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Honorable Elizabeth Welch



Ex-Officio Member

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION

Wednesday, July 31, 2013
10:00 a.m. – 2:00 p.m.
Office of Public Defense Services
1175 Court St. NE
Salem, Oregon 97301

MEETING AGENDA

- | | |
|--|----------------------------------|
| 1. Action Item: Review of Compliance with Best Practices for Boards and Commissions (<i>Attachment 1</i>) | Chair Ellis
Nancy Cozine |
| 2. PDSC representative for Work Group on Juvenile Dependency Proceedings; HB 3363 (<i>Attachment 2</i>) | Nancy Cozine |
| 3. Clatsop County Peer Review - Discussion of Report and Testimony (<i>Attachment 3</i>) | Paul Levy
Commission Members |
| 4. Executive Session* - Commission Review of Statewide Service Delivery Plan; Phase 2 | OPDS Staff
Commission Members |

****The Executive Session will be held at approximately 10:30 a.m. pursuant to ORS 192.660(2)(f).***

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 Kepford at (503) 378-3349.

Next meeting: September 12, 2013, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services in Salem, Oregon. Meeting dates, times, and locations are subject to change; future meetings are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

Self-Assessment Criteria

Best Practices Criteria	Yes	No
<ol style="list-style-type: none"> 1. Executive Director's performance expectations are current. 2. Executive Director receives annual performance feedback. 3. The agency's mission and high-level goals are current and applicable. 4. The board reviews the <i>Annual Performance Progress Report</i>. 5. The board is appropriately involved in review of agency's key communications. 6. The board is appropriately involved in policy-making activities. 7. The agency's policy option packages are aligned with their mission and goals. 8. The board reviews all proposed budgets (likely occurs every other year). 9. The board periodically reviews key financial information and audit findings. 10. The board is appropriately accounting for resources. 11. The agency adheres to accounting rules and other relevant financial controls. 12. Board members act in accordance with their roles as public representatives. 13. The board coordinates with others where responsibilities and interests overlap. 14. The board members identify and attend appropriate training sessions. 15. The board reviews its management practices to ensure best practices are utilized. 16. Others 		
Totals		
Percentage of Total		

Attachment 2

Enrolled
House Bill 3363

Sponsored by Representatives OLSON, BARKER; Representatives CONGER, HUFFMAN, KRIEGER, NATHANSON, THOMPSON, TOMEI, WHISNANT, WILLIAMSON, Senators BATES, JOHNSON, KRUSE (at the request of Oregon CASA Network)

CHAPTER

AN ACT

Relating to juvenile dependency proceedings; creating new provisions; and amending ORS 419A.255, 419A.256 and 419B.881.

Be It Enacted by the People of the State of Oregon:

SECTION 1. ORS 419B.881 is amended to read:

419B.881. (1) In all proceedings brought under ORS 419B.100 or 419B.500, each party, including the state, shall disclose to each other party and to a guardian ad litem appointed under ORS 419B.231 the following information and material within the possession or under the control of the party:

(a) The names and addresses of all persons the party intends to call as witnesses at any stage of the hearing, together with any relevant written or recorded statements or memoranda of any oral statements of such persons;

(b) Any written or recorded statements or memoranda of any oral statements made either by the parent or by the child to any other party or agent for any other party;

(c) Any reports or statements of experts who will be called as witnesses, including the results of any physical or mental examinations and of comparisons or experiments that the party intends to offer in evidence at the hearing; and

(d) Any books, papers, documents or photographs that the party intends to offer in evidence at the hearing, or that were obtained from or belong to any other party.

(2)(a) Disclosure *[shall]* **under subsection (1) of this section must** be made as soon as practicable following the filing of a petition and no later than:

(A) Thirty days after a petition alleging jurisdiction has been filed.

(B) Three days before any review hearing, except for information received or discovered less than three days prior to the hearing.

(C) Ten days before a **permanency hearing or a** termination trial, except for information received or discovered less than 10 days prior to the **hearing or** trial.

(b) The court may supervise the exercise of discovery to the extent necessary to insure that it proceeds properly and expeditiously.

(3)(a) When a ward has been placed in the legal custody of the Department of Human Services for care, placement and supervision under ORS 419B.337, the department shall disclose to all parties the case plan developed under ORS 419B.343, modifications to the case plan and any written material or information about services provided to the ward, or to the ward's parent or parents, under the case plan.

(b) Disclosure under this subsection must be made within 10 days of:

(A) Completion or modification of the case plan; and

(B) Receipt by the department of the written material or information about services provided under the case plan.

[3] (4) The obligation to disclose is an ongoing obligation and if a party finds, either before or during the hearing, additional material or information that is subject to disclosure, the information or material shall be promptly disclosed.

[4] (5) The following material and information need not be disclosed:

(a) Attorney work product; and

(b) Transcripts, recordings or memoranda of testimony of witnesses before the grand jury, except transcripts or recordings of testimony of a party to the current juvenile court proceeding.

[5] (6) Upon a showing of good cause, the court may at any time order that specified disclosure be denied, restricted or deferred or make such other order as is appropriate.

[6] (7) Upon request of a party, the court may permit a showing of good cause for denial or regulation of disclosure by the parties or the contents of subpoenaed materials, or portion of the showing, to be made in camera. A record shall be made of the proceeding.

[7] (8) If the court enters an order following an in camera showing, the entire record of the showing shall be sealed and preserved in the records of the court, to be made available to the appellate court in the event of an appeal. The trial court may, after disposition, unseal the record.

[8] (9) When some parts of certain material are subject to disclosure and other parts are not, as much of the material as is subject to disclosure shall be disclosed.

[9] (10) Upon being notified of any breach of a duty to disclose material or information, the court may:

(a) Order the violating party to permit inspection of the material;

(b) Grant a continuance;

(c) Refuse to permit the witness to testify;

(d) Refuse to receive in evidence the material that was not disclosed; or

(e) Enter such other order as the court considers appropriate.

SECTION 2. ORS 419A.255 is amended to read:

419A.255. (1) The clerk of the court shall keep a record of each case, including therein the summons and other process, the petition and all other papers in the nature of pleadings, motions, orders of the court and other papers filed with the court, but excluding reports and other material relating to the child, ward, youth or youth offender's history and prognosis. The record of the case shall be withheld from public inspection but is open to inspection by the child, ward, youth, youth offender, parent, guardian, court appointed special advocate, **a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, when reasonably necessary for the appointment or supervision of court appointed special advocates**, surrogate or a person allowed to intervene in a proceeding involving the child, ward, youth or youth offender, and their attorneys. The attorneys are entitled to copies of the record of the case.

(2) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis are privileged and, except at the request of the child, ward, youth or youth offender, may not be disclosed directly or indirectly to anyone other than the judge of the juvenile court, those acting under the judge's direction, service providers in the case and the attorneys of record for the child, ward, youth or youth offender or the child, ward, youth or youth offender's parent, guardian, court appointed special advocate, **a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, when reasonably necessary for the appointment or supervision of court appointed special advocates**, surrogate or person allowed to intervene in a proceeding involving the child, ward, youth or youth offender. Reports and other material relating to a youth offender's history and prognosis in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee. The service providers in the case, school superintendents, superintendents' designees and attorneys are entitled to examine and obtain copies of any reports or other material relating to the child, ward,

youth or youth offender's history and prognosis. Any service provider in the case, school superintendent, superintendent's designee or attorney who examines or obtains copies of such reports or materials is responsible for preserving their confidentiality. A service provider, school superintendent or superintendent's designee who obtains copies of such reports or materials shall return the copies to the court upon the conclusion of the service provider's, superintendent's or superintendent's designee's involvement in the case.

(3) Except as otherwise provided in subsection (7) of this section, no information appearing in the record of the case or in reports or other material relating to the child, ward, youth or youth offender's history or prognosis may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:

(a) In connection with a presentence investigation after guilt has been admitted or established in a criminal court.

(b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal from the juvenile court.

(4) If the court finds that the child, ward, youth, youth offender or parent is without financial means to purchase all or a necessary part of the transcript of the evidence or proceedings, the court shall order upon motion the transcript or part thereof to be furnished. The transcript or part thereof furnished under this subsection shall be paid for in the same manner as furnished transcripts are paid for in criminal cases.

(5) Notwithstanding any other provision of law, the following are not confidential and not exempt from disclosure:

(a) The name and date of birth of the youth or youth offender;

(b) The basis for the juvenile court's jurisdiction over the youth or youth offender;

(c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;

(d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;

(f) The names and addresses of the youth or youth offender's parents or guardians; and

(g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(6) Notwithstanding any other provision of law, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

(a) The youth's name and age and whether the youth is employed or in school;

(b) The youth offense for which the youth was taken into custody;

(c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;

(d) The identity of the investigating and arresting agency; and

(e) The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.

(7)(a) Information contained in reports and other materials relating to a child, ward, youth or youth offender's history and prognosis that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information for the reports or other materials has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person or entity who is in danger from the child, ward, youth or youth offender.

(b) An agency or a person who discloses information under paragraph (a) of this subsection has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this section does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(8) A county juvenile department is the agency responsible for disclosing youth and youth offender records if the records are subject to disclosure.

(9) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within the jurisdiction of the court, or a motion requesting an implementation plan other than return of a ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country as provided under ORS 419B.851 (3).

(10) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.

(11) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward.

SECTION 3. ORS 419A.256 is amended to read:

419A.256. (1)(a) Once prepared and filed with the court, a transcript of a juvenile court proceeding is part of the record of the case maintained by the clerk of the court under ORS 419A.255 (1) and is subject to the provisions of ORS 419A.255 (1) and (3) governing access and disclosure.

(b) Notwithstanding ORS 419A.255, if a transcript, audiotape or videotape has been prepared in any proceeding under ORS chapter 419C, the victim may obtain a copy by paying the actual cost of preparation.

(2) The official audio, video or other recording of a juvenile court proceeding shall be withheld from public inspection but is open to inspection by the child, ward, youth, youth offender, parent, guardian, court appointed special advocate, **a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, when reasonably necessary for the appointment or supervision of court appointed special advocates**, surrogate or a person allowed to intervene in a proceeding involving the child, ward, youth or youth offender, and their attorneys.

SECTION 4. (1) **The Work Group on Juvenile Court Dependency Proceedings is established, consisting of 11 members appointed as follows:**

(a) The Chief Justice of the Supreme Court shall appoint six members as follows:

(A) Two members representing the Judicial Department with expertise in juvenile court dependency proceedings, at least one of whom shall be a circuit court judge;

(B) One member representing the citizen review board state administrative office or local citizen review boards;

(C) Two members representing CASA Volunteer Programs as defined in section 3, chapter 97, Oregon Laws 2012; and

(D) One member representing the Public Defense Services Commission.

(b) The Attorney General shall appoint two members as follows:

(A) One member representing the Department of Justice with expertise in juvenile court dependency proceedings; and

(B) One member representing the Oregon District Attorneys Association with expertise in juvenile court dependency proceedings.

(c) The Board of Governors of the Oregon State Bar shall appoint two members who are members of the Oregon State Bar with expertise representing parents and children in juvenile court dependency proceedings.

(d) The Director of Human Services shall appoint one member representing the Department of Human Services with expertise in the area of child welfare.

(2) The work group shall:

(a) Examine Oregon's juvenile court dependency system for the purpose of identifying impediments to:

(A) The timely resolution of jurisdictional petitions in juvenile court dependency proceedings.

(B) The assessment of the bases for dependency jurisdiction.

(C) The development and implementation of case plans for the reunification of families that include services and other assistance that are appropriate and accessible to parents.

(D) The assessment of the adequacy of case plans.

(E) The identification and implementation of specific, understandable and realistic conditions for the return of a child placed in substitute care to the physical custody of the child's parent.

(F) The timely development and implementation of permanent plans, including reunification of the family, that take into account the policies of the State of Oregon expressed in ORS 419B.090 and the concept of "reasonable time" as defined in ORS 419A.004.

(b) Identify the specific actions each entity represented by the work group members can take under existing law and within current budgetary restraints to remove or mitigate the impediments identified under paragraph (a) of this subsection, and develop a plan to put those actions into practice and to measure the effectiveness of those actions.

(c) Identify changes to existing law that could be made to assist in removing or mitigating one or more of the impediments identified under paragraph (a) of this subsection that would not require the investment and support of additional state funds.

(d) Identify changes to existing law that would be essential to remove or mitigate one or more of the impediments identified in paragraph (a) of this subsection that would require the investment and support of additional state funds.

(3) A majority of the members of the work group constitutes a quorum for the transaction of business.

(4) Official action by the work group requires the approval of a majority of the voting members of the work group.

(5) The work group shall elect one of its members to serve as chairperson.

(6) If there is a vacancy for any cause, the appointing authority shall make an appointment to become immediately effective.

(7) The work group shall meet at times and places specified by the call of the chairperson or of a majority of the members of the work group.

(8) The work group may adopt rules necessary for the operation of the work group.

(9) The work group shall make a report, and may include recommendations for legislation, to interim committees of the Legislative Assembly related to juvenile dependency proceedings no later than January 15, 2015.

(10) The Legislative Administrator selected under ORS 173.710 shall provide staff support to the work group.

(11) Members of the work group who are not members of the Legislative Assembly are not entitled to compensation, but may be reimbursed for actual and necessary travel and other expenses incurred by them in the performance of their official duties in the manner and amounts provided for in ORS 292.495.

(12) All agencies of state government, as defined in ORS 174.111, are directed to assist the work group in the performance of its duties and, to the extent permitted by laws relating to confidentiality, to furnish such information and advice as the members of the work group consider necessary to perform their duties.

SECTION 5. Section 4 of this 2013 Act is repealed on June 30, 2015.

SECTION 6. The amendments to ORS 419A.255, 419A.256 and 419B.881 by sections 1 to 3 of this 2013 Act apply to dependency proceedings commenced or pending before, on or after the effective date of this 2013 Act.

SECTION 7. If Senate Bill 622 becomes law, section 2 of this 2013 Act (amending ORS 419A.255) is repealed and ORS 419A.255, as amended by section 3, chapter __, Oregon Laws 2013 (Enrolled Senate Bill 622), is amended to read:

419A.255. (1)(a) The clerk of the court shall keep a supplemental confidential file for each case and a record of each case except as otherwise provided in ORS 7.120.

(b) The record of the case shall be withheld from public inspection but is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The child;

(C) The ward;

(D) The youth;

(E) The youth offender;

(F) The parent or guardian of the child, ward, youth or youth offender;

(G) The guardian ad litem for the parent;

(H) The surrogate;

(I) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(J) Service providers in the case;

(K) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, **when reasonably necessary for the appointment or supervision of court appointed special advocates;**

(L) The attorneys or prospective appellate attorneys for any of the persons listed in subparagraphs (B) to (K) of this paragraph;

(M) The district attorney or assistant attorney general representing a party in the case;

(N) The juvenile department;

(O) The Department of Human Services; and

(P) The Oregon Youth Authority.

(c) The following are entitled to copies of the record of the case:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) A party to the extent permitted under ORS 419B.875 (2) or 419C.285 (2);

(C) A guardian ad litem for a parent to the same extent the parent is permitted to copies under ORS 419B.875 (2) or 419C.285 (2); and

(D) Persons listed in paragraph (b)(J) to (P) of this subsection.

(2)(a) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the supplemental confidential file or record of the case are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection. Once offered as an exhibit, reports and other material relating to the child, ward, youth or youth offender's history and prognosis become part of the record of the case but are subject to paragraph (e) of this subsection.

(b) A supplemental confidential file is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The parent or guardian of the child or ward in a dependency case;

(C) The guardian ad litem for the parent of a child or ward in a dependency case;

(D) The parent or guardian of the youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;

(E) The guardian ad litem for the parent of a youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;

(F) Service providers in the case;

(G) The attorneys or prospective appellate attorneys for:

(i) The child;

(ii) The ward;

(iii) The youth;

- (iv) The youth offender;
 - (v) The parent or guardian of the child, ward, youth or youth offender; or
 - (vi) The guardian ad litem for the parent;
 - (H) The surrogate;
 - (I) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;
 - (J) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, **when reasonably necessary for the appointment or supervision of court appointed special advocates;**
 - (K) The district attorney or assistant attorney general representing a party in the case;
 - (L) The juvenile department;
 - (M) The Department of Human Services; and
 - (N) The Oregon Youth Authority.
- (c) The supplemental confidential file in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee.
- (d) The following are entitled to copies of material maintained in the supplemental confidential file:
- (A) The judge of the juvenile court and those acting under the judge's direction;
 - (B) Service providers in the case;
 - (C) School superintendents and their designees in cases under ORS 419C.005;
 - (D) Attorneys designated under subsection (1)(b)(L) of this section;
 - (E) The district attorney or assistant attorney general representing a party in the case;
 - (F) The juvenile department;
 - (G) The Department of Human Services;
 - (H) The Oregon Youth Authority; and
 - (I) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, **when reasonably necessary for the appointment or supervision of court appointed special advocates.**
- (e) A person that obtains copies of material in the supplemental confidential file pursuant to paragraph (d) of this subsection is responsible for preserving the confidentiality of the material in the supplemental confidential file. A service provider, school superintendent or superintendent's designee who obtains copies of such material shall destroy the copies upon the conclusion of involvement in the case.
- (3) Except as otherwise provided in subsection (5) of this section, no information appearing in the record of the case or in the supplemental confidential file may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:
- (a) In connection with a presentence investigation after guilt has been admitted or established in a criminal court.
 - (b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal from the juvenile court.
- (4)(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of this section inspects or obtains copies of reports, materials or documents under this subsection or under subsection (1) or (2) of this section, the person may not use or disclose the reports, materials or documents, except:
- (A) As provided in this subsection or under subsection (1) or (2) of this section;
 - (B) In the juvenile court proceeding for which the reports, materials or documents were sought or disclosed;

- (C) With the consent of the court; or
- (D) As provided in ORS 419A.253.

(b) Nothing in this section prohibits the district attorney or assistant attorney general representing a party in a juvenile court proceeding, the juvenile department, the Department of Human Services, the Oregon Youth Authority or other parties in the proceeding or their attorneys from disclosing to each other reports, materials or documents described in subsections (1) and (2) of this section if the disclosure is reasonably necessary to perform official duties related to the involvement of the child, ward, youth or youth offender with the juvenile court or the juvenile department. A person to whom reports, materials or documents are disclosed under this subsection is subject to subsection (3) of this section.

(5)(a) Information contained in the supplemental confidential file that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information in the supplemental confidential file has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person who is in danger from the child, ward, youth or youth offender.

(b) A person that discloses information under paragraph (a) of this subsection has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this subsection does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(6) Notwithstanding any other provision of law, and subject to subsection (8) of this section, the following are not confidential and not exempt from disclosure:

- (a) The name and date of birth of the youth or youth offender;
- (b) The basis for the juvenile court's jurisdiction over the youth or youth offender;
- (c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;
- (d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;

- (f) The names and addresses of the youth or youth offender's parents or guardians; and
- (g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(7) Notwithstanding any other provision of law, and subject to subsection (8) of this section, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

- (a) The youth's name and age and whether the youth is employed or in school;
- (b) The youth offense for which the youth was taken into custody;
- (c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;
- (d) The identity of the investigating and arresting agency; and
- (e) The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.

(8) Except as provided in ORS 419A.300 and 420.048, only the juvenile court and the county juvenile department may disclose the information under subsections (6) and (7) of this section if the information is subject to disclosure, unless otherwise directed by the court.

(9) Nothing in this section limits access to any juvenile court records by an appellate court reviewing a juvenile court order or judgment. Appellate court rules may establish procedures for appellate court access to juvenile records.

(10) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within the jurisdiction of the court, or a motion requesting an implementation plan other than return of a ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country as provided under ORS 419B.851 (3).

(11) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.

(12) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward.

SECTION 8. If Senate Bill 622 becomes law, ORS 419A.255, as amended by sections 3 and 11, chapter ____, Oregon Laws 2013 (Enrolled Senate Bill 622), is amended to read:

419A.255. (1)(a) The clerk of the court shall keep a supplemental confidential file for each case and a record of each case except as otherwise provided in ORS 7.120.

(b) The record of the case shall be withheld from public inspection but is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The child;

(C) The ward;

(D) The youth;

(E) The youth offender;

(F) The parent or guardian of the child, ward, youth or youth offender;

(G) The guardian ad litem for the parent;

(H) The surrogate;

(I) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(J) Service providers in the case;

(K) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, **when reasonably necessary for the appointment or supervision of court appointed special advocates;**

(L) The attorneys or prospective appellate attorneys for any of the persons listed in subparagraphs (B) to (K) of this paragraph;

(M) The district attorney or assistant attorney general representing a party in the case;

(N) The juvenile department;

(O) The Department of Human Services;

(P) The Oregon Youth Authority; and

(Q) Any other person allowed by the court.

(c) The following are entitled to copies of the record of the case:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) A party to the extent permitted under ORS 419B.875 (2) or 419C.285 (2);

(C) A guardian ad litem for a parent to the same extent the parent is permitted to copies under ORS 419B.875 (2) or 419C.285 (2);

(D) Persons listed in paragraph (b)(J) to (P) of this subsection; and

(E) Any other person allowed by the court.

(2)(a) Reports and other material relating to the child, ward, youth or youth offender's history and prognosis in the supplemental confidential file or record of the case are privileged and, except at the request of the child, ward, youth or youth offender, shall be withheld from public inspection. Once offered as an exhibit, reports and other material relating to the child, ward, youth or youth offender's history and prognosis become part of the record of the case but are subject to paragraph (e) of this subsection.

(b) A supplemental confidential file is open to inspection by the following:

(A) The judge of the juvenile court and those acting under the judge's direction;

(B) The parent or guardian of the child or ward in a dependency case;

- (C) The guardian ad litem for the parent of a child or ward in a dependency case;
- (D) The parent or guardian of the youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;
- (E) The guardian ad litem for the parent of a youth or youth offender in a delinquency case if the youth or youth offender consents to, or the court authorizes, inspection;
- (F) Service providers in the case;
- (G) The attorneys or prospective appellate attorneys for:
 - (i) The child;
 - (ii) The ward;
 - (iii) The youth;
 - (iv) The youth offender;
 - (v) The parent or guardian of the child, ward, youth or youth offender; or
 - (vi) The guardian ad litem for the parent;
- (H) The surrogate;
- (I) A person allowed to intervene in a proceeding involving the child, ward, youth or youth offender;

(J) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, **when reasonably necessary for the appointment or supervision of court appointed special advocates;**

- (K) The district attorney or assistant attorney general representing a party in the case;
- (L) The juvenile department;
- (M) The Department of Human Services;
- (N) The Oregon Youth Authority; and
- (O) Any other person allowed by the court.

(c) The supplemental confidential file in cases under ORS 419C.005 may be disclosed to the superintendent of the school district in which the youth offender resides or the superintendent's designee.

(d) The following are entitled to copies of material maintained in the supplemental confidential file:

- (A) The judge of the juvenile court and those acting under the judge's direction;
- (B) Service providers in the case;
- (C) School superintendents and their designees in cases under ORS 419C.005;
- (D) Attorneys designated under subsection (1)(b)(L) of this section;
- (E) The district attorney or assistant attorney general representing a party in the case;
- (F) The juvenile department;
- (G) The Department of Human Services;
- (H) The Oregon Youth Authority;

(I) The court appointed special advocate, and a representative of a CASA Volunteer Program as defined in section 3, chapter 97, Oregon Laws 2012, **when reasonably necessary for the appointment or supervision of court appointed special advocates;** and

- (J) Any other person allowed by the court.

(e) A person that obtains copies of material in the supplemental confidential file pursuant to paragraph (d) of this subsection is responsible for preserving the confidentiality of the material in the supplemental confidential file. A service provider, school superintendent or superintendent's designee who obtains copies of such material shall destroy the copies upon the conclusion of involvement in the case.

(3) Except as otherwise provided in subsection (5) of this section, no information appearing in the record of the case or in the supplemental confidential file may be disclosed to any person not described in subsection (2) of this section without the consent of the court, except for purposes of evaluating the child, ward, youth or youth offender's eligibility for special education as provided in ORS chapter 343, and no such information may be used in evidence in any proceeding to establish criminal or civil liability against the child, ward, youth or youth offender, whether such proceeding

occurs after the child, ward, youth or youth offender has reached 18 years of age or otherwise, except for the following purposes:

(a) In connection with a presentence investigation after guilt has been admitted or established in a criminal court.

(b) In connection with a proceeding in another juvenile court concerning the child, ward, youth or youth offender or an appeal from the juvenile court.

(4)(a) When a person described in subsection (1)(b)(M), (N), (O) or (P) of this section inspects or obtains copies of reports, materials or documents under this subsection or under subsection (1) or (2) of this section, the person may not use or disclose the reports, materials or documents, except:

(A) As provided in this subsection or under subsection (1) or (2) of this section;

(B) In the juvenile court proceeding for which the reports, materials or documents were sought or disclosed;

(C) With the consent of the court; or

(D) As provided in ORS 419A.253.

(b) Nothing in this section prohibits the district attorney or assistant attorney general representing a party in a juvenile court proceeding, the juvenile department, the Department of Human Services, the Oregon Youth Authority or other parties in the proceeding or their attorneys from disclosing to each other reports, materials or documents described in subsections (1) and (2) of this section if the disclosure is reasonably necessary to perform official duties related to the involvement of the child, ward, youth or youth offender with the juvenile court or the juvenile department. A person to whom reports, materials or documents are disclosed under this subsection is subject to subsection (3) of this section.

(5)(a) Information contained in the supplemental confidential file that, in the professional judgment of the juvenile counselor, caseworker, school superintendent or superintendent's designee, teacher or detention worker to whom the information in the supplemental confidential file has been provided, indicates a clear and immediate danger to another person or to society shall be disclosed to the appropriate authority and the person who is in danger from the child, ward, youth or youth offender.

(b) A person that discloses information under paragraph (a) of this subsection has immunity from any liability, civil or criminal, that might otherwise be incurred or imposed for making the disclosure.

(c) Nothing in this subsection affects the provisions of ORS 146.750, 146.760, 419B.035, 419B.040 and 419B.045. The disclosure of information under this subsection does not make the information admissible in any court or administrative proceeding if it is not otherwise admissible.

(6) Notwithstanding any other provision of law, and subject to subsection (8) of this section, the following are not confidential and not exempt from disclosure:

(a) The name and date of birth of the youth or youth offender;

(b) The basis for the juvenile court's jurisdiction over the youth or youth offender;

(c) The date, time and place of any juvenile court proceeding in which the youth or youth offender is involved;

(d) The act alleged in the petition that if committed by an adult would constitute a crime if jurisdiction is based on ORS 419C.005;

(e) That portion of the juvenile court order providing for the legal disposition of the youth or youth offender when jurisdiction is based on ORS 419C.005;

(f) The names and addresses of the youth or youth offender's parents or guardians; and

(g) The register described in ORS 7.020 when jurisdiction is based on ORS 419C.005.

(7) Notwithstanding any other provision of law, and subject to subsection (8) of this section, when a youth has been taken into custody under ORS 419C.080, the following information shall be disclosed unless, and only for so long as, there is a clear need to delay disclosure in the course of a specific investigation, including the need to protect the complaining party or the victim:

(a) The youth's name and age and whether the youth is employed or in school;

(b) The youth offense for which the youth was taken into custody;

(c) The name and age of the adult complaining party and the adult victim, unless the disclosure of such information is otherwise prohibited or restricted;

(d) The identity of the investigating and arresting agency; and

(e) The time and place that the youth was taken into custody and whether there was resistance, pursuit or a weapon used in taking the youth into custody.

(8) Except as provided in ORS 419A.300 and 420.048, only the juvenile court and the county juvenile department may disclose the information under subsections (6) and (7) of this section if the information is subject to disclosure, unless otherwise directed by the court.

(9) Nothing in this section limits access to any juvenile court records by an appellate court reviewing a juvenile court order or judgment. Appellate court rules may establish procedures for appellate court access to juvenile records.

(10) A petition filed under ORS 419B.851 alleging that a child who is a foreign national is within the jurisdiction of the court, or a motion requesting an implementation plan other than return of a ward to the ward's parent, is subject to disclosure to the consulate for the child or ward's country as provided under ORS 419B.851 (3).

(11) Nothing in this section prohibits a guardian appointed under ORS 419B.365 or 419B.366 from disclosing or providing copies of letters of guardianship when so required to fulfill the duties of a guardian.

(12) The court shall cooperate in the sharing of information with a court in another state to facilitate an interstate placement of a child or ward.

SECTION 9. If Senate Bill 622 becomes law, section 3 of this 2013 Act (amending ORS 419A.256) is repealed.

SECTION 10. If Senate Bill 622 becomes law, section 6 of this 2013 Act is amended to read:

Sec. 6. The amendments to ORS 419A.255[, 419A.256] and 419B.881 by sections 1 [to 3] and 7 of this 2013 Act apply to dependency proceedings commenced or pending before, on or after the effective date of this 2013 Act.

Passed by House April 29, 2013

Received by Governor:

Repassed by House June 11, 2013

.....M.,....., 2013

Approved:

.....
Ramona J. Line, Chief Clerk of House

.....M.,....., 2013

.....
Tina Kotek, Speaker of House

.....
John Kitzhaber, Governor

Passed by Senate June 5, 2013

Filed in Office of Secretary of State:

.....M.,....., 2013

.....
Peter Courtney, President of Senate

.....
Kate Brown, Secretary of State

Attachment 3



Report to the Public Defense Services Commission

Clatsop County Public Defense Providers: Response to Peer Review Recommendations

July 17, 2013

I. INTRODUCTION

Background. Beginning in 2004, the Office of Public Defense Services (OPDS) has conducted over 40 peer reviews of public defense contractors with the goal of assisting public defense providers achieve excellence through a collaborative process that relies upon volunteer review teams of public defense leaders from across Oregon. Upon the recommendation of the Quality Assurance Task Force (QATF)¹, the specific objectives of each evaluation have been to determine the quality of service provided by a contractor; identify provider policies and practices that can be recommended to other public defense contractors; identify areas in need of improvement and assist the contractor in improving services; and acknowledge and commend practices by public defense providers that are especially deserving of recognition.

Until 2011, peer reviews were based largely upon confidential interviews and promises that the report would be shared only with the administrator of the contractor, the QATF, and a limited number of officials at OPDS. As a result, reports were not subject to disclosure under the Oregon Public Records Law². But another consequence of this policy was that information gained from peer evaluations could not be readily shared

¹ The Quality Assurance Task Force (QATF) was established in 2004 to advise the OPDS executive director on the protocols for evaluations and how best to achieve the recommendations of each evaluation. In 2012, the QATF was incorporated into a new Public Defense Advisory Group that continues to advise the executive director on how best to achieve excellence in public defense and on other matters related to public defense services in Oregon.

² Because reports were based upon information submitted in confidence and not otherwise required by law to be submitted, where such information should reasonably be considered confidential and OPDS obliged itself in good faith not to disclose the information publicly, peer review reports were exempt from disclosure under ORS 192.502(4).

with the Public Defense Services Commission (PDSC), even where reports recommended that PDSC consider significant changes concerning contracting in a county or region. Because the disadvantages of confidentiality were thought to outweigh its benefits, the OPDS Executive Director, with the concurrence of the Public Defense Advisory Group and the PDSC, directed that peer reviews no longer rely upon confidential interviews.

With the change in peer review protocol, OPDS also built a new step into the peer review process. Although staff follow-up to reports had long been a part of peer reviews, entities under review are now informed that a report will be made to the PDSC regarding contractor response to peer review team findings and recommendations. The report to PDSC will typically occur no sooner than six months following the finalization of the peer review report, allowing sufficient time for the contractor to undertake whatever response to the report they intend to make. Thus, this report follows a September 2012 peer review visit to Clatsop County and reports to the providers there that were finalized in November 2012.

Clatsop County Evaluation. The review in Clatsop County looked at the work of the two public defense contractors there. The Clatsop County Defender Association (CCDA), which was a four-person consortium at the time of the peer review, provides representation in adult criminal, juvenile dependency and delinquency, and civil commitment cases in Clatsop County. Mary Ann Murk, a solo practitioner, also contracts for the same case types.

The OPDS Executive Director assembled a review team consisting of Keith Rogers, who was asked to chair the team, and attorneys Jennifer Nash, Jack Morris, and Jennifer Kimble. Paul Levy served as staff for the team.³

The review was conducted in accordance with Paragraph 3.8.2 of the OPDS Model Contract which provides that any evaluation performed by OPDS of a contractor office adhere to the standards set forth in the American Bar Association's [*Standards for the Monitoring and Evaluation of Providers of Legal Services to the Poor*](#) (2002).

Prior to the on-site visit by the review team, stakeholders in the Clatsop County justice system, including judges, the District Attorney, probation and parole, the Juvenile Department, the Department of Human Services, the Citizens Review Board (CRB), Court-Appointed Special Advocates (CASAs), and others, received an online survey asking about the quality of representation provided by CCDA attorneys and Mary Ann Murk. A total of 14 people responded to this survey.

³Keith Rogers is the executive director of Multnomah Defenders, Inc. Previously, he has been the director of the Washington County section of the Metropolitan Public Defender, served as a circuit court judge in Washington County, and maintained a private practice for several years. Jennifer Nash is the administrator of the consortium of attorneys providing public defense representation in both criminal and juvenile cases in Benton County. Jack Morris heads a law firm that contracts to provide public defense representation in Hood River, Wasco, Sherman, Gilliam and Wheeler counties (the 7th Judicial District). Jennifer Kimble is a member of a four-person consortium that provides representation in criminal and juvenile cases in Crook and Jefferson counties (the 22nd Judicial District). Paul Levy is General Counsel at OPDS in Salem, and served as staff to the peer review. All team members have participated in other peer reviews.

Members of CCDA, except the administrator, received a separate survey about consortium operations and the effectiveness of the consortium administrator. There were no responses to this survey.

The CCDA administrator, Kris Kaino, also answered a detailed questionnaire about consortium operations. Mr. Kaino cooperated fully with the evaluation and, along with Mary Ann Murk, provided invaluable assistance in preparing for the evaluation and scheduling interviews for the site visit.

A three-day site visit to Clatsop County was completed on September 28, 2012. During the site visit team members met with judges, court staff, prosecutors, a state legislator, probation officers, mental health services providers, a private bar defense attorney, and others, conducting interviews with over 30 people. Other interviews were conducted by phone following the visit.

At the conclusion of on-site interviews, the team met to discuss preliminary findings and conclusions, and then met separately with Kris Kaino and Mary Ann Murk to provide initial feedback on the information it had received and some of the recommendations it was considering. Thereafter, separate draft peer review reports were provided to Kris Kaino and Mary Ann Murk on November 28, 2012. In January 2013, Mr. Kaino and Ms. Murk provided formal responses to the draft reports which were then finalized, with the responses attached.

On May 23, 2013, OPDS Executive Director Nancy Cozine, General Counsel Paul Levy, and Billy Strehlow, OPDS Analyst for Clatsop County, visited Astoria to conduct interviews with key justice system officials and the contractors to determine what changes had occurred in the county in response to the reports.

The key findings and recommendations of the peer review reports, and the information gained from the follow-up interviews are related in the balance of this report.

II. CLATSOP COUNTY

Demographics. Clatsop County has a population of about 37,000 people, which is somewhat more populous than its neighbor Tillamook County (approx. 25,000) but less than all other coastal counties except Curry (approx. 22,000)⁴. Like nearly every Oregon county, at the time of the peer review it was listed as an economically “distressed county” by the Oregon Business Development Commission, although its unemployment rate of 8% in August 2012 was among the lowest in the state.⁵ Fishing, timber and agriculture, along with tourism, are the principal industries in Clatsop County. The U.S. Coast Guard is the largest single employer in the county.

According to U.S. Census data, the county is somewhat less racially and ethnically diverse than the entire state population, with 86.9% identifying as white persons not of

⁴ <http://www.pdx.edu/prc/>

⁵ <http://www.oregon4biz.com/Publications/Oregon-Economic-Data/>

Hispanic or Latino origin (78.1% statewide); 0.7% identifying as black persons (2.0% statewide); 1.3% identifying as American Indian or Alaska Native (1.8% statewide); 1.4% identifying as Asian persons (3.9% statewide); and 7.8% identifying as persons of Hispanic or Latino origin (12.0% statewide)⁶. Census data also show the county has a slightly higher than statewide percent per capita of high school graduates (91.1%; 88.6% statewide), but a lower percent of college graduates (21.6%; 28.6% statewide).

Oregon State Police profile of index crimes for Clatsop County shows little change over the past five years, with the number hovering right around 1500. Total reported crime for the county has dropped slightly over the same period.⁷

Justice System. The county courthouse is a majestic building constructed in 1904 and most recently renovated in 2007. It is located in Astoria's historic downtown and houses the county's three circuit court judges: Presiding Judge Philip Nelson, Judge Paula Brownhill, and Judge Cindee Matyas. The District Attorney, Joshua Marquis, and his six deputies also have their offices in the courthouse. At the time of the peer review, three of the four CCDA attorneys had their offices within a short walk to the courthouse; the other attorney was about 15 miles away in Seaside. Mary Ann Murk has her office at historic Pier 39, which requires a drive, brisk walk or trolley ride to get to the courthouse.

The county jail is also near the courthouse. Its capacity is capped at 60 beds, requiring frequent "matrix" (or forced) releases of prisoners. In July 2012, voters rejected for a third time in recent years a levy for construction of a new jail. The Juvenile Department and Department of Human Services also have offices in the downtown area. The Probation and Parole offices, however, are in a somewhat remote area several miles from town in Warrenton. The Oregon Youth Authority's North Coast facility, which includes detention beds used by Clatsop County, is at the same Warrenton complex.

Case processing. The county's three judges all handle some criminal and civil docket matters but have divided among themselves primary responsibility for particular case types, with Judge Nelson handling in-custody arraignments and juvenile delinquency cases, and Judge Brownhill handling most juvenile dependency cases. Each judge also presides over special courts, which are addressed further below.

The county does not have a formal early disposition program, as provided by ORS 135.941, or a similar procedure for routine early disposition of criminal cases. However, in criminal cases, the court will set an "early resolution conference" (ERC) 45 days after arraignment (30 days for in-custody cases). It is DA office policy to provide a written pretrial plea offer at initial appearance in misdemeanor cases and at the indictment arraignment in felonies, at which time they also provide discovery. If a case is not resolved at the ERC, the matter is set for trial 60 days later (earlier for in-custody

⁶ <http://quickfacts.census.gov/qfd/states/41/41007.html>

⁷ Oregon State Police, 2010 Annual Uniform Crime Report, http://www.oregon.gov/osp/CJIS/Pages/annual_reports.aspx. The "Crime Index" was developed to measure crime on a national scale by choosing eight offenses that are generally defined the same by each state, which are: Willful Murder, Forcible Rape, Robbery, Aggravated Assault, Burglary, Larceny (Theft), Motor Vehicle Theft and Arson. Total reported crime was 5,909 in 2006 and 5,213 in 2010, the last year for which data are available and a low for the five-year period.

cases), or the case is continued for a “final resolution conference” (FRC), after which it is set for trial if there is no resolution.

In delinquency cases, the county Juvenile Department typically appears at arraignment without representation from the DA’s office, which only appears at jurisdictional hearings when requested by the Juvenile Department. At the time of the peer review, public defense attorneys were typically not present for arraignment in delinquency cases. The Juvenile Department estimates that youth waive their right to appointed counsel in approximately 40% of delinquency cases. The department also reports that 20 detention beds are available at the OYA North Coast facility, with between six and 13 youth typically in custody awaiting disposition.⁸

Shelter hearings in dependency cases can take place at any time during a court day, depending upon the judge’s availability and case exigencies. Mary Ann Murk is notified of these hearings and is typically present and appointed to represent children. CASA is also notified, and the DA’s office is present. At the time of the peer review, no one was notified to be present for appointment to parents, who were usually unrepresented at shelter hearings. After court jurisdiction is established, which is rarely contested, the court typically will conduct no further review until a permanency hearing is held a year later, or earlier in a significant number of cases. A Citizens Review Board hearing will take place at six months following the disposition on the petition. DHS is usually not represented at permanency hearings, even contested ones. An assistant attorney general appears for DHS if a case proceeds to a termination of parental rights petition.

As indicated above, Clatsop County employs a variety of special or “problem solving” courts. Judge Nelson presides over a drug court, served by a “team” that includes a deputy DA, a probation officer, a treatment provider and Mark Lang, a local non-contract defense attorney who bills OPDS hourly for his services. The program functions as both a “supervision court” for persons convicted on felony drug offenses and placed on probation and as a “conditional discharge court” for persons who can earn dismissal of drug offenses through successful completion. The court is not designed or funded, as with programs in some counties, to include “Measure 57” offenses. Judge Nelson also oversees a drug court and a “behavioral court” for adjudicated youth in delinquency cases. Typically, contract attorneys will not attend these post-dispositional delinquency proceedings after their clients have entered the programs.

Judge Matyas presides over a “treatment court,” served by a team that includes a deputy DA, a probation officer, treatment providers and, again, Mark Lang as defense counsel. The program is a supervision court, serving persons both on probation and post-prison supervision who have either a mental health disorder or other disorder, such

⁸ According to the most recent statewide detention trends report from the Oregon Youth Authority’s Juvenile Justice Information System (JJIS), in 2007 Clatsop County was somewhat above the average statewide rate for total juvenile detention admissions per 1,000 youth with 48.7 total admissions (27.8 statewide) and 20.3 unduplicated admissions (14.0 statewide) for youth ages 10-17. Data for 2007 also show that Clatsop County was slightly above the statewide average for length of stay for all admissions with an average of 10.7 days (9.1 statewide average). Although a statewide comparison report is not available for subsequent years, JJIS data for Clatsop County for 2008-2011 show that total admissions have declined somewhat from a high in 2007, and that average length of stay has remained about the same. http://www.oregon.gov/OYA/Pages/jjis_data_eval_rpts.aspx.

as traumatic brain injury, which is a common diagnosis for veterans who have served in Iraq or Afghanistan.

Judge Brownhill manages a “family drug court,” which serves parents in dependency cases, who can earn a dismissal of the petition in their cases through successful completion of the program, which includes a variety of treatment providers. Again, a non-contract defense attorney, Stacey Rodriguez, who has her office in Cannon Beach, is paid on an hourly basis to represent parents in this program. If a parent who is represented by a contractor enters the program, Ms. Rodriguez will be substituted as counsel for that client. If a second (or subsequent) parent in the same case also enters the program, the original appointed attorney will remain on the case, although that person is not part of the court “team,” which includes the judge, a deputy DA, Ms. Rodriguez, DHS, a CASA, and treatment providers. Mary Ann Murk, who usually represents children in dependency cases, also attends family drug court staffings and court proceedings.

Data from the Oregon Judicial Department show that Clatsop County averages somewhat more trials in criminal cases than statewide. Data on age of pending cases and age of terminated cases show that the county is among the fastest to resolve cases.⁹

III. OVERVIEW OF CLATSOP COUNTY DEFENDERS ASSOCIATION (CCDA)

At the time of the peer review, the Clatsop County Defenders Association was a consortium of four lawyers. Although the group has an “operating agreement” signed by all members, it does not otherwise have a formal business structure.¹⁰ Kris Kaino, one of the members, has served as the consortium administrator for the past 10 years. The group does not have a board of directors, and no person outside of the group participates in the oversight or administration of its operations.

The four attorneys who were members of CCDA at the time of the peer review have each practiced law for over 20 years. At the time of the review, the group’s composition had not changed for many years, and it disclaimed any role in providing training or educational opportunities for its members, or in conducting any oversight or evaluation of the quality of its member’s services. There is no formal mechanism for members to share memoranda or other practice tools and aids. The operating agreement calls for quarterly meetings with topics ranging from financial and caseload matters to legal trends and developments in the court justice system. CCDA members report interacting with each other frequently in and out of court, along with frequent email exchanges about legal matters and consortium business.

At the time of the peer review, each consortium member had some office staff working for them except for Mr. Kaino, who shared a receptionist in the suite of offices where he

⁹ <http://courts.oregon.gov/OJD/OSCA/Pages/statistics.aspx>.

¹⁰ The operating agreement casts some doubt regarding the actual name of the consortium. The document is entitled “Operating Agreement of Clatsop County Indigent Defense Consortium,” but it identifies the entity it governs as the Clatsop County Defender’s [sic] Association. For simplicity and consistency, this report refers to the consortium as the Clatsop County Defenders Association, which is how it is named in its contract with PDSC.

shares space. Mr. Kaino had part-time assistance to help with preparing case reports for OPDS but no person other than Mr. Kaino was available to assist with day-to-day consortium administrative matters such as case assignment or resolution of client contact issues.

As consortium administrator, Mr. Kaino is known among court personnel as a contact person for concerns about consortium members or operations. Along with Ms. Murk, he had worked with the Presiding Judge, just prior to the peer review, to place primary responsibility with contractors for identifying and resolving potential conflicts of interests with new case appointments, a function performed until then by the court in advance of initial appointments. Mr. Kaino and Ms. Murk believe this may reduce the number of non-contract hourly appointments in potential conflict cases, which they saw as a major contributor to a recent decline in case appointments to CCDA and Ms. Murk. Under the new system, the contract attorney assigned to cover in-custody arraignments for a particular day, who ordinarily will receive the appointment on that day's cases, receives a list several hours before court of defendants to be arraigned and any identified alleged victims in their cases. If the attorney identifies a potential conflict, the appointment will go to another contractor. It is the responsibility of the assigned arraignment attorney to identify a new contractor to receive conflict appointments.

Mr. Kaino had also worked with the Presiding Judge to ensure that one attorney usually handles all of a defendant's pending cases and is appointed on any probation violations that arise from those cases.

Outside of ad hoc meetings to resolve specific matters, at the time of the peer review neither Mr. Kaino nor any other consortium member participated in regular justice system policy meetings. In fact, no such meetings were taking place in Clatsop County. There is a Local Public Safety Coordinating Council, but it meets infrequently and the defense attorney representative is not an active public defense provider.

IV. THE MARY ANN MURK FIRM

Mary Ann Murk has her office on historic Pier 39, a former cannery that is the largest and oldest waterfront building in Astoria, located on the Columbia River. The office is comfortably and professionally furnished to accommodate both adult and child visitors. Ms. Murk employs a full-time legal assistant. At the time of the on-site visit by the peer review team, Ms. Murk estimated that she had 60 open dependency case, mostly involving representation of children, in addition to open adult criminal and juvenile delinquency cases. She could not provide a number for her total open caseload.

Ms. Murk has contracted with OPDS for many years. In previous contracts, she managed a "consortium" consisting of herself and Dawn McIntosh. Ms. McIntosh now holds the contract to provide public defense services in Tillamook County.

IV. PEER REVIEW FINDINGS AND RECOMMENDATIONS

Clatsop County Defender Association

The Public Defense Services Commission (PDSC) conducted a service delivery review in Clatsop County in 2006, and identified a number of “significant concerns.”¹¹ The concerns included the imminent need to attract new public defense attorneys to work in the county; the caseload demands on the then six public defense contract attorneys, particularly in light of the quick rate at which the court processed cases and lack of communication among the county’s judges on judicial administration matters; disparity between contract rates in the county and elsewhere in the state; the absence of contract attorney participation in any early disposition program; the lack of organizational development and structures in the county’s consortia; and unsatisfactory representation by CCDA on behalf of parents in juvenile dependency cases. In 2008, as an update to the 2006 report, then-OPDS Executive Director Ingrid Swenson visited with Clatsop County judges, the district attorney, and defense providers and reported that most of the issues identified in the 2006 report had not been resolved. The peer review team also concluded in 2012 that little had changed since the 2006 report to the Commission.

The peer review team found that every member of CCDA had strengths in some areas of practice or type of cases and one member was said to be an excellent trial attorney in criminal cases. Each attorney was well-liked by their justice system colleagues, and were usually seen to care about their clients. But overall, the review team concluded, the group did not deliver consistently good representation, especially in juvenile dependency cases. This was a particular concern in such a small group, where the weaknesses of just one or two attorneys can have a significant impact on the clients entrusted to the consortium’s attorneys. The unsatisfactory representation was manifested in a variety of ways, from failure to establish timely and meaningful contact with clients, lack of preparation for court proceedings, tardiness for court, apparent ignorance of current or applicable law, failure to identify and zealously advocate for client objectives, confusion in the court and similar difficulties. The causes, too, were varied, from a simple lack of interest to large workloads and other less tangible factors, according to interviews. The peer review report recommended that OPDS should look to a different way of providing public defense services in Clatsop County if the group did not undertake meaningful changes to improve the quality of representation that it provided.

After providing detailed information about the information it gathered from interviews and the online survey, the peer review team made the following recommendations to CCDA:

1. **Contract Administration.** CCDA should carefully review the OPDS recommended Best Practices¹², and implement quality assurance and other practices that seek to ensure that every public defense client receives

¹¹ <http://courts.oregon.gov/OPDS/docs/Reports/clatsopfinalreport.pdf>.

¹² <http://www.oregon.gov/OPDS/CBS/pages/bestpractices.aspx>

satisfactory and appropriate representation. These recommended practices were assembled in part from the experience gained through other peer reviews of Oregon public defense providers, where contractors of all types—including small consortia—have undertaken steps to assure quality representation. The fact that CCDA is composed of four seasoned attorneys is not a sufficient response to having no recruitment, training, evaluation or disciplinary processes in place. Clearly, as recommended below, the composition of CCDA should change, with the likelihood of adding less experienced members for whom appropriate guidance, mentoring and oversight may be essential.

OPDS should follow up, through its contract administration staff or other means, to ensure that meaningful improvements have been undertaken by CCDA to establish quality assurance protocols that bring about real change in the quality of CCDA services. If effective improvements are not undertaken, the peer review team recommends that OPDS seek to change the way it provides public defense services in Clatsop County by either contracting with a different entity, by providing a list of suitable attorneys to appoint to particular case types, or through other means.

CCDA should hire a staff person to work with the courts, clients and member attorneys to facilitate the timely assignment of appropriate counsel to new cases, and assist with the efficient transfer of cases among consortium members when conflicts of interest require a change in counsel. A staff person can work with court staff to ensure that attorneys are available to represent parents at shelter hearings in dependency cases. A staff person can also assist clients and attorneys in facilitating contact between them, in addition to other contract administration duties that do not require the attention of an attorney. Nearly all public defense consortia, of every size, have a staff person to assist with these and other tasks. The position is financed through a percentage “hold back” from the contract proceeds that otherwise would be distributed to member attorneys.

- 2. Member Recruitment.** In many interviews and on every survey conducted by OPDS regarding public defense services in Clatsop County, local justice system officials have stressed the need for new consortium members. If clients are not being visited in jail and detention, if attorneys are coming to court unprepared and without current knowledge of applicable law, if attorneys are not engaged with their dependency case clients after the court establishes jurisdiction, and if attorneys are not appointed to nearly half the delinquency cases in which youth are eligible for appointed counsel, then it is very likely that new or different members of the consortium are needed. A handful of potential members were mentioned in a number of interviews, and it is likely that these people are known to the consortium. If other options are desired, the group should undertake active recruitment efforts.

The peer review team is mindful that enlarging consortium membership, in addition to adding a permanent staff person, has the effect of reducing the compensation received by current members. However, it also appears that

some current consortium members are not attending a number of proceedings—CRB hearings, Family Drug Court hearings and other post-disposition proceedings—for which the consortium could be receiving case credit and, therefore, more revenue for the group from which to partially finance new positions. Moreover, as described long ago by the PDSC, it has always been expected that attorneys participating in a consortium will maintain a private practice that includes retained work so that they are not entirely dependent upon public defense income. Consortium lawyers should not treat a public defense contract as an entitlement program that guarantees a particular level of income. Rather, the first priority should be the provision of high quality client representation through a structure that can meet the particular financial needs of its members.

- 3. Juvenile Delinquency Representation.** Two separate but related issues should be addressed by CCDA concerning delinquency cases. First, the consortium should work with the Presiding Judge and Juvenile Department to ensure that financially eligible youth waive their right to appointed counsel only after being fully informed of the risk of proceeding without a lawyer and the benefits of having one. As part of this process, youth should have an opportunity to consult with counsel before making a decision to waive a lawyer. In this regard, CCDA should work with the court to ensure that a consortium attorney is present when youth make their first appearances in delinquency cases. Of course, in addition to the youth, all other juvenile justice stakeholders should understand the benefits of having a lawyer represent a youth in delinquency cases. There should be little question about this point¹³, but it may not be apparent in Clatsop County if those lawyers now appointed in delinquency cases do not see their clients in detention or make timely responses to calls and other messages from clients and Juvenile Department officials.

The adverse consequences of shackling youth during transport to court proceedings and during such proceedings are becoming better understood. As a result, both nationwide and in Oregon, courts are increasingly prohibiting the practice without a clear demonstration of the need for heightened security measures and the absence of reasonable alternatives to shackling. Pleadings and court orders concerning the litigation of this issue recently in Yamhill County are available, along with other resources, for advocating against routine use of shackles in delinquency cases. According to one interview with a consortium member during the peer review, CCDA attorneys reached an agreement among themselves that they would not challenge this practice. It is hard to imagine what circumstances would have led to such an agreement, or how a lawyer's duties to individual clients could be sacrificed by a vote of a consortium. In any case, the group as a whole and each member attorney should reconsider the matter and seek assistance if required in challenging the practice. OPDS General Counsel can provide additional information on

¹³ The importance of counsel in delinquency cases should be self-evident. An excellent description of the role and responsibilities of a lawyer in these cases can be found in publications of the National Juvenile Defender Center (<http://www.njdc.info/index.php>), especially their [*Role of Juvenile Defense Counsel in Delinquency Court*](#) (2009).

this matter. Youth, Rights and Justice, a public defense contractor in Portland, is also a resource.

4. **Juvenile Dependency Representation.** It is not clear that CCDA should continue to provide representation in these cases. Representation in dependency cases requires knowledge and skills that are very different from the practice of criminal defense, and it is an unreasonable expectation that every good criminal defense attorney will also serve dependency clients well. Therefore, both CCDA and OPDS should reassess whether the consortium should continue to contract for representation in these cases.

But if CCDA does continue with this work, then each member handling dependency cases should become thoroughly familiar with the standards of practice and law that governs this practice. Every lawyer providing dependency representation under contract with OPDS is now required to attest to attendance at 16 hours of specialized training for each contract period. It is not clear that each CCDA attorney has fulfilled this obligation.¹⁴ In addition, CCDA lawyers should be familiar with the expectations of the Oregon State Bar performance standards in dependency cases,¹⁵ and with the OPDS expectations described in its document *The Role of Counsel for Children and Youth*.¹⁶ The entire consortium would likely benefit from actual in-person attendance at applicable Oregon State Bar, ODCLA or Juvenile Law Training Academy programs. The group should also consider seeking consultations with the Juvenile Law Resource Center provided by Youth, Rights and Justice, and with the Juvenile Appellate Section of the Appellate Division of OPDS.

The group should work immediately with the court to ensure that lawyers are notified of shelter hearings so that attorneys can appear then to represent parents. The importance of zealous representation of parents at shelter hearings is explained well in a series of articles in the Youth, Rights and Justice *Juvenile Law Reader*.¹⁷ Each member of the consortium should be familiar with these articles and share them with the court in order to promote an understanding of the importance of having counsel available to represent parents at the shelter hearing. In addition, participation in these hearings is an obligation of counsel under the Oregon State Bar's performance standards, Standard 3.5, which describes the steps that attorneys for both parents and children should take at shelter hearings.

¹⁴ In its 2011 response to the OPDS Request for Proposals for 2012-2013 contracts, the CCDA administrator explained that he had acquired the recordings of two past seminars from the Juvenile Law Training Academy, which each member was expected to "attend" by the end of December 2011. There was no separate certification that each lawyer had obtained the materials for these programs or listened to at least 16 hours of instruction.

¹⁵ The performance standards, which are currently being revised and updated, are available at http://www.osbar.org/surveys_research/performancestandard/index.html.

¹⁶ *The Role of Counsel for Children and Youth* is available at <http://www.oregon.gov/OPDS/CBS/pages/roleofcounsel.aspx>.

¹⁷ The articles, *Zealous Advocacy: The Shelter Hearing*, Part I and Part II, are in the December 2007 and February 2008 issues of the *Juvenile Law Reader*, available at <http://www.irplaw.org/juvenile-reader>.

Post-disposition representation of parents in dependency cases can be critical to ensuring that the Department of Human Services provides services and visitation, among other efforts, needed for successful reunification of children with parents. It appears, from interviews, that attorneys are not maintaining meaningful contact with clients following disposition in these cases, and that advocacy at review hearings is perfunctory. Again, the OSB performance standards are a good guide to the expectations for attorneys in this regard, particularly Standard 3.12 (Postdisposition), Standard 3.13 (Review Hearings and CRB Hearings), and Standard 3.14 (Permanent Planning Hearings). The peer review team heard that very few post-disposition review hearings are conducted by the court but that the court would also conduct early permanency hearings that frequently result in a change of plan to adoption. More active representation of parents combined with more frequent review hearings is likely to assist clients with fulfilling the obligations imposed by the court for achieving reunification. This requires, of course, engaged and informed representation by skilled lawyers for parents.

As noted above, the team heard from the CCDA administrator that he could not attend CRB hearings because they conflict with court appearances. Since CRB hearings are set at the same time every month, it is not clear why courthouse matters could not be scheduled around CRB meeting times. The team learned, however, that it might be possible to conduct the CRB hearings at the courthouse, as happens in some other counties, which would make attendance even more convenient for attorneys. The CCDA indicated at the peer review team's exist interview with him that he would be open to investigating this idea.

5. **Adult Criminal Representation.** In addition to addressing the issues concerning client contact and timely case preparation, CCDA should consider whether its attorneys are using investigators appropriately. It's not clear that attorneys are providing appropriate guidance to investigators or staying well informed on their work. It is a particular concern that an investigator would feel compelled to require—and an attorney would permit—a client to sign a form warning that case work would be incomplete if the attorney does not seek authorization from OPDS for the necessary hours to work on a case. The use of this form suggests a fundamental dysfunction in the relationships between attorneys and their investigator and clients. CCDA should resolve the issues that prompted the use of this inappropriate form.
6. **System Collaboration.** The peer review team recommends that the Clatsop County Defenders Association administrator, in concert with Ms. Murk, explore placing a public defense contractor on the Local Public Safety Coordinating Council or, if this group is not meeting effectively, urge the Presiding Judge to convene a Criminal Justice Advisory Council that can foster more targeted collaboration on policy affecting the court, public defense and related services¹⁸.

¹⁸ A Local Public Safety Coordinating Council (LPSCC), required by ORS 423.560, must include a broad range of justice system partners, including a criminal defense representative, and address countywide

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At that time it conducted the 2006 service delivery review, the Commission noted that “[b]oth attorneys in the Murk Consortium were singled out for their strong personal commitment and zealous advocacy on behalf of children in juvenile dependency cases.”¹⁹ The comments received in interviews during the peer review team’s 2012 visit echoed this assessment and were similar to the comments on the online survey that highly praised Ms. Murk’s work.

Ms. Murk was described as extraordinarily diligent in all phases of her representation. She maintains good client contact, making timely visits to in-custody and detained clients and visiting with the children she represents in dependency cases. Unlike other public defense attorneys in Clatsop County, she regularly attends Family Drug Court and other post-dispositional proceedings, including CRBs and Family Decision Meetings at DHS. One person described Ms. Murk as “efficient, effective, direct and trustworthy.”

The peer review team heard only one concerning comment amid all the praise for Ms. Murk. As noted above, the PDSC’s 2006 report noted that Ms. Murk has a strong personal commitment to her representation of children. Several interviewees said that Ms. Murk often requests an early permanency hearing on behalf of her children clients, seeking a plan of adoption and termination of parental rights. Ms. Murk was said by some to be acting upon her own strongly held views of her clients’ best interest which may not always be the same as her clients’ expressed wishes. At the peer review team’s exit interview with Ms. Murk, she maintained that she understands and abides by her professional responsibilities when representing children, but also told the team that she has a strong commitment to permanency for children and a belief that children do not necessarily need to be raised by biological parents in order to thrive.

V. CONTRACTOR RESPONSE TO PEER REVIEW

Clatsop County Defender Association

Almost immediately upon receiving the draft peer review report, the CCDA administrator, Kris Kaino, began regular conversations with the OPDS analyst for Clatsop County and OPDS General Counsel about how his group could improve its work. Among other things, Mr. Kaino was invited to confer with Jennifer Kimble and Jennifer Nash, who were members of the peer review team with experience in the

criminal and juvenile justice system planning. Likewise, unless an equivalent already exists, ORS 1.851 requires that the Presiding Judge establish a local criminal justice advisory council (CJAC) that includes public defense providers and that specifically addresses “coordinating court, public defense and related services and resources in the most efficient and cost-effective manner that complies with the constitutional and statutory mandates and responsibilities of all participants.”

The 2012 OCDLA/OPDS Public Defense Management Seminar featured a panel of prosecutors and defense attorneys from three counties who have used the structures of a LPSCC or CJAC, among other forum, to collaborate successfully on system policy matters and issues related to quality of defense services.

¹⁹ See, [OPDS’s Final Report on Service Delivery in Clatsop County & PDSC Service Delivery Plan for the County\(2006\)](#).

management of small consortia that had faced quality assurance challenges. He was also referred to other consortia that had undertaken quality assurance initiatives.

In Mr. Kaino's formal written response to the peer review, which was attached to the final report, he outlined actions that he had taken or intended to take in response to the report's findings and recommendations, including:

- Hiring a consortium staff person to serve as a liaison with the court regarding appointment of counsel, to assist with client complaints about consortium attorneys, and to assist in other consortium operations.
- Meeting with Ms. Murk and Presiding Judge Nelson to arrange for the presence of an attorney at delinquency arraignments. The new CCDA staff person will assist with this process. The issue of waiver of counsel in delinquency cases was discussed at this meeting but was described as a matter needing further work.
- Recruiting new consortium members, and obtaining agreement from Ms. Murk and another local attorney expert in dependency cases, Stacy Rodriguez, to assist in mentoring attorneys new to dependency work, while Mr. Kaino would plan to mentor attorneys new to criminal representation. Judge Brownhill also agreed to provide input regarding the work of attorneys new to dependency work.
- Meeting with Ms. Murk and Judge Nelson regarding shackling of youth in transport to and during court hearings in delinquency cases. Independently of that meeting, OPDS General Counsel provided Judge Nelson, upon his request, a lengthy opinion on shackling by Judge John Collins, in Yamhill County, that addressed the potential for harm from unwarranted shackling and placing restrictions on its use in that county.
- Requiring each CCDA member to review the OPDS statement on the role of counsel for children and youth, the Juvenile Law Reader articles on the importance of zealous representation of parents at shelter hearings, and the Oregon State Bar performance standards in dependency cases. In addition, members agreed to read each new issue of the Juvenile Law Reader, published online by Youth, Rights, and Justice, Inc.
- Requiring each CCDA member to attend in person an upcoming OCDLA juvenile law seminar, and requiring in person attendance thereafter at one juvenile law seminar every year.
- Working with Ms. Murk to place a public defense contract attorney on the Clatsop County LPSCC, and arranging quarterly meetings with Ms. Murk, court staff and judges to discuss court operations and representation in criminal and juvenile cases.
- Planning a meeting with CCDA members and someone from parole and probation to learn more about the interstate compact on supervision of probationers, was an issue identified as needing attention in the peer review report.
- Meeting with each member of the consortium to discuss the peer review, requiring reporting of first in-person contacts with new in-custody clients, and addressing any issues particular to individual members that arose in the course of the peer review.

Later, on March 1, 2013, Mr. Kaino updated OPDS General Counsel on progress with CCDA improvements, reporting that two new attorneys would be performing consortium

work, one of them focusing largely on dependency cases; that quarterly meetings with the judges had begun; that the court had agreed to restrict shackling of youth to only those instances where a specific risk is identified; that each CCDA member was registered to attend the April 2013 OCDLA juvenile law CLE; that the staff person had been hired; that attorneys were now required to make timely responses to any complaint about their performance or face a fine; that the consortium would conduct an annual survey of system stakeholders regarding consortium performance; that the training session on interstate transfer of probation had been very helpful; and that other measures, specific to individual attorneys had been undertaken.

On May 23, 2013, OPDS Executive Director Nancy Cozine, OPDS Analyst Billy Strehlow and OPDS General Counsel Paul Levy visited Clatsop County to speak with judges, court staff, the District Attorney, contractors and others about developments following the peer review. Local justice system stakeholders generally acknowledged a variety of changes in response to the peer review, including the addition of new attorneys to the consortium, the addition of a consortium staff person, establishing a procedure for attorneys to be present at first appearances for parents in dependency cases and for youth in delinquency cases, a change in procedure concerning shackling of youth in delinquency matters, and other changes concerning particular consortium members. There is also an expectation that Mr. Kaino and Ms. Murk will meet regularly with the court concerning public defense management issues, and that periodically the court will meet with the public defense contractors and the District Attorney concerning court procedure issues.

After the May 2013 visit by OPDS staff, Mr. Kaino informed OPDS that two long serving members of CCDA would no longer be providing services for the consortium, one for health related reasons and the other because of plans to move to another community. Mr. Kaino described active efforts to recruit additional member to join CCDA. As a result of this development, if the Commission approves a contract for the 2013-2014 biennium, except for Mr. Kaino the composition of CCDA will be entirely different from the group as it existed when the peer review team visiting in 2012.

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As indicated above, the peer review team found a high degree of satisfaction with the services provided by Ms. Murk. With only one significant caveat, the peer review team concluded that she was indeed providing very good representation in her clients. Ms. Murk addressed that concern raised by the peer review in her response to the team's report, agreeing to review her advocacy for children with community partners and implement changes that might be needed in her practice. In its May 2013 follow up to the peer review, OPDS staff heard that there is still a very high degree of satisfaction with Mr. Murk's work, and that she has been working with Mr. Kaino to assist with improvements to the consortium operations, including providing training in dependency cases for attorneys new to CCDA.

VI. CONCLUSION

As described above, the peer review team concluded that public defense services in Clatsop County had not changed significantly since the Commission had visited in 2005 and identified a number of concerns. However, in response to the peer review report, Mr. Kaino undertook a number of actions, some immediately and others over the course of the following months, which promise to provide more meaningful quality assurance by the consortium and better representation to public defense clients. Those changes are welcome and appropriate, and the challenge will be to sustain and build upon them as the group's composition changes dramatically and grows. All Clatsop County justice system stakeholder should expect continued monitoring of public defense performance in the county by the staff of OPDS and the Commission.