Create a plan! It is needlessly burdensome to collect data that are not utilized, or if there is no rationale for collecting them. Understand what you are trying to accomplish. Are you seeking to monitor attorney workload? Evaluate performance? Substantiate budget requests? Evaluate client charges or outcomes across demographics? Answering these basic questions informs the selection of which indicators you are going to need to track.

### *Practice Point*

Select indicators that provide feedback on how well you are achieving your organizational goals. The data, or performance indicators, you track should be quantifiable measurements that reflect the critical success factors of your organization. The mission and goals for your program are the starting point for selecting what factors you will measure.

Keep in mind: you can’t improve what you can’t measure. If one day you want to break out your data to look at how non-citizen clients fare compared to U.S. citizens, but you do not record citizenship in your database, you will not be able to do that analysis. So, as daunting as it seems, try and think big when you are first setting up your system, and record everything you practically can.

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<sup>5</sup> Aggregating refers to combining things (e.g., data points) into categories whereas disaggregating refers to separating things out into categories. “Disaggregating data” refers to the capacity to break out data for analysis using multiple variables. For example, perhaps you want to look at bail practice across a statewide indigent defense system. By tracking disaggregated data, you can determine, by region, by type of counsel and by attorney’s level of experience, the number and percentage of felony cases where the client was released pre-trial and, of those, how many and what percentage were the result of a bail hearing. To be able to disaggregate data, be sure that, for each item being counted, your case management system contains separate fields to enter each of the desired measures. See the later section on “Cross Tabulation” for visual examples of disaggregated data.

## Defenders Need to Know: How are Things Going?

Andrew Davies, Director of Research for the New York Office of Indigent Legal Services, explains that data collection, at its simplest, helps answer the most basic of queries for defender managers: how are things going for my program? Davies breaks this query into three key, interconnected areas that data will help you assess: program resources, case activity, and client outcomes.

1. **What resources exist, and are they adequate?** Basic resources that can be expressed through data include overall funding, expenditures, staff size and composition, and attorney experience level. These data should be considered in context with other important resources that speak to capacity, such as training, office equipment and tools of the trade, such as on-line legal research.
2. **Attorney activities: what work is performed?** Case-related work activities include client contact, legal research, motion practice, investigation and in-court advocacy. Again, measurements of these case-related activities can be considered in context with non-case-related activities, such as training and professional development.
3. **Client outcomes: what do you do for your clients?** Basic client outcomes include case disposition (guilt or acquittal/dismissal) while more nuanced understandings consider life outcomes, client satisfaction, or whether clients plead to charges less severe than originally charged.

Information about program resources, case activities and client outcomes, taken together, enables defender managers to manage effectively and deploy resources appropriately. Just as important, it empowers defender leaders to take action when things are not going as well as expected.

The following figure sets out a basic approach, with suggested measurement options, to compile information that will help you assess the adequacy of program resources, attorney activities and case outcomes, or the “how are things going” query. Most of the items appear on the RDA Committee’s list, but there are some differences.

Area	Measurement Options	Extras
Resources		
Budget and Expenditure	<ul style="list-style-type: none"> <li>• Annual budget, by category, by funding source(s)</li> <li>• Attorney and expert voucher payments</li> </ul>	
Workload	<ul style="list-style-type: none"> <li>• Cases assigned, cases closed, cases open (by attorney and by case type/division)</li> <li>• Number of attorneys (by case type/division)</li> <li>• Experience level of attorneys (by case type/division)</li> </ul> <p>NOTE: Count cases in the same way the local prosecutor does.</p>	<ul style="list-style-type: none"> <li>• Develop overall cost per case or by dividing budget by cases.</li> <li>• Develop overall attorney workload by dividing cases by number of attorneys.</li> </ul>

Area	Measurement Options	Extras
<b>Attorney Activity</b>	<b>Track all information by case and by attorney</b>	
Client Contact	<ul style="list-style-type: none"> <li>Number of client visits: jail, non-jail?</li> <li>Number of phone conversations</li> <li>Number of family visits</li> </ul>	
Legal Research	<ul style="list-style-type: none"> <li>Westlaw/Lexis time records</li> </ul>	
Motion Practice	<ul style="list-style-type: none"> <li>Number and type of motions filed</li> </ul>	
Social Worker	<ul style="list-style-type: none"> <li>Requested?</li> <li>Granted/Used?</li> </ul>	
Investigator	<ul style="list-style-type: none"> <li>Requested?</li> <li>Granted/Used?</li> </ul>	
Expert	<ul style="list-style-type: none"> <li>Requested?</li> <li>Granted/Used?</li> <li>Type of expert</li> </ul>	
Procedure	<ul style="list-style-type: none"> <li>Trial, Plea, Deferred Sentence</li> </ul>	
<b>Case Outcomes</b>	<b>Track all information by case and by attorney</b>	
Pre-trial Status	<ul style="list-style-type: none"> <li>Detained</li> <li>Released</li> </ul>	
Disposition	<ul style="list-style-type: none"> <li>Guilty, Not Guilty, Nolle Prose, Deferral</li> </ul>	
Sentencing	<ul style="list-style-type: none"> <li>Incarceration, probation, fines</li> <li>Plea to reduced charge vs. sentence for original top charge</li> </ul>	<ul style="list-style-type: none"> <li>Sentence specifics (length, fine amount)</li> <li>Drug or specialty court?</li> </ul>
Client Outcome	<ul style="list-style-type: none"> <li>Employment before &amp; after case; housing situation; recidivism within 3 years</li> </ul>	

Figure 2. “How are Things Going?” Data Elements

### A Special Point about Counting Cases

It is important that you develop and apply a standard definition of a “case” to your case tracking system. This will enable you to accurately analyze the volume of work handled and outcomes across and among case types without artificially inflating or under-counting effort. The North Carolina Systems Evaluation Project (NCSEP) Toolkit on Defining a Case and Assigning a CaseID explains that, “In order to identify what happened to the defendant, we need to identify ‘cases,’ e.g., the number and type of charges the defendant faced, the number and type of charges he was convicted of, and the sentence he received for those convictions.”<sup>6</sup> Keep in mind, however, that in order to do meaningful, comparative justice system

<sup>6</sup> See p. 3, North Carolina Office of Indigent Defense Services Systems Evaluation Project Toolkit, “Defining a Case and Assigning a CaseID.” Is there a cite for this? How to access it?

workload analysis of your particular jurisdiction, it is important that the local courts, public defender and prosecutor count cases uniformly.

If the prosecutor tracks cases by the number of charges in a single case filing, and your office just counts a filing - regardless of the number of charges it contains - as one case, your case counts will appear artificially low in a side-by-side comparison of cases handled. Similarly, some courts assign unique docket numbers to each charge that arises from a single incident. You need to be aware of the counting methods used by the court and prosecutor in your jurisdiction. Depending on the different approaches used, you may well want to record several identifiers for each case, such as your office's case identifier number, court docket number(s), and indictment number.

Which definition of "case" should you use? Ultimately, this will depend on various factors such as local practice and your CMS capabilities. The NCSEP toolkit contains a detailed method of identifying and tracking a case. A benefit of using that method is the ability to compare public defender office workload and outcomes with any office in the country that also uses the NCSEP method. However, the method may be impossible to adopt in jurisdictions lacking comparable information from the court or if the public defender's CMS program cannot accommodate the data sought.<sup>7</sup> In that case, the definition of "case" used by the National Center for State Courts, "all charges against an individual defendant arising out of a single incident," is a good model to consider.<sup>8</sup>

## Tracking Time

One significant item should be added to the list of key data points identified by the RDA Committee. All indigent defense providers, including public defenders, should track their time.

Every public defender has heard some version of, "I became a public defender because I care deeply about representing my clients. I may earn less than attorneys in private practice but I get to do what I love and I don't have to be bothered with tracking my time."

Unfortunately, public defenders who do not track their time are putting at risk their ability to effectively represent their clients. Being uninformed about a) how much time they put into handling cases and b) whether that time is adequate is potentially very damaging for a defender agency. Defenders are often asked to do more with no additional resources and, without time records that tie into caseload standards, they have no substantiation of how the inevitable corner cutting impacts their clients.

National standards on the amount of time it takes to effectively handle particular case types do not exist. However, a number of public defender agencies have participated in time studies to develop workload standards for their programs. One recent study in Missouri used a two-part methodology that combined defender time tracking with a "Delphi method" review of time study findings.<sup>9</sup> As of March 1, 2013, daily time entry of all case and non-case-related activity became a mandatory requirement for all Missouri State

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7 For example, NCSEP's case tracking method is able to identify criminal cases that have an associated probation violation case because the North Carolina court system's database adds subsequent probation violation charges under the docket number of the original criminal charge. That is also the approach used by the North Carolina indigent defense system CMS.

8 See p. 13, "State Court Guide to Statistical Reporting, v.2.0", National Center for State Courts (March 2014), <http://www.courtstatistics.org/other-pages/publications/~//media/microsites/files/csp/state%20court%20guide%20to%20statistical%20reporting%20v%202.ashx>

9 The Delphi method is a structured communication technique, originally developed as a systematic, interactive forecasting method relying on a panel of experts. The name "Delphi" derives from the Oracle of Delphi. The technique was developed during the Cold War to forecast the impact of technology on warfare. For more explanation see [http://en.wikipedia.org/wiki/Delphi\\_method](http://en.wikipedia.org/wiki/Delphi_method)

Public Defender (MSPD) practitioners. The study collected 25 weeks of those time entries and produced a baseline reflecting the average amount of time defenders put into various types of cases. Researchers then surveyed MSPD practitioners to identify which case-related tasks they felt they often had insufficient time to perform, based on current practices and staffing levels. A panel of experienced private practitioners and public defenders, through a professionally facilitated Delphi method process, then determined the amount of time that should be allotted for those tasks that MSPD attorneys identified as getting short shrift. That time was added to the baseline data to establish final workload standards for the Missouri system.<sup>10</sup>

The resulting study has been an important tool used by the Missouri State Public Defender, which has struggled with inadequate resources for many years. In 2008, the Public Defender Commission enacted an administrative rule requiring that it “maintain a caseload standards protocol identifying the maximum caseload each district office can be assigned without compromising effective representation.”<sup>11</sup> If any district office exceeds that maximum caseload level for three consecutive months, the rule allows the State Public Defender to restrict that district office’s availability to accept additional cases by filing a certification of limited availability with the presiding circuit judge or chief appellate judge of the affected court. The legislature has yet to fully staff the public defender system in line with the workload standards but a Missouri Supreme Court opinion endorsed the use of the case limitation process.<sup>12</sup>

Director of the Missouri State Public Defender, Cat Kelly, says that despite discouraging budget results, she still believes defender time-keeping is necessary. “The arc of criminal justice policy is bending toward evidence-based decision-making and public defenders aren’t exempt from that. Even as we argue for its use in other areas, we have to be prepared to produce the evidence to back up our own workload anecdotes as well.”

The caseload standards from the time study help substantiate the need for periodic caseload limitation requests and for continued budget advocacy.

## How Do I Collect Data?

In order to know what is happening to your clients in your cases, you need information on every single case. This is called ‘case-level’ data. It needs to be organized electronically. There is no shortcut to this – even though your ultimate analysis will involve aggregating these data, you must have this case-level info to do the analysis. You need:

- A computer
- Case management system (CMS)
- Training
- Administrative support
- IT support

Explore the possibility of data integration with local systems – for example, will the courts allow you to upload case data from them, in order to populate your CMS? This can save you time on case entry but requires a big investment in infrastructure.

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10 See “The Missouri Project: A Study of the Missouri Defender System and Attorney Workload Standards,” January 2014, [http://www.americanbar.org/content/dam/aba/events/legal\\_aid\\_indigent\\_defendants/2014/ls\\_sclaid\\_5c\\_the\\_missouri\\_project\\_report.authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/events/legal_aid_indigent_defendants/2014/ls_sclaid_5c_the_missouri_project_report.authcheckdam.pdf)

11 <https://www.sos.mo.gov/adrules/csr/current/18csr/18c10-4.pdf>

12 STATE EX REL. MISSOURI PUBLIC DEFENDER COMM’N. v. Pratte, 298 S.W.3d 870 (Mo. 2009)

The primary source for case information is individual case files. For assigned counsel, vouchers will contain additional key information on time and billing. The CMS you use - whether it is a sophisticated software package custom-made made for your office, or a series of Excel spreadsheets – is only as good as the data you capture.

Data are most valuable when they are in the aggregate, are complete and accurate, and span a period of time in which patterns can be detected, such as a year.

Collecting the same information for each case is crucial. Most defender offices are accustomed to capturing client name and demographic information to perform a conflict check, and noting attorney assignment. Over the life of a case, there can be less fidelity to capturing complete data points. A harried public defender who is responsible for entering information on case activities and final disposition may not remember to do so for each case. Defender leaders must develop a system where clear expectations of data management are set and understood to be factors in performance assessment. In the case of contract or assigned counsel, payment can be made contingent on receipt of data.

## How Do I Use Data?

The payoff for your efforts to faithfully and accurately collect data is the rich source of information you can now tap. You can use data in many ways and for many purposes once you have them. As “Using Data to Sustain and Improve Public Defense Programs” noted, there are internal and external uses of defender agency data. Some of the internal uses of data include:

- Conduct intake and perform conflict checks
- Continuously monitor and manage workload across staff
- Track outcomes: acquittals, sentences, deferrals, etc.
- Document exactly what is done for clients – contacts made, motions filed, use of experts, etc. – to protect the record in case of appeal
- Develop and apply workload standards and case weights
- Track attorney time, as well as that of other case-handlers, including investigators and social workers
- Manage with clear expectations and performance measures.

Externally, defense agencies need data to demonstrate the need for and value of their services to funders and to respond to legislation or other proposed initiatives that could affect the quality or availability of representation.<sup>13</sup>

More concrete examples include:

- If you have data on bail amounts and believe that a reform in a certain court has had the impact of increasing offers of personal recognizance or partially secured bail bonds– **cross tabulate** bail amounts by cases before the reform and cases after. For instance, select five of the most common felony case types and examine bail results (personal recognizance, partially secured bail bond, bail, no bail) in the cases before and after a jurisdiction introduces the practice of conducting pre-trial risk assessments prior to determination of bail.
- If you have data on time spent in jail and believe that cases where you meet clients earlier result in fewer pretrial incarceration days, divide cases into categories based on how early you meet the client, and

13 Beeman supra note 3.

cross-tabulate with time spent in jail.

- If you have time data on attorney-client contact, and are concerned that certain attorneys are doing less than others, simply run the averages for attorney-client contact by attorney name. See Table 1 for a simple example.

### Attorney-Client Contact Analysis

	Average Time Per Case of Client Contact (in hours)			
Attorney	In-Person Meetings	Phone Conversations	Email Conversations	TOTAL
Jane	1	1	0.5	2.5
Bill	2	1	1	4
Raj	3	1	0.5	4.5
Janet	4	1.5	1	6.5
Tom	1	0.5	0.5	2
Average Hours	2.2	1	0.7	3.9

Table 1. Attorney-Client Contact Analysis

Assuming all five attorneys handle the same workload and case types, with an overall client contact average of 3.9 hours per case, a supervisor may want to speak with Tom, Jane and Janet to understand more about their client contact practice, as all three stray from the average.

The basic method to any analysis is:

- Aggregate the relevant factor across all cases.
- Think about how to cross-tabulate them.

## Cross Tabulation

What is cross tabulation? Cross tabulation is a tool that allows you to compare the relationship between two or more categorical variables. A categorical variable is a measure whose values are non-numerical and mutually exclusive. Gender is a categorical variable with the categories male and female. Other examples of categorical variables include primary color (with categories red, yellow, blue) or case type (with categories felony, misdemeanor, juvenile delinquency).

A cross-tabulation (or cross-tab for short) is a display of data that shows how many instances each category of one variable are divided among the categories of one or more additional variables. In a cross-tab, a cell is a combination of two or more characteristics, one from each variable.<sup>14</sup>

The follow examples illustrate two views of the same (completely fictitious) data set, entered into an Excel workbook. Table 2 displays raw data on defendants, including their home state, month of arrest and length of pre-trial detention. Table 3 compiles the data into a cross-tab pivot table. The table disaggregates the raw data by state and by month and calculates average length of stay for each.

The following examples illustrate two views of the same (completely fictitious) data set, entered into an Excel workbook. Table 2 displays raw data on defendants, including their home state, month of arrest and length of pre-trial detention. Table 3 compiles the data into a cross-tab pivot table. The table disaggregates

14 See [http://sociology.about.com/od/C\\_Index/g/Cross-tabulation.htm](http://sociology.about.com/od/C_Index/g/Cross-tabulation.htm)

the raw data by state and by month and calculates average length of stay for each.

### Raw Data on Defendants by State, Month of Arrest and Length of Pre-Trial Detention

Defendant	State	Arrest Month	Length of Stay (Days)
1011	Alabama	June	10
1012	Texas	June	8
1013	Texas	June	12
1014	Idaho	June	18
1015	Virginia	June	20
1016	Virginia	June	19
1017	Texas	June	10
1018	Virginia	June	25
1019	Virginia	June	4
1020	Texas	June	21
1021	Alabama	June	32
1022	Alabama	July	11
1023	Virginia	July	17
1024	Texas	July	17
1025	Texas	August	10
1026	Alabama	August	22
1027	Virginia	August	11
1028	Texas	August	9
1029	Virginia	August	9
1030	Idaho	August	8

Table 2. Raw Data on Defendants by State, Month of Arrest and Length of Pre-Trial Detention

### Average Length of Defendant Stay Pre-Trial, by State and Month

Row Labels	Average of Length of Stay (Days)
Alabama	18.75
June	21.00
July	11.00
August	22.00
Idaho	13.00
June	18.00
August	8.00
Texas	12.43
June	12.75
July	17.00
August	9.50

Row Labels	Average of Length of Stay (Days)
Virginia	15.00
June	17.00
July	17.00
August	10.00
<b>Overall Average</b>	<b>14.65</b>

Table 3. Pivot Table, Average Length of Defendant Stay Pre-Trial, by State and Month

### *Practice Point*

After you determine which measures to track based on your program's needs, you should systematize your processes for collecting them and for producing the reports you want. You will likely need a combination of weekly, monthly, quarterly and annual runs of your data, depending on their various uses. For example, line supervisors need more frequent reports on open caseload to monitor workload, while the chief defender needs annual figures to support budget requests.

### Keep Your Staff Plugged In

It is important to communicate your metrics to employees. Metrics related to performance evaluations, such as the number of trials conducted before promotion to another division is permitted, of course must be shared. But other information is good to share, too. The analysis you present to the legislature about workload trends, or about findings from special projects, concerns the entire staff. Sharing it with them helps build a culture that data matter. And when the metrics show improvement, share that success with everyone.

### Make it Visual

Any CMS, including an Excel workbook, will offer ways to display your aggregate data in tables, charts or graphs. Take time to consider the most effective way to convey data to your target audience(s). Legislators appreciate simple graphics that tell a story without having to wade through columns of numbers. RDA Committee members joke that, "Every picture is worth a thousand data points." Use pie charts, line charts, and other graphs to quickly, easily, and visually communicate your metrics. The following example (Figure 3) shows how different formats – two types of bar graphs and a pie chart – displaying aspects of public defender caseload in South Carolina make it easy to digest data.

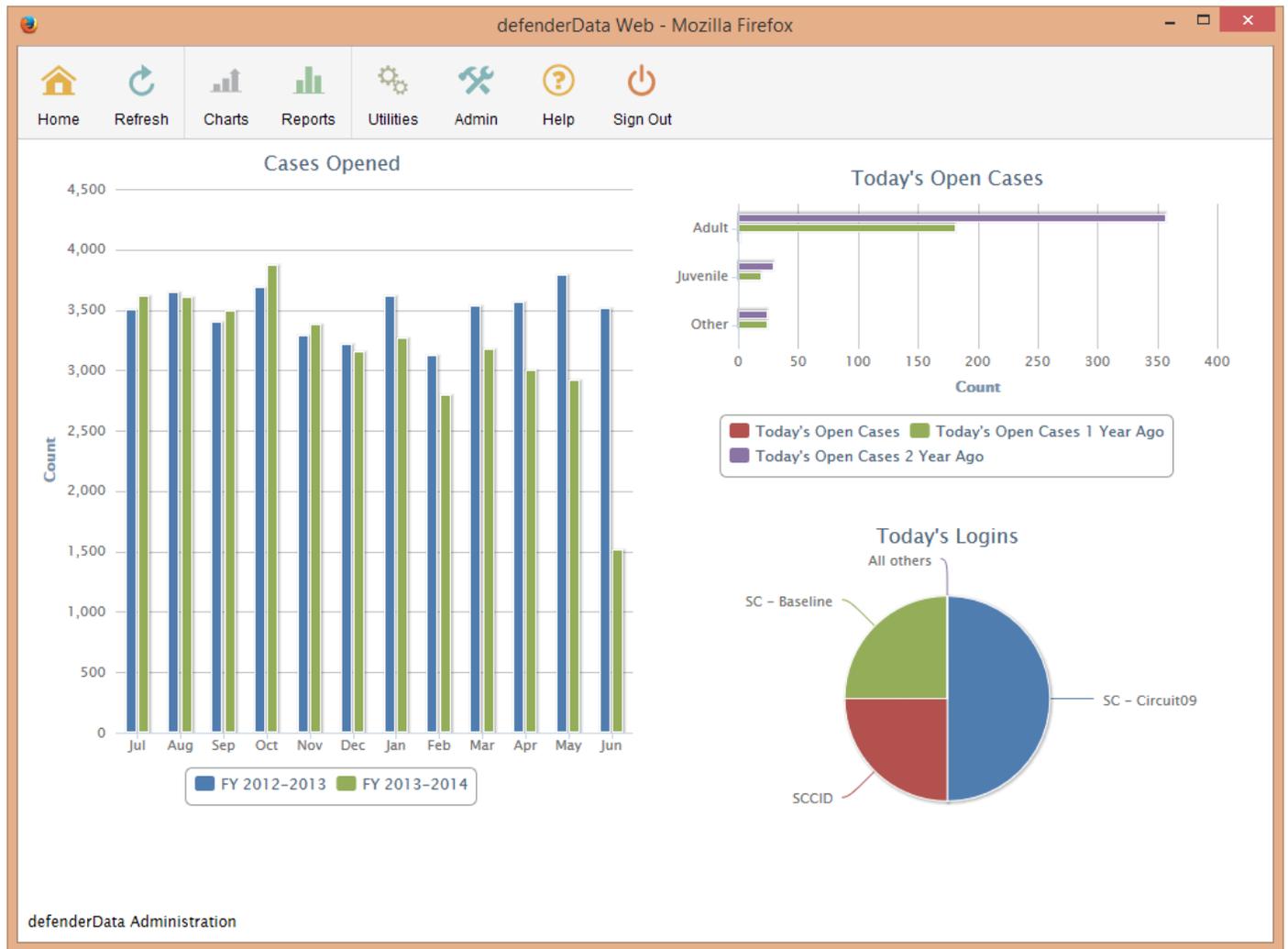


Figure 3. Examples of public defender activity from the South Carolina Office of Indigent Defense's defenderData<sup>®</sup> case management system

## Consider Engaging Professional Researchers

Occasionally what you want to know can out-strip your in-house research capacity. For instance, if you are doing any kind of comparison (for example, results before and after a program was introduced, or comparing outcomes for clients who received a service to those who did not), are you sure the comparison is fair? That is, is there anything else different between the two groups that might account for the differences you think you are seeing? If so – consult a researcher. You may need to use statistical controls.

Researchers, particularly those at university doctoral programs, are thirsty for data sets where they can put their skills to work. Reach out to a university to see if, in exchange for sharing your data, they will conduct more advanced analysis than you are capable of in-house.

Another scenario when consulting a researcher might be of benefit is if you are arguing that two things are related but you cannot be entirely sure. For example, if you see that when your attorneys investigate more, clients get better outcomes, ask yourself if you have thought of all the other possible explanations for why that apparent relationship might exist. If you suspect there might be something else going on but you are not sure how to tell, contact a researcher. Finally, are you wondering if a program saves money? Economic researchers can help think through all the costs and benefits the program produces, and quantify them.

## One Program's Story

In South Carolina, lawmakers in 2007 created a unified, statewide public defender system, which replaced a disparate, county-based system of nonprofit defender agencies. Funding comes from a combination of state and county funds. Instead of 39 individual county programs providing trial level representation, there are now 16 circuit defenders. Policy is set by the South Carolina Commission on Indigent Defense, and administrative oversight is provided by the Office of Indigent Defense (OID). Among other things, OID, which is led by Executive Director Patton Adams, oversees a central reporting system for the accurate compilation of statistical data in the delivery of indigent defense services. Since shifting to a uniform system, overall state funding has increased dramatically, largely because of improved documentation of resource needs.

Prior to the shift to a unified system, Adams began implementing a CMS that would be used by all indigent defense providers in the state, but until 2007 he had no authority to enforce data collection efforts. He struggled to get accurate data from individual defender agencies and assigned counsel. Some defender agencies did not track data at all, while others had manual systems; one system consisted of 3" x 5" index cards. Some counties flat out failed to respond to requests for data; others supplied guesstimates. This completely unreliable picture of defender activity was a major issue in annual budget requests. With a budget process that is based on the number of cases handled, Adams admits, they lost funding over the inability to provide accurate data.

The Chief Justice understood the need for complete data, and issued a Supreme Court Administrative Order that mandates two things: all indigent defense attorneys, whether assigned counsel or public defender programs, must enter new cases into the CMS within 15 days from appointment and they must report final case outcomes.<sup>15</sup> For assigned counsel, payment will not be made without this information. Acknowledging there is a cost involved with careful data collection, Adams reimbursed providers who submitted data in the uniform fashion he sought on a per-case basis.

Meanwhile, work continued to refine the case management systems used by defender programs and assigned counsel. Today, public defenders enter data into a cloud-based case management system called defenderData®, created by the Salt Lake City, Utah-based company, Justice Works. Assigned counsel enter data into a system called Voucher Data, developed by indigent defense data systems consultant David Newhouse. South Carolina now has a statewide, web-based case management system tailored to its practice. It collects case activity information favored by Circuit Defenders to manage local practice, plus data that are needed to assess and report on statewide activity, including caseload, cost per case, cost per capita, use and cost of experts, and case outcome data, all broken out by county, circuit or statewide and between public defenders and assigned counsel. Appendix B contains screen shots from the Voucher Data and defenderData® programs.

Adams found that as all reporting on indigent defense activities and expenses migrated from dozens of disparate reports to the two case management systems, legislators went from having no confidence in South Carolina's public defender operation to "absolute confidence." Centralized collection of uniform data enabled the OID to:

- Monitor assigned counsel, investigator and expert witness billing for accuracy and abuses
- Facilitate payment on vouchers within 48 hours rather than the previous two–three months' average
- Track average expert witness costs by type of expert
- Identify concentration of crimes by area (much like CompStat for policing).

15 <http://www.judicial.state.sc.us/whatsnew/displaywhatsnew.cfm?indexID=350>

Benefits to public defender programs from the defenderData® program include:

- Access to an office-wide, shared calendar
- Automated document assembly
- Ability to communicate with colleagues through a secure system, rather than through email
- Easier case management and work allocation for supervisors.

As one who went from having no reliable data to having a very capable data collection system, Adams is sympathetic to those just starting out. Still, he encourages defenders to make the investment in time and effort. It does not have to cost an arm and a leg to start tracking the basics: type of case, numbers of cases and charges, number of attorneys and funding.

Adams says “the human element” is the biggest challenge to collecting complete and accurate data. Running up to the close of the fiscal year, there is still an annual push from OID to get local offices to enter all of their cases into the system. All public defender trainings reinforce the need to enter complete and consistent data. Adams says, “It’s taken a while, but most defenders are pretty much getting it.”

## Conclusion

The benefits of data collection outweigh the burdens. If you do not already have a data tracking system in place, get started. Even the most basic data sets, such as caseload and client contact, are most valuable considered in the aggregate, over a period of time. The longer you put it off, the farther away you remain from having that tool. Some things to keep in mind:

- To make informed analysis of their program, public defender, assigned counsel and contract counsel agencies should collect as much information as possible. Shoot for the sky, but do what you can.
- Be systematic: collect accurate, complete data.
- Budget for data collection and analysis: both staff and equipment.
- Use a carrot and stick approach: make assigned counsel or contract defender funding contingent on reporting or insist that defender time tracking is an expected attorney responsibility.
- Offer initial and ongoing training to staff to ensure uniformity in data collection.

If you have questions about how to get started, reach out for advice. Contact information for resources mentioned in this paper, such as the Justice Standards, Evaluation and Research Initiative (JSERI), appear in the following section of the paper.

# Resources Mentioned

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Carl Richey  
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Justice Standards, Evaluation and Research Initiative (JSERI)  
TA@nlada.org

“The Missouri Project: A Study of the Missouri Defender System and Attorney Workload Standards,” prepared by Rubin Brown on behalf of the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (January 2014)

“Using Data to Sustain and Improve Public Defense Programs,” prepared by Marea Beeman on behalf of the American Bar Association’s Standing Committee on Legal Aid and Indigent Defendants (August 2012)

# Appendix A

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# Appendix B

## Examples from South Carolina Office of Indigent Defense's Case Management Systems for Assigned Counsel and Public Defenders

The first three images below are examples of entry screens for assigned counsel when registering a case using the Voucher Data case management system. The fourth image, also from Voucher Data, is an example of a report showing the total amounts paid per fiscal year for both assigned counsel and public defenders. The fifth and final image is a screen shot from the public defender office case management system, defenderData®.

### Register a Criminal, PCR, SVP Case [View Tutorial](#)

#### Criminal, PCR, SVP Case Registration for Ryan Cole

\* indicates a required field

A case will not be considered as registered until all required information below has been provided.

**Attorneys Appointed under SCACR 608 are eligible for professional liability coverage through the SC Bar. You must notify the SC Bar of your appointment to obtain coverage. To comply with requirements of the carrier, please complete the Direct Intake form and return with a copy of the Order of Appointment to the Pro Bono Program within 72 hours of the appointment. Please contact Rose Dean at 803-799-6653 Ext.164 for further information.**

#### Attorney Information [View Tutorial](#)

Date of Appointment*	01	01	2014
County of Appointment*	Select County		
Appointing Judge*	Choose the Judge		

[Don't see your judge?](#)

I am providing these services free of charge (Pro Bono).\* (Amendable)

Yes  No

I am replacing a previously appointed attorney in this case.\*

Yes  No

If yes, provide the name of the attorney you are replacing.

This includes a probation violation from another case\*:

Yes  No

## Your Case Information [View Tutorial](#)

Case Name*	<input type="text"/>
Case Type*	Select Case Type <input type="button" value="v"/>
608 Contract Case*	No <input type="button" value="v"/>
County of Indictment*	Select County <input type="button" value="v"/>
Court Type*	<input type="button" value="v"/>

### List all Docket, Indictment, Warrant, and Ticket numbers.

Note: You must enter a correct docket, indictment, warrant, or ticket number with it's associated CDR number to register this case.

Docket number example: 2006-GS-34-00056(A)

Docket #	<input type="text"/> - <input type="text"/> - <input type="text"/> - <input type="text"/> <input type="button" value="v"/>
Indictment #	<input type="text"/> - <input type="text"/> - <input type="text"/> - <input type="text"/> <input type="button" value="v"/>
Warrant #	<input type="text"/>
Ticket #	<input type="text"/>
CDR #	<input type="text"/>

The offense CDR code section has been upgraded. You will now be able to search using any part of the offense's text. All **Active** charges are now available. If your offense is not available, please e-mail Ryan Cole at [rcole@sccid.sc.gov](mailto:rcole@sccid.sc.gov).

[See full CDR list](#)

If you do not find your CDR# in the list above, click here to see the entire CDR list of offenses.

If you have multiple case numbers, Click Here to add them.

[Add Another Case Number](#)

## Your Client's Information [View Tutorial](#)

Client's First Name*	<input type="text"/>
Middle Initial	<input type="text"/>
Last Name*	<input type="text"/>
Date of Birth*	<input type="button" value="01"/> <input type="button" value="01"/> <input type="button" value="2014"/> <input type="button" value="v"/>
Gender*	<input type="radio"/> Male <input type="radio"/> Female
Defendant Race	Select <input type="button" value="v"/>
Victim Race	Select <input type="button" value="v"/>
Permanent Residential Address*	<input type="text"/>
Add. Address Info.	<input type="text"/>
City*	<input type="text"/>
State*	South Carolina <input type="button" value="v"/>
Zip Code*	<input type="text"/>

[Add Another Client](#)

[Register the Case](#)

You must register the case to submit a Voucher

[Return to My Cases](#)

Any changes will be discarded. If you wish to save your changes, click Register the Case above.

status		(Multiple Items)					
Sum of VoucherTotalPaid		FYPaid					
userTYPE	case_type2	2010	2011	2012	2013	2014	Pending
Attorney	Civil	\$ 1,487,748.32	\$ 50,169.07	\$ 1,677,068.69	\$ 2,256,859.23	\$ 3,487,531.29	\$ 21,200.00
	Attorney (userTYPE) hal	\$ 1,794,928.68	\$ 1,769,122.85	\$ 2,019,080.45	\$ 3,243,760.14	\$ 4,509,183.40	\$ 900.00
	Row: Attorney						
	lony (Capital) Conviction	\$ 4,970.00	\$ 5,440.00	\$ 3,459.00			
	(A) Juvenile Conviction (JU)				\$ 70.00		
	(A) Misdemeanor Conviction				\$ 900.00		
	Capital	\$ 1,694,465.42	\$ 1,679,051.42	\$ 2,003,823.50	\$ 2,004,239.14	\$ 1,130,601.90	
	PCR	\$ 398,825.58	\$ 37,462.59	\$ 377,148.03	\$ 491,310.48	\$ 754,925.83	\$ -
	(A) SVP	\$ 1,323.55					
	GAL	\$ 58,448.35	\$ 257.50	\$ 11,218.00	\$ 2,205.00		
	Probate Commitment			\$ 2,055.00			
<b>Attorney Total</b>		<b>\$ 5,440,709.90</b>	<b>\$ 3,541,503.43</b>	<b>\$ 6,093,852.67</b>	<b>\$ 7,999,343.99</b>	<b>\$ 9,882,242.42</b>	<b>\$ 22,100.00</b>
Public Defender	Criminal	\$ 680,577.12	\$ 629,232.74	\$ 480,808.45	\$ 855,167.62	\$ 847,523.04	
	(A) Adult Probation Violation - Misdemeanor				\$ 900.00		
	Capital	\$ 219,632.99	\$ 147,011.61	\$ 144,780.18	\$ 115,921.85	\$ 111,929.35	
	PCR					\$ 35.75	
<b>Public Defender Total</b>		<b>\$ 900,210.11</b>	<b>\$ 776,244.35</b>	<b>\$ 625,588.63</b>	<b>\$ 971,989.47</b>	<b>\$ 959,488.14</b>	
<b>Grand Total</b>		<b>\$ 6,340,920.01</b>	<b>\$ 4,317,747.78</b>	<b>\$ 6,719,441.30</b>	<b>\$ 8,971,333.46</b>	<b>\$ 10,841,730.56</b>	<b>\$ 22,100.00</b>

defenderData Web - Mozilla Firefox
Home Refresh Search New Case

Save/Exit Save Add Copy Delete Print
Help

#	Charge	Ticket	Indictment
2 )	Malicious / Malicious injury, personal, real prop., more than \$200 (no longer used)(see 0416, 0110 (16-11-0520)	I203892	Indictment #
<b>99A11-00001140</b>			
1 )	Burglary / Burglary (After June 20, 1985) - First degree	I204150	Indictment #
<b>99J08-00000009</b>			
1 )	Assault / Simple common law assault, no battery	08-JU-32-13	Indictment #
<b>99J07-00000195</b>			
1 )	Probation / violation of terms of probation, parole or other supervisory program (not used for I	07-JU-32-156	Indictment #
<div style="display: flex; justify-content: space-between;"> <span>3329 (24-21-0450; 24-21-0680; 24-...)</span> <span>07-JU-32-156</span> <span>Indictment #</span> </div> <div style="display: flex; justify-content: space-between; margin-top: 5px;"> <div> <p>Indictment Date: <input type="text"/></p> <p>Subseq. Arrest: <input type="text"/></p> <p>Appointed By: <input type="text" value="Clerk"/></p> <p>Appointed As: <input type="text"/></p> <p>Appointed Date: <input type="text"/></p> <p>Incident Date: <input type="text"/></p> <p>In Custody: <input type="checkbox"/></p> <p>Bond Type: <input type="text"/></p> </div> <div> <p>Appeal: <input type="checkbox"/></p> <p>Capital: <input type="checkbox"/></p> <p>LWOP: <input type="checkbox"/></p> <p>Disposition Charge: <input type="text"/></p> <p>Disposition: <input type="text"/></p> <p>Sentence: <input type="text"/></p> <p>Sentence Note: <input type="text"/></p> </div> </div>			

**Katrina Antonio Cardenas**

06/09/1992 (22)  
999-01-2033

All (5) Open (0) Closed (5)

**99A11-00001110**

Assault 07/22/2011  
General Sessions I204085  
Lawson, Jodonnah Mayberry  
Plea/Charged - Bargain

**99A11-00000212**

Malicious 02/08/2011  
General Sessions I203875  
Lawson, Jodonnah Mayberry  
Plea/Charged - Bargain

**99A11-00001140**

Burglary 09/12/2011  
General Sessions I204150  
Lawson, Jodonnah Mayberry  
Plea/Lesser

**99J08-00000009**

Assault 01/16/2008  
Juvenile/Family 08-JU-32-13  
Lawson, Jodonnah Mayberry  
Closed Case

**99J07-00000195**

Probation 12/03/2007  
Juvenile/Family 07-JU-32-156  
Lawson, Jodonnah Mayberry  
Closed Case

Add Notes

Case Charges Schedule Time Ticklers People Notes Documents



# Attachment 5

June 2016: PDSC Compliance with Commission Best Practices

1. Executive Director's performance expectations are current. **ED Position Description last updated April 2011; still current.**
2. Executive Director receives annual performance feedback. **Nancy Cozine's evaluation began December 2015; completed March 2016.**
3. The agency's mission and high-level goals are current and applicable. **The mission and high-level goals are reviewed annually for the Annual Performance Progress Report and the agency adopted new KPMs in July 2015. Commission members also received the Executive Director's 2015 Annual Report which addresses the current goals of the agency and includes a progress report on efforts to achieve those goals. The PDSC is concluding an extensive strategic planning process that began in October 2015 and will conclude in July 2016.**
4. The board reviews the *Annual Performance Progress Report*. **The Annual Performance Progress Report is due in September each year. The Commission reviewed the 2015 report in September 2015, and will review the 2016 at the September 2016 PDSC meeting.**
5. The board is appropriately involved in review of agency's key communications. **The Commission is asked to review and approve key agency documents - the agency's biennial budget proposal, Emergency Board submissions, requests for proposals, proposed contracts, rule and policy changes.**
6. The board is appropriately involved in policy-making activities. **The Commission is the policy making body for the agency. Its policy making responsibilities are set forth in statute. Its strategic plan establishes the goals and strategies the agency follows in pursuing its mission.**
7. The agency's policy option packages are aligned with their mission and goals. **PDSC's mission is to establish and maintain a public defense system that ensures the provision of public defense services in the most cost-efficient manner consistent with the Oregon Constitution, the United States Constitution and Oregon and national standards of justice. All of the agency's policy option packages have been directed at achieving that mission.**
8. The board reviews all proposed budgets. **The Commission reviewed the agency's proposed 2015-17 policy option packages at its June 19, 2014, meeting, and approved the 2015-17 agency request budget at its September 2014 meeting; the Commission will review proposed policy option packages for 2017-19 in June 2016 and will approve the final budget proposal in the fall of 2016.**
9. The board periodically reviews key financial information and audit findings. **Throughout the course of the year the Commission receives periodic updates on budget developments and the agency's expenditure of funds. The results of all reviews are presented to the Commission when they occur.**
10. The board is appropriately accounting for resources. **The Commission approves a budget proposal for the agency that is then presented to the Legislative Assembly. The Legislative Assembly ultimately passes budgets for CBS, AD and the Public Defense Services Account. Funds are expended in accordance with budget requirements and in some biennia, interim reports are prepared for the Emergency Board and the Interim Ways and Means Committee. Copies of**

**these documents are provided to the Commission. During the course of the biennium, OPDS management reports to the Commission regarding use of budgeted funds.**

11. The agency adheres to accounting rules and other relevant financial controls. **The agency has been awarded the State Controller's Gold Star Certificate for achieving statewide accounting goals and excellence in financial reporting for each fiscal year since the agency was created.**
12. Board members act in accordance with their roles as public representatives. **The Commission meets 8-10 times a year. The attendance and involvement in Commission business demonstrated by the Commissioners shows their strong commitment to public service. Meetings held around the state in conjunction with service delivery reviews often provide stakeholders their first contact with the agency. Commission members are careful to make a distinction between their role as Commissioners and their other roles.**
13. The board coordinates with others where responsibilities and interests overlap. **The Chief Justice's role on the commission and in selecting other members of the commission permits coordination with the Oregon Judicial Department. Public defense providers are consulted on a regular basis through the Public Defense Advisory Group, and the Commission has made them welcome at all of its meetings, has invited them to participate actively in those meetings and to provide input on a regular basis to the decisions made by the PDSC. The Commission coordinates with OCDLA to provide training, to receive feedback, and to research insurance and health care coverage for providers.**
14. The board members identify and attend appropriate training sessions. **The agency's General Counsel provides periodic training sessions for Commission members, related to changes in criminal or juvenile law, public meetings laws, and public records laws. In 2015, Commission members received a Commission member handbook, which compiles training and practical information for Commission members in one centralized location.**
15. The board reviews its management practices to ensure best practices are utilized. **This self-assessment is the Commission's review of its practices.**
16. Others. **The Commission may wish to define additional best practices for itself but to date has not added any additional standards.**

# Attachment 6

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

TRIAL LEVEL PUBLIC DEFENSE PROVIDER POLICY OPTION PACKAGES				
			Cost Detail	Total POP
1	Parent & Child Representation Program (PCRP) Expansion			\$35,945,246
		Phase 1: approximately 33% of caseload	\$10,648,893	
		Phase 2: approximately 29% of caseload	\$10,594,715	
		Phase 3: approximately 38% of caseload	\$13,915,338	
	PCRP OPDS Staffing	3.0 FTE PCRP Attorney Managers	\$786,300	
2	Public Defense Contractor Parity			\$34,466,892
	Contractor Parity with DAs*	Contractor Rate Increases	\$19,769,176	
	Increased Hourly Rates	Increase in rates for hourly paid Attorneys, Investigators & Mitigators		
		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 Attorneys; \$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
4	Professional Services Account Budget Shortfall			\$3,500,000
<b>Total Trial Level Request:</b>				<b>\$75,362,938</b>

OPDS POLICY OPTION PACKAGES				
			Cost Detail	Estimated Total Cost
5	Employee Compensation ORS 151.216	OPDS agencywide parity with other state agencies		\$1,989,990
6	PCRP Staffing & Quality Assurance			\$808,099
	PCRP 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	
<b>Total OPDS Request:</b>				<b>\$2,798,089</b>

**Agencywide Policy Option Package Requests: \$78,161,027**

\* Funding POP #1 (PCRP expansion) will reduce the amount needed for POP #2 parity in the new PCRP counties.  
 Contract entities in the following counties may not have met criteria for inclusion in the pay parity package: Baker, Columbia, Douglas, Gilliam, Grant, Harney, Hood River, Jackson, Josephine, Klamath, Malheur, Morrow, Sherman, Umatilla, Union, Wallowa, Wasco, Wheeler.

## Oregon Demographics

<b>City</b>	<b>Population (2015)</b>	<b>Median Home Prices (2016)</b>	<b>Median Household Income (2014)</b>	<b>Min. Wage (2017)</b>	<b>DA Salary Elected (2016)</b>	<b>DA Salary Management (current)</b>	<b>DA Salary Non- Management (current)</b>
Bend	87,014	\$348,500	\$52,471	\$10.25	\$148,025	\$122,281	\$82,584 - \$110,936
Coos Bay	16,182	\$162,600	\$36,360	\$10.00	\$115,520	\$93,324	\$50,424 - \$96,408
Eugene	163,460	\$247,500	\$42,715	\$10.25	\$153,171	\$131,352	\$55,515 - \$118,726
Grants Pass	37,088	\$219,300	\$33,240	\$10.25	\$122,679	\$108,852	\$56,376 - \$103,668
Medford	79,805	\$225,600	\$42,366	\$10.25	\$143,474	\$103,938	\$54,350 - \$85,613
Pendleton	16,881	\$150,800	\$45,930	\$10.25	\$118,134	\$86,868	\$54,828 - \$83,352
Portland	632,309	\$368,800	\$53,230	\$11.25	\$175,712	\$176,000	\$74,432 - \$162,902
Roseburg	22,114	\$173,400	\$30,951	\$10.00	\$143,229	\$115,814	\$50,669 - \$102,918
Salem	164,549	\$201,800	\$46,273	\$10.25	\$146,702	\$139,714	\$58,094 - \$126,734
Hillsboro	102,347	\$305,800	\$66,668	\$11.25	\$178,199	\$185,606	\$71,098- \$168,181

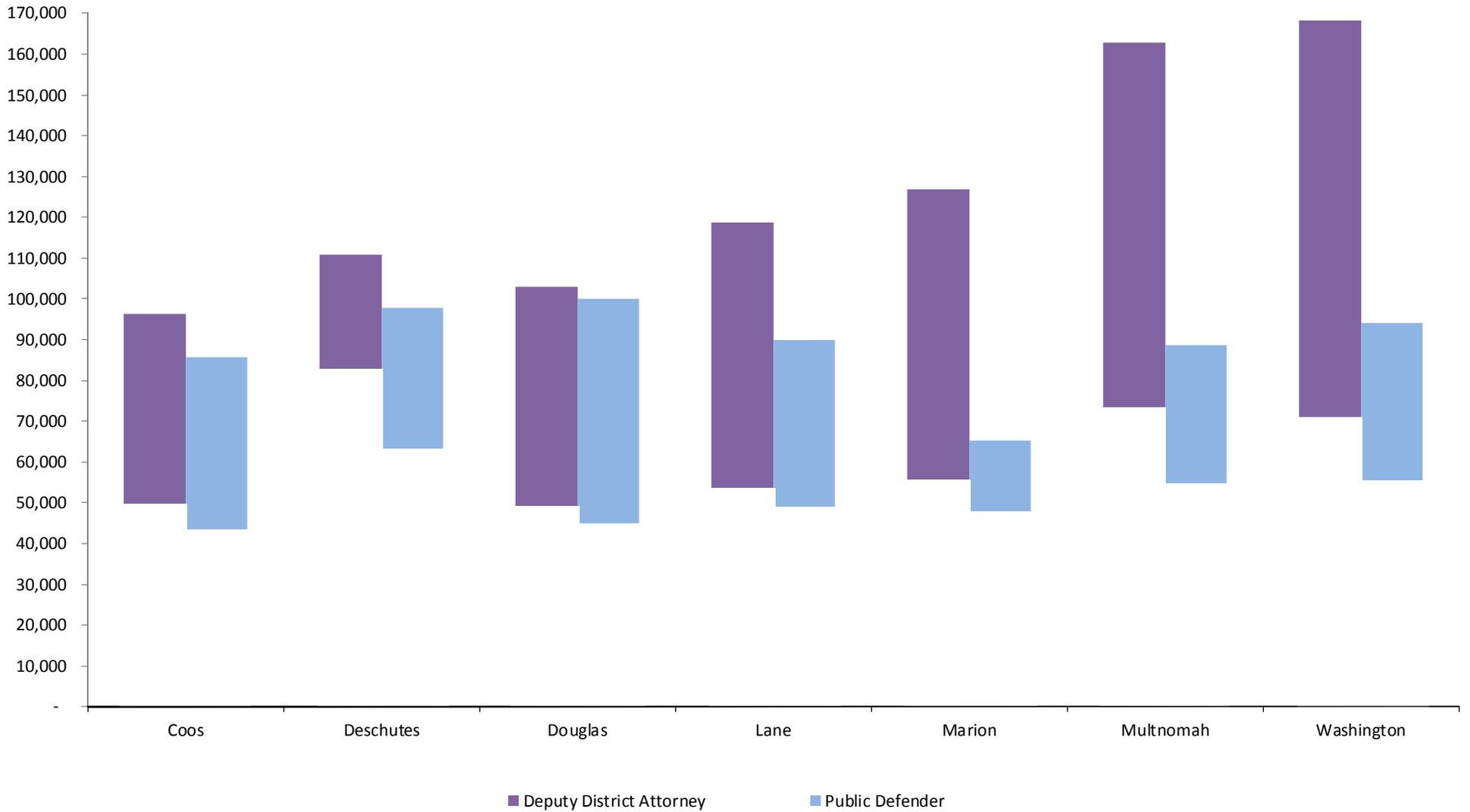
Population, Median Household Income: US Census Bureau

Median Home Prices: Zillow

Elected DA Salary: ODAA 2016 Salary Survey

DA Salaries (Management & Non-Management): County Human Resources

# 2016 Salary Comparison for DDA to PD (for non-management)



## **Public Defense Services Commission meeting July 25, 2016**

### **Policy Option Package 1: Parent & Child Representation Program Expansion**

This POP would expand the PCRCP statewide as contemplated in one, two, or three phases. The possible rollout groups are described below based on county need, readiness and impact. County readiness is a composite score which includes two factors, 1. Counties with non-profit public defenders and 2. Counties with a regularly meeting collaborative juvenile court improvement team.<sup>1</sup> County impact assesses the scale of juvenile dependency cases within the county. It is a composite score which considers caseload within the top 10 of Oregon counties and number of children in care within the top 10 of Oregon counties.<sup>2</sup> County need includes both case outcomes and counties with high caseloads. It is a composite score which includes: percentage of children who are in care more than 24 months, percentage of children not reaching permanency within 24 months, a higher than average rate of removal, and higher than average attorney caseload.<sup>3</sup>

As indicated in the graphs below, rollout group A has a high need score with 2/3 of counties reflecting a need score of 1 or higher, and 11/12 counties reflecting a need of .5 or higher. Rollout group B reflects a high readiness score, with every county scoring at least 1. Rollout group B also has a high impact score which is not a surprise given that the metro region is in this group. Rollout group C, the largest group of counties, has a fairly high need score (14/17 reflect a need of .5 or higher). However, only 6 of the 17 counties have a caseload share of greater than 2%.

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<sup>1</sup> To calculate readiness, I assigned a value of 1 to whether there is a non-profit public defender in the county and 1 to whether there is a regular juvenile court meeting. The maximum readiness score is 2. Sources: OPDS contract analysts, OJD Juvenile Court Improvement Program.

<sup>2</sup> To calculate impact, I assigned a value of 1 to counties which have a total juvenile caseload (as determined by OPDS) within the top ten counties in the state and a value of 1 to counties which have a foster care population in the top ten counties in the state. Sources: OPDS contract analysts, DHS ROM website.

<sup>3</sup> To calculate need, I assigned a value of 1 to counties where caseload, by attorney (as determined by OPDS), is higher than average, a value of .5 to counties where the removal rate is higher than average, a value of .5 to counties where the percentage of children in care over 24 months is greater than average, and a value of .5 to counties where the percentage of children not reaching permanency within 24 months is greater than average. Sources: OPDS contract analysts, DHS ROM website.

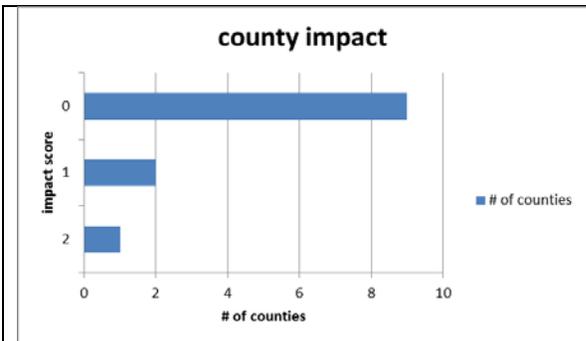
I considered disproportionality for those counties where data is available. Statewide, the disproportionality index for African American children in foster care is 2.07 and for American Indian/Alaska Native children it is 3.27.<sup>4</sup> For African American children, Klamath (5.16), Jackson (5.04), Lane (4.33), Multnomah (3.81), Marion (2.52) and Washington (2.43) counties reflect disproportionately greater than the statewide index. For American Indian/Alaska Native children, Multnomah (3.93), Lane (3.54), Klamath (3.12), Jackson (2.99) and Coos (2.52) reflect high disproportionality.<sup>5</sup>

### Parent Child Representation Program Possible Rollout

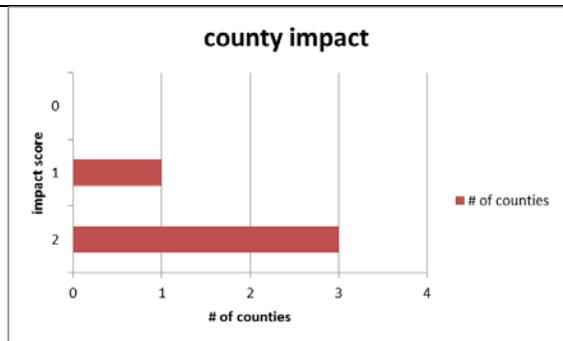
<p>Rollout Group A          Counties (12): Benton, Deschutes, Gilliam, Hood River, Klamath, Lake, Lane, Lincoln, Polk, Sherman, Wasco, Wheeler          Cost: \$10.6 M          % of juvenile caseload: 33%</p>	<p>Rollout Group B          Counties (4): Clackamas, Clatsop, Multnomah, Washington          Cost: \$10.5 M          % of juvenile caseload: 29%</p>	<p>Rollout Group C          Counties (17): Baker, Coos, Crook, Curry, Douglas, Grant, Harney, Jackson, Jefferson, Malheur, Marion, Morrow, Tillamook, Umatilla, Union, Willamette          Cost: \$13.9M          % of juvenile caseload: 38%</p>
<p>Readiness: local PD = 1; regular bar/bench meeting = 1</p>	<p>Readiness: local PD = 1; regular bar/bench meeting = 1</p>	<p>Readiness: local PD = 1; regular bar/bench meeting = 1</p>

<sup>4</sup> Disproportionality index is the percentage at which groups of children in the child welfare system are present in the child welfare system at percentages that differ from their percentage in the general population. An index of 1 means that there is no disproportionality. An index of 2 means that the percentage of children in the child welfare system is twice that of the general population for children in that group.

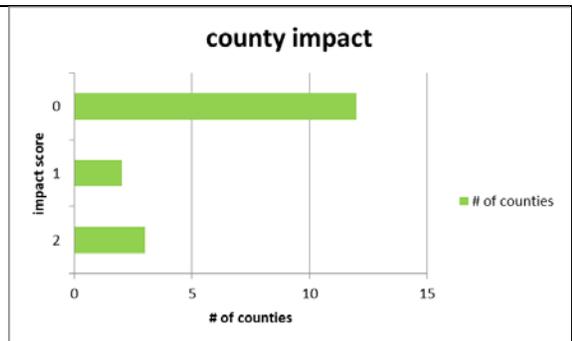
<sup>5</sup> Sources: Task Force on Legal Representation in Childhood Dependency Meeting #7, Oregon Disproportionality Snapshot (April 21, 2016).



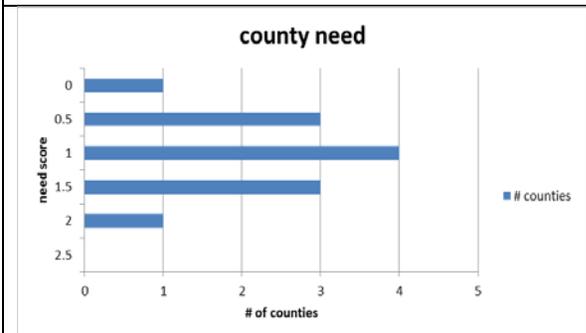
Impact: Top 10 in number of foster children (statewide)= 1, top 10% of caseload (statewide)=1



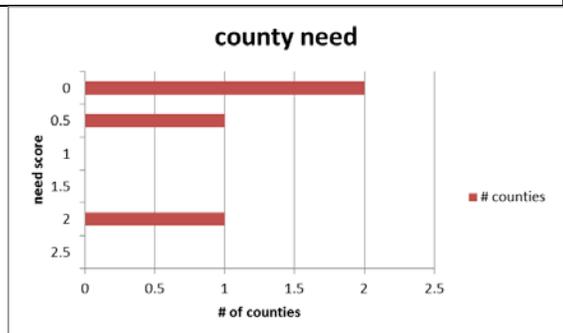
Impact: Top 10 in number of foster children (statewide)= 1, top 10% of caseload (statewide)=1



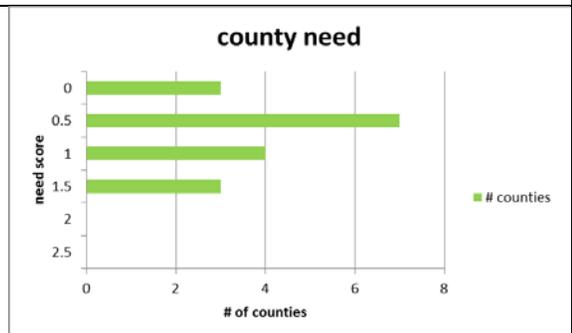
Impact: Top 10 in number of foster children (statewide)= 1, top 10% of caseload (statewide)=1



Need: Caseload identified as higher than average = 1, removal rate higher than average, % not reaching permanency within 24 months higher than average, % of children in care over 24 months higher than average = .5



Need: Caseload identified as higher than average = 1, removal rate higher than average, % not reaching permanency within 24 months higher than average, % of children in care over 24 months higher than average = .5



Need: Caseload identified as higher than average = 1, removal rate higher than average, % not reaching permanency within 24 months higher than average, % of children in care over 24 months higher than average = .5

# Attachment 7

**EXHIBIT 3. SCHEDULE OF GUIDELINE AMOUNTS**

<b>ATTORNEY FEES - TRIAL AND APPELLATE LEVEL CASES</b>		
Non-capital Case	\$46 per hour	Includes juveniles charged with aggravated murder.
Capital Case, Lead Counsel	\$61 per hour	See definition in section 2.1.2
Capital Case, Co-counsel	\$46 per hour	Initial cap of 300 hours for trial-level cases. See definition in section 2.1.2.
Out-of-State	\$46 per hour	Or the minimum public defense hourly rate of the state in which the attorney resides, whichever is more.
<b>NON-ATTORNEY FEES (Must be preauthorized by OPDS)</b>		
Paraprofessional	\$15 per hour	
Transcription	\$3.00 per page for original	Electronic submission-no postage paid.
Guardian Ad Litem	\$45 per hour maximum	For attorney and non-attorney providers
Investigator – Non-Capital Case	\$29 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Investigator – Bilingual	\$34 per hour	
Fact Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$40 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Mitigation Investigator - Capital Case (See definition for capital case in section 2.1.2)	\$45 per hour	Mileage and some out-of-pocket paid without specific preauthorization.
Polygraph Exam	\$400 flat fee for exam and report	Reimbursement for travel expenses must be specifically preauthorized.
Psychiatrist and Psychologist	\$150 per hour	Travel expenses must be specifically preauthorized.
All Other Experts	Varies on type of service and provider qualifications	Preauthorization required
<b>INTERPRETER FEES (For attorney/client communication, does not require preauthorization by OPDS)</b>		
Qualified Interpreter	\$25 per hour	Travel time at one-half the hourly rate and mileage at the guideline rate.
Certified Interpreter	\$40 per hour	
<b>ROUTINE CASE EXPENSES FOR COUNSEL &amp; INVESTIGATORS (Preauthorization not required)</b>		
Blank CD/DVD, case and label	\$1.00 each	For media, case and label
Film Developing/Photograph Production, In-house and Vendor	Actual cost if vendor. Photos in-house at \$0.40 for 3 x 5 or 4 x 6. \$1.20 for full page.	Receipt required if produced by vendor.
Photocopies and Scanning, In-house	Maximum \$0.10 per page	Also applies to in-coming faxes.
Photocopies and Scanning by Vendor	Maximum \$0.15 per page	Receipt required.

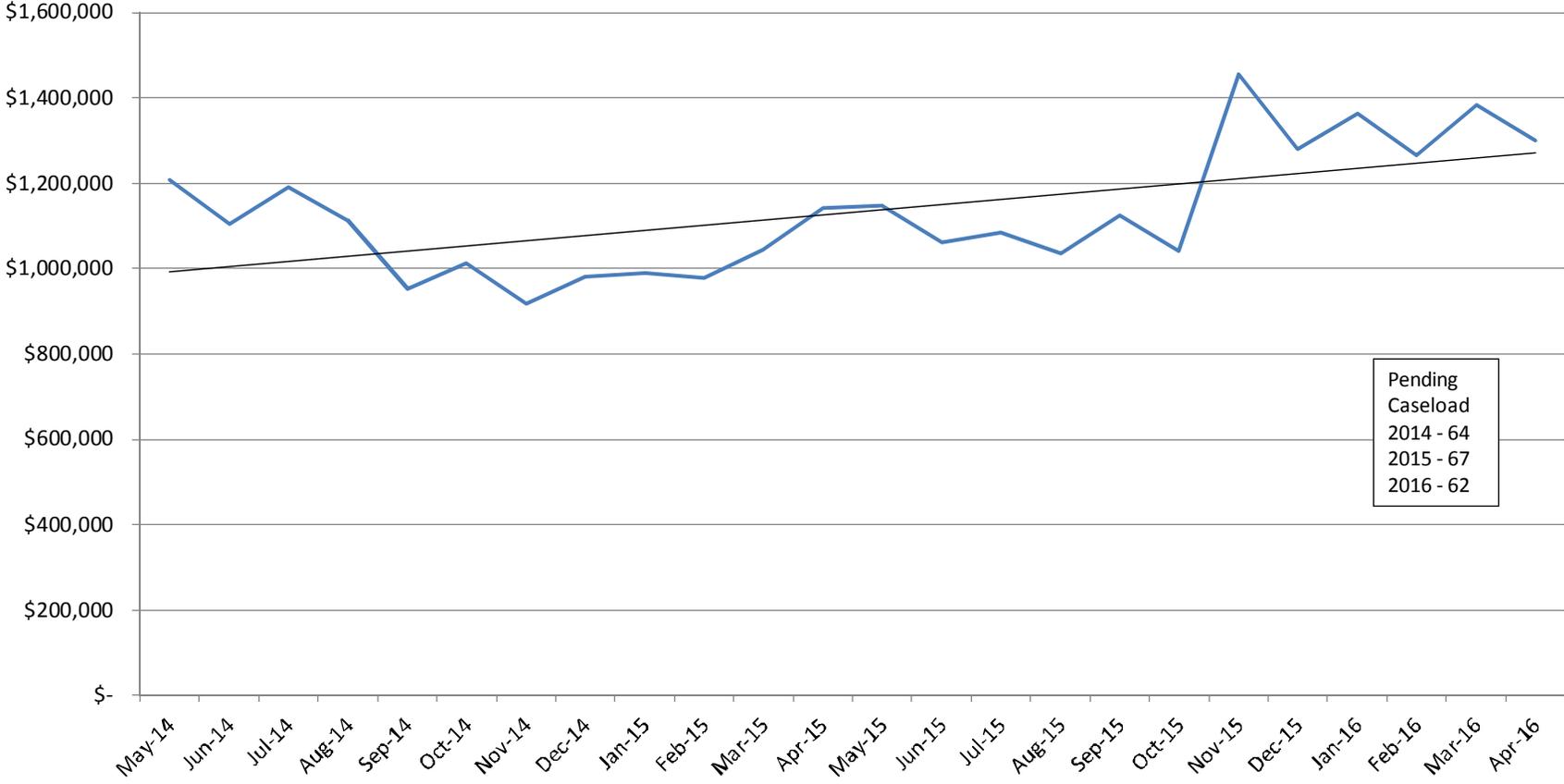
Photocopies, State Court/Other Government Entities	Maximum \$0.25 per page	Certification costs also paid if necessary. Receipt required.
Mileage from 1/1/11 to 4/16/12 From 4/17/12 to 12/31/2012 From 1/1/2013 to 12/31/2013 From 1/1/2014 to 12/31/2014 From 1/1/2015 to 12/31/2015 From 1/1/2016 to present	Maximum \$0.51 per mile Maximum \$0.555 per mile Maximum \$0.565 per mile Maximum \$0.56 per mile Maximum \$0.575 per mile Maximum \$0.54 per mile	Excludes counsel's trips between office and courthouse unless specifically authorized.
Parking - routine travel	Actual cost	If trip qualifies for mileage payment. Receipt required if over \$25.
Telephone	Actual cost	Long-distance charges, including those for faxes, and charges for collect calls from client held at an institution.
Discovery	Actual cost when supported by a receipt	Material obtained from district attorney, DHS or county juvenile department.
Postage	First-class mail	
OJIN Online Searches	\$0.25 per minute of usage	When provider has subscription for OJIN.
Service of Process	\$30 per location of service	Use of sheriff's office is encouraged.
Special Delivery	UPS, Federal Express, USPS Express mail, messenger service	Explanation and receipt required. See Section 3.2.2 of policy for details.
Other Items		See Section 3.2.2 of policy for details.
<b>TRAVEL EXPENSES (Must be preauthorized by OPDS)</b>		
Meal Allowance Amounts - When on overnight business and departure and return times are not reported	\$20 for first day of travel \$19 for last day of travel \$39 for each full day between first and last	May qualify for additional allowance for first and last day depending on time of departure and return if traveler notes times on worksheet. <b><u>Receipts are not required.</u></b>
Breakfast - When on overnight trip	Maximum \$9.00	If leaving home or office prior to 6:00 a.m. or return is after 9:00 a.m.
Lunch - When on overnight trip	Maximum \$10.00	If leaving home or office prior to 11:00 a.m. or return is after 2:00 p.m.
Dinner - When on overnight trip	Maximum \$20.00	If leaving home or office prior to 5:00 p.m. or return is after 8:00 p.m.
Mileage (other than routine mileage for counsel, investigators and forensic experts)	See date ranges and rates listed above.	Must be preauthorized for providers other than attorneys, investigators and forensic experts.
Parking	Actual cost	Receipt required if over \$25.
Rental Car	Varies	Compact vehicle (unless otherwise preauthorized) plus fuel with submission of original receipts. Insurance costs will not be reimbursed.
Airfare	Varies	Through state contract. Contact OPDS.

**LODGING, MAXIMUM PER NIGHT (excluding taxes)**  
**Must be preauthorized by OPDS for all providers**  
**2016 Oregon Rates**

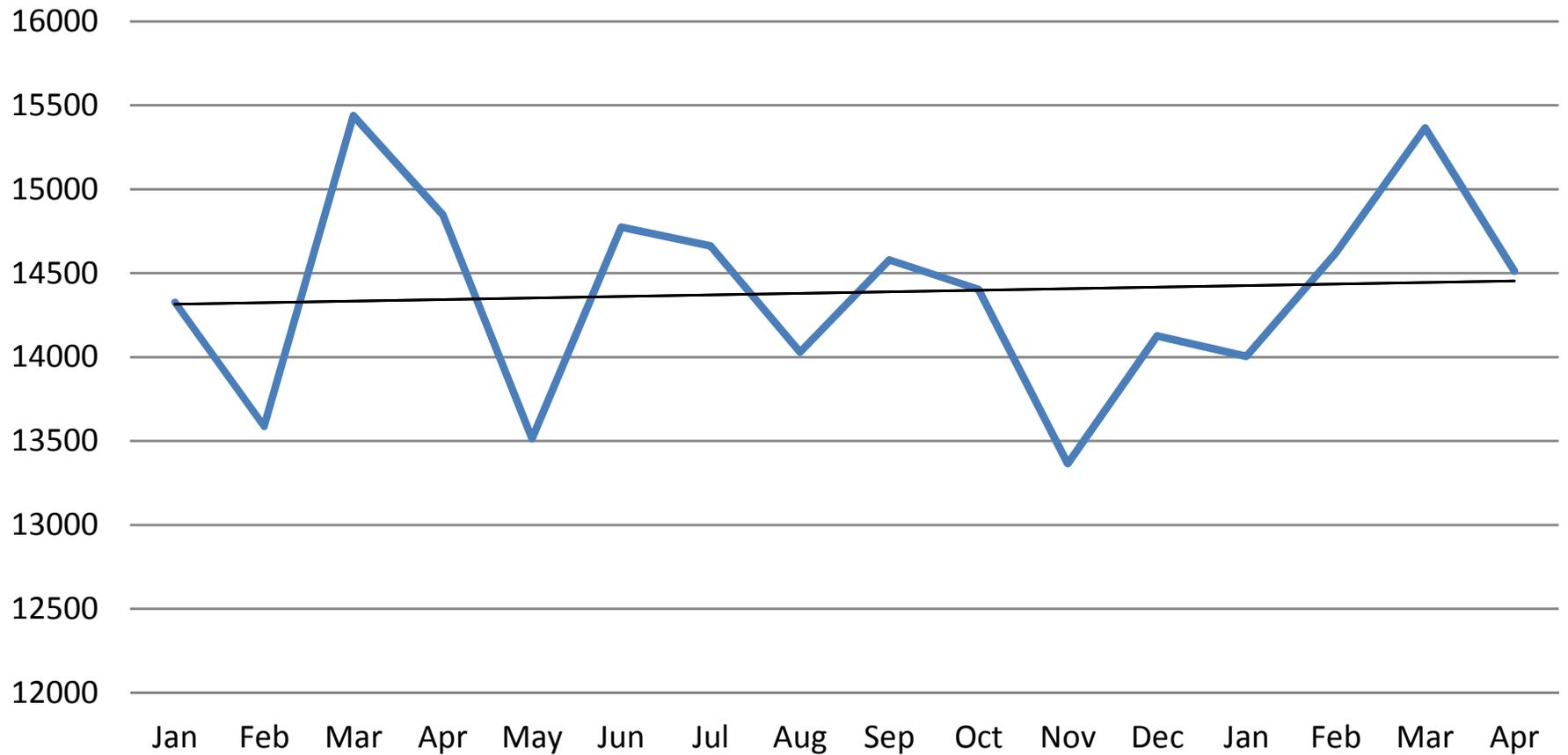
<b>\$89</b>	<b>\$102</b>	<b>\$105</b>	<b>\$102</b>	<b>\$106</b>	<b>\$98</b>	<b>\$151</b>	<b>\$119</b>
Standard Rate  (Applies for all locations without specified rates)	Clackamas	Clatsop	Deschutes	Lane	Lincoln	Multnomah	Washington
Out-of-State Lodging	Please follow the GSA Guidelines for Out-of-State Lodging. The traveler should request the government rate. GSA Website: <a href="http://www.gsa.gov/portal/content/104877">http://www.gsa.gov/portal/content/104877</a> - "Search by State"						
Non-Commercial Lodging	\$25 allowance when traveler uses alternative accommodations. Provide a short written explanation.						

# Attachment 8

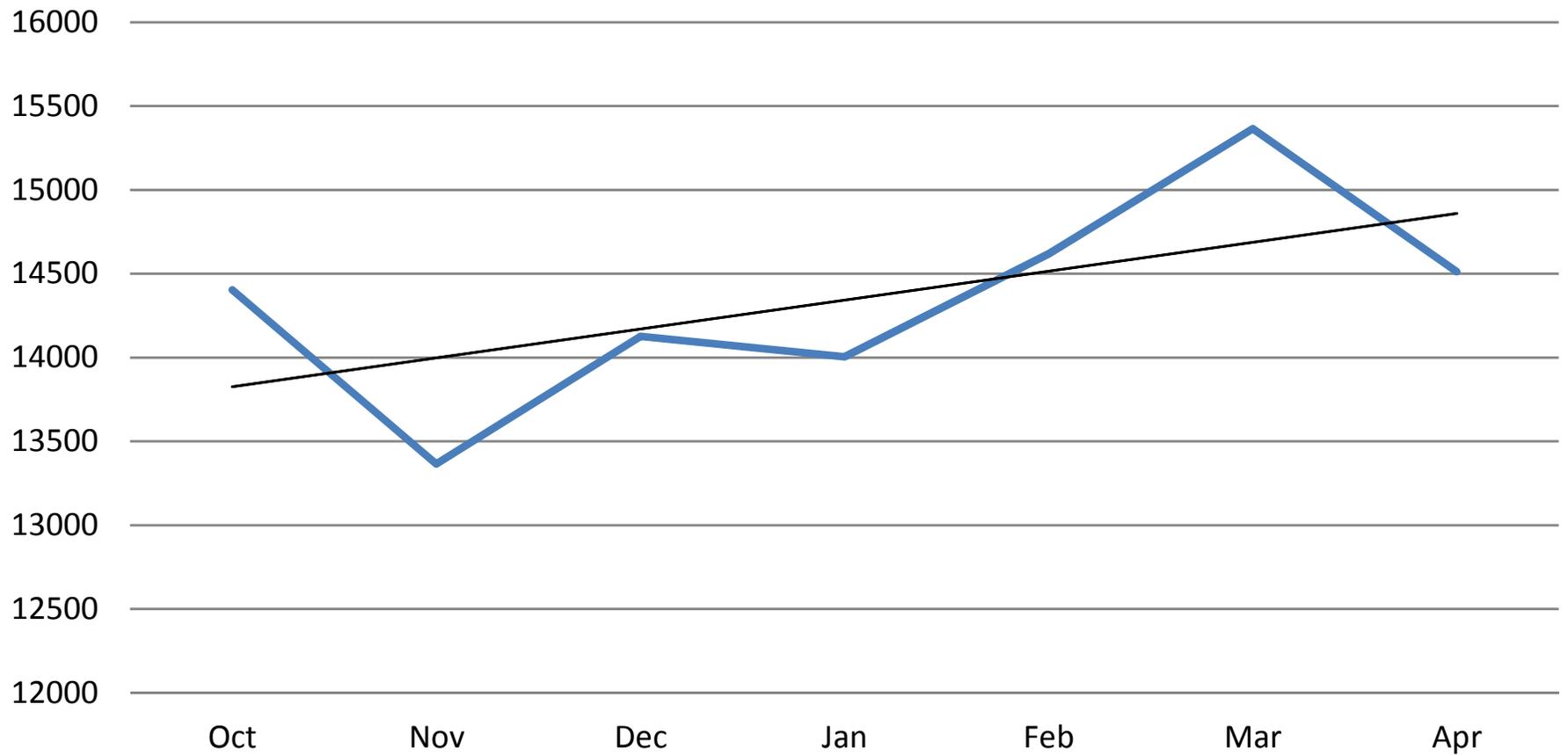
# Capital Expenditures May 2014 through April 2016



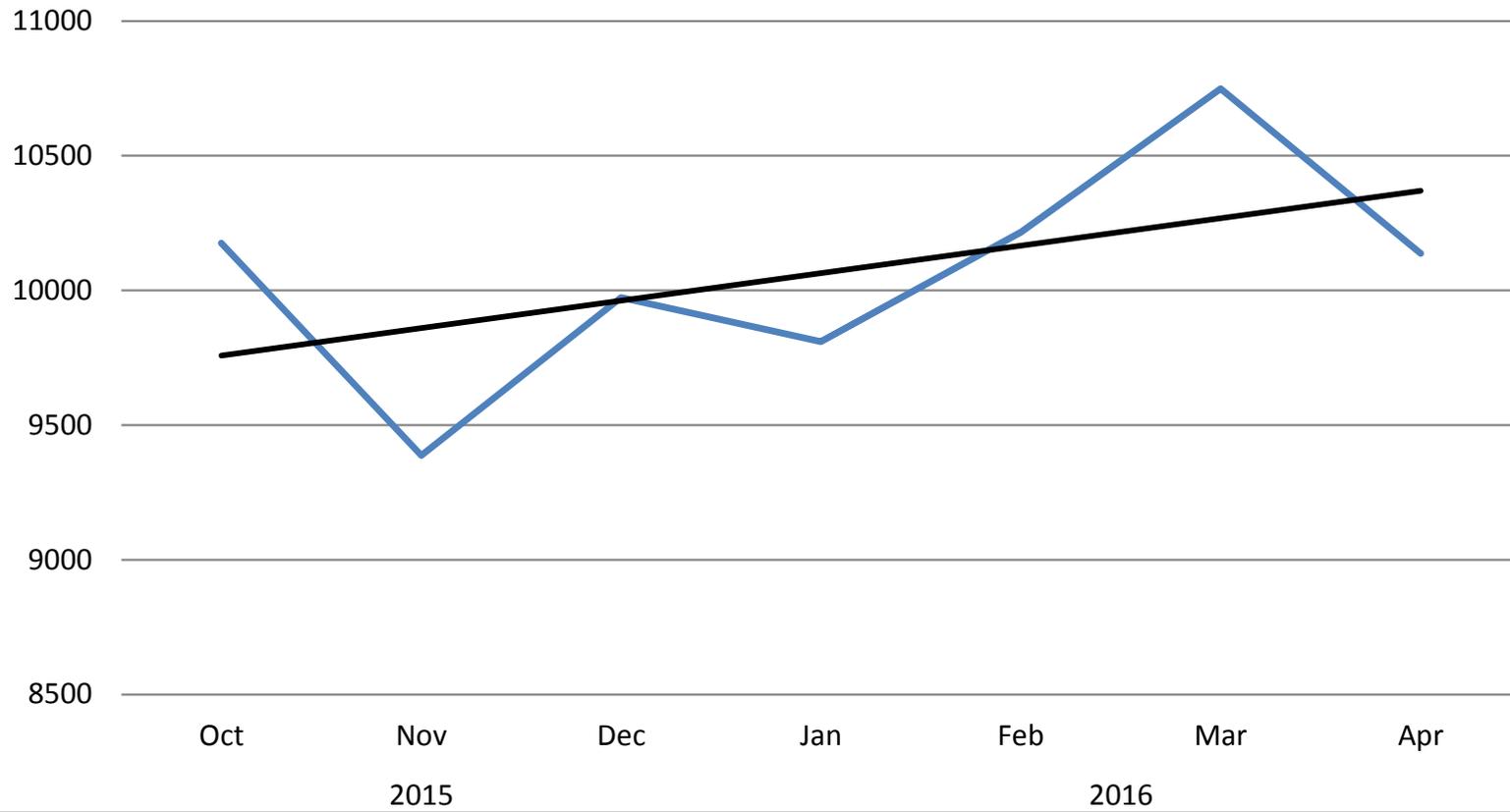
## Statewide Non-Capital Caseload Credits for January 2015 through April 2016



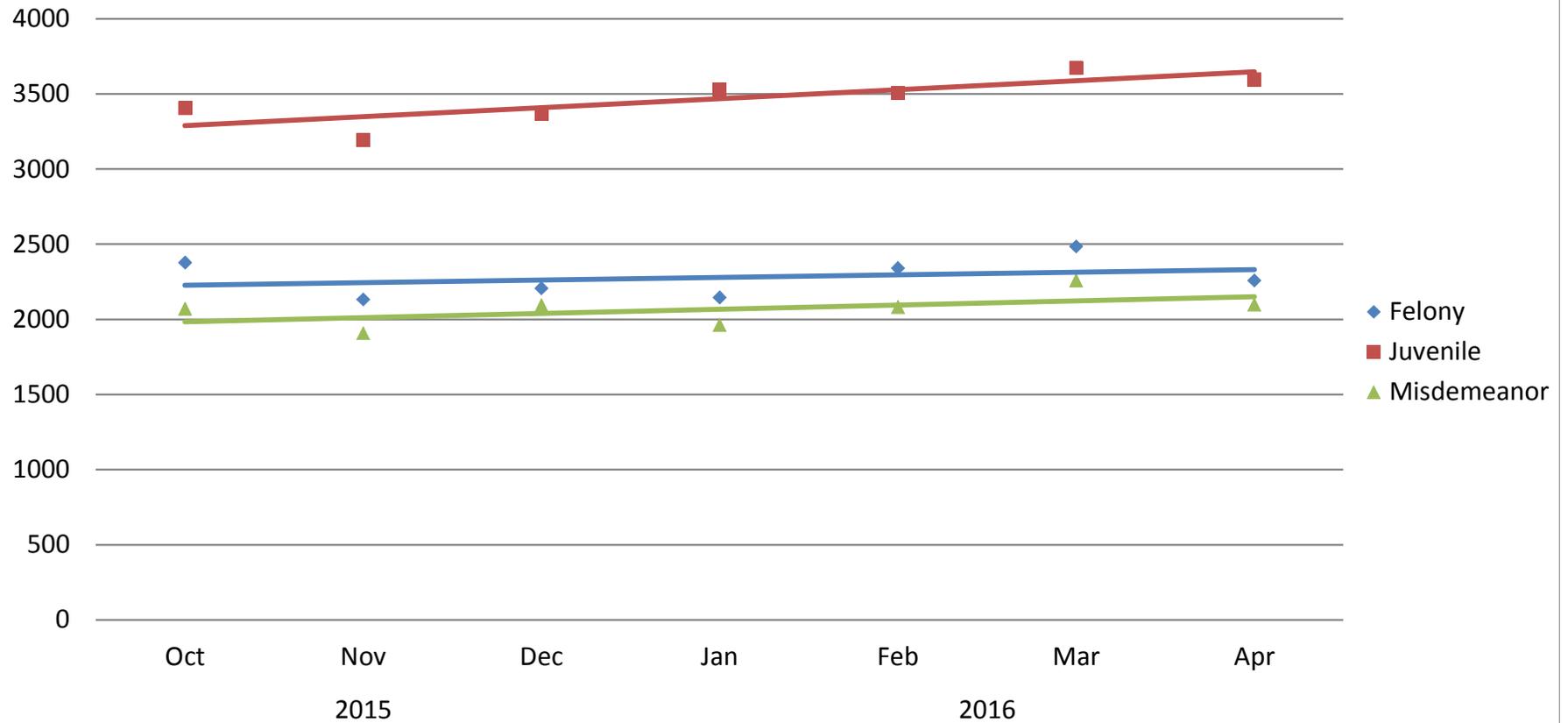
## Statewide Non-Capital Caseload Credits for October 2015 through April 2016



## Caseload Credits in 10 Largest Counties October 2015 through April 2016



## Caseload Credits in 10 Largest Counties October 2015 through April 2016



# Attachment 9a

## Public Defense Services Commission

### Draft 2017 Meeting Schedule

<b>Date</b>	<b>Day</b>	<b>Location</b>	<b>Notes</b>
February 16	Thurs	Salem, OR	Legislative Session begins early February
April 20	Thurs	TBD	
June 15	Thurs	Bend, OR	Held in conjunction with OCDLA Annual Conference
August 17	Thurs	TBD	
October	Fri	TBD	Held in conjunction with OCDLA Public Defense Management Conference; date and location not yet posted.
December	Thurs	Salem, OR	

**Attachment 9b**

# 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 plan<sup>1</sup> 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

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<sup>1</sup> 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 PDSC 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.<sup>2</sup> 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*

---

<sup>2</sup> 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](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.<sup>3</sup> 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.<sup>4</sup> 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

---

<sup>3</sup> “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.

<sup>4</sup> “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.*

*Strategy 7: Maintain fiscal integrity and develop a long-term financial stability plan for PDSC programs.*

# Attachment 10



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## **RIGHT TO COUNSEL**

**If you are charged with a crime and might go to jail or prison, you have the right to get help from a lawyer. Your lawyer should:**

- **TALK TO YOU**

**Meet with you early in the case (within 3 days if you are in jail)**

**Tell you when and how you can get in touch (phone, visit, letters)**

**Ask you about evidence that could help you**

**Tell you what is happening with your case**

**Answer your questions**

**Help you decide if you should testify, plead guilty, or have a trial**

- **KNOW THE LAW**

- **INVESTIGATE YOUR CASE**

**Go to the place where the alleged crime occurred**

**Take pictures or videotapes of the scene**

**Interview witnesses**

**Interview police officers**

**Look at the prosecutor's evidence**

**Get all court records and police reports and records, including computer dispatches, radio communications, policy manuals**

**Check records on prosecution witnesses**

**Decide if expert witnesses could help you**

**Look for programs you could do instead of jail or prison (diversion, mental health court, drug court, community service)**

**Help you connect with services (health care, housing, job)**

- **LITIGATE**

**If you are in jail, try to get you released before trial**

**File motions (discovery, bill of particulars, suppression)**

**Prepare for trial:**

**Opening statement**

**Jury voir dire (asking jury questions)**

**Cross-examination (asking prosecution witnesses questions)**

**Direct examination (asking defense witnesses questions)**

**Have pictures, maps, records ready for evidence**

**Closing argument**

**Jury instructions**

**Prepare for sentencing & argue for best result possible**

**YOU CAN ASK YOUR LAWYER TO DO THESE THINGS FOR YOU  
OR TO EXPLAIN WHY THEY ARE NOT BEING DONE.**

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Attachment 11

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## “WHERE WAS I AT?!” AMPLIFYING CLIENT VOICE IN THE STRUGGLE FOR REFORM

by Janet Moore, Assistant Professor of Law, University of Cincinnati College of Law  
on Monday, September 15, 2014



### RIGHT TO COUNSEL

If you are charged with a crime and might go to jail or prison, you have the right to get help from a lawyer. Your lawyer should:

- **TALK TO YOU**  
Meet with you early in the case (within 3 days if you are in jail)  
Tell you when and how you can get in touch (phone, visit, letters)  
Ask you about evidence that could help you  
Tell you what is happening with your case  
Answer your questions  
Help you decide if you should testify, plead guilty, or have a trial
- **KNOW THE LAW**
- **INVESTIGATE YOUR CASE**  
Go to the place where the alleged crime occurred  
Take pictures or videotapes of the scene  
Interview witnesses  
Interview police officers  
Look at the prosecutor's evidence  
Get all court records and police reports and records, including computer dispatches, radio communications, policy manuals  
Check records on prosecution witnesses  
Decide if expert witnesses could help you  
Look for programs you could do instead of jail or prison (diversion, mental health court, drug court, community service)  
Help you connect with services (health care, housing, job)
- **LITIGATE**  
If you are in jail, try to get you released before trial  
File motions (discovery, bill of particulars, suppression)  
Prepare for trial:  
Opening statement  
Jury voir dire (asking jury questions)  
Cross-examination (asking prosecution witnesses questions)  
Direct examination (asking defense witnesses questions)  
Have pictures, maps, records ready for evidence  
Closing argument  
Jury instructions  
Prepare for sentencing & argue for best result possible

YOU CAN ASK YOUR LAWYER TO DO THESE THINGS FOR YOU OR TO EXPLAIN WHY THEY ARE NOT BEING DONE.

Indigent defense reform advocates should recruit one of their strongest allies in the struggle to provide high-quality service: the informed, proactive client. Indigent defendants who fully understand the right to counsel and their lawyers' corresponding duties to communicate, investigate and advocate can support demands for the time and resources necessary to fulfill those duties. Client-rights information forms and client satisfaction surveys are good megaphones for amplifying client voice—not only in particular cases but also in the broader fight to improve indigent defense systems.

For example, the Indigent Defense Clinic at the University of Cincinnati College of Law partners with the local public defender office to provide each

client with a Client's Bill of Rights. This short form explains the attorney's duties to communicate, investigate, and advocate. The form also encourages the client to ask questions if it appears that counsel is not fulfilling these duties.

The same jurisdiction successfully tested a client satisfaction survey, which probed clients' understanding of their rights and counsel's efforts to fulfill their corresponding duties. The project used random-sample surveys and a focus group discussion.[1] This type of empirical research highlights the importance of attorney-client communication for building trust and mutual cooperation, as well as for improving clients' perceptions of system legitimacy and even respect for the law.[2]

The variables in the Cincinnati study focused on the extent to which clients felt their voices were heard. Client satisfaction was most closely linked with how well attorneys listened to the clients, sought client input, investigated cases, and informed clients about case progress and possible consequences. Clients knew their lawyers had "ridiculous" workloads, but wanted them to "Come to the cell block, talk to me ... Have me explain exactly what happened." One client felt erased from the process when his

### Upcoming Events

Webinar: Are Law Enforcement's Online Investigations Violating the 4th Amendment? A Deeper Look Into P2P, NIT and Other Techniques  
07/22/2016

Webinar: Practical Pointers for Defenders and Board Members regarding Principles for Public Defense Boards and Commissions  
07/25/2016

Webinar: Aggressive Bail Litigation: Using the Law to Fight for the Release of our Clients  
08/04/2016

Webinar: Defending Victims of Battering Charged with Crimes  
08/11/2016

### News Feed

Inspector General Report Critical of DOJ and the FBI Lab

FEWER PRISONERS, LESS CRIME: A TALE OF THREE STATES

Dodging Decarceration: The Shell Game of 'Getting Smart' on Crime

Legislature gives, governor takes away public defender system increase

Governor Appoints Prison Ministry President to Indigent Defense Commission

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lawyer instead simply told him, “If we plead this the judge already said that he would do this.” The client protested, “When did that happen?! Where was I at?!”

More research is needed to expand the study’s sample set and variables. Yet the results indicate several benefits from amplifying client voice through client rights/client satisfaction tools. Clients can support demands for the time and resources needed to communicate, investigate, and advocate. Those demands may improve case outcomes and client perceptions of those outcomes. Where those demands fail, empirical evidence of clients’ experiences and perceptions strengthens the case for system reform. Whether that case is made through litigation or policy advocacy, the fully informed client is a crucial and underutilized partner in the ongoing fight to improve the quality of indigent defense service.

You can download a [Word Version of the form here](#).

[1] Christopher Campbell, et al., Unnoticed, Untapped, and Underappreciated: Clients’ Perceptions of their Public Defenders 17–20 (manuscript under review).

[2] See, e.g., Marcus T. Boccaccini, et al., Development and effects of Client trust in Criminal Defense Attorneys: Preliminary Examination of the Congruence Model of Trust Development, 22 *Behav. Sci. and the Law* 197 (2004); Tom R. Tyler, et al., Legitimacy and Criminal Justice: International Perspectives, in *Legitimacy and Criminal Justice* 9–29 (T.R. Tyler, ed. 2007).

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# Attachment 12

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# Juvenile Law Reader

Youth, Rights & Justice

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"Unequivocally, we find that Oregon's registration of young sex offenders adjudicated in juvenile court is deeply flawed."

— Portland City Club

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Also in this issue: How Multidisciplinary Representation Helps Parents Succeed - Page 5;  
ICE Parental Interests Directive - Page 9

## Portland City Club Finds Oregon's Juvenile Registry Laws "Deeply Flawed"

By Mark McKechnie, MSW, YRJ  
Executive Director

A study committee of the Portland City Club spent much of 2014 examining the issue of juvenile sex offender registration in Oregon. The committee was asked to examine this question: "Should the Oregon Legislature modify the process or requirements for including in the state's sex

offender registry people who committed sex offenses while juveniles?"

The report describes the conclusions that the study committee made after an extensive review of available studies and other literature, as well as interviews with 17 witnesses from Oregon, including representatives of various interested groups, including state legislators, current and retired prosecutors, victims' advocates, law enforcement officers, judges, criminal defense attorneys, juvenile treatment, probation and corrections representatives and youth advocates. The committee concluded:

"Unequivocally, we find that Oregon's registration of young sex offenders adjudicated in juvenile court is deeply flawed. Perhaps the greatest flaws are that (1) the law

*Continued on next page »*

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*Inside This Issue* Portland City Club Findings: Page 1 / Multidisciplinary Representation: Page 5 / Clackamas District Attorney Launches Broad Attack: Page 7 / ICE Parental Interests Directive: Page 9 / Juvenile Law Resource Center: Page 11 / Case Summary & Resources: Page 23 / OYA Releases 10-Year Plan For Close Custody Facilities: Page 24 / Save the Date: Page 24

«Portland City Club continued from previous

currently subjects juvenile offenders to lifetime registration and (2) does so before offenders receive, and hopefully respond to treatment. As we discuss in the Report, these flaws harm juvenile offenders and the public.”

The report notes that the committee chose to focus only on youth who were adjudicated in juvenile court of a sex offense. They noted that it is also important to consider youth who are charged as adults for these offenses, but they thought that a re-examination of Measure 11 was a substantial and important topic deserving of a separate City Club study.

An executive summary and the full report can be found at: <http://www.pdx-cityclub.org/jsor>. The final report provided important background about the history of registry laws in Oregon and elsewhere in the country:

“As a society, we have chosen to treat sex offenders differently from other types of offenders in an effort to protect vulnerable populations from sex abuse. No other crimes carry the possibility of lifetime registration with law enforcement. As the names of sex offender laws

attest – Adam Walsh, Jacob Wetterling, Megan Kanka – many of them were passed in response to attacks on children.

Twenty years ago when Congress passed the first national legislation, our country was still just beginning to talk about sexual assault and abuse, a difficult conversation that continues today. Policymakers did not have the benefit of the extensive research that has since been done on sex crimes and offenders, especially those who offend as juveniles. With few facts available, policymakers legislated out of fear and made assumptions that time now allows us to test.”

The report is clear, well-written and interesting to read, providing background on the origin and expansion of sex offender registry laws generally and the addition of juveniles to these requirements. The committee report focuses on Oregon’s law and a history of changes it has made to adult and juvenile registry requirements. The committee noted that:

“Oregon is one of 38 states that include juvenile offenders in their sex offender registries, and one of only six that include juvenile of-

fenders in the registry potentially for life. Approximately 3,000 people appear in the Oregon registry for offenses committed while they were juveniles and youth as young as eight have been included. Juvenile offenders have been included in the predatory designation since 1995, although witness testimony suggests that less than five juvenile offenders carried that designation as of 2013.”

The committee also looked at the laws around consent, elements of sex crimes that are dependent upon the age of an identified victim and the fact that voluntary and consensual behaviors between minor children are often considered criminal because they are legally unable to consent to the behavior. The committee report stated:

“In Oregon, any time a person under the age of 12 engages in sexual conduct (other than alone), someone has committed a crime. If both individuals are under 12, both have. Voluntary (or consensual) sexual contact between minors who are over 12 is **not** criminal unless one minor is more than three years older than the other. If so, the older child

*Continued on next page »*

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Tax deductible donations are welcome and can be sent to the YRJ offices.

Queries regarding contributed articles can be addressed to the editorial board.

« *Portland City Club continued from previous*

has committed a sex crime. This means that if a 17-year-old girl has sex with her 14-year-old boyfriend and she is *one day* more than three years older than he is, then, even if the sex is completely voluntary



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PHOTO BY NICKY VARKEVISSER

on his part, she has committed the Class C Felony of Rape in the Third Degree and, if the case were pursued and adjudicated, must register as a sex offender, potentially for the rest of her life.

Some sex crimes can be committed by minors even if they are of the same age and acting voluntarily. For

example, if two 17-year-olds voluntarily made a videotape of the two of them engaging in sexually explicit contact and then allowed anyone else to see the videotape, both would be guilty of Using a Child in a Display of Sexually Explicit

Conduct, a felony sex crime. If the case were pursued and adjudicated in juvenile court [sic], both of them would have to register as sex offenders. The Oregon Criminal Code involving sex offenses is sufficiently complex that lawyers who practice criminal law have to refer to their statutes when reviewing age-based sex offenses. It is probably true to

say that *no child* in Oregon understands them.” [emphases in original]

The report also recognized the seriousness of violent, forcible and unwanted sexual contact and the fact that children are disproportionately victims of these offenses. The report highlights its conclusion that “Sexual abuse and assault are serious crimes that can have a lifetime impact on the victim. Sex offenders should be held accountable for their actions. And, if possible, steps should be taken to reduce the risk of re-offense.”

The committee was clear that juveniles adjudicated of these offenses should be held accountable and some should face serious consequences. The committee considered access to treatment and rehabilitation to be of paramount importance, as well, and they ultimately concluded that current registry requirements for juveniles in Oregon interfere with the process of rehabilitation and reintegration into the community for juvenile offenders.

The report discusses the latest research on adolescent brain development and the fact that young people are naturally impulsive and often fail to understand or appreciate the con

*Continued on next page »*

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«Portland City Club continued from previous sequences of their actions. Amidst extensive discussions of these and other issues, the report committee highlighted several conclusions, including the following:

- “Offenses committed as a juvenile do not necessarily indicate a lifetime propensity for victimizing others. Brain development research demonstrates that impulse control, reasoning and the ability to exercise judgment are developing during adolescence. Treatment during that time can effectively change behavior.”
- “Recidivism rates for juvenile sex offenders as a group, are incredibly low. While some offenders pose a high risk for re-offense, the vast majority of juvenile offenders do not. Risk assessment tools for juveniles are imperfect, but evolving, and can offer sufficient guidance for a court to determine the risk a particular youth poses to the community”
- “Sex offender registration often results in juvenile offenders facing barriers to education, housing and employment, as well as community institutions that help them reintegrate into the community. The purpose of registration is to protect public safety,

and not to punish offenders. And yet, your committee believes the current policy of registering all juveniles adjudicated of felony sex crimes may actually work against the public safety by alienating rather than rehabilitating youth fully capable of rehabilitation.”

- “The complexity of the legal system and financial costs pose significant barriers to juvenile sex offenders receiving relief from registration despite their eligibility.”
- “The inflexible nature of the current registration system sometimes leads to underreporting, and sometimes discourages prosecutors from bringing charges they otherwise would bring.”
- “Regulations governing release of information are confusing and rely on the discretion and judgment of the person responding to the request, thus creating opportunities for incon-



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sistent application of the rules.”

As a result of their findings, the majority of the committee made the following recommendations:

“Recommendation #1: The Oregon Legislature should amend state law to require that a court’s decision to subject a juvenile sex offender to registration occurs when the offender’s supervision and treatment ends.

Recommendation #2: The Oregon Legislature should amend state law to require that (a) the court that subjects a juvenile sex offender to registration also determine when the offender may seek relief, which must be no more than five years after registration is imposed, and (b) if the offender is denied relief, the offender has the right to periodically request relief.

Recommendation #3: The Oregon Legislature should amend state law to make the process for obtaining relief from registration more accessible to juvenile sex offenders.

Recommendation #4: The Oregon State Police should establish clear guidelines for the release of information about juvenile sex offenders to the public and should keep records of these requests to better evaluate the

effectiveness of the registry.”

It was noteworthy, as well, that the minority report of the committee did not argue for the status quo. Rather, the minority report recommended, “The Oregon Legislature should abolish juvenile sex offender registration.” The minority report cited much of the same research as the majority did and noted that the low rate of re-offense by juveniles and the lack of evidence of any public safety benefit provided by the registration of juveniles argued for the elimination of the registry. In a meeting of Club Members who heard the reports from both the majority and the minority members of the committee, the assembled membership ultimately decided to advance the majority report and recommendations to the full City Club membership for approval.

The City Club announced the results of the vote on November 18, 2014. Among current City Club members who voted, 96% voted to adopt the findings and recommendations of the majority report. The full report, executive summary and videos of the City Club debate and deliberations can be found online at: <http://www.pdxcityclub.org/jsor>. ●

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# Achieving Synergy: How Multidisciplinary Representation Helps Parents Succeed

By Amy Miller, Deputy General Counsel, Office of Public Defense Services

*Synergy: the increased effectiveness that results when two or more people or businesses work together*

Parents in the child welfare system need to be heard. In a recent New York Times Article<sup>1</sup>, Nicole Goodwin shares her story. A young Iraq war veteran, Ms. Goodwin, battles and eventually succumbs to deep depression upon her return home. Her worsening condition leads to charges of child neglect and eventually removal of her daughter. Ultimately, Ms. Goodwin was able to overcome her difficulties and successfully reunite with her daughter.

She credits the court and her legal representation team for listening, giving her a voice, and empowering her to succeed.

Meaningful participation by parents and their attorneys is essential to a well-functioning juvenile dependency court system. High quality legal representation for parents, where attorneys have adequate time to devote to their client's case, and parents have access to independent social workers as part of their legal team, has been shown to reduce the time children spend in foster care.<sup>2</sup> Across the country, legal advocates for parents are designing and implementing data-driven programs which consistently prove that high-quality legal representation for parents is also what's best for children.<sup>3</sup> In New York City, the Center for Family Representation's team model for parent representation has been credited with reducing the length of stay for children in foster care and increasing the number of safe family reunifications.<sup>4</sup> Washington State's Parent Representation Program, which includes caseload limits for attorneys and social workers for parents, has been shown to increase



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PHOTO BY VALERIE EVERETT

reunifications by 36%.<sup>5</sup> Multidisciplinary parent representation programs underway in Michigan, Colorado and Vermont have similar results.<sup>6</sup>

Parents in the child welfare system need a strong voice and a connection to the court process because early involvement of a parent in their child welfare case is critical to reunification. Indeed, the direction a case takes early on often predicts whether the child will return home.<sup>7</sup> Effective attorneys can ensure parental rights are protected and that a parent's voice is heard in court. Parents need advocacy outside of court as

well. They benefit greatly from a knowledgeable, trusted, and experienced social worker who will help them find and engage in the right services—those that comply with the court's order and that will allow them to develop the skills needed to remediate the bases for child welfare involvement.<sup>8</sup> However, parents face the enormous, and in some cases insurmountable, challenge of developing a working and trusting relationship with the same agency that removed their children in the first place.

Unfortunately, without a strong

*Continued on next page »*

« *Achieving Synergy* continued from previous connection to a capable and sympathetic social worker, parents often struggle to navigate a complicated system in order to obtain, complete, and learn from the services ordered by the court.<sup>9</sup> Child-welfare-involved-parents are under substantial stress, may face mental health and addiction challenges, and can be overwhelmed by the requirements imposed on them by the court. It's not a surprise that these parents become fatigued, disenchanted and wonder if their hard work will ever pay off. According to Michael Heard, Social Services Manager for the Washington State Parent

Representation Program, "This is where parent social workers come in. They are most effective in cases where parents need extra support and encouragement to stay engaged. Social workers for parents help the parents buy into and develop trust in the court process. Parents who believe in the system stay engaged in the system." Too often, agency referrals are provided to parents as a standard menu of services. Additional advocacy is needed to find flexible and creative services to engage parents to move more rapidly towards reunification.<sup>10</sup>

One question policy makers ask is whether parent social workers are

duplicating the efforts of the child welfare agency. The answer to this question is no. Social workers for parents have a unique role as part of the parent's advocacy team. Because they work with the parent's attorney, their primary responsibility is to the parent client.<sup>11</sup> Parent clients know that their conversations are confidential, won't be revealed to anyone else besides the attorney, and that the social worker is on their side.<sup>12</sup> As a result, parents can share information with their social worker without fear of the agency bringing the parent back to court or changing the safety plan. For example, if a parent misses a service appointment, the parent and social worker can work together to develop a plan to get back on track and then present the plan to the court.<sup>13</sup>

Through the Office of Public Defense Services Parent Child Representation Program (PCRPP), Oregon joined the national movement to promote high quality legal representation in juvenile dependency cases. Oregon's new pilot program, which started in Linn and Yamhill Counties in August 2014, includes caseload limits, additional training and oversight requirements, and a multi-

disciplinary approach to representation. Case managers, who fulfill a function similar to a social worker, are working closely with attorneys to assess and address client needs, motivate parents, develop alternative safety and visitation plans, and identify solutions to expedite permanency for children.

Although the PCRPP is in its infancy, significant improvement is underway. Parents and children are now consistently represented at initial shelter hearings by attorneys who have access to discovery and, in many cases, meet with their clients before the hearings. Case managers are available to work with clients from the moment the attorney is appointed. This is crucial because even a moderate increase in parental engagement with the child welfare system is associated with a 47% increase in the rate of reunification.<sup>14</sup> The findings of a National Council of Juvenile and Family Court Judges research project further emphasizes the importance of early involvement in the child welfare system. Families are more likely to be reunified when parents, mothers in particular, and

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« *Achieving Synergy continued from previous*

attorneys are present and involved in early stage hearings.<sup>15</sup>

When lawyers and social workers collaborate to help parents succeed in reunifying with their children, the entire child welfare system benefits. A number of team representation programs substantiate what has been shown through research and study: that social workers for child-welfare-involved-parents, working as part of a team approach to legal representation, help parents succeed.

<sup>1</sup>Goodwin, Why is this happening in your life? Parents in the Child Welfare System Need to be Heard, *The New York Times*, [http://parenting.blogs.nytimes.com/2014/11/20/why-is-this-happening-in-your-life-parents-in-the-child-welfare-system-need-to-be-heard/?\\_r=0](http://parenting.blogs.nytimes.com/2014/11/20/why-is-this-happening-in-your-life-parents-in-the-child-welfare-system-need-to-be-heard/?_r=0) (November 20, 2014).

<sup>2</sup>Courtney, Hook & Orme, Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes, *Partners for Our Children* (Discussion Paper Vol. 1(1)) (2011).

<sup>3</sup>The ABA Center on Children and the Law identifies fourteen different states which have implemented programs aimed at improving parent representation in juvenile court cases. Summary of Parent Representation Models, ABA Center on Children and the Law, [http://www.americanbar.org/content/dam/aba/publications/center\\_on\\_children\\_and\\_the\\_law/parentrepresentation/summary\\_parentrep\\_model\\_authcheckdam.pdf](http://www.americanbar.org/content/dam/aba/publications/center_on_children_and_the_law/parentrepresentation/summary_parentrep_model_authcheckdam.pdf) (2009).

<sup>4</sup>The Center for Family Representation,

2013 Report to the Community (2013).

<sup>5</sup>American Bar Association, ABA National Project to Improve Representation for Parents Fact Sheet, <http://schubert.case.edu/files/2014/02/ABAFactsheet.pdf>.

<sup>6</sup>Id. Buckholz, When an Attorney's Best Efforts are Not Enough: The Multidisciplinary Approach to Parent Representation, [http://vtprc.org/files/buckholz\\_article2.pdf](http://vtprc.org/files/buckholz_article2.pdf), Vermont Parent Representation Center (2012).

<sup>7</sup>Cohen and Cortese, Cornerstone Advocacy in the First 60 Days: Achieving Safe and Lasting Reunification for Families, ABA Child Law Practice (May 2009).

<sup>8</sup>Buckholz, When an Attorney's Best Efforts are Not Enough: The Multidisciplinary Approach to Parent Representation, [http://vtprc.org/files/buckholz\\_article2.pdf](http://vtprc.org/files/buckholz_article2.pdf), Vermont Parent Representation Center (2012).

<sup>9</sup>Id.

<sup>10</sup>See FN 7.

<sup>11</sup>Pilnik, Parents' Social Workers Help Parents Succeed, ABA Child Law Practice 27(9) (November 2008).

<sup>12</sup>Regulated social workers, like attorneys, are mandatory reporters of child abuse under ORS 419B.010.

<sup>13</sup>See FN 11.

<sup>14</sup>Marcenko, Newby, Mienko, and Courtney, Family Reunification in Washington State: Which children go home and how long does it take? *Partners for our children* (August 2011).

<sup>15</sup>National Council of Juvenile and Family Court Judges, Effects of Parental and Attorney Involvement on Reunification in Juvenile Dependency Cases, PPCD Research Snapshot, [http://www.ncjfcj.org/sites/default/files/Parental%20Involvement%20One%20Pager\\_Final\\_0.pdf](http://www.ncjfcj.org/sites/default/files/Parental%20Involvement%20One%20Pager_Final_0.pdf) (August 2011).



## Clackamas District Attorney Launches Broad Attack On Oregon Juvenile System

By Mark McKechnie, MSW, YRJ Executive Director

Clackamas District Attorney John Foote and retired Deputy District Attorney Charles French issued "Juvenile Justice in Oregon: An Analysis of the Performance of Oregon's Juvenile Justice System and Specific Recommendations for Improvements" on September 29, 2014. The document asserts that Oregon's juvenile justice system is failing relative to other states in the U.S., particularly in the areas of juvenile property crime and drug use. The authors credit a 68% drop in violent juvenile crime to policy changes that waive some juveniles 15 and older into the adult system. The report fails to note that 95% of juvenile violent offenses are still addressed in the juvenile, rather

than in the adult, court system. The French-Foote document can be found on the Clackamas District Attorney's web site: <http://www.clackamas.us/da/documents/JuvenileJusticeinOregon20140929.pdf>

The document was quickly criticized by local juvenile justice professionals and national experts, citing misrepresentation or misinterpretation of juvenile justice data. One critique was published in an Op-Ed by Dick Mendel, entitled: Glaring Flaws and Brazen Biases Riddle Oregon JJ Study." Mendel faults French and Foote for their omission of juvenile data from 1995-2001, a period during which arrest rates of juveniles in Oregon and Multnomah County decreased at much greater rates compared to national trends in terms of violent index crimes, property index crimes and total juvenile arrest rates. Mendel's Op-Ed can be found on the Juvenile Justice Information Exchange web site: <http://jjie.org/glar-ing-flaws-and-brazen-biases-riddle-oregon-jj-study/107662/>

Multnomah County and the Annie E. Casey Foundations Juvenile Detention Alternatives Initiative (JDAI) were targeted for particular criticism

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by Foote and French. According to the Annie E. Casey Foundation, JDAI is present in 300 jurisdictions nationally and will be active in 41 states and the District of Columbia by the end of 2015. The JDAI promotes alternatives to the use of county and state detention centers for juveniles whenever possible, citing research that youth placed in juvenile facilities were 38 times more likely to be arrested as adults.

Officials in Multnomah County contacted Melissa Sickmund, Ph.D., the Director of the National Center for Juvenile Justice, the research division of the National Council of Juvenile and Family Court Judges to review the Foote/French document. Her analysis, "Review and Critique of Juvenile Justice in Oregon," found data errors and misrepresentations, as well as faulty logic in the French-Foote report. She also highlighted differences between the prosecutors' arguments and prevailing national goals and beliefs regarding effective juvenile justice practices. Her analysis can be found here: <http://www.youthrightsjustice.org/media/3444/ncjj-analysis-of-or-juv-system.pdf>

In response to the document and its criticisms of Multnomah County, Presiding Judge Nan Waller has convened a work group to examine the local juvenile justice system as a whole and identify areas of strength and areas needing improvement. The group includes leaders from across the county and across multiple



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systems. The announcement of the work group said:

"Announcement of Formation of Juvenile Justice Task Force  
Multnomah County has a long tradition of collaborating on

public safety issues, including our juvenile justice system. We are and have been unwavering in our commitment to positive outcomes for our children and young people involved in the juvenile justice system and to assuring the safety of our community. We are committed to system improvement through the use of best practices and looking to reliable data to inform our decision making. A recent report commissioned by John Foote, District Attorney in Clackamas County, raises questions about how well the juvenile justice system in Multnomah County is currently functioning. We welcome the opportunity to consider these issues in an inclusive, multi-disciplinary, and rigorous assessment of our current practices. We will be convening a task force to begin this assessment. In keeping with the Multnomah County tradition, this group will be a collaboration that includes all key juvenile justice system partners and stakeholders."

The signers of the statement were:

Nan Waller, Presiding Judge  
Multnomah County Circuit Court  
Deborah Kafoury, Chair  
Multnomah County Board of

Commissioners  
Maureen McKnight, Chief Family Judge Multnomah County Circuit Court  
Rod Underhill, Multnomah County District Attorney  
Mike Reese, Chief, Portland Police Bureau  
Scott Taylor, Director, Multnomah County Department of Community Justice  
Christina McMahan, Multnomah County Juvenile Services Division Director  
Abbey Stamp, Executive Director, Multnomah County Local Public Safety Coordinating Council  
Suzanne Hayden, Executive Director, Citizen's Crime Commission  
Lane Borg, Executive Director, Metropolitan Public Defender's Office  
Mark McKechnie, Executive Director, Youth, Rights & Justice  
Meg Garvin, Executive Director, National Crime Victim Law Institute

The work group began meeting on October 13, 2014. In addition to

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those listed above, representatives from a number of governmental and non-governmental offices and organizations are participating in the work group, including: Local Public Safety Coordinating Council; Multnomah Family and Juvenile Court; Rosemary Anderson High School/ POIC; City of Portland; Portland Public Schools; Multnomah County Department of Community Justice and its Juvenile Services Division; Latino Network; Multnomah County Chair's and Commissioners' Offices; District Attorney's Office; Portland Police Bureau; Gresham Police Department; Troutdale Police Department; Fairview Police Department; Multnomah Sheriff's Office; Metropolitan Public Defender; Volunteers of America; Multnomah County Mental Health Division; Oregon Youth Authority; Citizen's Crime Commission; Oregon DHS; National Crime Victim Law Institute; East County School Districts; and Youth Villages.

District Attorney Foote and Mr. French presented their report to the work group. Mr. French has also indicated that he will seek legisla-



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tive changes in 2015, based upon his report's findings and recommendations. One recommendation is a redefinition of recidivism that includes arrests, in addition to convictions or adjudications. Another recommendation is to require judges to include a minimum period of confinement during disposition when the judges commit youth to Oregon Youth Authority correctional facilities. During this minimum period, OYA would not be permitted to parole or otherwise release youth back into the community. ●

## ICE Parental Interests Directive

By Christa Obold Eshelman, YRJ Attorney

In 2013, U.S. Immigration and Customs Enforcement (ICE) issued a Parental Interests Directive.<sup>1</sup> It delineates several ways that ICE should consider and facilitate the parenting interests of people who are involved in immigration enforcement proceedings.

1. First, each ICE field office is to designate a Point of Contact for Parental Rights who is responsible to address inquiries regarding parental issues for detainees.<sup>2</sup> The field office handling Oregon and Washington detainees is the Seattle office: [Seattle.Outreach@ice.dhs.gov](mailto:Seattle.Outreach@ice.dhs.gov). Locate a detained parent online at <https://locator.ice.gov/odls/homePage.do>. More information on how to initiate a parental rights request can be found on the ICE website at the following link: <http://www.ice.gov/parental-interest-faq>.

2. As one factor in its prosecutorial discretion in any stage of an immigration proceeding, ICE is to consider whether the person is a parent or guardian of a U.S. citizen or lawful permanent resident child, or is the primary caretaker of any minor. Prosecutorial discretion includes whether to detain a parent, and whether to prosecute a parent for immigration violations at all.<sup>3</sup>

3. ICE is mandated to try to place a detained parent as close as possible to their children or location of custody or child welfare proceedings.<sup>4</sup> For people from Oregon who are not released during the pendency

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«ICE Directive continued from previous of their removal proceedings, the Tacoma Northwest Detention Center is the default location. However, women are sometimes placed at NORCOR<sup>5</sup> in The Dalles; and at times, Columbia County jail beds have been used by ICE<sup>6</sup>, so some advocacy to keep detained parents in Oregon may be possible.

4. Subject to distance, staffing, and security constraints, ICE should transport detained parents to required child welfare or custody proceedings. If impracticable, ICE should work with parties to arrange an alternative mode of participation, such as video- or tele-conferencing.<sup>7</sup>

5. Visitation with children, if mandated by a court or child welfare agency, should be facilitated by ICE at the detention center. In-person visitation is the preferred mode, but video or telephone visits are alternatives.<sup>8</sup>

6. ICE is to accommodate parents' efforts to make arrangements for their minor children, if the parent is to be deported. This includes giving the parents access to necessary persons, including counsel, family may provide a parent's itinerary ahead of time so that the parent can coordinate travel plans for his or her children.<sup>9</sup>

7. Finally, a parent who has already

been deported may be given permission by ICE to return to the United States solely for the purpose of participating in "a hearing or hearings related to his or her termination of parental or legal guardianship rights," if a court has determined that the parent must be physically present for the hearings.<sup>10</sup>

An attorney, caseworker, judge, or other person can contact ICE to advocate for family interests.<sup>11</sup> Key to many of the requests is providing a relevant order from the juvenile or family court; for example, as proof of the existence of child custody/welfare proceedings, and the necessity of visitation or participation in hearings. Because juvenile court and Oregon Department of Human Services records are confidential, advocates should make sure they are complying with the restrictions of ORS 409.225 and ORS 419A.255 prior to releasing any information from the case to ICE.

Even when disclosure is permissible, care should be taken regarding what information is provided to ICE. Any information ICE receives about the parent could be used against the parent in his or her deportation

proceedings. Very limited court findings and orders likely should be drafted for the explicit purpose of disclosure to ICE for facilitation of family rights.

<sup>1</sup>The full text of the Parental Interests Directive can be found at the following ICE website: [http://www.ice.gov/doclib/detention-reform/pdf/parental\\_interest\\_directive\\_signed.pdf](http://www.ice.gov/doclib/detention-reform/pdf/parental_interest_directive_signed.pdf).

<sup>2</sup>U.S. Immigration & Customs Enforcement, 11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities, 5.1 (2013) [hereinafter Parental Interests Directive].

<sup>3</sup>*Id.* at 5.2; *Applying the ICE Parental Interests Directive to Child Welfare Cases*, ABA Child Welfare and Immigration Project, Immigrant Legal Resource Center, Vol. 33, No. 10 (Oct. 2014).

<sup>4</sup>Parental Interests Directive at 5.3.

<sup>5</sup>Northern Oregon Regional Correctional Facilities

<sup>6</sup>Interview with Anna Ciesielski, Oregon Immigration Group, Nov. 17, 2014.

<sup>7</sup>*Id.* at 5.4.

<sup>8</sup>*Id.* at 5.5.

<sup>9</sup>*Id.* at 5.6.

<sup>10</sup>*Id.* at 5.7.

<sup>11</sup>*Id.* at 5.1. ●



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# Juvenile Law Resource Center

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## Conditions for Return: DHS Policy, the Juvenile Code and Case Law

By Julie H. McFarlane, YRJ Supervising Attorney and Jason Pierson, YRJ Law Clerk

### **Background**

The Oregon Safety Model (OSM) was first rolled out in 2007 to provide a practice model for caseworkers that requires child safety assessment and management at all stages of Oregon child welfare cases. The Department of Human Services (DHS) is presently updating the OSM and is educating staff and community partners about these updates in the “OSM Refresh”. The OSM and the changes that have

come with the “Refresh” are largely found in *Child Welfare Policies, Oregon Administrative Rules and Protocols*<sup>i</sup>, the *DHS Staff Tools for Child Welfare – Safety Model Training*<sup>ii</sup>, and the *DHS Child Welfare, Procedure Manual*<sup>iii</sup>. More recently, DHS is rolling out Differential Response (DR) in some Oregon Counties. DR focuses on pre-removal intervention with families and is designed to reduce removals.

Overall, the OSM, when correctly applied provides, in these authors’ opinions, a significant improvement in the guiding principles of Oregon child welfare practice by requiring improvements in information gathering about child welfare involved families and the application of a more rigorous, logical, sequential and systematic approach to the decisions that must be made in these cases. These rules and policies, while governing DHS casework practice, are also highly relevant to the decisions made by judges in juvenile dependency cases and the work of

attorneys in advocating for specific outcomes for their clients.<sup>iv</sup> Gaining a working knowledge of the entire OSM and the interplay between the OSM and the statutes and case law to which the juvenile court must adhere is critical to zealous advocacy in these cases. This memorandum addresses the interplay of the OSM and the Oregon dependency statutes in the context of “conditions for return”<sup>v</sup>.

### **I. Conditions for Return – Rule and Policy Overview**

OAR 413-040-0005 (6) defines “Conditions for return” as a: “written statement of the specific behaviors, conditions, or circumstances that must exist within a child's home before a child can safely return and remain in the home with an in-home ongoing safety plan.” DHS develops the conditions for return during the creation of the ongoing safety plan for the child and documents the conditions for return in the case plan.<sup>vi</sup> Conditions for return should

not be confused with expected outcomes, “Expected Outcomes” are the goals for change that demonstrate that the child will remain safe in the care of the parent and lead to termination of wardship and temporary commitment to DHS.<sup>vii</sup>

The groundwork for the conditions for return is done prior to the completion of the case plan which is due 30 days after removal. The OSM not only details specific activities of the caseworker in determining the conditions for return, but also shifts the case planning focus from the incident(s) that brought the child into care to the individual characteristics of the child (child vulnerability) and the parents (protective capacities) in the context of the threats of danger in the family.

Once the conditions for return have been crafted, DHS must make reasonable efforts to reduce the stay of the child in substitute care, and reunify the child with the parents

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# Juvenile Law Resource Center

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« *Conditions For Return continued from previous* whenever possible.<sup>viii</sup> DHS is also responsible for contacting and communicating with each parent through monthly face-to-face meetings regarding the progress made toward reuniting them with their child through the least intrusive intervention possible.<sup>ix</sup>

The OAR requires the following conditions to be met before DHS will recommend return of the child to her parents with a safety plan:

- The conditions for return in the case plan have been met;
- The identified safety threats can be managed with an ongoing safety plan;
- The parents or guardians are willing and able to accept responsibility for the care of the child or young adult with an ongoing safety plan;
- The parents or guardians are willing and able to continue participating in case plan services;
- Service providers who are cur-

rently working with the child, young adult, parents or guardians, and other involved persons including the child or young adult's CASA and attorneys have been informed, in writing, of the plan to return the child or young adult with an in-home ongoing safety plan; and

- No safety concerns for the child or young adult are raised in the caseworker's review of criminal history

records and child welfare protective services records of all persons currently residing in a parent or guardian's home.<sup>x</sup>

The OSM further explains that DHS must determine the conditions that must exist prior to the return of the child to the parents by taking the following steps:

1. Thinking about the identified safety threats to consider options;

2. Developing a detailed understanding as to why an in-home plan will not work at this time;
3. Determining what would manage child safety with an in-home safety plan;
4. Clearly communicating the conditions for return to everyone involved, most notably the child's parents;
5. Communicating Conditions for Return to the court, attorneys, CASA, Tribe(s), etc. through regular court reports, case plan reviews, discussions, and other forms of communication; and
6. Documenting information about the conditions for return in the Child Welfare Case Plan and describe the following:
  - a. The specific behaviors, conditions or circumstances that must exist before a child can return to parents' home with an in-home ongoing safety plan; and
  - b. The actions and time requirements of all participants in the in-home on-going safety plan.<sup>xi</sup>

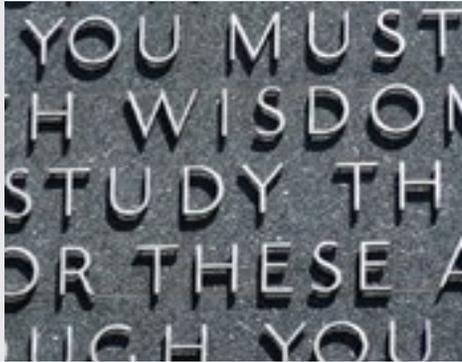


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# Juvenile Law Resource Center



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The case plan and the conditions for return are not static and inflexible, as the on-going case plan must always ensure the safety of the child by implementing the least intrusive means necessary.<sup>xii</sup> When reviewing the case plan, DHS must document the elimination or management of identified safety threats, and an assessment of parents' progress toward the conditions for return.<sup>xiii</sup> The OSM states that "safety threats do not have to be totally eradicated to manage the child's safety," and "parents do not necessarily have to demonstrate sustained change for

children to return to the parents' home."<sup>xiv</sup>

These conditions for return can be overridden by a court as discussed in more detail below.<sup>xv</sup> If the court orders the return of the child to the parents' home, DHS must develop an in-home safety plan as soon as practicable, but no later than seven days following the court order.<sup>xvi</sup>

## II. Return of Child – Statutory Provisions

Through-out the stages of the court process, the court must determine whether to return the child to her home. The juvenile court has exclusive original jurisdiction over children who come to the attention of the State and who meet jurisdictional criteria, including those whose "condition or circumstances are such as to endanger their welfare or the welfare of others."<sup>xvii</sup> However, "[i]t is the policy of the State of Oregon...to offer appropriate reunification services to parents and guardians to allow them the oppor-

tunity to adjust their circumstances, conduct or condition to make it possible for the child to safely return home... [and] there is a strong preference that children live in their own homes with their families."<sup>xviii</sup>

### A. The Pre-Jurisdictional Stage

Although conditions for return have not been required to be developed by DHS at the time of the initial removal and shelter hearing, they may well be available for subsequent shelter hearings or settlement hearings. The safety analysis that Child Protective Services (CPS) caseworkers perform in determining whether to remove a child forms the basis for the later development of the conditions for return. While the safety analysis vocabulary differs from the vocabulary of the statutory provisions, the safety analysis can help provide information and analysis that the juvenile court needs to reach the decisions and findings it must make.

#### 1. Statutory Provisions Pre-Jurisdiction

ORS 419B.150 (1) allows DHS to take a child into protective custody when the child's condition or surroundings reasonably appear to be such as to jeopardize the child's welfare, when the juvenile court has ordered that the child be taken into protective custody or when it reasonably appears that the child has run away from home. If an order is sought to take the child into custody, it must be based on an affidavit that describes the facts and circumstances, why protective custody is in the best interests of the child and the reasonable or active efforts made to eliminate the need for protective custody.<sup>xix</sup>

A shelter hearing must be held within 24 hours.<sup>xx</sup> At the initial shelter hearing and any subsequent review, the child and parents are entitled to an evidentiary hearing to determine whether the child "can be returned home without further danger of suffering physical injury or emotional

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# Juvenile Law Resource Center

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« *Conditions For Return continued from previous* harm, endangering or harming others or not remaining within the reach of the court process prior to adjudication.<sup>xxxi</sup> At this shelter hearing or subsequent review, the juvenile court must make written findings as to whether DHS has made reasonable or active efforts to prevent or eliminate the need for removal.<sup>xxxii</sup> In determining whether to remove the child, or continue the child out of home, the court, considering the child's health and safety as paramount, must determine whether removal is in the best interests of the child and whether provision of reasonable services can prevent or eliminate the need to separate the family.<sup>xxxiii</sup>

In *State ex rel. SOSCF v. Frazier*<sup>xxxiv</sup>, the Oregon Court of Appeals held that the type and sufficiency of efforts that DHS is required to make depends on the particular circumstances of the family and that the

trial court must consider services provided before the state took custody of the child and services provided immediately after the removal of the child.<sup>xxxv</sup> Further, the juvenile court must assess for each parent, individually, the reasonableness of the efforts by DHS to prevent or eliminate the need for removal of the child from each parent's home.<sup>xxxvi</sup>

2. The OSM Interplay Pre-Jurisdiction  
Thus, in the pre-jurisdiction stage, the juvenile court is making decisions concerning return, best interests and reasonable efforts – all of which interplay with relevant OSM requirements.

a. The Return Decision – OSM Safety Analysis

Pursuant to the OSM, DHS must be able to articulate either a present danger safety threat, or an impending danger safety threat for a child to be removed from her family.<sup>xxxvii</sup> To determine that there is a present danger safety threat to the child,

DHS must be able to conclude that the danger is immediate, significant, and clearly observable.<sup>xxxviii</sup> The OSM provides further guidance in defining the terms “immediate”, “significant”, and “clearly observable.” In short, these terms mean that the caseworker can see what is happening right before her eyes; that the behavior, condition or circumstance is onerous, vivid, impressive and notable; and that the behavior, conditions or circumstances are totally transparent; requiring no interpretation by the caseworker.<sup>xxxix</sup> The OSM provides a non-exclusive list of present danger safety threats.<sup>xxx</sup>

The OAR also requires the caseworker to apply the “safety threshold” criteria to determine whether an impending danger safety threat exists.<sup>xxxxi</sup> Safety threshold is defined in OAR 413-015-0115(40) as “the point at which family behaviors, conditions, or circumstances are manifested in such a way that they are beyond being risk influences and

have become an impending danger safety threat.” It further provides the following five criteria that the behaviors, conditions, or circumstances must meet: imminent, out of control, affect a vulnerable child, specific and observable, and have potential to cause severe harm to a child.

The OSM articulates 16 inclusive impending safety threats, one of which must be identified if a referral to the department is identified as founded.<sup>xxxiii</sup> If an impending danger safety threat is identified, DHS must analyze the information by describing the following:

- The length of time the family behaviors, conditions, or circumstances have posed a threat to child safety;
- The frequency with which the family behaviors, conditions, or circumstances pose a threat to child safety;

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# Juvenile Law Resource Center

« *Conditions For Return continued from previous*

- The predictability of the family behaviors, conditions, or circumstances that pose a threat to child safety;
- Specific times (during the day or week), if any, that require special attention due to the way the family behaviors, conditions, or circumstances are occurring
- Identified individual or family behaviors, conditions, or circumstances that prevent a parent or caregiver from adequately functioning in their primary parenting role; and
- Anything else that is associated with, occurs at the same time as, or influences the family<sup>xxxiii</sup>.

If it is determined that a safety threat exists, DHS must next analyze whether the child is vulnerable,<sup>xxxiv</sup> and whether the parents have sufficient protective capacities to allow the child to safely remain in the home.<sup>xxxv</sup> Then DHS develops a safety plan for the child.<sup>xxxvi</sup> An in-home safety plan can allow a child to remain in or be returned safely to the home.

## b. Reasonable Efforts – Services

All of the activities and requirements of the OSM also interplay with the juvenile court's reasonable efforts determination at the pre-jurisdiction stage. The OSM states that a "rigorous" application of the standards in the OSM is sufficient to comply with the reasonable efforts standard imposed by the ORS and the courts.<sup>xxxvii</sup> The juvenile court may question whether reasonable or active efforts have been made if the caseworker has failed to follow the policies and procedures of the OSM that apply to a particular family given who its members are and the condition and situation in which they find themselves. Thus, it is important for practitioners to examine the work done by the caseworker, applying the OSM, to determine whether reasonable or active efforts have been made.

(The full article and all endnotes can be viewed [here](#).) ●

## Juvenile Dependency Issues Pending in the Appellate Courts

By Angela Sherbo, Supervising Attorney, Youth Rights & Justice and Inge Wells, Assistant Attorney-in-Charge, Appellate Division, Oregon Department of Justice

**The following article is the first in what the editors hope will be a regular column authored by various appellate attorneys to help trial lawyers keep informed about cases that haven't been decided yet. We hope this will be a useful adjunct to the summary of recently decided cases.**

Several cases presently under advisement in the Oregon Court of Appeals raise claims of inadequate assistance of counsel. Those cases raise two issues: (1) whether

inadequate-assistance claims may be raised on direct appeal; and (2) what actions (or inactions) of trial counsel in dependency and termination of parental rights cases amount to inadequate assistance of counsel.

In *State ex rel Juv. Dept. v. Geist*, 310 Or 176, 796 P2d 1193 (1990), the Supreme Court held that parents could raise claims of inadequate assistance of counsel on direct appeal, in part because of the absence of "statutes providing otherwise[.]" *Id.* at 187. In the cases pending before the court, the state questions whether that holding in *Geist* continues to apply in light of the enactment of ORS 419B.923. That statute, which was enacted in 2001, allows a parent to move to set aside "any order or judgment" made by the juvenile court for reasons including but not limited to excusable neglect or newly discovered evidence. ORS 419B.923(1). See *Dept. of Human Services v. A.D.G.*, 260 Or App 525, 539, 317 P3d 950 (2014) ("the legislature intended to provide a juvenile court with broad authority under ORS 419B.923(1) to modify or set aside a judgment or order").

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# Juvenile Law Resource Center

« Pending Issues continued from previous

In *Dept. of Human Services. v. H.H.*, 266 Or App 196, 206, 337 P3d 925 (2014) the Court of Appeals assumed “without deciding” that the opportunity for a party to seek to set aside a judgment based on a claim of inadequate assistance of counsel under ORS 419B.923 does not foreclose the appellate court from considering such a claim in the first instance or remanding for evidentiary development of the claim. But, citing the Geist caution that a court should authorize an evidentiary hearing only where a parent raises a substantial question about the witness the parent alleges should have been called, the court declined to do so in this case. The court explained

“Before authorizing an evidentiary hearing, a court doubtless would require a threshold showing of specific allegations, including the names of witnesses to be called, the expected substance of their testimony, and an explanation of how that testimony would show that trial counsel was inadequate.”

*H.H.*, 266 Or App at 206.

Questions that continue to arise include whether, as the state argues, a parent should be required to raise claims of inadequate assistance of trial counsel in an ORS 419B.923 motion, so that an evidentiary record may be developed. And if so, whether a parent, as a practical matter, will be entitled to obtain substitute trial counsel for that purpose. Another question is whether the opportunity to file a motion under ORS 419B.923 is sufficient to protect a parent’s due process right to a fundamentally fair proceeding.

On the merits of what constitutes inadequate assistance, one issue for trial counsel involves the relatively common situation where a client fails to appear. What is the attorney’s responsibility to move for a continuance and, if that motion is denied, participate in the hearing? How should ORS 419B.819(8), which says that if a parent has been summoned, “the parent may not appear through the parent’s attorney” be reconciled with ORS 419B.875(2), which estab-

lishes the rights of parties, including the right to appear with counsel? Is the attorney inadequate if he or she asks to be excused from the proceeding or asks for leave to withdraw as counsel? And if an attorney does not participate in a *prima facie* hearing, by, for example, objecting to inadmissible testimony and exhibits, how should the court evaluate whether a parent was prejudiced?

Another issue arises where a parent appears, as a result of a mental or physical disability or impairment, to “lack substantial capacity either to understand the nature and consequences of the proceeding or to give the direction and assistance to the parent’s attorney on decisions the parent must make in the proceeding.” ORS 419B.231. In that instance, the court, “on its own motion, or on the written or oral motion of a party in the proceeding, may appoint a guardian ad litem for a parent.” May an attorney for that parent initiate the process of having a guardian ad litem (GAL) appointed for her own client?<sup>1</sup> Or, has the attorney provided inadequate assis-

tance if she does so? Finally, in cases where a GAL has been appointed, can the attorney’s actions thereafter, including not asking to have the GAL removed if a parent’s circumstances have arguably changed, constitute inadequate assistance of counsel?

Trial counsel for all parties should be alert to these issues, contact their appellate experts if necessary and watch the Court of Appeals website for the latest juvenile decisions.

<sup>1</sup>For further guidance on this issue, lawyers with a client who may lack full capacity should consult ORPC 1.14 and OSB Formal Ethics Op No 2005-159. ●



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PHOTO BY ADAM GROFFMAN

# Juvenile Law Resource Center

## CASE SUMMARIES

By Caitlin Mitchell, YRJ Attorney  
and Jason Pierson, YRJ Law Clerk

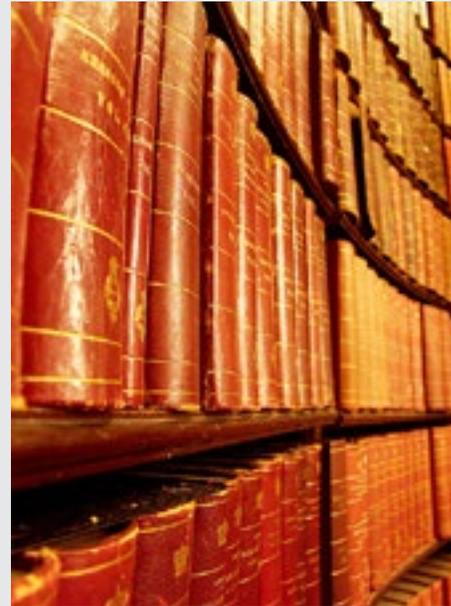
***RE: In the Matter of S.F. – H; Dept. of Human Services v. H.H., 266 Or App \_\_\_\_ , \_\_\_\_ P.3d \_\_\_\_ (October 8, 2014)***  
**Opinion written by Lagesen; Out of Multnomah Co.**

Mother and Father appealed from a juvenile court judgment taking jurisdiction over their two sons, S and H. The grounds for jurisdiction were that (1) father caused a nonaccidental injury to H that amounted to child abuse; and (2) mother refused to acknowledge father's role in the injury to H, and was therefore unable to protect her children. The parents argued that the court erred in determining that H's injury was nonaccidental and that the chil-

dren's circumstances endangered them. The parents also argued that trial counsel was inadequate and requested an evidentiary hearing on that issue.

The Court of Appeals declined parents' request for a de novo review, reviewing the juvenile court's findings to determine whether they were supported by any evidence in the record. On parents' first claim, the court found that the nature of H's injuries and the facts surrounding them—in particular, that H broke his femur while in father's care, that H did not sustain injuries while father was away for three months, and that H was again injured shortly after father returned home—were sufficient to support the juvenile court's finding that the injury was nonaccidental.

The Court of Appeals also rejected mother's claim that the juvenile court erred in finding that the children's circumstances endangered them. The court held that even though mother is an engaged



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and caring parent, the fact that she continued to reside with father, was adamant that father did not injure H, and testified that the family would likely function in the same way as it had prior to the accident if DHS was no longer involved, was sufficient to support the court's determination that the children's circumstances endangered them so as to warrant jurisdiction.

Finally, the court declined to exercise its discretion to remand the case for an evidentiary hearing on the adequacy of the parents' attorneys. That was because, although the parents argued that they had asked their attorneys to call an additional expert witness and the attorneys had failed to do so, the parents did not explain how that witness' testimony would have contributed to the trial. Quoting Geist, the court explained that, "[b]efore authorizing an evidentiary hearing, a court doubtless would require a threshold showing of allegations, including the names of witnesses to be called, the substance of their testimony, and an explanation of how that testimony would show that trial counsel was inadequate." Absent that showing, the parents' claim did not raise a substantial question concerning the adequacy of counsel. The Court of Appeals assumed without deciding that statutory amendments had not foreclosed the court's discretion to remand a case for

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# Juvenile Law Resource Center

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«*JLRC Case Summaries continued from previous* evidentiary development of a claim of inadequate assistance of counsel pursuant to Geist. The court also assumed without deciding that the right to adequate assistance of counsel applies even where a parent's lawyer is retained and not appointed, and at all stages of a juvenile case, including the jurisdictional stage.

***RE: In the Matter of A.H.; Dept. of Human Services v. M.H., 266 Or App \_\_\_\_ , \_\_\_\_ P.3d \_\_\_\_ (October 15, 2014) – Opinion written by Egan; Out of Josephine Co.***

DHS and the child appealed the juvenile court's judgment setting aside earlier judgments that terminated mother's and father's paternal rights. The Court of Appeals determined that the juvenile court had not abused its discretion in setting aside the judgments and therefore affirmed.

The juvenile court took custody of

the child in September 2010. In July 2011, the court entered a judgment changing the permanency plan for A from reunification to adoption. Both parents appealed, and the Court of Appeals affirmed without opinion. DHS filed petitions to terminate the parents' rights in August 2011. In August 2012, the juvenile court held a second permanency hearing and entered a judgment continuing the plan of adoption. Both parents appealed from that second permanency judgment. In March 2013, while the appeal was pending, the juvenile court terminated the rights of both parents. Approximately five months following the termination of the parents' rights, the Court of Appeals issued Department of Human Services v. M. H., 258 Or App 83, 308 P3d 311 (2013), in which it reversed the juvenile court's August 2012 permanency judgment. The court held that the juvenile court had erred by failing to make certain statutorily required factual findings pursuant to ORS 419B.476 and ORS

419B.498, and that the error was not harmless, because adoption and termination proceedings cannot occur until there is a predicate permanency judgment. Based on the decision of the Court of Appeals, the juvenile court granted the parents' motion to set aside the termination judgments. The state and the child appealed, arguing that (1) a termination of parental rights proceeding is separate from the underlying dependency case, and that a "valid" permanency judgment thus is not required before parental rights can be terminated; (2) the text of ORS 419B.498(3) demonstrates that the legislature intended only to ensure that the juvenile court approves a case plan of adoption before a termination petition is filed; and (3) the permanency judgment that had been reversed on appeal merely continued a plan of adoption that previously had been approved. The Court of Appeals disagreed. ORS 419B.476(2)(b) requires the juvenile court to consider the circum-

stances at the time of the permanency hearing to determine whether the appropriate plan is in place. Specifically, the juvenile court is required to make findings as to "whether, considering the circumstances at the time of the hearing, DHS has made reasonable efforts to find the child an adoptive placement"; whether "the permanency plan should change to or remain adoption"; and "whether and when the child will be placed for adoption and the petition for termination of parental rights filed." Those requirements evince legislative intent that the trial court carefully evaluate DHS's decision to change or maintain a particular permanency plan—at each permanency hearing—to ensure that the plan is the one most likely to lead to a positive outcome for the child. To further ensure that the juvenile court carefully evaluates a child's permanency plan at each permanency hearing, ORS 419B.498(3) makes the juvenile court's approval

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# Juvenile Law Resource Center

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«JLRC Case Summaries continued from previous of a permanency plan of adoption a precondition to the filing of a termination petition. Whether a juvenile court maintains or continues a permanency plan, the consequences of those decisions implicate the same calculation and careful evaluation. Based on the foregoing analysis, the Court of Appeals affirmed the juvenile court's judgment setting aside the judgments that terminated the parents' rights.



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**RE: In the Matter of L.M.; Dept. of Human Services v. J.M., 266 Or App \_\_\_\_, \_\_\_\_, P.3d \_\_\_\_ (October 22, 2014) – Opinion written by Ortega; Out of Douglas Co.**

The parents appealed from a permanency judgment changing the plan for their child, L, from reunification to adoption. The Court of Appeals affirmed.

DHS filed a dependency petition two days after L's birth, in August 2012. Jurisdiction was established based on the parents' admissions that they lacked the parenting knowledge to ensure L's safety; that both had mental health problems that interfered with their ability to parent; that mother failed to recognize how father's mental health problems presented a safety risk; and that father's inability to control his anger presented a safety threat. In January 2014, the juvenile court changed the plan from reunification

to adoption. The parents appealed, claiming (1) that the juvenile court violated their due process rights by admitting out-of-court statements contained within three reports without providing the parents the opportunity to cross-examine the authors of the reports; (2) that the juvenile court erred in determining that DHS made active efforts to reunify the family and that the parents had not made sufficient progress to allow L to be safely returned home; and (3) that, pursuant to ICWA, the juvenile court had erred in continuing the placement of L in relative foster care without hearing expert testimony that continued custody by the mother was likely to result in "serious emotional or physical damage" to L.

The Court of Appeals rejected the parents' claims. It first held that, pursuant to *Mathews v. Eldridge*, the parents' due process rights were not violated. Dependency proceedings interfere with a parent's liberty interest in the care and custody of

his or her child, while simultaneously implicating the state's interest in the welfare of the child, the child's best interests, and, in an ICWA case, the state's interest in preventing the unwarranted break up of Indian families. Those interests must be examined in consideration of the time, place, and circumstances within which the due process claim arises. Here, the court found that a permanency hearing is not a "key juncture" in which due process would prohibit the juvenile court from admitting exhibits without regard to competency,<sup>1</sup> because (1) the state has already taken physical and legal custody of the child; (2) the purpose of the permanency is to achieve permanency for the child while providing court oversight of DHS' efforts and the parents' progress; (3) other procedures—in particular, the power to subpoena witnesses—are available to parents; and (4) a permanency hearing does not determine whether a parent's legal ties to their child

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# Juvenile Law Resource Center

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«*JLRC Case Summaries continued from previous* should be severed, and termination of parental rights proceedings, in which that determination is made, include significant additional procedural protections. In light of those considerations, the court concluded that, given the low risk of erroneous deprivation of the parents' liberty interest, and factoring in the interests of the child and the state, the admission of the exhibits did not violate due process.

Next, the Court of Appeals held that DHS had made active efforts to reunite the parents with L, including visitation, counseling, and weekly one-on-one parent training. The court accepted the opinion of the parents' psychologist, that all of the services provided were appropriate and that it was unlikely that any further progress would be made with additional services. The court additionally determined that the trial court did not err in finding that the parents had not made sufficient

progress, due to father's explosive anger episodes and mother's failure to show she could safely care for L. Finally, the Court of Appeals held that the change of plan from reunification to adoption did not constitute a "foster care placement" that would, pursuant to ICWA, require the court to hear expert testimony at the permanency hearing. That was because L had already been removed from his parents at an earlier proceeding, and because the permanency hearing at issue on appeal had caused no significant shift in legal rights.

<sup>1</sup>ORS 419B.325(2) states that, "For the purpose of determining proper disposition of the ward, testimony, reports or other material relating to the ward's mental, physical and social history and prognosis may be received by the court without regard to their competency or relevancy under the rules of evidence."

***RE: In the Matter of A.W.; Dept. of Human Services v. S.W., 267 Or App \_\_\_, \_\_\_ P.3d \_\_\_ (November 26, 2014) – Opinion written by Garrett; Out of Wasco Co.***

Father appealed from a permanency judgment that changed the plan for his daughter from reunification to adoption, arguing, among other things, that DHS had failed to make the required reasonable efforts to reunify him with his child. Father focused on a period of approximately 33 months during which he was incarcerated in Washington, arguing that DHS' failure to contact father's prison counselor to discuss services, and DHS' failure to explore the possibility of visitation with A, rendered the department's efforts unreasonable.

The Court of Appeals rejected father's argument. As in the companion case of Dept. of Human Services v. T.S., the court reiterated that the reasonableness of the department's efforts is dependent on the particular circumstances of the case, and that a court must consider not only the burdens that the state would shoulder in providing particular services, but also what benefit might reasonably be expected to flow from them. The court noted

that, in assessing reasonable efforts, it may consider whether a parent has attempted to make the necessary changes in his or her life, or whether the parent instead has ignored or refused to participate in DHS' plan. The court began by noting that this was a "difficult case," in part because DHS' level of effort during the 33-month-period that father had identified was "hardly vigorous." The court found, however, that DHS' somewhat minimal efforts were reasonable, when viewed with in the context of the life of the case and the "particular circumstances of father and A," and keeping in mind the "paramount concern" of A's welfare. The court focused on DHS' significant efforts early in the case to engage father in treatment and to arrange visitation. Father's engagement in both treatment and visitation had been inconsistent, and father ultimately committed new crimes, resulting in a lengthy period of incarceration that rendered him

*Continued on next page »*

# Juvenile Law Resource Center

«*JLRC Case Summaries continued from previous* unavailable to parent. While in prison, father knew what DHS expected, but chose not to participate in key services, despite their availability. In addition, while in prison, father “evidenced little interest in A,” making only a single request for telephone visits and failing to initiate contact until the department encouraged him to write letters.

The court observed that, even during the 33-month-period, DHS’ efforts were more than “virtually nonexistent,” the phrase used to describe the department’s efforts in Williams: DHS had sent letters of expectation to father, had two telephone calls and one meeting with him, encouraged him to write to A, and arranged for a psychological evaluation. Although DHS did not provide visitation, that was because the department had made a “considered decision” that visits would not be appropriate, due in part to the long drive, A’s particular physical, behavioral, and emotional problems, A’s lack of a relationship



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with father, and recommendations made in father’s psychological evaluation. Finally, the court noted, father had failed to explain how any further efforts by DHS would have furthered the statutory objective of allowing A to safely return home, particularly because, at the time of the permanency hearing, father’s remaining three months of incarceration would be followed by 19 months of supervised post-prison substance abuse treatment. In response to the dissent, the majority clarified that it was not proposing a per se rule that DHS

need not invest in services for parents facing lengthy incarceration, but instead was taking the circumstances of the incarceration, juxtaposed against the child’s stage of development and particular needs, into consideration when assessing the department’s efforts.

Judge Ortega dissented, arguing that the majority had focused impermissibly on father’s behavior in assessing DHS’ efforts, thus allowing DHS “to gamble against making such efforts if it appears that a parent is unlikely to be worthy of its investment of time.” ORS 419B.476(2)(a) requires that a parent’s progress be evaluated only where DHS has made reasonable efforts, and not as a prerequisite to making such efforts: “A parent does not earn the right to reasonable efforts, and a parent’s failure to engage consistently early in a case cannot excuse the cessation of efforts by DHS as the case proceeds.” The dissent also challenged the majority’s manner of considering the length of father’s incarceration, arguing that

reasonable efforts are required even for parents with lengthy sentences because termination of parental rights is not inevitable in cases involving incarcerated parents, even those in prison for long periods of time. “It is not possible,” the dissent writes, “to predict the outcome for an incarcerated parent any more than for any parent—and even if it were, allowing DHS to gauge what efforts are reasonable by such predictions would be inconsistent with the statute’s requirement of reasonable efforts and our recognition that such efforts must be made in every case.” In sum, the dissent argued, DHS’ effort as to father was minimal and not reasonable (the dissent also took issue with the majority’s recitation of the facts concerning DHS’ efforts), and neither father’s incarceration nor his early inconsistencies justified that lack of effort: “The majority’s conclusion otherwise relieves DHS of the burden of making reasonable efforts \*\*\* and instead imposes on parents the

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# Juvenile Law Resource Center

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«*JLRC Case Summaries continued from previous* burden of showing that such efforts would have been efficacious in their particular circumstances, as evaluated on a record where such efforts were not made.»

**RE: *In the Matter of T.S.; Dept. of Human Services v. T.S., 267 Or App \_\_\_\_ , \_\_\_\_ P.3d \_\_\_\_ (November 26, 2014) – Opinion written by Garrett; Out of Multnomah Co.***

Father appealed from a permanency judgment that changed the plan for his daughter, T, from reunification to adoption, arguing that DHS had failed to make the required reasonable efforts to reunify him with T. Specifically, father, who was incarcerated at the time of the permanency hearing, argued that DHS' efforts were unreasonable because the department had failed to contact father for approximately one year; did not look into arranging visita-

tion or telephone calls with T until 7 or 8 months into father's incarceration; and made no efforts to develop father's relationship with T, other than forwarding letters that father had written in the months prior to the hearing.

The Oregon Court of Appeals agreed with father and reversed the trial court's decision. The court began by reiterating that, although a parent's incarceration may not serve as a basis for excusing DHS from making reasonable efforts, the nature of the efforts required is dependent on the particular circumstances of the case, and that a parent's refusal to participate in services may factor into the court's analysis. Here, the court observed that father's participation was erratic at the beginning of his case, but that father became more active after his incarceration. Without assistance or encouragement from DHS, father sought out parenting classes, attended alcohol and drug rehabilita-

tion classes, was employed, attended church services, met regularly with his counselor, and worked toward achieving his GED. Also during his incarceration, father "persistently" sought opportunities for contact with his daughter. The court observed that, notwithstanding father's progress and his repeated requests for assistance from DHS in developing his relationship with his daughter, the department had not contacted father for an extended period of time, choosing instead to focus on the mother because she was regarded as being a more viable candidate for reunification. That choice, the court determined, as "impermissible," because DHS is required to make reasonable efforts as to both parents. Viewing the circumstances in their totality, the court held that DHS had failed to make reasonable efforts to reunify father with T.

Judge Ortega concurred, stating that she disagreed with the majority's analysis because of the ma-

majority's "emphasis on the parent's behavior"—that is, the majority's focus on the fact that father had taken initiative to seek services in prison and to write to his child. That focus, Ortega argued, is "misplaced and, taken to its logical conclusion, would allow DHS to hedge its bets on providing reasonable efforts to many parents who lack the coping skills to advocate for themselves and to devise an appropriate reunification strategy" on their own. The statute does not condition DHS' obligation on parental compliancy or initiative. To do so, Ortega argued, would be "contrary to the statutory scheme, which calls for the state to do what it reasonably can to ensure that parental rights are preserved where a parent can be brought up to the standard of minimal adequacy." A parent's ability to make efforts or progress independently should not factor into the analysis of whether the department's efforts were reasonable. ●



## CALL FOR WORKSHOP PROPOSALS AMERICAN BAR ASSOCIATION

4TH National Parent Attorney Conference  
Achieving Justice Against the Odds  
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Join the movement to reform the child welfare system. The National Project to Improve Representation of Parents Involved in the Child Welfare System will host the 4th National Parent Attorney Conference in Washington, D.C.

The audience will include attorneys who represent parents in the child welfare system, managers of parent attorney offices, parents, social workers, parent partners, judges, court administrators, law professors, and policy makers.

The call for workshop or discussion group proposals is now out.  
[You can find more information here.](#)

## Case Summary

State of Oregon v. K.L.F., 265  
Or App \_\_\_\_, \_\_\_ P3d \_\_\_\_  
(September 4, 2014) – Per  
Curiam Opinion)

summarized by Jason Pierson, YRJ  
Law Clerk

Youth appealed a supplemental judgment from an underlying judgment finding him within the jurisdiction of the juvenile court. The supplemental judgment ordered him to pay \$1,054.22 in restitution to the Oregon Department of Justice, and \$292.00 in restitution to the victim's parents. The youth argued that the juvenile court erred in ordering him to pay \$152.00 of restitution costs incurred by the victim's parents to restore cellular phone service and obtain phone records. The State conceded that the contested charges were not a result of the youth's conduct toward the victim. The Court of Appeals accepted the concession and noted that the three prerequisites for an award of restitution are (1) criminal activity, (2) pecuniary damages, and (3) a causal relationship between the two. Accordingly,

the Court of Appeals held that the youth's restitution should be reduced by the \$152.00. •

## Resources

### JDAI Helpdesk Updates Conditions For Confinement Page

The JDAI Helpdesk has updated the Conditions for Confinement Page to reflect the recent changes to the conditions for confinement standards. Resources on the facility assessment process, room confinement, PREA, youth with limited English proficiency, and statewide detention facility standards are now easily accessible. You can find them [here](#).



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# OYA Releases 10-Year Plan For Close Custody Facilities

By Jason Pierson, YRJ Law Clerk

On August 26, 2014, the Oregon Youth Authority (“OYA”) released a 10-year strategic plan for close custody facilities in Oregon. The plan was developed in response to HB5050, a budget note in 2013 that directed the OYA to develop a facilities plan that (1) evaluated the facilities in terms of capacity, operating and maintenance costs, and deferred maintenance need; (2) developed a ten year plan for the facilities; (3) included recommendations and rationale for facilities disposition; and (4) recommended future use of the buildings that OYA no longer needed.

The evaluation revealed that all of the close custody facilities have significant deferred maintenance

needs, requiring approximately \$21 million in work to bring them up to date. Further, the intake facility for male youth at Hillcrest was found to be small, and correctional in feel, which does not provide a reassuring first experience for youth. Many of the facilities were found to be “very correctional” in design, being inappropriate for providing school, vocational treatment, recreation and visiting. The best example of appropriate housing in the system is the unoccupied Young Women’s Transitional Facility at Oak Creek.

As part of the strategic plan, OYA created a forecast for the future of OYA populations. According to the report, recent trends suggest declining youth population levels across the country. However, the report suggests that the Oregon youth correctional population will actually increase from 645 in 2015 to 659 in 2024. The strategic plan requires OYA to complete the deferred maintenance at all of the facilities, except the Hillcrest campus, which it suggests closing. The Hillcrest campus closing is recommended mostly because the Hillcrest campus has two story buildings and retrofitting

those buildings for seismic upgrades would be more costly than upgrading the other campuses. The total cost of the 10-year strategic plan for close custody facilities is \$97.38 million.

The complete report can be found at: [http://www.oregon.gov/oia/reports/OYA%2010%20\\_Yr%20Strategic%20Plan.pdf](http://www.oregon.gov/oia/reports/OYA%2010%20_Yr%20Strategic%20Plan.pdf)



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## Save The Date

### 12th Annual Women in Prison Conference

February 7, 2015

Lewis & Clark Law School,  
Portland, Oregon

Presented by the Oregon Justice  
Resource Center

The keynote speaker is Emily  
Salisbury, Ph.D. Register [here](http://ojrc.info/wipconference/).

<http://ojrc.info/wipconference/>

### 38th National Child Welfare, Juvenile & Family Law Conference

August 25-27, 2015

Hyatt Regency, Monterey,  
California

Presented by the National  
Association of Counsel for  
Children

Abstracts due by February 1,  
2015. Conference brochure  
available May 2015.

[www.NACCchildlaw.org](http://www.NACCchildlaw.org)

# In Loving Memory

Nicholas Ryan Demagalski  
1979-2014



Nick Demagalski had a true passion for helping Oregon's most vulnerable children. He served as a paralegal for Youth, Rights & Justice for 15 years. Kind,

friendly and outgoing, Nick loved the people he worked with, and he was loved in return. Nick was born in Portland and attended David Douglas and Franklin high schools. He met his wife, Nichole, while working at Boston Market. Together, they had three beautiful children: Isabelle, Emma, and Sophia. Nick lost his battle with cancer in September 2014, and he is greatly missed by all of us at Youth, Rights & Justice. Donations for the young family can be made at any Chase Bank under the name Nick Demagalski.

Learn more about who we are and what we do at:  
[www.youthrightsjustice.org](http://www.youthrightsjustice.org)

## Youth, Rights & Justice

ATTORNEYS AT LAW

YRJ is a nonprofit organization that provides legal experts and advocates for children in foster care and youth in the justice system. Our services are provided at no cost to our clients. We have made a positive difference for more than 50,000 children and their families since 1975.

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# Standing Up For Oregon's Most Vulnerable Children

As 2014 comes to a close, we want to thank all of you who support the work of Youth, Rights & Justice.

In 2015, we will continue to fight for individual children and youth so that each one has a chance to finish school, go to college and become successful adults. We will continue to advocate for policy solutions that promote these goals, as well. You can play a part. We urge you to invest in our efforts and the success of Oregon's next generation.

Make a gift in any amount by visiting us online at [youthrightsjustice.org](http://youthrightsjustice.org) or by contacting Janeen Olsen, Director of Development and Communications at (503) 232-2540 or by email at [janeen.o@youthrightsjustice.org](mailto:janeen.o@youthrightsjustice.org).

<< Photos of the 2014 Wine & Chocolate Extravaganza by Win Goodbody.

# Attachment 13



Sections

The Washington Post

PostEverything

# Law is the least diverse profession in the nation. And lawyers aren't doing enough to change that.

Lawyers are leading the push for equality. But they need to focus on their own profession.



By Deborah L. Rhode May 27, 2015

Deborah L. Rhode is the Ernest W. McFarland Professor of Law, the director of the Center on the Legal Profession, and the director of the Program in Law and Social Entrepreneurship at Stanford University. Her new book, *The Trouble with Lawyers*, will be released in June 2015 from Oxford University Press.



Loretta Lynch, the new U.S. attorney general, testifies before a Senate Appropriations subcommittee. (Gary Cameron/Reuters)

From the outside, the legal profession seems to be growing ever more diverse. Three women are now on the Supreme Court. Loretta Lynch is the second African American to hold the position of attorney general. The president and first lady are lawyers of color. Yet according to Bureau of Labor statistics, law is one of the least racially diverse professions in the nation. [Eighty-eight percent of lawyers are white](#). Other careers do better — 81 percent of architects and engineers are white; 78 percent of accountants are white; and 72 percent of physicians and surgeons are white.

The legal profession supplies presidents, governors, lawmakers, judges, prosecutors, general counsels, and heads of corporate, government, nonprofit and legal organizations. Its membership needs to be as inclusive as the populations it serves.

Part of the problem is a lack of consensus that there *is* a significant problem. Many lawyers believe that barriers have come down, women and minorities have moved up, and any lingering inequality is a function of different capabilities, commitment and choices.

The facts suggest otherwise.

[Women constitute more than a third of the profession](#), but only about a fifth of law firm partners, general counsels of Fortune 500 corporations and law school deans. The situation is bleakest at the highest levels. Women account for only 17 percent of equity partners, and only seven of the nation's 100 largest firms have a woman as chairman or managing partner. Women are less likely to make partner even controlling for other factors, including law school grades and time spent out of the workforce or on [part-time schedules](#). [Studies find](#) that men are two to five times more likely to make partner than women.

Although blacks, Latinos, Asian Americans and Native Americans now constitute about a third of the population and a fifth of law school graduates, they make up fewer than 7 percent of law firm partners and 9 percent of general counsels of large corporations. In major law firms, only 3 percent of associates and less than 2 percent of partners are African Americans.

The problem is not lack of concern. I [recently surveyed](#) managing partners of the 100 largest law firms and general counsel of Fortune 100 companies. Virtually all of the 53 participants in the study said diversity was a high priority. But they attributed the under-representation of minorities to the lack of candidates in the pool. And they explained the “woman problem” by citing women's different choices and disproportionate family responsibilities in the context of a 24/7 workplace. As one managing partner put it, “You have to be realistic. It's

a demanding profession. . . . I don't claim we've figure it out.”

Such explanations capture only a partial truth. Minorities' underrepresentation in law school does not explain their disproportionate attrition in law firms. And even women who work long hours and never take time out of the labor force have [a lower chance of partnership than similarly situated men](#). Moreover, although data on women's desires for partnership is lacking, what the research on women's leadership preferences generally does not show is substantial gender disparities. In law, women experience greater dissatisfaction than men with key dimensions of practice such as level of responsibility, recognition for work and chances for advancement.

Moreover, [substantial evidence](#) suggests that unconscious bias and exclusion from informal networks of support and client development remain common. Minorities still lack the presumption of competence granted to white male counterparts, as illustrated in [a recent study by a consulting firm](#). It gave a legal memo to law firm partners for “writing analysis” and told half the partners that the author was African American. The other half were told that that the writer was white. The partners gave the white man's memo a rating of 4.1 on a scale of 5, while the African American's memo got a 3.2. The white man received praise for his potential and analytical skills; the African American was said to be average at best and in need of “lots of work.”

Women are subject to a double standard and a double bind. A cottage industry of research suggests that what is assertive in a man seems abrasive in a woman, and female leaders risk seeming [too feminine or not feminine enough](#). They may appear too “soft” or too “strident – either unable to make tough decisions or too pushy and arrogant to command respect. Mothers, even those working full-time, are assumed to be less available and committed, an assumption not made about

fathers.

So, too, women and minorities are often left out of the networks of mentoring and sponsorship that are critical to career development. In American Bar Association research, 62 percent of women of color and 60 percent of white women, but only 4 percent of white men, felt excluded from formal and informal networking opportunities. Such networking is often crucial to building client and collegial relationships that are essential to advancement.

To address these issues, legal organizations need a stronger commitment to equal opportunity, which is reflected in policies, priorities and reward structures. Leaders must not simply acknowledge the importance of diversity, but also hold individuals accountable for the results. The most successful approaches generally involve task forces or committees with diverse members who have credibility with their colleagues and a stake in the outcome. The mission of those groups should be to identify problems, develop responses and monitor their effectiveness. [Mentoring programs and training in unconscious bias are equally important.](#)

As an [ABA Presidential Commission on Diversity recognized](#), assessment should be a critical part of all diversity initiatives. Leaders need to know how policies that affect inclusiveness play out in practice. That requires collecting both quantitative and qualitative data on matters such as advancement, retention, assignments, satisfaction, mentoring and work/family conflicts. For example, although more than 90 percent of American law firms report policies permitting part-time work, only about [6 percent of lawyers actually use them](#). Many women believe, with good reason, that any reduction in hours or availability will jeopardize their careers. Those who take reduced schedules often find

that their hours creep up, the quality of their assignments goes down, and [they are stigmatized](#) as “slackers.” That needs to change

Although bar leaders generally acknowledge the problem of work/life balance, they often place responsibility for addressing it anywhere and everywhere else. Clients get much of the blame. Law is a service business, and expectations of instant accessibility reportedly make reduced schedules difficult to accommodate. Yet the problems are not insurmountable. The evidence available does not indicate substantial resistance among clients to reduced schedules. They care about responsiveness, and part-time lawyers generally appear able to provide it. In one recent survey of part-time partners, most reported that they did not even inform clients of their status and that they adapted their schedules to fit client concerns.

Most important, lawyers need to assume personal responsibility for professional changes. They can support workplace initiatives and expanded efforts to increase the pool of qualified minorities through scholarships and mentoring. To make all these reforms possible, they must not be seen as “women” or “minority” issues, but as organizational priorities in which everyone has a stake. The challenge is to create that sense of unity and to translate rhetorical commitments into daily practices.

Comments



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