

Members

Barnes H. Ellis, Chair
 Shaun S. McCrea, Vice-Chair
 Henry H. Lazenby, Jr.
 Peter A. Ozanne
 John R. Potter
 Janet C. Stevens
 Honorable Elizabeth Welch

**Ex-Officio Member**

Chief Justice Thomas Balmer

Executive Director

Nancy Cozine

PUBLIC DEFENSE SERVICES COMMISSION**PUBLIC DEFENSE SERVICES COMMISSION MEETING**

Thursday, August 16, 2012
 10:00 a.m. - 2:00 p.m.
 Office of Public Defense Services
 1175 Court St. NE
 Salem, Oregon 97301

AGENDA

- | | |
|---|---------------------------|
| 1. Action Item: Approval of minutes - PDSC meeting on June 14, 2012 (<i>Attachment 1</i>) | Chair Ellis |
| 2. Action Item: Discuss and Possible Approval of Douglas County Service Delivery Plan (<i>Attachment 2</i>) | Commissioners |
| 3. 2013-15 Agency Request Budget (<i>Attachment 3</i>) | Kathryn Aylward |
| 4. Best Practices for Boards and Commissions <ul style="list-style-type: none"> • Secretary of State Audit Report Boards and Commissions
 http://www.sos.state.or.us/audits/pages/state_audits/full/2012/2012-20.pdf • PDSC □ Compliance with Best Practices (<i>Attachment 4</i>) | Nancy Cozine
Paul Levy |
| 5. Annual Performance Progress Report <ul style="list-style-type: none"> • Customer Service Survey Results • Appellate Division □ time to filing (<i>Attachment 5</i>) | Kathryn Aylward |
| 6. Update Regarding Death Penalty Contractor Review (<i>Attachment 6</i>) | Paul Levy |
| 7. OPDS Monthly Report <ul style="list-style-type: none"> • Appellate Division Update • Waiver of Counsel • OPDS litigation <ul style="list-style-type: none"> ○ Motion to quash ○ Mandamus ○ Marion County contempt proceedings • Public Defense Advisory Group Meeting • Plans for Clatsop County Peer review • Conference planning | OPDS Management Team |

Please note: Lunch will be provided for Commission members at 12:00 p.m.

The meeting location is accessible to persons with disabilities. A request for an interpreter for the hearing impaired or for other accommodations for persons with disabilities should be made at least 48 hours before the meeting, to Laura Kepford at (503) 378-3349.

Next meeting: September 12, 2012, 10:00 a.m. – 2:00 p.m. at the Office of Public Defense Services. Please note that meeting dates, times, and locations are subject to change. Future meetings dates are posted at: <http://www.oregon.gov/OPDS/PDSCagendas.page>

Attachment 1

PUBLIC DEFENSE SERVICES COMMISSION

OFFICIAL MINUTES

Thursday, June 14, 2012
9:00 a.m. – 12:30 p.m.
Seventh Mountain Resort,
18575 SW Century Drive
Bend, Oregon 97702

MEMBERS PRESENT: Barnes Ellis
John Potter
Janet Stevens
Hon. Elizabeth Welch (by phone)

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Paul Levy
Peter Gartlan
Shawn Wiley
Amy Jackson
Billy Strehlow
Shelley Winn

The meeting was called to order at 9:10 a.m.

Agenda Item No. 3 Clackamas Indigent Defense Consortium Update

Chair Ellis asked Caroline Meyer and Ron Gray for an update regarding Clackamas County. Ms. Meyer summarized the concerns expressed by Commission members at the March meeting, specifically CIDC's lack of progress on board composition, specifically, progress on the addition of two outside board members.

Ron Gray explained that there is now a process set up through the local Clackamas County Bar, through which two non-CIDC attorneys are selected as board members. CIDC rewrote their bylaws to change the structure of the board and the terms of the boards of directors. Brad Jonasson, outgoing CIDC president, helped with the rewrite, and those are now adopted.

The Clackamas County Bar officers set up an appointment process at the beginning of the year. One CIDC board member had connections with the Rotary Club, and was able to solicit suggestions from that group. The CIDC board now includes two non-CIDC members - retired Judge Ray Bagley, and Thomas Joseph, who has Thomas Joseph Dry Cleaners in the Portland metropolitan area. Mr. Gray has met with both; they will both attend the quarterly board meeting next Tuesday with all of the other board members present, which will be the first meeting they physically attend.

At the next CIDC board meeting, the board will start the process of reviewing applications. They are considering adding one or two more full time positions to CIDC because the caseload is up. CIDC has already advertised for applicants, and has a committee that is

checking references and evaluating those applications. The final selection will probably be at a follow up board meeting called for the sole purpose of reviewing applications.

Mr. Gray is hoping that the CIDC board will address the client survey process once done reviewing attorney applicants and filling positions. He is hoping to issue a survey again, taking into account some of the lessons learned from the past, and trying to make it work more efficiently.

Chair Ellis expressed satisfaction with CIDC's progress, though noted that it seemed to take a long, long time to accomplish, and asked whether Mr. Gray involved the Clackamas Bar when establishing the board selection process. Mr. Gray explained that he did, and that he had to work with the Bar to make sure that they understood that they were actually the selecting body; they were not simply making recommendations. In addition, Mr. Gray had to set up a process to make sure that if they had a person in mind, CIDC was given notice in case there were conflicts of interest or anything like that. Mr. Gray said that the Bar officers who started at the beginning of the year were a lot more aggressive about getting the process established, and it then developed very rapidly.

Chair Ellis asked about CIDC succession planning. Mr. Gray indicated that Mike Czaiko is on the board, and the board has ratified him, and he has agreed, to be in training as Mr. Gray's successor. Mr. Czaiko is consulting with Mr. Gray on various issues, and sometimes attends meetings with Mr. Gray, so he already knows a lot about the job. That selection was made a year ago.

Commissioner Potter asked whether the nine member directors are listed somewhere. Mr. Gray pointed to the bylaws, which include current board members and their terms - one, two and three years. Ultimately, they will all be on three-year rotations. Chair Ellis suggested that Mr. Gray introduce his new board members to Lane Borg at MPD, and a couple of the MPD board members who have played that role for quite awhile, to give a perspective about how they contribute. Mr. Gray said that he could make that offer.

Caroline Meyer reminded commission members of Commissioner Lazenby's inquiry at the March meeting, regarding CIDC's apprenticeship program, and how many attorneys are actually promoted from within that program. Mr. Gray gave an overview of the apprentice program, which was originally designed to have two, basically new, attorneys who were starting a practice, or were an associate in an office somewhere in the county, and wanted to gain some criminal experience with an idea of helping build clientele and a caseload and maybe, eventually, being qualified to take a caseload. Interested apprentices are told that when their apprenticeship is done, and if they remain in the county and practice, when positions open with CIDC, they can apply. Obviously, CIDC members know them, and it helps - members have watched them practice, and have been in court, side by side, with them. CIDC has, in the past, offered full time positions to people who were apprentices. CIDC offers a six-month apprentice contract, with an option to apply for a second six months where they can get an occasional felony. There are currently three apprentices - one attorney, in his thirties, who came from another jurisdiction and is practicing in Milwaukie; he is in his second six months of the apprenticeship. They also have an attorney who used to be a firefighter, then went to law school out of state, and came back. He is now practicing law in Clackamas County. A lot of people remember him, and he is doing an apprentice contract. CIDC recently signed up another young lawyer who just graduated law school but has clerked in an office in Clackamas County for a couple of years. He is starting a six-month apprentice contract. There are now two former apprentices with practices in Clackamas County who have applied to become full time CIDC attorneys.

Chair Ellis asked about the total size of the CIDC group. Mr. Gray said there are 27 attorneys with full caseloads; the high was 30. When Brad Jonasson retired last year, the board was somewhat hesitant to fill the position, concerned that a few months later, they would "have

got to cut back [the] caseload because of the economy.” Mr. Gray says they should be adding two positions to the group given the current caseload, but notes that he is only one vote on the board, so expects a lively discussion about this at the next couple of board meetings.

Agenda Item No. 1 Approval of minutes – PDSC meeting on May 10, 2012.

Chair Ellis noted one correction, on page 2, the paragraph at the very bottom of the page, third line - “Statues” should be “Statutes.”

MOTION: Janet Stevens moved to approve the minutes, John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 2 October PDSC Meeting – Discussion

Chair Ellis indicated that he would not be able to attend the October PDSC meeting, and noted the meeting’s connection to the OCDLA and OPDS management conference scheduled in Silverton. Chair Ellis wondered whether others wanted to keep the meeting, or have it moved to another date, also explaining that it would be about the time for the executive director’s review. Commissioner Potter commented on the positive aspect of having many contractors at the October meeting because it is held in conjunction with the management conference, and suggested that the review process could take place at the December meeting. Chair Ellis concluded that it should remain as scheduled on October 19, and will explore his teleconference options (though notes it is not likely to be an option). Chair Ellis asked Kathryn Aylward to gather input from senior staff, as she has in prior executive director reviews, and asked her to examine past efforts to reach out to the provider community to get their input. Ms. Aylward indicated that she would look at what was done the last time there was a review and do the same again.

Agenda Item No. 3 Approval of Lincoln County Contract

Kathryn Aylward reminded Commission members that they extended the Lincoln Defense Consortium’s contract by six months at the end of 2011, to give them time to reorganize their bylaws and board of directors, and get everything in place. If approved by the Commission, the new contract will begin July 1, 2012, with the new entity, Lincoln Defenders and Juvenile Advocates Incorporated, and will run 18 months so that it will be on the same timeline ending with all the other contracts. Ms. Aylward indicated that the new contract does not include any changes in rates or caseload. Chair Ellis noted that the board formation was a little slow, but that he commended Mr. Greco at the last meeting, for working hard to make the changes.

MOTION: John Potter moved to approve the contract, Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Agenda Item No. 5 Yamhill County Update

Shelley Winn explained that she would provide a brief outline of the new Yamhill entity’s structure, summarize the feedback received from the judges, and then ask Judge Selander to provide his perspective. Ms. Winn reminded the Commission that it approved a one year contract for the Justice Alliance Center, now called the Yamhill Justice Center. Ms. Winn noted that the Commission’s materials include the list of board of directors, the bylaws, and the attorney agreements. Yamhill Justice Center does have a board of directors with two outside members, with insurance. Members are paid as the work comes in; they do not split the check. There are 21 members of this group, and lawyers are dedicated to either juvenile or criminal work. The group is four months into this one year contract, and they are running approximately 37% above quote. OPDS will make an adjustment to reflect what they are actually picking up so they can pay their attorneys for the work as it is being completed. Like MCAD, when they moved from an hourly contract to a case count contract, it was difficult. It is hard to predict and project what the actual caseload is going to be. OPDS is conservative in the beginning, but reasonable and flexible, and will work to make sure that their contract is

adjusted so quota is accurate. OPDS would like to extend the contract through December of 2013, to get them on the same cycle as the rest of the contracts.

Ms. Winn indicated that Judge Selander has been encouraging professionalism among the attorneys at the Yamhill Justice Center. They held a CLE in January at which all members, except for one who was in trial, were present. Ms. Winn spoke with the judges in Yamhill County; they believe things are going well, that morale has improved, and perhaps quality has improved. Judge Easterday was pleased that the attorneys assigned to juvenile cases were attending her monthly juvenile meetings. Yamhill County is unique in that they are the first county to experience the new Odyssey program which replaced OJIN. There have been some snags, but everyone has been very positive and gracious as they work through the process.

Judge Selander explained that the group has two teams – one dedicated to juvenile work, and one dedicated to criminal work. They have 14 attorneys handling adult cases, and seven attorneys handling juvenile cases. Of the 14 attorneys doing adult cases, 10 of them are A felony qualified. Of the juvenile attorneys, very few are felony qualified, but they hope to get everyone qualified to the maximum level as soon as possible. Each team has a leader who is Ballot Measure 11 qualified. Paula Lawrence is the juvenile team leader; she has taken the lead in juvenile court cases in Yamhill County for a couple of years. Yamhill Justice Center is seeking new attorneys, but the distance from metropolitan areas is a problem, as it is 45 minutes away. Attorneys must see their in custody clients within 24 hours and maintain contact with their clients as necessary, and many of the attorneys who have sought admission simply can't meet those requirements.

Yamhill Justice Center has increased accountability for its board, the executive director, and the attorneys. Chair Ellis requested more details about increased accountability of the executive director. Judge Selander explained that they have board meetings once a month, with almost 100% of the board members attending every board meeting, either in person or by telephone. The executive director is filing financial reports for the board every single month, and a bookkeeper reviews the books once a month. Even though Judge Selander is given authority and responsibility to do things without clearing it through the board, he is clearing everything through the board.

Chair Ellis commended Judge Selander for his work, and noted that having former judges serve as executive directors of defense organization is working well in a couple of places.

Judge Selander indicated that though there have been transition problems with the court on this contract, he believes it is for reasons that are not unique to Yamhill County. As he travels around the state performing Plan B work, he has become more aware that every county has unique practices, and they may not even be aware that they are unique. In Yamhill County, for example, up until this year, the presiding judge was appointing all the attorneys in indigent defense. There was not an enthusiastic willingness of the presiding judge to give up that authority or that responsibility. The presiding judge was also approving every attorney that was coming into the court. It is not a difficulty, but it is just changing things that have been going on for a long time.

Chair Ellis inquired about outside board members. Judge Selander indicated that Lori Coukoulis is one. Lori was a clerk in Clackamas County, then went down to Gold Beach and was with the district attorney's office. She came up to Yamhill County, and was part of the Yamhill Consortium, but is now strictly in private practice. The other current member is Dick Duer. He has a financial background and is one of the pillars of the community in Yamhill County, involved in Royal Rosarians and the Rose Festival. They have both been attending every board meeting as well. The longest board member appointment is for 10 years; some are less. Judge Selander feels this is the easiest way to ensure that the principles of any group are going to remain alive during the course of the group.

Judge Selander is still doing Plan B work, but not in Yamhill County. Chair Ellis thanked Judge Selander for the information.

Agenda Item No. 6

Non-Routine Expense Requests and *State v. West*

Paul Levy summarized this very recent Court of Appeals case - the first Court of Appeals case to address judicial review of the denial of a request for non-routine expenses. This is remarkable, not because OPDS is doing something right, but for the reason that the defense community hasn't often pursued judicial review of OPDS decisions. The process is that if OPDS denies a request, the attorney must request reconsideration, where additional information can be presented. If OPDS denies the request for reconsideration, the statutory procedure calls for an appeal to the presiding judge of the county where the case is pending. That happens occasionally. In fact, most of the time the presiding judge authorizes the expenses. But in those instances where the trial court has agreed with OPDS, there have been no appeals, until this case.

The Court of Appeals follows and cites the same cases that OPDS cites to providers, and follows the same standards that OPDS follows in its review. That is reassuring. The attorney who has been handling this case is going to seek further review, and that is entirely appropriate. The case itself involves a very interesting issue - one that is near and dear to at least the DUII practitioners. They would like to have access to the source codes and schematics for the intoxilyzer 8000. Legislation has made that very difficult for them to do.

Chair Ellis asked about recent inquiries regarding OPDS non-routine expense requests; Nancy Cozine indicated that the inquiries have subsided, but that it did bring about an informative review of the Judiciary Committee's 2003 report on non-routine expenses. OPDS long ago adopted many of the recommendations in that report, and in some ways the case that issued from the Court of Appeals is a demonstration that OPDS is carefully analyzing each request.

Agenda Item No. 7

2013-15 CSL Budget and Policy Option Packages; Provider Recommendation

Kathryn Aylward provided an overview of Attachment 6, a description of the components of mandated caseload. It starts with the base budget - just exactly what the agency had last time. Added to that is mandated caseload, Package 040, which reflects additional workload or needs. Those two together form current service level. On top of that an agency can add policy option packages, which then forms the entire agency request budget.

PDSC's mandated caseload has six items included in it. One of them is the standard inflationary amount, which this cycle is 2.4% on services and supplies, and 2.8% on what they call "non-state employee personal services." Now, for most agencies the inflation is included in a different package. This is Package 040, which normally just reflects increase in workload. Historically the inflation has been included in that mandated caseload and over the years Ms. Aylward has suggested to LFO that perhaps it should be separate and put in that other package. They have always said just keep it in Package 040. So, when legislators and analysts are looking at agency budgets, they are used to seeing something that represents two, three, four percent of an agency's budget in the inflationary package, with the mandated caseload somewhere else. OPDS is a little bit at a disadvantage having both of those included in one package because it makes it a big number and big numbers always get attention. Ms. Aylward indicates that she has worked on that.

The second one is the regular non-death penalty, trial level caseload change. Ms. Aylward doesn't think it is going up or down; it is very steady. The third one is death penalty caseload from prior biennium. That particular one is very steady - always around \$4 million a biennium. It continues to add \$4 million each biennium. If you draw a graph it is a line that just absolutely goes up at a 45 degree angle. Chair Ellis asked if that was largely PCR, and

Ms. Aylward confirmed that it includes post conviction relief, direct appeals, and appeals of post conviction relief.

The fourth one, non-attorney provider cost increase, is non-routine expenses, which is increased by 2.4% in the next budget cycle. Some of the services that we are buying are increasing far beyond a normal inflationary amount. For example two-thirds of that amount, about \$840,000, is the additional increase in discovery costs. Discovery, by and large, is from district attorney offices and it is the county council that makes the budgetary determination of the amount that a district attorney should charge for provision of discovery. OPDS has tried to minimize the effort for the counties and cost for OPDS, but there is very little OPDS can do to control that.

Number five on this list, the personal services adjustment, is a little over 11%, and for the AG's office, what is built into the budget for those charges is 14.9%. Part of the reason there are such large increases is that in the current biennium, the budget froze a merit increase and included furlough days. When building the budget, Ms. Aylward had to put back into the budget the amount that was cut for furloughs, and the amount that was cut for the frozen step last time, then build it up for those people who are no longer frozen and have steps to go to. In the budget process all agencies have to add in that much just to get back to where they should have been this biennium, and then add increases for next biennium - the steps and the inflation that everyone expects. OPDS mimicked that process when calculating amounts paid for contracts, because under contracts, it is not all salaries - OPDS estimated a portion of the contracts, about 85%, is personal services costs. So basically, people costs for the organization, including retirement and health benefits. OPDS increased that amount by the difference between 11.2%, which is what the state employee increase was, and the 2.8% that they allow in the budget process. It ends up being a significant amount of money, but contractors have also had furlough days and frozen steps. By the end of this contract cycle they will have gone four years without increases. OPDS is anticipating a need to provide increases in the next contract period.

Number 6, the last item, is mileage reimbursement. The Commission has approved mileage reimbursement at the federal rate, which is the same as the state rate. OPDS spends about \$2.5 million dollars a biennium on reimbursing for mileage. A lot of that is investigators driving around to find witnesses and interview people. It is attorneys who have to travel because it is a death penalty case and there isn't a death penalty attorney in that county, so the attorney has to travel. Some agencies can absorb increases in mileage expenses; OPDS cannot - they are too significant.

In the past, in developing policy option packages, OPDS has considered whether, if mandated caseload is particularly large, as it is this time, the Commission might wish to take a different approach toward policy option packages so as not to make the entire agency request budget such a huge jump from what it is now, especially in a time when it is unlikely that any policy option packages will be funded. OPDS is recommending a multi-biennium approach, using the concepts that were proposed last biennium, seeking policy option packages that spread the request over three biennia. The Commission approved the approach and requested that policy option package numbers be presented at the next meeting.

Mark McKechnie expressed his belief that there is a will and an interest, within the legislature, in improving funding for public defense, but there simply haven't been the resources to do it for many years. He also indicated that the juvenile dependency representation package was originally structured as an incremental approach, reducing caseloads by only 20%. He explained his understanding that some caseloads around the state are still very high, and even a 20% reduction is still far from the ideal. Mr. McKechnie also shared that when he obtained salary information for all attorneys in the Portland Metro area in general, and for YRJ attorneys, they started at just slightly above half the median, so take the middle and cut that in half. Again, the reference point is the median not the highest paid attorneys. The 50% mark.

So YRJ comes in at about the 25% mark. Attorneys lose ground from there. That is sort of the high water mark, where the salaries are most competitive. Then over time they lose ground. He emphasized the need for reduced caseloads and increased compensation in the juvenile area.

Greg Hazarabedian shared his view that realism dictates that agencies are not going to get a lot of policy packages this time, but that it is important to make the record of the need, and an incremental approach to policy option packages would fulfill that need.

Agenda Item No. 8

OPDS Monthly Report

Pete Gartlan provided a quick summary of what has been happening at the Appellate Division. In May, they had the May Daze CLE. It was devoted mostly to parole issues. Marc Brown gave a CLE presentation to the attorneys, and two members from the Board of Parole presented information. They also had a speaker from the Supreme Court Library provide an overview of legal resources available through the state intranet. Two new juvenile appellate attorneys - Valerie Colas and Kimberlee Volm - got their first wins. Appellate attorneys argued three Supreme Court cases this past week - *Haynes, Pipkin* and *Mullins*. In September they will be arguing three more cases: *Moore, Nelson*, and *Savastano*.

Nancy Cozine provided an update regarding appointment of counsel and waiver of counsel issues in juvenile delinquency cases. The Chief Justice has expressed an interest and a willingness to establish a task force regarding appointment of counsel. It would be administered through the Judicial Department, and it would include several stakeholders. Ms. Cozine also summarized her participation in the National Legal Aid and Defender Association's advisory committee on data, and some of the work being done in other states that Oregon might look to as it considers how to better collect, analyze and use data to improve public defense. Ms. Cozine also mentioned the upcoming Juvenile Law Training Academy that will take place in October on the 15th and 16th, a co-sponsored event with OCDLA, the courts, OPDS, and others. The focus is on best practices in juvenile dependency cases. She also noted that the Commission on Public Safety has started to meet again, and Larry Matasar is the defense representative.

Chair Ellis indicated that Commissioner Ozanne has decided that he will not seek reappointment when his term on the Commission expires in November, and invited suggestions for a new Commission member. He noted that Mr. Ozanne has been a very important part of this Commission - he was the first executive director, at a critical time, and he did an exemplary job of taking this Commission and making it really a significant incremental improvement on the system. Then he was absent for a couple of years in Arizona, but he has returned. Chief Justice De Muniz asked him to join the Commission, which he did and he has obviously been a very important player.

Chair Ellis asked whether anyone else had a matter for the Commission.

MOTION: John Potter moved to adjourn the meeting; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Meeting adjourned.

PUBLIC DEFENSE SERVICES COMMISSION

UNOFFICIAL EDITED TRANSCRIPT

Thursday, June 14, 2012
9:00 a.m. – 12:30 p.m.
Seventh Mountain Resort,
18575 SW Century Drive
Bend, Oregon 97702

MEMBERS PRESENT: Barnes Ellis
John Potter
Janet Stevens
Hon. Elizabeth Welch (by phone)

STAFF PRESENT: Nancy Cozine
Kathryn Aylward
Paul Levy
Peter Gartlan
Shawn Wiley
Amy Jackson
Billy Strehlow
Shelley Winn

The meeting was called to order at 9:10 a.m.

1:52 Chair Ellis We will call the meeting to order. Commissioner Welch is on the phone. The two other Commissioners we expect will be here but haven't come yet. We will skip the items that require a quorum vote. Let's go to Clackamas.

Agenda Item No. 3 Clackamas Indigent Defense Consortium Update

2:14 Chair Ellis Caroline, do you want to? It says Ron will be here but I don't see him.

2:30 C. Meyer He is here.

2:48 Chair Ellis Okay. Go ahead with an update.

2:48 C. Meyer Good morning, Chair Ellis and Commissioner Potter and other Commission members. Is this on?

3:05 Chair Ellis I am able to hear you fine. Ron you are on.

3:09 R. Gray I have been summoned. Sorry I was outside.

3:18 C. Meyer Alright. So, at the March meeting I provided an update on Clackamas County in general. At that point we talked about both contractors. There were some specific concerns with

Clackamas Indigent Defense Corporation, specifically with concern to their board composition and whether they had finalized the addition of two outside board members. So Ron Gray is here today, and in just a minute I am going to turn it over to him to talk specifically about that, and any other concerns that the Commission wanted to address with him. I think he is prepared to answer any questions that you might have in follow up to the discussion. He did receive a copy of the minutes and has reviewed those. In your materials you will see a copy of their current bylaws. We also included a copy of the client letter that they send out along with a survey. Ron can talk to you about how often that is done. I believe they are going to be doing that again this year. Then there is also a copy in your materials of the questionnaire to system participants, as well as the questionnaire to their own attorneys. I think with that I am going to turn it over to Ron and let him talk to you about the current board composition.

4:43 Chair Ellis

Okay. Go for it.

4:47 R. Gray

Can I plead the Fifth? We finally now have the process set up through the local Clackamas County Bar officers, a process to assign independently the two – we will just call them civilian board members, non-CIDC attorney board members. We completely rewrote our bylaws to change the structure of the board; what the terms of the boards of directors were, because before we had a setup where we had a certain number of rotating members and a certain number of permanent board members, which was left over from the days when CIDC was a fledgling organization. So, there was quite an extensive rewrite project. In the fall our outgoing president, who is retired now, Brad Jonasson, helped me and he took the lion's share of the load to rewrite the bylaws. We got those adopted. Then, the last panel of bar officers had trouble getting together to get the steps done that I needed to get the selection process finalized. As soon as the beginning of the year hit the new officers became a lot more aggressive in responding and got a process set up. One of the board members, fortunately for us, is a member of the Rotary Club, so not only had a couple of people who know the CIDC attorneys already who are interested, but raised the issue to some people he knew at the Rotary Club. We now have a selection of retired judge Ray Bagley as a non-CIDC board member and then Thomas Joseph, who has Thomas Joseph Dry Cleaners in the Portland metropolitan area. He serves as a volunteer on more than one board in the area and he agreed to serve as another board, as a member for us. I have met with both and gone over their questions. They will both attend our quarterly board meeting next Tuesday with all of the other board members present.

7:02 Chair Ellis

That will be the first meeting they have attended?

7:03 R. Gray

That will be the first meeting they physically attend. Judge Bagley snowbirds in Arizona between January and May, but he and I have actively communicated through email. So if any issues arise during that time period next year he will be readily accessible. Mr. Joseph's businesses are all in the metro area and I would anticipate that he will be at all meetings personally. So, we have that accomplished. At our next board meeting we are not only introducing them to the rest of the board, but we are also starting the process of reviewing applications. We are considering adding one or two more full time positions to CIDC because our caseload is up. We have already advertised for applicants, as we do periodically, and we have a committee that is checking references and evaluating those applications. We are probably not going to be selecting attorneys at the next board meeting because I don't think the process is going to be quite complete. It will probably be a follow up board meeting, maybe a month further out, that we will call to review the applications. That will be the singular issue that we will deal with. As far as the client surveys go, my plan is to try to strong arm the board to take that as the next issue once we get done with the attorney applicants and filling positions issue. We need to do that again and we need to take into account some of the lessons that we have learned from the last process to try to make it work more efficiently. Those are all agenda items for this current year.

8:54 Chair Ellis I am glad you made the step on the board members. It seemed, from our point of view, to take a long, long time to get that done.

9:08 R. Gray Well, ultimately, the mantel and everything weighs with me because it is my responsibility to coordinate it. I had some problems getting some outside people to get up to snuff, and willing to do it, and have a process that they found comfortable to do the selection process.

9:30 Chair Ellis Did you involve the Clackamas Bar?

9:36 R. Gray In talking to other people who have done this it seemed that the best way to go was to use your Bar officers as a screening committee. I had to make sure that they understood that they were actually the selecting body. It wasn't that they were making recommendations. We had to set up a process and part of the process was making sure that if they had a person in mind that before they made a selection they might at least let us know the name in case we had any conflicts of interest or anything like that that might arise, but that we were not the selectors. The new Bar officers, as I said, got a lot more aggressive about helping me out and getting it set up and it developed very rapidly.

10:18 Chair Ellis One of the issues when we met at Clackamas County a year and a half ago is your own plans. Have you given further thought to succession planning and what happens?

10:39 R. Gray There is an individual who is a CIDC attorney who is my fall back person. He is a full time contractor and he is on the board and the board has ratified him and he has agreed to be kind of in training as my successor.

10:59 Chair Ellis Who?

10:59 R. Gray His name is Mike Czaiko. So Mike will talk to me periodically about issues. There are times when he will go to meetings with me, so he already knows a lot about the job. That selection was made a year ago when he agreed to do that.

11:23 Chair Ellis Alright. Any other questions for Ron or Caroline?

11:26 J. Potter Are the nine member directors listed somewhere? Do we know who they are?

11:34 C. Meyer I believe they are in the bylaws.

11:38 R. Gray In the bylaws that you have got, we took the current board members and then set their terms - one, two and three years. Ultimately, they are going to be on three-year rotations. We had them specifically named. We added a couple of board members by election at our annual attorney meeting in February. It is easy to get the information to you. It is not a problem. We always try to encourage people who have never participated in the process to get involved. For one thing it eliminates a lot of complaining about things they know nothing about.

12:17 Chair Ellis One thought occurs to me with the two brand new outside board members, and it is the first time CIDC has had that, you might try to link up with Lane at MPD and get him to have a couple of the MPD board members who have played that role for quite awhile, meet with your two new board members and, kind of, give from that perspective how they can contribute.

12:50 R. Gray Yeah, it is a thought. I get the impression, one, because Judge Bagley was a senior judge is now retired, that he is familiar enough with the process, that I don't think his issues are as much - he doesn't have as much of a learning curve, I guess. Mr. Josephs and I spent about two hours together over lunch, and he is a very bright man, and he asked a lot of questions and I explained it. I will bring it up to him. If he is comfortable then we can set that up.

13:21 Chair Ellis I just think that, if I were one of them, I would like to meet my counterpart.

13:29 R. Gray It is not a problem. I will make the offer.

13:34 Chair Ellis Any other comments?

13:35 C. Meyer The only other thing I was going to add is I believe at the March meeting, I think it was Commissioner Lazenby had asked about their apprenticeship program, and I don't know if it was necessarily a concern, but just a question, on how many attorneys are they actually promoting from within that program. Is that program working to bring new lawyers into their organization? I had asked Ron about that after the meeting and I know that he would be happy to expand on that, but it does now sound like they are in a position to do some hiring, they have some interest from either current apprenticeship members, or attorneys that they weren't able to offer positions to at the end of their apprenticeship because they weren't hiring, but are still in the area that have expressed interest in coming back. So I didn't know if that is something that

14:16 Chair Ellis I would be interested because obviously you have a bit of a conundrum. You are the defense providers in the community, so the other lawyers practicing in the community, very few of them have much exposure to public defense. So when you recruit you don't get a former DA, or someone who has moved in with experience, how do you develop

14:45 R. Gray Well, to be clear, we have over the long period of time that we have existed, picked up people who were expressing interest and ready to take the step to go to private practice from a prosecutorial position, or who were out of county but were interested in moving in and were extremely well qualified. We have taken the step of offering them a position contingent upon them getting an office, and that, before. So that has happened. It is not the normal way that it works, but it has happened. The apprentice program was originally designed to have two, basically new, attorneys. We are talking about primarily young attorneys, who were starting a practice or are an associate in an office somewhere in the county, and wanted to gain some criminal experience with an idea of helping build clientele and a caseload and maybe, eventually, being qualified to take a caseload. What we learned early on is that we needed an out because obviously you get people that apply to be apprentices, and you give them a limited contract of misdemeanors, and you watch them perform, and then they don't pan out. You can't build a guarantee that they are going to be full time CIDC lawyers. That would be silly. But what I tell all of the apprentices, because I screen them and meet with them and explain the process, is that, when they are interested and when we are ready to have them sign up, is that if when their apprenticeship is done they remain in the county and practice and then positions open with CIDC and they apply, obviously we know them and it helps us because we have gotten to know them, and we have watched them practice and been in court side by side with them. We have had people in the past who have been apprentices who have been offered full time positions. We have two now who have been apprentices in the last few years. They have practices in Clackamas County and have applied to become full time CIDC caseload attorneys should an opportunity arise. We just sent out an advertisement, which the board agreed to do years ago, without saying there is definitely an opening, we are interested in applicants. Usually what happens is they contact me or I contact them and say, "We have already got your letter on file. You don't need to reapply. You are there in the stack of people that have applied already. So if you want to update information you may, but I already know you are interested." We decided about four years ago that we would have the right to move the number of apprentices up to an active number of four, but if went above two at any given time, that I would let the board know I had some applicants and get the board to say, "Go ahead and do it." Right now we have three. We have one attorney who is in his thirties who came from another jurisdiction who is practicing in Milwaukie who came in with some experience. We have a six-month apprentice contract and then you can apply for a second six months where you get an occasional felony. He is in that second six months. We have an attorney who used to be a firefighter and retired as a firefighter. He went out of state and

went to law school and came back. He is now practicing law in Clackamas County and a lot of people remember him from those days and he is doing an apprentice contract. We just signed up another young lawyer who just graduated law school but has clerked in an office in Clackamas County for a couple of years. He has just now started in a six-month apprentice contract.

- 18:53 Chair Ellis What is the total size of the group now?
- 18:56 R. Gray We have 27 attorneys who are taking full caseloads. Our high has been 30. We were at 28 until Brad Jonasson retired last year. The board, obviously because of the economy, was somewhat hesitant to bring somebody in, and then tell them a few months later, “we have got to cut back your caseload because of the economy,” but I think they are over that paranoia now, so now we are actively discussing it. I have just one opinion, so I am just one vote on the board, but my position with the board, without breaching confidences, because this is something that I talk about publicly, is that we ought to go back to adding about two more because of our caseload. We will have probably a lively discussion about how to do all this at the next couple of board meetings. We do use our apprentices as a way of getting to know people to see if they should become full time lawyers.
- 20:02 Chair Ellis Okay. Any other questions? Thanks. Good to see you.
- 20:09 R. Gray Sure.
- 20:09 Chair Ellis Commissioner Stevens has arrived so we now have a quorum.
- Agenda Item No. 1 Approval of minutes – PDSC meeting on May 10, 2012.**
- 20:22 Chair Ellis We will go back to item one which is approval of the minutes of May 10, 2012, meeting. Are there any additions or corrections? I have one correction on page 2, the paragraph at the very bottom of the page, third line, it is a typo. “Statues” should be “Statutes.” If there are no additions or corrections, do I hear a motion to approve the minutes?
MOTION: Janet Stevens moved to approve the minutes, John Potter seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**
- Agenda Item No. 2 October PDSC Meeting – Discussion**
- 21:10 Chair Ellis Okay. Item 2 relates to the October meeting. I think it is October 19 is the current date. I don't know if that is tied to an OCDLA event?
- 21:27 N. Cozine Chair, it is tied to the OCDLA and OPDS management conference scheduled in Silverton.
- 21:38 Chair Ellis And that is a date that I can't attend. We could just not worry about that and move past it. I am sure Shaun could attend. If it is viewed to be significantly tied to the management conference.
- 22:02 N. Cozine You and the Commission members are probably in the best position to make a decision about whether it should be moved to a different date or held on the 19th.
- 22:11 Chair Ellis And one other factor we are coming up on your anniversary and I would like to do a review process. We do this more years than not, but I think after the first full year of a new ED, I think it is helpful both for the Commission and the ED to do that.
- 22:33 N. Cozine I would agree.
- 22:33 Chair Ellis I sort of had in mind having some of that happen at the meeting around October. Again, that doesn't have to be. Do you guys have any thoughts on that?

22:50 J. Potter The good thing about having it at the management conference is that a lot of folks show up. The review process could take place, at least in my mind, could take place at the December conference. I am speaking from personal experience. My board has just reviewed me after 33 years.

23:23 Chair Ellis Why don't we leave it on October 19. I doubt I can even patch in by phone because I am going to be on the east coast at another board meeting. We will see if I can do that. Why don't we talk through now the process we will go through for the executive director review. If the actual conference with Nancy takes place in December that is alright. Kathryn, I know in prior efforts of executive director reviews we have asked you to gather input from senior staff. I believe we have a process where we tried to reach out to the provider community to get their input. I can't remember whether you handled that also?

24:30 K. Aylward I believe I did. I can go back and see what I did the last time there was a review and do the same again.

24:39 Chair Ellis Yes. I think I would hold off doing it until say September. That is the actual anniversary, but if you wouldn't mind putting that on your calendar and getting that process going that would be very helpful.

Agenda Item No. 3 Approval of Lincoln County Contract

25:01 Chair Ellis Okay. Item 3 is the Lincoln County contract. I know Guy has been with us two or three times in the last six months. I think we are pretty well up to speed but why don't you be sure we are.

25:22 K. Aylward Well, I think you are. What this contract, that I am asking the Commission to approve, represents is the last two year contract, we extended Lincoln Defense Consortium's contract by six months to give them time to do their reorganization and their bylaws and their board of directors, and get everything in place. This new contract will begin July 1, 2012, if you approve it, with the new entity, Lincoln Defenders and Juvenile Advocates Incorporated and will run 18 month so that it will be on the same timeline ending with all the other contracts. Now, when we extended January 1, there were no changes in contract rates but we did drop the caseload quota. Their monthly payment had been about \$99,000 a month and it dropped to about \$85,000, something like that. This continuation from July 1 on mimics and is the same as the first six months of this year. No changes in rates, and no changes in caseload, from what their current extension has.

26:28 Chair Ellis Any questions or comments? It is a little like Clackamas. It has been a little slow but we are getting there. This is happening and at the last meeting I commended Guy. He has worked hard to get it to where we wanted it to be. Is there a motion to approve?
MOTION: John Potter moved to approve the contract, Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

27:03 Chair Ellis Betsy, did I hear you say aye?

27:04 Hon. Elizabeth Welch I didn't know....

27:08 Chair Ellis Was that an aye?

27:10 Hon. Elizabeth Welch It is an aye.

27:11 Chair Ellis Okay. So that carries.

Agenda Item No. 5 Yamhill County Update

27:17 Chair Ellis The next one is Yamhill County. Shelley?

27:37 S. Winn Mr. Chair and Commissioners. For this particular portion of the agenda, what I would like to do is give you a brief outline of the new entity structure, let you know the feedback that I have received from the judges in Yamhill, and then let Judge Selander talk to you and explain what is going on, and the challenges, and how things are going from his perspective. You approved a one year contract for the Justice Alliance Center now doing business as Yamhill Justice Center. It is a one year contract for the calendar year 2012. Included in your materials are the list of board of directors, the bylaws, and the attorney agreements that they have. They do have a board of directors with two outside members with insurance. Members are paid as the work comes in. They do not split the check. Whatever work that comes in that they are assigned to, that is what they get paid for, which our office is in favor of. There are 21 members of this group, and Judge Selander will discuss the FTE part of each member or the members generally in just a minute. The workload is divided as follows: they are dedicated to juvenile work or criminal work. There are teams.

29:19 Hon. Elizabeth Welch I'm sorry. I can't hear anything.

29:31 S. Winn Can you hear me Commissioner Welch? Okay. The workload is divided and there are teams. There is a team leader. There are dedicated attorneys for juvenile caseload and criminal caseload. They do attend shelter care hearings, Judge Welch. As far as the caseload, currently we are four months into this one year contract and they are running approximately 37% above quote. So we do need to make an adjustment for quota to reflect what they are actually picking up so they can actually pay their attorneys for the work as it is being completed. Like MCAD when they moved from an hourly contract to a case count contract, it was difficult. It is hard to predict and project what the actual caseload is going to be. We are conservative in the beginning but we are reasonable and flexible and we will work to make sure that their contract is adjusted so quota is accurate. It is our hope to extend them to 2013, December of 2013, to get them on the same cycle as the rest of the contracts. I am sure Judge Selander will expand on this and talk about it, but they did hold an annual CLE in January. All members were present except for one who was in trial. Judge Selander, as this will come as no surprise to you, he told all his members that they needed to step it up and be professional. His standards for professionalism and quality of representation are very high. It is my understanding that he is making sure that is happening. He is no stranger to cracking the professional whip. In May I did check in with the judges in Yamhill County to see how things were going. They did acknowledge that it has been a bit of a transition period, but they believe things are going well. They said that they believe that morale has improved overall in the group and perhaps quality has improved, or another way to look at it is the members under the current contracts are providing quality services. Judge Easterday was pleased that the attorneys assigned to juvenile cases were attending her monthly juvenile meetings that she holds. That is sort of the outline of the structure and the entity so far. Yamhill County is also unique in that they are the first county to experience the new Odyssey program which replaced OJIN. There have been some snags, however they have been very positive and gracious as they work through the process. So, unless the Commission has questions of me, I will turn it over to Judge Selander.

33:06 J. Selander The Commission may recall when the Justice Alliance sent me their proposal. Their proposal was for adult criminal work and they wanted to just cut out the juvenile work. The Commission did not want to do that. They wanted a full contract, so we accepted a full contract and we broke out juvenile internally. The reason we wanted to break juvenile out in

the initial contract is because, to do juvenile adequately and make the number of court appearances necessary in juvenile, you have built in conflicts between appearances in adult criminal cases. I speak from experience, being a judge having attorneys tell me they couldn't appear because they were in juvenile court cases. We have 14 attorneys who do adult cases. We have seven attorneys that do juvenile cases. Of the 14 attorneys doing adult cases, 10 of them are A felony qualified. Of the juvenile attorneys, we have very few of them who are felony qualified for juvenile cases. It is our desire to get everybody qualified to the maximum level as soon as possible.

34:41 Hon. Elizabeth Welch

Hello.

34:41 J. Selander

Hello, Judge Welch. Can you hear me?

34:50 Hon. Elizabeth Welch

I can't hear anything.

34:52 J. Selander

We have set up a program where attorneys are divided into teams. Every team has a team leader. The team leader is Ballot Measure 11 qualified. In the juvenile cases the team leader is Paula Lawrence, who has taken the lead in some of the juvenile court cases in Yamhill County for a couple of years. We are seeking new attorneys in Yamhill but it causes problems because Yamhill County is, depending on where you are coming from, 45 minutes away. We have a requirement that attorneys see their clients in custody within 24 hours and maintain contact with their clients as necessary. Many of the attorneys who have sought admission simply can't meet our requirements. That is a problem. They almost have to be a Yamhill County attorney and we have a couple who are not. They almost have to be a Yamhill County attorney to be able to do what we want them to do. We have increased board accountability. We have increased accountability of the executive director, and we have increased accountability of the attorneys to the board. I think we have overcome many of the problems that our predecessor group had.

36:16 Chair Ellis

Talk a little more specifically. When you say you have increased accountability of the executive director what is involved there?

36:31 J. Selander

We have board meetings once a month. We have almost 100% of the board members attending every board meeting, either in person or by telephone. That is a substantial difference from what was happening last year. I am filing financial reports. We have a bookkeeper who is coming in once a month overlooking our books. I am filing financial reports for the board every single month. I am personally filing a report with the board every single month. Even though I am given authority and responsibility to do things without clearing it through the board, I am clearing everything through the board.

37:12 Chair Ellis

How long have you had the position of ED?

37:21 J. Selander

Since January 15 or January 1 or something.

37:23 Chair Ellis

Of this year?

37:24 J. Selander

Of this year.

37:31 Chair Ellis

We are glad to see you there. This has become our new model. That we get former judges to serve as executive directors of defense organization. It is working well in a couple of places.

37:47 J. Selander

I wanted to comment on something that Shelley said. We have had transition problems with the court on this contract, but I think for reasons that are not unique to Yamhill County. The more I travel around the state and do Plan B, the more I am aware that every county has

unique practices that they do and they may not even be aware that they are unique. In Yamhill County, for example, up until this year the presiding judge was appointing all the cases in indigent defense. There was not an enthusiastic willingness of the presiding judge to give up that authority or that responsibility. The presiding judge was also approving every attorney that was coming into the court. There has not been overwhelming enthusiastic acceptance ...

- 38:47 Chair Ellis You got a start at MPD in Portland.
- 38:56 J. Selander The fact is those are some of the transition problems that we are having. I think we are resolving them quickly. Judge Collins and I have known each other since law school. It is not a difficulty. It is just changing things in the way of practice that have been going on for a long time.
- 39:20 Chair Ellis I am glad to hear that, because that was one of our observations when we were in McMinnville -- what was it two years ago? There was much more presiding judge management than we were used to. Sounds like you are addressing this.
- 39:38 J. Selander I think we are.
- 39:44 Chair Ellis Good. Who were the outside directors?
- 39:45 J. Selander Lori Coukoulis is one. Lori is an attorney who I first knew as a clerk in Clackamas County. She then went down to Gold Beach and was with the district attorney's office. She came up to Yamhill County. I think for awhile she was part of the Yamhill Consortium. She is no longer a part of the Yamhill Consortium. She is strictly in private practice. The other current member is Dick Duer. I can't tell you all of his background but he is involved in financial things. He is probably one of the pillars of the community in Yamhill County. I know he is involved in Royal Rosarians. He is involved in the Rose Festival. He is the other outside director. They have both been attending every board meeting as well.
- 40:50 Chair Ellis Do you function as a Plan B judge as well as the executive director?
- 40:53 J. Selander I do.
- 40:53 Chair Ellis Is that working out all right? I assume you do your Plan B work outside of Yamhill?
- 41:04 J. Selander I was executive director for a very short period of time with the prior group. I then withdrew from that and actually did three weeks of Plan B in Yamhill County with the knowledge of the district attorney and the judges and everybody else it involved with the consortium. I will not be doing any further Plan B work in Yamhill County.
- 41:27 Chair Ellis Okay. Any other questions for Judge Selander?
- 41:31 J. Potter How did you arrive at the terms of office for these. A 10 year term is a substantial term. It could be a sentence.
- 41:48 J. Selander I think I philosophically disagree with the Commission on how long terms of office should be. Because I was one of the founding members of CIDC, I go back a long, long ways and supported primitive board members. The reason I support primitive board members is it is the easiest way to ensure that the principles of any group are going to remain alive during the course of the group. I know the Commission disagrees with that, and because I know the Commission disagrees with that, we wanted continuity, but we also wanted the change that this Commission was looking for. The longest board member is 10 years. The other board members have lesser terms, but that's the way we came up with that.

42:28 J. Potter Did that impede the process of finding people who are willing to commit?

42:31 J. Selander No. No.

42:40 J. Potter On one hand it is impressive - folks who sign up for eight, nine, ten years for a public defense commission. I congratulate you for that.

42:53 Chair Ellis Okay. Thank you. This has been helpful. Anything else you wanted to add?

43:01 S. Winn No. Nothing that I wanted to add. Just to remind the Commission that we will most likely be making an amendment to this contract adjusting quota and extending out until 2013, which I don't think requires any action on your part because it is an extension.

43:19 J. Selander In terms of numbers, we are down from contract price \$135,000. This Commission has made up, I think, \$75,000. We are currently down \$56,000. That's in the first four months of the contract. Much of that has to do with an increased emphasis on juvenile cases; making appearances at the review hearings. It also has to do with an early representation of children in juvenile cases, which is not historically what happened in Yamhill County. I expect that that is going to continue to be high, the juvenile court portion of it, and the adult is either even or just below. I don't expect as long as the current district attorney is there that the case numbers are going to drop very dramatically.

Agenda Item No. 6 Non-Routine Expense Requests and *State v. West*

44:18 Chair Ellis Paul, do you want to address Item 6, the non-routine expense request?

44:30 P. Levy Thank you, Mr. Chair. I will talk about this very briefly. I will use the microphone just so that you can hear me and the folks back there can hear me too. We brought this case, a very recent Court of Appeals case, to your attention only for the reason that it is remarkable in one respect and mundane in another. The Commission has been in existence for about 10 years. Our agency has been reviewing non-routine expense requests for that period of time. This is the first Court of Appeals case to deal, on the appellate level, with judicial review of the denial of a request for non-routine expenses. I think that is pretty remarkable, not because we are doing something right, but for some reason the defense community hasn't pursued judicial review of our decisions very often.

45:41 Chair Ellis Is that Mr. Gartlan's division?

45:41 P. Levy No. It has nothing to do with his division. It is that attorneys at the trial level will on the rarest of occasions use the statutory appeal process to seek review in the trial court.

45:58 Chair Ellis At the time of the denial?

45:59 P. Levy At the time of the denial. The process is that if we deny a request there needs to be a request for reconsideration where additional information can be presented. If we deny a request for reconsideration the statutory procedure calls for an appeal to the presiding judge of the county where the case is pending. That happens occasionally. In fact, most of the time the presiding judge overrules or authorizes the expenses. I can't really say overruled because it is a de novo review in the trial court. It is not a review for abuse of discretion. But in those instances where the trial court has agreed with us there have been no appeals until this case. It is remarkable in that sense. What is not remarkable but is interesting to see is that the discussion in the Court of Appeals follows and cites the same cases that we cite to providers, and follows the same standards that we follow in our review. That is reassuring for us; to know that we are following the right standards in the view of the Court of Appeals. So we brought that to your attention. Now the case itself, I have spoken to the attorney who has been handling this case and he is going to seek further review, and that is entirely appropriate.

The case itself involves a very interesting issue, and one that is near and dear to at least the DUII practitioners, and with which I sympathize a great deal. They would like to have access to the source codes and schematics for the intoxilyzer 8000. Legislation has made that very difficult for them to do. Courts have not cooperated and as much as we would like to assist them in their efforts, on the basis of what was presented to us in this case, we couldn't authorize the expense as requested. It is an issue that needs to be and will, I'm sure, be further developed. We just wanted to bring this interesting instance of appellate review of something that we did, although our agency's role was not mentioned, which is fine. The court didn't need to, so long as it doesn't mislead the bench and bar into believing that we don't have a role, which we certainly do.

- 48:50 Chair Ellis While we are on this subject, Nancy, you mentioned to me there has been some comment on our expense approvals. Where does that stand?
- 49:04 N. Cozine Chair Ellis, we did have some inquiries into the reasonableness of our authorizations. There was some concern expressed by a district attorney that perhaps PDSC and OPDS were too lenient with their view of what was a reasonable expense. We have had a very lengthy discussion via email. We will continue to have discussions over the phone. The discussion brought back some of the legislative hearings from 2003 that went into the reasons for the non-routine expense requests and, as you know, the Legislature at that point in time did a very thorough review of what was being authorized.
- 50:00 Chair Ellis This is when Max Williams was the chair.
- 50:01 N. Cozine It was, yes. So there was an extensive review of non-routine expense requests and there were some recommendations made in the report that was issued in 2003 by the Judiciary Committee. We have adopted many of those recommendations and in some ways the case that issued from the Court of Appeals is a demonstration that we do look at every request carefully and we do make a reasoned decision. So, at this point in time, the waters seemed to have quelled and we are not responding to complaints about the authorizations that we are providing.
- 50:47 Chair Ellis For the record the new inquiries are from the district attorney who is not in Clatsop County.
- 50:56 N. Cozine That is correct. It was also from a district attorney who was not the district attorney back in 2003. So there is, I think, very good reason to return to those discussions from 2003, to expand upon what we learned then, and to remind everyone in the system about the importance of carefully reviewing things, being reasonable when we determine what is authorized and what is not, and focusing on the balance that we need within our public safety systems and juvenile justice systems throughout the state.
- 51:36 Chair Ellis Any questions for Paul?
- Agenda Item No. 7 2013-15 CSL Budget and Policy Option Packages; Provider Recommendation**
- 51:39 Chair Ellis Okay. Next are the 2013-15 CSL Budget and Policy Option Packages.
- 51:50 Hon. Elizabeth Welch Hello.
- 51:50 N. Cozine Hello.
- 51:50 Hon. Elizabeth Welch I thought I had lost you again.

51:57 N. Cozine

Sorry. Chair Ellis was announcing the next agenda item which is the 2013-15 Policy Option Packages and Budget information.

52:29 K. Aylward

In your materials you will see Attachment 6, a description of the components of mandated caseload. Now I wish Commissioner Lazenby were here because I know he loves this budget stuff, but basically the way it works, is you have what is called your current service level, which is what you did last time, moved forward. Sorry. Let's start at the beginning. Base budget is just exactly what you had last time. Then you add to that something called mandated caseload, this is Package 040, which should reflect additional workload or needs. Those two together form your current service level. In other words, if nothing changes those two together would be the amount that we needed to continue providing services. Then on top of that you can add policy option packages, which then forms your entire agency request budget. Those are the building blocks. Our mandated caseload, as you can, see has six items included in it. One of them is the standard inflationary amount, which this cycle is 2.4% on services and supply, and 2.8% on what they call "non-state employee personal services." Now for most agencies the inflation is included in a different package. This is Package 040, which normally just reflects increase in workload. Historically the inflation has been included in that mandated caseload and over the years I have suggested to LFO that perhaps it should be separate and put in that other package. They have always said just keep it in Package 040. So a little bit when legislators and analysts are looking at agency budgets, they are used to seeing something that represents two, three, four percent of an agency's budget in the inflationary package. Then the mandated caseload somewhere else and we are a little bit at a disadvantage having both of those included in one package because it makes it a big number and big numbers always get attention. I have worked on that. The second one is the regular non-death penalty, trial level caseload change. You will see a big fat zero there. I don't think it is going anywhere. I don't see any up. I don't see any down. It is very steady what the caseload is. In fact I sort of boasted in the past about how close my projection was for caseload, but the reality is when you have 340,000 cases in a biennium you can be off by a thousand cases and you are still within .00 whatever of the caseload. It is too big to change too much. You will see in some counties they will say, "Well, have a different DA. Somehow it is up and now it is down." Or they say, "We have lost timber money and now it is down." But statewide the system does not change that much from biennium to biennium, at least not now. It may be that over the last 20 years it has continued to grow, but at this point I am not projecting any change. The third one is death penalty caseload from prior biennium. That particular one is very steady. It is always around \$4 million a biennium. It continues to add \$4 million each biennium. If you draw a graph - I should have included a graph - it is a line that just absolutely goes up at a 45 degree angle.

56:15 Chair Ellis

Is that largely PCR?

56:24 K. Aylward

It is. It is post conviction relief, it is direct appeals and it is appeals of post conviction relief. It is all of the stages that a case might be at after the original trial of the case. The fourth one, non-attorney provider cost increase, that's basically the non-routine expenses. We are allowed to inflate them by 2.4% in the next budget cycle. Some of the services that we are buying are increasing far beyond a normal inflationary amount. For example two-thirds of that amount about \$840,000, is the additional increase in discovery costs. Now discovery by and large is from district attorney offices and my understanding is that it is county council that makes the budgetary determination of the amount that a district attorney should charge for provision of discovery. So if the county council gets together and says, "Well, we think you should charge a flat \$10 per case even if the discovery is two pages," then that is what the DA charges us. "That is what our county council told us to do." There is not a lot of push back that we can do. We pretty much watch those expenses go up. In some situations we have at least tried to stem the tide - but if suddenly they say, "Well now instead of 20 cents of a page it is 40 cents a page," what we have done in a couple of counties is negotiate with them to say, "Look, it is about this much per month. Why don't you just bill us this much per month and you don't have to actually count and document two pages here at 40 cents, one page here." At

least we have tried to minimize the effort for the counties and for our office, but there is very little we can do to control that. Number five on this list, the personal services adjustment, the way that is calculated; we know that the 2.8% inflationary amount that is allowed in the budget process is insufficient. For example with state employees, the personal service inflation or increase this time is a little over 11%, and for the AG's office, what is built into the budget for those charges is 14.9%. Part of the reason we are seeing such large increases is that in the current biennium, the budget stopped one annual merit increase - froze a merit increase and included furlough days. So part of the problem in the budget building is that you have to say, "Well wait a minute. First of all we have to put back into our budget the amount that was cut for furloughs and the amount that was cut for the frozen step last time and now let's build it up for those people who are no longer frozen and have steps to go to. We are adding the amount that it would cost to give them that step. The reason the percentages look high is let's imagine there is some sort of zero baseline, this biennium you are below it. All agencies are. In the budget process you have to add in that much just to get back to where you should have been this biennium and then add increases for next biennium the steps and the inflation that you expect. We mimicked that process for what we pay for contracts. Now we know under contracts it is not all salaries. It is not all personal services. We estimated a portion of the contracts would be about 85%, we assume, is personal services costs. So basically people costs for your organization. Retirement and health benefits and definitely 85% of any organization's costs, and sometimes more. To that amount we increased it by the difference between 11.2%, which is what the state employee increase was, and the 2.8% that they allow in the budget process. It ends up being a significant amount of money, but we know our contractors have also had furlough days and frozen their steps. By the end of this contract cycle we will have gone four years without increases. There is only so long you can hold that back and we are anticipating a need to provide increases in the next contract period. Number 6, the last thing, is mileage reimbursement. The Commission has approved that our mileage reimbursement is the same as the federal government, which is the same as the state government. We all follow what the federal government does. Now, for most agencies, an increase from - it had been 51 cents to .555 - they can absorb that. Some amount of that is covered by normal inflationary adjustment. It is not a big deal for them but for us we spend about \$2.5 million dollars a biennium on reimbursing for mileage. A lot of that is investigators driving around to find witnesses and interview people. It is attorneys who have to travel because it is a death penalty case and there isn't a death penalty attorney in that county, so the attorney has to travel. So for us it is not small enough that we could just absorb it in the normal flow. It is \$139,000 in addition to what the inflation would have cost. So that is a lot of talking and a lot of numbers, but basically when our budget's built, it is what we had last time plus what is in mandated caseload is our current service level. You can see in the chart below that I have put in a little bit of history. For all the three divisions together if you look at 2007-2009, actually that column, \$212 million was our current service level. These figures mean not including any policy option packages. Nothing else that you thought would be nice to have. This is just the basics of what we need. You can see it was \$212 then \$223, \$226, and then a huge increase to \$254. In the past, in developing policy option packages, our office certainly has considered whether, if mandated caseload is particularly large as it is this time, that the Commission might wish to take a different approach towards policy option packages so as not to make the entire agency request budget such a huge jump from what it is now, especially in a time when it is unlikely that any policy option packages will be funded. Also, Nancy pointed out that the 2011-13 legislatively approved budget, the definition of legislatively approved is all actions approved through April of 2012 in this case. We have a special purpose appropriation of \$3.5 million, which if we had gone in April to the E-Board and requested it and received it, then that \$3.5 million would have already been included in our legislatively approved amount. So the fact that we are not going to be seeking those funds until September, I mean you don't see it in there, but part of the difference between the \$226 and the \$254 is that \$3.5 that we will be getting this time, hopefully.

1:05:23 J. Potter

So that means that you add it into the \$226 the \$3.5?

1:05:29 N. Cozine It does.

1:05:30 K. Aylward That is correct.

1:05:30 J. Potter And you are still left with \$1.5 million difference. What I am trying to do, if you are adding your total mandated caseload package to your approved number, you come up with 249 and then you add the 3.5, you are still not at 254.

1:05:50 K. Aylward Right. There is \$1,485,000 that is – you may recall a couple of meetings ago we discussed the fact that during this biennium the Legislative Fiscal Office recommended and required that we change the way we are transferring funds to Judicial for the Application Contribution Program. In budgetary terms we had been doing what is just called a transfer, which is money that gets passed from agency to agency and is not reflected in their budget. Legislative Fiscal has required us to change those to something that are called “special payments.” Special payments do appear as an expense in your budget. That requirement will be effective July 1 of this year. So in the special 2012 session, the legislature said, “Okay, we are going to increase your other fund expenditure limitation by the figure was about \$1.2 million, because we know in the second half of this biennium you are going to need permission to send that much in special payments to Judicial.” But in the 13-15 budget we are going to need permission to send twice that much and some inflation. So that figure \$1,485,000, is the additional amount next biennium that we are going to need to send back to Judicial for their Application Contribution Program. It is very confusing even for me. It is difficult to explain.

1:07:49 Chair Ellis When do we need to decide on policy option packages?

1:07:54 K. Aylward Our plan was that you would make a recommendation to staff, or you would tell staff what do. Staff would go back and work up the dollar figures for the policy option packages and then at the August meeting you would make a final decision and approval of the budget.

1:08:17 Chair Ellis I am not optimistic any POP has much chance, but you always need to be in position if you didn’t even try. There are constituents who hope we would try.

1:08:37 K. Aylward The Commission has discussed this in the past that a multi-biennium approach may be what is necessary. What I recommend is that – part of the reason that you want to have those policy option packages in there is to set the record. To continue to remind the Legislature of where your needs are, but you have to be careful not to be saying, “Wow, we could do a better job with more money.” That is always the case. What a policy option package should do is address a particular need. You should be saying to the Legislature, “We can’t find attorneys to do the work for this amount.” Or say, “Children are not getting represented because of these reasons.” You have to point out a problem and say why this funding solves it. It is not sufficient to be able to say, “It should be more money.”

1:09:37 Chair Ellis Which is like the juvenile appellate piece that we did a couple of years ago. That was a targeted effort.

1:09:44 K. Aylward And in my recollection that is the only policy option package this agency has ever been awarded and I think that had huge political support that had to build over several biennium. I think what you can do is you still make the record. You say, “This is the total amount that we should have in order to ensure the long term stability of the program.” In other words, if you want to make sure that your PD offices stay strong, you need to be able to match salaries in DA offices. We know that. We also know how much it is going to cost and we know the Legislature can’t afford that. So this policy option package is to get us a little bit closer, and we will ask for \$2 million this time and then our plan is over a multi-biennium \$2 million, \$2 million, so that we get to our target \$6 million. I think that way you could still make the record. You can ask for something that is maybe a smaller bite. My concern is that there is going to be an element of sticker shock.

- 1:11:08 Chair Ellis Even without any POP.
- 1:11:09 K. Aylward Even without any policy option packages. That is correct.
- 1:11:19 N. Cozine And Chair Ellis and members of the Commission, we did have a discussion within our management team regarding, not only the packages that we have historically asked for, but also, what would we have on our radar if we wanted to pursue something new. There were two areas that we discussed, though not in great detail and we certainly didn't cost them out, but one would be trying to create some type of policy option package to address the Commission's concerns in the juvenile delinquency area. I have some updates on that topic for later. The other area was trying to pursue a policy option package that would allow us to give to contractors some additional money to pursue targeted training efforts with an added component of collecting data to show that those targeted training efforts actually had a benefit to the defendant and to the community. As we discussed these ideas, and we talked about the larger budget picture, the statewide budget picture, and what we want to present to the Legislature, we felt that we could do more work developing the concepts throughout the next biennium, working with our contractors, and save those for the next biennium, but start some of the conversations behind the scenes with our system partners. With regard to the policy option packages that we requested last biennium, it may be worth looking at those, and even choosing a piece of one. One of the areas that continually comes up is, of course, our hourly rate, and PD parity. We do have some jurisdictions where our PD offices are able to provide their lawyers with something that is similar to what is paid in the district attorney's office. We also have contractors who really have not achieved that yet. It is very hard for these offices to keep, train, retain, and recruit. The recruiting is a little easier right now because of the economy, but that training and retention is a challenge. It is one that I think the Commission needs to have on its radar. We haven't had an increase for our providers in four years. That really does have to be, in our view, a priority.
- 1:13:58 K. Aylward I would like to add one more thing. In the budgeting process this time the Executive Branch is exerting - well I suppose they always have control. Executive Branch agency budgets go through the Department of Administrative Services, where they get sort of vetted and approved. There is a budget and management analyst for each agency who looks at it and says, "No, I don't think you should have that. No. Not that." It goes through that process and this time the Executive Branch agencies are being told: Do not come forward with policy option packages that are, "gee, it would be nice if." Executive Branch is going to really minimize what they are asking for in their agency request budgets. It is a big system and you have to spreadsheets and numbers to analyze it. What gets handed out in short form to the legislators, or the public, is something that says, "This agency's request budget is X percent more than last time." So there are kind of two philosophies. You could either say, "Well, I better try to ask for a lot in a policy option package so that I have a really large agency request budget." Then I can say, "Oh, yes, look, we have been cut 10%." But the 10% that is cut is out of policy option packages so you are not really getting to the bone. That is one approach. The other approach is to say, "You know what. Let's minimize the increase when we go up to agency request budget because if everybody else is out there with 14% increases and here we are with our little 11%, we might not get cut any further. So there are two philosophies, but I think this time the latter is the more prudent. I think our budget should appear more in keeping with other Executive Branch budgets which will be modest policy option packages.
- 1:16:14 Chair Ellis So remind me, on the three that we had last year, those were not incremental? Those were trying to get all the way into end line?
- 1:16:24 K. Aylward That is correct.
- 1:16:29 Chair Ellis So one possibility would be to re-compute the figures on those three. I am sure the numbers here are a little changed. Then seek a policy option package that spreads the request over

three biennia so that the numbers we are actually looking for in the current biennium would be along the lines of your last comments, but we wouldn't have sort of walked away from the concept.

- 1:17:06 K. Aylward That would be my recommendation.
- 1:17:09 Chair Ellis That was where my mind was going as I listened to this. Any thoughts or comments from others?
- 1:17:23 J. Potter I hadn't thought about this, but I am listening to you talk about the training efforts for contractors and that could be an added policy package. What I hear around the state periodically is that there are lawyers practicing and they are getting training in how to do a Measure 11 case. There is training out there to do that, but there are lots of lawyers going, and don't understand the mechanics of the courtroom process. They don't understand the procedures and aren't doing them correctly, and they are bogging down the court and frustrating the judges. Does it make any sense to ask for a training package that says, "We need money for training on these kinds of things, but not just for the defense, but for the prosecution as well? So you are going in and asking for funds that assist both. Is that just too outside the bounds? If we are going to go in and argue that – if we were to argue – that the mechanics affect the court. The court gets frustrated. It slows the system down. Might we be in a better position to say that the mechanics affect the court, or both sides, and therefore we need the funds? Then we work out the training package that assists both the prosecution function and the defense function.
- 1:18:46 K. Aylward I am not in a position to comment on that. I just know that I have a gut reaction, of "that didn't sound right."
- 1:18:52 N. Cozine My view on that is it would certainly be a lot of benefit in trying to create a package that would show our willingness and interest in collaborating to improve the system statewide county by county. It would be a complex request because it would be benefiting both sides and we would have to develop a curriculum, or find someone who could develop a curriculum, and what is challenging is that because each county is different with regard to their practices and procedures, finding someone who could go into the county, determine what the practices are in that county, and tailor some generic training component to meet that county's needs, would be relatively complex. I think it would take further development. I don't think it is a bad idea at all, simply one that would take more exploration before we could pursue it.
- 1:19:54 J. Potter If it was a bad idea would you tell me?
- 1:19:57 N. Cozine Absolutely not.
- 1:19:59 Chair Ellis Why don't we discuss this at the August meeting, if you can work the incremental package approach, which you described a few minutes ago. Let's take a look at that in August.
- 1:20:27 N. Cozine Chair Ellis and members of the Commission, I looked back through our agenda and meeting minutes for the last several years to determine how the Commission has handled contractor comments with regard to our view of what we should pursue for the budget in the coming biennium, and interestingly, it was always on the agenda, contractor comments, but then I would look at the minutes and I find that very few contractors actually commented. In odd number years, contractors would often comment on how we should allocate the money once it was received. But, I put it on the agenda as something that the contractors might want to comment on. We have several in the room. I don't know if you have any interest in hearing from them before making a final decision as to how you would like us to proceed.
- 1:21:18 Chair Ellis One reason we hold our meetings here at the time that OCDLA has its meetings is so ..

1:21:26 Hon. Elizabeth Welch I can't hear a thing.

1:21:30 Chair Ellis I would be very happy to hear comments from anyone who wants to comment.

1:21:40 K. Aylward And if anyone does want to make comments, please use the mic and have it two inches from your mouth because Judge Welch won't be able to hear you.

1:21:52 M. McKechnie Thank you, Chair Ellis and members of the Commission. I certainly have strong opinions on this issue and I agree that it is tricky to figure out what the best strategy is in the current budget climate. I will say that we have had many conversations with legislators, members of the Ways & Means Committee. Unfortunately we are losing at least one key member of the subcommittee that I can think of who has been very understanding and sympathetic. I am not sure who is going to take Representative Nolan's place in that position, but I believe that there is a will and an interest in improving funding for public defense but there simply haven't been the resources to do it for many years. I think we came very close in 2007, tantalizingly close, to getting some improvements and unfortunately were unable to do it then. The idea was that, certainly in 2009, we will come back and complete that task. We all know what happened in the interim. I would say that I am certainly in favor of making some progress rather than no progress in the next biennium. We have essentially made no progress for several biennia now. I do want to point out that I see the juvenile dependency representation package itself as an incremental approach to begin with. I believe it addressed reducing caseloads by 20%. I don't believe that this is the goal.

1:23:39 Chair Ellis You are not going to reduce them by 100%.

1:23:46 M. McKechnie My understanding is that some caseloads around the state are still very high and even at a 20% reduction, it is still far from the ideal. We often talk about 80 active cases, per attorney. That has been identified as a level at which attorneys can do quality representation. Our caseloads are currently in the low 100's. I understand in other parts of the state it is still 200 to 300 cases. So, if you are talking about a 20% reduction from there, you are still not reaching the goal. But still maybe a smaller increment is still appropriate. The other thing that I just wanted to repeat, when I testified at the Ways & Means Committee in 2011, I pointed this out and I will repeat it here. When I obtained salary information for attorneys in the Portland Metro area in general and our attorneys start at just slightly above half the median, so take the middle and cut that in half. That is where our attorneys start and then they actually ...

1:25:04 Chair Ellis Comparing it to private bar?

1:25:07 M. McKechnie All attorneys in the area. Obviously there is a wide range. Again, the reference point is the median not the highest paid attorneys. The 50% mark. So we come in at about the 25% mark. Then our attorneys lose ground from there. That is sort of the high water mark where the salaries are most competitive is for the starting salary. Then over time they lose ground. Obviously the compensation issue is very important as well. I agree that probably achieving parity in one session, given the current budget climate, is unrealistic, and an incremental approach that would get us there perhaps over three biennia would be great. If there is some way to try - I know we can't get guarantees, but I don't know if there would be any way through legislation to sort of set that path, and then it would require the legislature to disrupt that path to prevent it from proceeding so that there would be presumptive increases going forward. I don't know if that is an option. I certainly think we need to ask for some kind of improvement in order to make some progress. I will just add that our organization is dedicated to juvenile work and I don't believe that the rates really bear any resemblance to the reality of what it takes to do quality work in the juvenile arena. I think juvenile was originally sort of the poor step-child of public defense and because there haven't been dedicated

legislative actions to improve resources for that type of practice, there has only been incremental change from that point. I think training is certainly useful, but training an attorney who carries 200 or 300 open cases at one time, I think is going to have a minimal impact and the caseloads really are the primary issue for improving quality of representation in juvenile cases.

1:27:24 Chair Ellis We had a pretty strong legislative voice when Kate Brown was there. Mr. Hazarabedian.

1:27:36 G. Hazarabedian Thank you, Mr. Chair. Chair, members of the Commission, I don't have too much to say in contradiction to what Kathryn is proposing. I think realism dictates that we are not going to get a lot of policy packages this time. I think what is important is that we continue to make the record of the need and it sounds like what she is proposing accomplishes that. I am more here to speak to the comments of Commissioner Potter. With all due respect to my friend Commissioner Potter, and with all due respect to our brethren and sistren on the bench, I think a lot of what the bench would complain about clumsy procedural things happening in the courtroom is what I would call ensuring due process for criminal defendants. I am very wary about assessing the fact that there is a need for such training merely because judges see that. I think judges are often overly concerned with moving the assembly line at a predetermined appropriate pace and we often get in the way of that. I think when we are doing our jobs right we get in the way of that to some degree. I am questioning the premise of that particular training need. Thanks.

1:29:03 Chair Ellis If there are no other comments why don't we take about a 10 minute recess and then we will pick up.

(Recess)

Agenda Item No. 8 OPDS Monthly Report

1:29:21 Chair Ellis The next item is the OPDS management team monthly report.

1:30:10 N. Cozine Thank you, Chair Ellis. I am not sure if we have Judge Welch back on the phone yet.

1:30:14 Hon. Elizabeth Welch You do. I am here.

1:30:55 P. Gartlan Good morning. For the record Pete Gartlan with the Office of Public Defense Services, Appellate Division. I will give you a quick run down of what has been happening at the Appellate Division for the last month or so. In May, we had the May Daze CLE. It was devoted mostly to parole. We had a speaker, Marc Brown, who is kind of the head of parole in our office. He gave a CLE presentation to the attorneys. We also had two members from the Board of Parole come and talk with the attorneys. I wasn't present but I heard it was a very nice, fruitful, interesting discussion. We also had a speaker from the Supreme Court Library to tell us what resources are available through the state intranet. I am also happy to report that two of our very new juvenile appellate attorneys got their first wins. The new attorneys are Valerie Colas and Kimberlee Volm. They started with our office in December and January respectively. They got their two first published opinion wins a couple of weeks ago. We have three Supreme Court cases that we argued this past week. *Haynes*, *Pipkin* and *Mullins*. I think I have told you about these before. *Pipkin* is a very interesting one because it has to do with the burglary statute and burglary can be committed by entering or remaining. So, when you have a factual or evidentiary record where it is unclear whether or not the person was invited in or not, so whether they entered unlawfully or whether they remained unlawfully, and must there be jury concurrence on that act? Can you have five jurors finding that somebody entered unlawfully and five jurors finding that somebody remained, is that enough for a verdict or must the jury concur with respect to the act of entering or remaining? In September we have three more cases that we will be arguing and they are in various stages

of briefing. One is *State v. Moore*. That is going to be a very interesting one; it has to do with the advice and consequences warning that is given to drivers who are arrested for driving under the influence of intoxicants. In this case it is not alcohol intoxicant, it is a drug, so the exigency aspect of it is kind of taken out of this case. The pure legal question is, are those advice of rights and consequences, which we know are designed to compel the driver to take the test, either to blow or give a blood sample, does that render their consent involuntary? It is an interesting question. We are looking to keep out the result of a test on the basis that the driver's consent to take that case is rendered involuntary because of the advice and warnings, which are very compulsive and designed to be compelling. The next case is *State v. Nelson*, which has to do with mental states and what mental state goes with what element of the offense. What I find really fascinating about this is that in 1971, and with the revision of the criminal code, this was supposed to be something – it is very basic. It is like, what are the elements of the crime of an offense, and what mental states go with each particular element? Here we are 40 plus years later, and we are still going through and trying to figure out some very basics, very basic structural components of criminal law. I just find that fascinating. It is kind of a comment on how the basics seem to be still undiscovered. Something that should be kind of apparent and should have been pretty well articulated 40 years ago are still being articulated and addressed today. The next case is another really very interesting case is *Savastano*. This is a case that is a state's petition and it has to do with Article I, section 20, which is the equal privileges and immunities clause in the State Constitution. We have case law from the Supreme Court that says that Article I, section 20 applies to the Executive Department, and in our context it applies to the district attorney's charging decisions. How they charge crimes. What criteria are used in charging particular offenses? The state is taking a position that those cases, and the Supreme Court case law has not properly interpreted Article I, section 20. If you go back historically, Article I, section 20 was designed to address legislative enactments. It is really a provision addressed to the Legislature. It is supposed to make sure that the Legislature does not pass laws that provide some sort of economic benefit to a person or a class of people. So in the state's view the state is arguing that Article I, section 20 does not affect prosecutor's charging decisions at all. Again, it is very interesting and fascinating and potentially very important and dramatic change in the law. That is about all I have.

1:37:34 Chair Ellis

Which of your lawyers will be making the argument?

1:37:39 P. Gartlan

State v. Moore, the consent one, I am going to be arguing that one because this is a kind of an offshoot of *State v. Machuca*, which was an important case a couple of years ago that had to do with a challenge to the advice and consequences warnings, but in that case – I won't say the Supreme Court sidestepped, but never reached the ultimate issue. The Supreme Court said when there is a DUI arrest and it concerns alcohol, alcohol evaporates and so that is an exigency. It is very important that police get either the breath test or the blood test. That exigency excuses any kind of a need for a warrant and the Supreme Court said, "we don't have to address whether or not the consent is voluntary because there is an exigency involved." So, because this is an offshoot of that case, I am going to be arguing that. The brief in the Court of Appeals was really just a rearticulation of what our brief was in *Machuca*. *Nelson* is the mental state one. That is going to be argued by Ernie Lannet who is a chief deputy in the office. He argued another mental state case last year. He's kind of picked up the baton that Judge Duncan was carrying several years ago with respect to articulating, identifying just how do mental states work with respect to the elements and offenses? So Ernie is now our resident expert on the mental state issue. Ernie is also going to be arguing the *Savastano* case. He had that case in the Court of Appeals.

1:39:42 Chair Ellis

Okay. Thanks.

1:39:44 N. Cozine

Chair Ellis, members of the Commission, I have a few other office updates for you. We have had extensive discussions on the appointment of counsel and waiver of counsel issues in juvenile delinquency cases. At our May meeting you asked that we continue to work with the

judicial branch to determine whether we could create a process to advance the appointment of counsel in juvenile delinquency cases. I have met with judicial branch representatives in three separate meetings. I have also met with the Chief Justice; we met on June 7th. Through discussions with the juvenile law staff counsel for the Judicial Department, we have come up with a proposal that would entail the creation of a task force on the juvenile delinquency processes and procedures related to appointment of counsel. The Chief Justice has expressed an interest and a willingness to establish such a task force. It would be administered through the judicial branch, through the Judicial Department, and it would have several stakeholders. It would include the courts with judges, trial court administrators, and verification staff. It would include representatives from our office. It would include juvenile department directors, juvenile court defense practitioners, district attorneys, and a representative from the Oregon State Bar. This group would be charged with the responsibility of not only looking through the ACP procedures that have been shared with this Commission, that are encapsulated in Chapter 8 of the ACP manual, to determine whether or not there are pieces of that that hinder the appointment of counsel process, but also to work together to create some system recommendations for each county. One of the things we have talked about are the different practices in different counties with regard to who is advising or talking to a youth charged who allegedly committed an act that puts them within the jurisdiction of the court. Whether it is a lawyer, a juvenile court counselor, the court, this group would come up with recommendations that each county could then employ so that there is a more consistent message that is delivered at the point where a child is trying to decide whether or not to have a lawyer. There is a particular statute, ORS 419C.245, that does charge the juvenile department with advising a youth of their right to counsel. We suspect that in an attempt to comply with that statutory provision there may be discussions that delve much more deeply into the right to counsel and the cost associated with counsel. So, something for us to explore, and the goal from the judicial branch perspective would be to also raise awareness of the national and Oregon standards with regard to appointment of counsel. So, we are hoping that this entity can be formed fairly quickly and get some work done through the end of the year. We had talked about the possibility of the legislative approach. I am sure this group, this task force, would be a good entity to discuss whether or not that would be viable for 2013, but our sense is, we will start with the discussions that are informal and see what we can come up with before we commit to any kind of legislative action.

- 1:43:19 Chair Ellis Will you be our participant?
- 1:43:22 N. Cozine I will. As you know I am very interested and excited about the opportunity.
- 1:43:31 Chair Ellis I am very encouraged. This is an issue that you know bothers me a lot on how it is being handled. I am glad it is getting addressed.
- 1:43:41 N. Cozine Yes. We are very fortunate to have another Chief Justice who is interested and willing to take on these types of issues.
- 1:43:52 Chair Ellis Good.
- 1:43:52 N. Cozine I also shared with the Commission at our last meeting that I would be heading out to Washington D.C. to participate in the National Legal Aid and Defender Association's advisory committee on data. I have been. Of course they covered all of the expenses, which was a nice way to travel. Not to say that it was extravagant, simply that we didn't have to budget for it. It was a very interesting meeting. The goal of this advisory committee really is to look at whether or not there can be some recommendations for how we can measure public defense services and create standards so that we compare entities nationally, and so that we can actually use each other's data to support our budget requests. The most fascinating thing was, as we started this collaborative conversation, we talked about data success stories. Some of the things that are being done in other states are things that we could really look to, to guide our own actions. Something that I thought I would share with you is an effort that was

undertaken by the Michigan appellate public defender office. They were trying to decide how to measure success. As you probably know, success defined by a win is a tough measurement for a public defender. They decided to determine success by measuring the number of dollars saved through reduced jail and prison sentences. A unique approach and they were a little wary of as they started this project. In the end they were able to demonstrate that, not only did they save the state money by making sure that sentences that were imposed were correct sentences or convictions were correct convictions, they actually more than covered the cost associated with their budget. It is an interesting approach and a novel approach, I think, but one that has been very successful in Michigan. Another statement - I think it was Ohio that created a collateral consequences database that was available to all of their public defenders. They could simply plug in the statute of the crime of conviction, and it would then pull up all of the collateral consequences associated with that crime of conviction. They could use this then to demonstrate to the legislature why their costs per case were increasing because as the collateral consequences increased both in terms of the number and the severity, they could demonstrate why their function, why their job, become much harder. So two really interesting approaches that I think we can use here in Oregon. Not that we would necessarily adopt those approaches, but it does help set a nice framework for a conversation. I have reached out to every member now - I think there is one phone call that we have traded voice messages and I need to still get in touch, but with all of our contractors who will be participating in the new Public Defender Advisory Group. These are some of the issues that I would like to talk about with that group to determine how Oregon might better use data to justify our budget requests. How we could collect data to justify our budget requests. We do a lot of that now. We are able to demonstrate how efficient we are with the dollars that we are allocated, but there may be more that we can do. The other interesting part was when the conversation turned to what we could do to establish some standards that could be applied nationally. It became remarkably clear that we have an incredible road to travel if we really want to achieve that kind of national standard. We started by trying to come to agreement on what the definition of a case should be. We had one state that was very, very wedded to their definition of a case. Their definition of a case is anything filed by the district attorney against a particular defendant within a 21 day period of time. For them that works. The rest of us at the table said, "That would not work for us." You had another office where they measured cases per charge. So each charge was a case, and that is the way they measured their outcomes. The group will meet again in September in Washington D.C. We will have a teleconference in between. We have a lot of discussing to do, and I think that we will have to scale back, perhaps, our objectives. Creating a national standard at this point, even with regards to what the definition of a case is, would be very, very challenging because we all have different systems, all have different dynamics, but, again, it makes me excited to have the conversation with our contractors here in Oregon to figure out whether we can define what a case is. We have defined it in terms of payment for contract purposes, but we haven't really undertaken, as far as I know, a concentrated effort to talk about how we want to measure a case in terms of outcome. If we want to look at the successes that we are achieving, how do we define a case at the statewide level? We may or may not get there.

- 1:49:54 Chair Ellis I just see a lot of benefit in you being very actively involved in this. A lot of the debate is that the words used are used differently. The data collected is different. I think for you to get knowledgeable about that is very significant. Then we will just see if we can't develop a much more evidence based ability to benchmark what is happening within our system and how we are doing. I am totally in favor of this.
- 1:50:52 N. Cozine Thank you. It is exciting. It is very interesting, and has been very informative as well.
- 1:51:00 Chair Ellis Okay.
- 1:51:05 N. Cozine A few other updates. We are in the process of planning for the Juvenile Law Training Academy that will take place in October on the 15th and 16th. It is a co-sponsored event with OCDLA, the courts, our office, and it will focus this year on best practices in juvenile

dependency cases. Our plan is to break down juvenile dependency into the various stages of the case and then really talk about the best practices for each practitioner at each stage. So child's attorney, parent's attorney, state's attorney, each one will have a portion of the discussion dedicated to what the best practice is for that particular role. I also wanted to let you know, if you didn't have the information already that the Commission on Public Safety has started to meet again. I am sure you all do know but, again, a very interesting conversation surrounding the issues of charging and sentences. We will see where the Commission goes. Larry Matasar is the defense representative. We look forward to seeing what recommendations they will come up with.

1:52:22 Chair Ellis

I don't know if it has been stated publicly, but Commissioner Ozanne has asked to resign. Chief Justice Balmer will be appointing a successor. I think if anyone has suggestions send them to Chief Justice Balmer, or we'd be happy to pass them along. I do want to say for the record that Mr. Ozanne has been a very important part of this Commission. As everyone here knows he was the first executive director, which was a critical time and he did an exemplary job of taking this Commission and making it really a significant incremental improvement on the system. Then he was absent for a couple of years in Arizona, but he has returned. Chief Justice De Muniz asked him to join the Commission, which he did and he has obviously been a very important player. So for the record we thank him.

1:53:43 N. Cozine

Yes. I have spoken with Commissioner Ozanne. His term expires in November. So he will continue on until the Chief Justice has identified a candidate. Thank you for your comments.

1:54:00 Chair Ellis

Anything else?

1:54:02 N. Cozine

That concludes our agenda for the day unless you have anything that you would like to ask?

1:54:05 Chair Ellis

Anything anyone else wants to ask or contribute? If not, I would entertain a motion.

MOTION: John Potter moved to adjourn the meeting; Janet Stevens seconded the motion; hearing no objection, the motion carried: **VOTE 4-0.**

Meeting adjourned.

Attachment 2

**Public Defense Services Commission
Service Delivery Plan for Douglas County
Draft Final Report
(June 26, 2012)**

Introduction

Since developing its first Strategic Plan in December 2003, the Public Defense Services Commission (PDSC) has focused on strategies to accomplish its mission to deliver quality, cost-efficient public defense services in Oregon. Recognizing that increasing the quality of legal services also increases their cost-efficiency by reducing risks of error and the delay and expense associated with remedying errors, the Commission has developed strategies designed to improve the quality of public defense services and the systems across the state for delivering those services. Foremost among those strategies is PDSC's service delivery planning process, which is designed to evaluate and improve the operation of local public defense delivery systems.

The service delivery planning process is a multi-step endeavor, which begins with an investigation of the jurisdiction selected by the PDSC. The investigation is completed by the Office of Public Defense Services (OPDS). The primary objectives of OPDS's investigations of local public defense delivery systems throughout the state are to (1) provide PDSC with an assessment of the strengths and weaknesses of those systems for the purpose of assisting the Commission in its determination of the need to change a system's structure or operation and (2) identify the kinds of changes that may be needed and the challenges the Commission might confront in implementing those changes. PDSC's assessment of the strengths and weaknesses of a local public defense system begins with a review of an OPDS report regarding the initial findings within a particular area.

PDSC's investigations of local delivery systems in counties or judicial districts across the state serve another important function. They provide useful information to public officials and other stakeholders in a local justice system about the condition and effectiveness of that system. The Commission has discovered that "holding a mirror up" to local justice systems for all the community to see can, without any further action by the Commission, create momentum for local reassessments and improvements.

In the final analysis, the level of engagement and the quality of the input from all of the stakeholders in a particular judicial district is the single most important factor contributing to the quality of the final version of OPDS's report to the Commission and its Service Delivery Plan for a particular area.

This report includes the results of OPDS's preliminary investigation into the conditions of the public defense system in Douglas County.

PDSC's service delivery planning process

There are four steps to PDSC's service delivery planning process. First, the Commission has identified regions in the state for the purposes of reviewing local public defense delivery systems and services, and addressing significant issues of quality and cost-efficiency in those systems and services.

Second, starting with preliminary investigations by OPDS and a preliminary draft report, the Commission reviews the condition and operation of local public defense delivery systems and services in each county or region by holding one or more public meetings in that region to provide opportunities for interested parties to present their perspectives and concerns to the Commission.

Third, after considering OPDS's preliminary draft report and public comments during the Commission's meetings in a county or region, PDSC develops a service delivery plan, which is set forth in the final version of OPDS's report. That plan may confirm the quality and cost-efficiency of the public defense delivery system and services in that region or propose changes to improve the delivery of the region's public defense services. In either event, the Commission's service delivery plans (a) take into account the local conditions, practices and resources unique to the region, (b) outline the structure and objectives of the region's delivery system and the roles and responsibilities of public defense contractors in the region, and (c) when appropriate, propose revisions in the terms and conditions of the region's public defense contracts.

Finally, under the direction of PDSC, contractors subject to the Commission's service delivery plans are urged to implement the strategies or changes proposed in the plans. Periodically, these contractors report back to PDSC on their progress in implementing the Commission's plans and in establishing other best practices in public defense management.

Any service delivery plan that PDSC develops will not be the last word on a local service delivery system, or on the quality and cost-efficiency of the county's public defense services. The limitations of PDSC's budget, the existing personnel, level of resources and unique conditions in each county, the current contractual relationships between PDSC and its contractors, and the wisdom of not trying to do everything at once, place constraints on the Commission's initial planning process in any region. PDSC's service delivery planning process is an ongoing one, calling for the Commission to return to each region of the state over time in order to develop new service delivery plans or revise old ones. The Commission may also return to some counties in the state on an expedited basis in order to address pressing problems in those counties.

Background and context to the service delivery planning process

The 2001 legislation establishing PDSC was based upon an approach to public defense management, widely supported by the state's judges and public defense attorneys, which separates Oregon's public defense function from the state's judicial function. Considered by most commentators and authorities across the country as a "best practice," this approach avoids the inherent conflict in roles when judges serve as neutral arbiters of legal disputes and also select and evaluate the advocates in those disputes. As a result, while judges remain responsible for appointing attorneys to represent eligible clients, the Commission is now responsible for the provision of competent public defense attorneys.

PDSC is committed to undertaking strategies and initiatives to ensure the competency of those attorneys. In the Commission's view, however, ensuring the minimum competency of public defense attorneys is not enough. As stated in its mission statement, PDSC is also dedicated to ensuring the delivery of quality public defense services in the most cost-efficient manner possible. The Commission has undertaken a range of strategies to accomplish this mission.

Service delivery planning is one of the most important strategies PDSC has undertaken to promote quality and cost-efficiency in the delivery of public defense services. However, it is not the only one.

In December 2003, the Commission directed OPDS to form a Contractor Advisory Group, made up of experienced public defense contractors from across the state. That group advised OPDS on the development of standards and methods to ensure the quality and cost-efficiency of the services and operations of public defense contractors, including the establishment of a peer review process and technical assistance projects for contractors and new standards to qualify individual attorneys across the state to provide public defense services.

OPDS also formed a Quality Assurance Task Force of contractors to develop an evaluation or assessment process for all public defense contractors. Beginning with the largest contractors in the state, this process is aimed at improving the internal operations and management practices of those offices and the quality of the legal services they provide. Since 2004 site teams of volunteer public defense managers and lawyers have visited contractors in Benton, Clackamas, Columbia, Crook, Deschutes, Douglas, Jackson, Jefferson, Klamath, Lake, Lane, Lincoln, Linn, Multnomah, Umatilla, Washington and Yamhill counties and prepared reports assessing the quality of their operations and services and recommending changes and improvements. In accordance with its Strategic Plan, PDSC has also developed a systematic process to address complaints about the behavior and performance of public defense contractors and individual attorneys. In 2012, the Contractor Advisory Group and the Quality Assurance Task Force were merged into a new Public Defense Advisory Group.

Numerous Oregon State Bar task forces on public defense have highlighted the unacceptable variations in the quality of public defense services in juvenile cases across the state. Therefore, PDSC undertook a statewide initiative to improve juvenile law practice in collaboration with the state courts, including the creation of a Juvenile Law Training Academy for public defense lawyers. In 2006, the Commission devoted two of its meetings to investigating the condition of juvenile law practice across the state and to developing a statewide Service Delivery Plan for representation in juvenile dependency cases.

Another area of practice in which significant concerns about quality of representation have been raised by the Oregon State Bar and others is post conviction relief cases. In March 2008 PDSC heard from judges, the Department of Justice and a number of attorneys whose practice includes post conviction relief about the need for improvement in the quality of representation being provided by public defense attorneys. A work group was convened by the bar at the request of PDSC to create performance standards for attorneys in these cases. Those standards have now been approved by the bar's Board of Governors and adopted by PDSC as the standards to be observed by court-appointed attorneys. The work group also made additional recommendations to PDSC for improving services in this area of practice. Those recommendations were presented to PDSC at its March 2009 meeting. A service delivery plan for post conviction relief cases was reviewed at the April 16, 2009 and June 18, 2009 PDSC meetings.

In 2007 PDSC undertook to review the delivery of public defense services in death penalty cases. A final plan for providing services in those cases was approved by the Commission in June of 2007.

Structure versus performance in the delivery of public defense services

Distinguishing between structure and performance in the delivery of public defense services is important in determining the appropriate roles for PDSC and OPDS in the Commission's service delivery planning process. That process is aimed primarily at reviewing and improving the structure for delivering public defense services in Oregon by selecting the most effective kinds and combinations of organizations to provide those services. Experienced public defense managers and practitioners, as well as research into best practices, recognize that careful attention to the structure of service delivery systems contributes significantly to the ultimate quality and effectiveness of public defense services.¹ A public agency like PDSC, whose volunteer members are chosen for their variety and depth of experience and judgment, is best able to address

¹ Debates over the relative effectiveness of the structure of public defender offices versus the structure of private appointment processes have persisted in this country for decades. See, e.g., Spangenberg and Beeman, Indigent Defense Systems in the United States, 58 Law and Contemporary Problems 31-49 (1995).

systemic, overarching policy issues such as the appropriate structure for public defense delivery systems in Oregon.

Most of PDSC's other strategies to promote quality and cost-efficiency in the delivery of public defense services described above focus on the "performance" of public defense contractors and attorneys in the course of delivering their services. Performance issues will also arise from time to time in the course of the Commission's service delivery planning process. These issues usually involve individual lawyers and contractors and present specific operational and management problems that need to be addressed on an ongoing basis, as opposed to the broad policy issues that can be more effectively addressed through the Commission's deliberative processes. OPDS, with advice and assistance from its Public Defense Advisory Group and others, is usually in the best position to address performance issues.

In light of the distinction between structure and performance in the delivery of public defense services and the relative capacities of PDSC and OPDS to address these issues, this report will generally recommend that, in the course of this service delivery planning process, PDSC should reserve to itself the responsibility of addressing structural issues with policy implications and assign to OPDS the tasks of addressing performance issues with operational implications.

Organizations currently operating within the structure of Oregon's public defense delivery systems

The choice of organizations to deliver public defense services most effectively has been the subject of a decades-old debate between the advocates for "public" defenders and the advocates for "private" defenders. PDSC has repeatedly declared its lack of interest in joining this debate. Instead, the Commission intends to concentrate on a search for the most effective kinds and combinations of organizations in each region of the state from among those types of organizations that have already been established and tested over decades in Oregon.

The Commission also has no interest in developing a one-size-fits-all model or template for organizing the delivery of public defense services in the state. The Commission recognizes that the local organizations currently delivering services in Oregon's counties have emerged out of a unique set of local conditions, resources, policies and practices, and that a viable balance has frequently been achieved among the available options for delivering public defense services.

On the other hand, PDSC is responsible for the wise expenditure of taxpayer dollars available for public defense services in Oregon. Accordingly, the Commission believes that it must engage in meaningful planning, rather than simply issuing requests for proposals (RFPs) and responding to those proposals.

As the largest purchaser and administrator of legal services in the state, the Commission is committed to ensuring that both PDSC and the state's taxpayers are getting quality legal services at a fair price. Therefore, the Commission does not see its role as simply continuing to invest public funds in whatever local public defense delivery system happens to exist in a region but, instead, to seek the most cost-efficient means to provide quality services in each region of the state.

PDSC intends, first, to review the service delivery system in each county and develop service delivery plans with local conditions, resources and practices in mind. Second, in conducting reviews and developing plans that might change a local delivery system, the Commission is prepared to recognize the efficacy of the local organizations that have previously emerged to deliver public defense services in a county and leave that county's organizational structure unchanged. Third, PDSC understands that the quality and cost-efficiency of public defense services depends primarily on the skills and commitment of the attorneys and staff who deliver those services, no matter what the size and shape of their organizations. The organizations that currently deliver public defense services in Oregon include: (a) not-for-profit public defender offices, (b) consortia of individual lawyers or law firms, (c) law firms that are not part of a consortium, (d) individual attorneys under contract, (e) individual attorneys on court-appointment lists and (f) some combination of the above. Finally, in the event PDSC concludes that a change in the structure of a county's or region's delivery system is called for, it will weigh the advantages and disadvantages and the strengths and weaknesses of each of the foregoing organizations in the course of considering any changes.

The following discussion outlines the prominent features of each type of public defense organization in Oregon, along with some of their relative advantages and disadvantages. This discussion is by no means exhaustive. It is intended to highlight the kinds of considerations the Commission is likely to make in reviewing the structure of any local service delivery system.

Over the past two decades, Oregon has increasingly delivered public defense services through a state-funded and state-administered contracting system. As a result, most of the state's public defense attorneys and the offices in which they work operate under contracts with PDSC and have organized themselves in the following ways:

1. Not-for-profit public defender offices. Not-for-profit public defender offices operate in ten counties of the state and provide approximately 35 percent of the state's public defense services. These offices share many of the attributes one normally thinks of as a government-run "public defender office," most notably, an employment relationship between the attorneys and the office.² Attorneys in the not-for-profit public defender offices are

² Spangenberg and Beeman, *supra* note 2, at 36.

full-time specialists in public defense law, who are restricted to practicing in this specialty to the exclusion of any other type of law practice. Although these offices are not government agencies staffed by public employees, they are organized as non-profit corporations overseen by boards of directors with representatives of the community and managed by administrators who serve at the pleasure of their boards.

While some of Oregon's public defender offices operate in the most populous counties of the state, others are located in less populated regions. In either case, PDSC expects the administrator or executive director of these offices to manage their operations and personnel in a professional manner, administer specialized internal training and supervision programs for attorneys and staff, and ensure the delivery of effective legal representation, including representation in specialized justice programs such as Drug Courts and Early Disposition Programs. As a result of the Commission's expectations, as well as the fact that they usually handle the largest caseloads in their counties, public defender offices tend to have more office "infrastructure" than other public defense organizations, including paralegals, investigators, automated office systems and formal personnel, recruitment and management processes.

Because of the professional management structure and staff in most public defender offices, PDSC looks to the administrators of these offices, in particular, to advise and assist the Commission and OPDS. Boards of directors of public defender offices, with management responsibilities and fiduciary duties required by Oregon law, also offer PDSC an effective means to (a) communicate with local communities, (b) enhance the Commission's policy development and administrative processes through the expertise on the boards and (c) ensure the professional quality and cost-efficiency of the services provided by their offices.

Due to the frequency of cases in which public defender offices have conflicts of interest due primarily to cases involving multiple defendants or former clients, no county can operate with a public defender office alone.³ As a result, PDSC expects public defender offices to share their management and law practice expertise and appropriate internal resources, like training and office management systems, with other contractors in their counties.

2. Consortia. A "consortium" refers to a group of attorneys or law firms formed for the purposes of submitting a proposal to OPDS in response to PDSC's RFP and collectively handling a public defense caseload specified by PDSC. The size of consortia in the state varies from a few lawyers or law firms to 50 or more members. The organizational structure of consortia also varies. Some are relatively unstructured groups of

³ Id.

professional peers who seek the advantages of back-up and coverage of cases associated with a group practice, without the disadvantages of interdependencies and conflicts of interest associated with membership in a law firm. Others, usually larger consortia, are more structured organizations with (a) objective entrance requirements for members, (b) a formal administrator who manages the business operations of the consortium and oversees the performance of its lawyers and legal programs, (c) internal training and quality assurance programs, and (d) plans for "succession" in the event that some of the consortium's lawyers retire or change law practices, such as probationary membership and apprenticeship programs for new attorneys.

Consortia offer the advantage of access to experienced attorneys, who prefer the independence and flexibility associated with practicing law in a consortium and who still wish to continue practicing law under contract with PDSC. Many of these attorneys received their training and gained their experience in public defender or district attorney offices and larger law firms.

In addition to the access to experienced public defense lawyers, consortia offer several administrative advantages to PDSC. If the consortium is reasonably well-organized and managed, PDSC has fewer contractors or attorneys to deal with and, therefore, OPDS can more efficiently administer the many tasks associated with negotiating and administering contracts. Furthermore, because a consortium is not considered a law firm for the purpose of determining conflicts of interest under the Oregon State Bar's "firm unit" rule, conflict cases can be cost-efficiently distributed internally among consortium members by the consortium's administrator. Otherwise, OPDS is required to conduct a search for individual attorneys to handle such cases and, frequently, to pay both the original attorney with the conflict and the subsequent attorney for duplicative work on the same case. Finally, if a consortium has a board of directors, particularly with members who possess the same degree of independence and expertise as directors of not-for-profit public defenders, then PDSC can benefit from the same opportunities to communicate with local communities and gain access to additional management expertise.

Some consortia are made up of law firms, as well as individual attorneys. Participation of law firms in a consortium may make it more difficult for the consortium's administrator to manage and OPDS to monitor the assignment and handling of individual cases and the performance of lawyers in the consortium. These potential difficulties stem from the fact that internal assignments of a law firm's portion of the consortium's workload among attorneys in a law firm may not be evident to the consortium's administrator and OPDS or within their ability to track and influence.

Finally, to the extent that a consortium lacks an internal management structure or programs to monitor and support the performance of its attorneys, PDSC must depend upon other methods to ensure the quality and cost-efficiency of the legal services the consortium delivers. These methods would include (i) external training programs, (ii) professional standards, (iii) support and disciplinary programs of the Oregon State Bar and (iv) a special qualification process to receive court appointments.

3. Law firms. Law firms also handle public defense caseloads across the state directly under contract with PDSC. In contrast to public defender offices and consortia, PDSC may be foreclosed from influencing the internal structure and organization of a law firm, since firms are usually well-established, ongoing operations at the time they submit their proposals in response to RFPs. Furthermore, law firms generally lack features of accountability like a board of directors or the more arms-length relationships that exist among independent consortium members. Thus, PDSC may have to rely on its assessment of the skills and experience of individual law firm members to ensure the delivery of quality, cost-efficient legal services, along with the external methods of training, standards and certification outlined above.

The foregoing observations are not meant to suggest that law firms cannot provide quality, cost-efficient public defense services under contract with PDSC. Those observations simply suggest that PDSC may have less influence on the organization and structure of this type of contractor and, therefore, on the quality and cost-efficiency of its services in comparison with public defender offices or well-organized consortia.

Finally, due to the Oregon State Bar's "firm unit" rule, when one attorney in a law firm has a conflict of interest, all of the attorneys in that firm have a conflict. Thus, unlike consortia, law firms offer no administrative efficiencies to OPDS in handling conflicts of interest.

4. Individual attorneys under contract. Individual attorneys provide a variety of public defense services under contract with PDSC, including in specialty areas of practice like the defense of aggravated murder cases and in geographic areas of the state with a limited supply of qualified attorneys. In light of PDSC's ability to select and evaluate individual attorneys and the one-on-one relationship and direct lines of communications inherent in such an arrangement, the Commission can ensure meaningful administrative oversight, training and quality control through contracts with individual attorneys. Those advantages obviously diminish as the number of attorneys under contract with PDSC and the associated administrative burdens on OPDS increase.

This type of contractor offers an important though limited capacity to handle certain kinds of public defense caseloads or deliver services in particular areas of the state. It offers none of the administrative advantages of economies of scale, centralized administration or ability to handle conflicts of interest associated with other types of organizations.

5. Individual attorneys on court-appointment lists. Individual court-appointed attorneys offer PDSC perhaps the greatest administrative flexibility to cover cases on an emergency basis, or as "overflow" from other types of providers. This organizational structure does not involve a contractual relationship between the attorneys and PDSC. Therefore, the only meaningful assurance of quality and cost-efficiency, albeit a potentially significant one, is a rigorous, carefully administered qualification process for court appointments to verify attorneys' eligibility for such appointments, including requirements for relevant training and experience.

PDSC's Preliminary Investigation in Douglas County

In April 2012, Public Defense Services Commissioner John Potter, OPDS Executive Director Nancy Cozine, and OPDS Analyst Billy Strehlow, visited Douglas County and met with the following stakeholders:

- Presiding Judge Garrison, Judge Ambrosini, Judge Burge, Judge Marshall, Judge Poole, and Pro Tem Referee Zuver
- Jessie Larner, Trial Court Administrator
- Rick Wesenberg, District Attorney
- Allen Boice, Adult Parole and Probation Department Director
- Aric Fromdahl, Juvenile Department Director, Robert Solerno, Juvenile Department Manager
- Susan Knight, CASA Director, and Katherine Elisar, CASA Program Manager
- Darline DiAngelo, DHS Office Director for Douglas County, and Lisa Lewis, DHS District Manager for Douglas County
- Jim Arneson, James A. Arneson P.C.
- Dan Bouck, Director, and Carrie Thomson, Office Manager, Umpqua Valley Public Defender (UVPD)

In addition, Nancy Cozine and Billy Strehlow later met in person or over the telephone with:

- Walt Gullett, CRB Coordinator
- Richard Cremer, Richard Cremer P.C.

OPDS's Initial Findings in Douglas County

The Circuit Court

There are five judges in Douglas County: Presiding Judge Garrison, Judge Ambrosini, Judge Burge, Judge Marshall, and Judge Poole. The court also has a Pro Tem Referee, Julie Zuver, who presides over the majority of juvenile delinquency and dependency proceedings, among other matters.

The judges hear a mix of cases, with Judges Burge, Ambrosini, Poole, and Marshall handling the majority of criminal cases. Judge Garrison presides over primarily civil matters. Judge Ambrosini presides over the county's two specialty courts, Drug Court and Domestic Violence Court.

The court does not use a centralized docketing system; each judge's calendar is individually maintained. At the time of the preliminary visit, the county's primary contract provider was filing affidavits in all proceedings assigned to one particular judge. The blanket affidavit is impacting the court system in this small community, which is already stretched due to serious budget constraints. It seems that the parties involved and affected are engaged in a productive discussion, and are open to finding a resolution. The presiding judge and the contract administrator are taking leadership roles in this process.

Douglas County Circuit Court will be transitioning to the new Tyler Odyssey eCourt system at some point in the next few years; they should have a firm installation date by the end of 2012. This system will allow for electronic transfer of court documents, and all system partners will be able to view case files electronically. New physical court files will not be created once the Odyssey program is installed; old files are already being scanned so that they can be stored in the new system. The court will be sharing Tyler Odyssey demonstration videos with court staff and system partners in preparation for the conversion.

County Challenges

Like many Oregon timber counties, Douglas County is struggling to cover its many responsibilities without the resources it once possessed. Everyone interviewed in preparation for the Commission's visit noted the possibility of further cuts to county services, including potential cuts to the district attorney's budget. County representatives noted the dramatic reduction and resulting lack of services available in Douglas County. There are two drug and alcohol treatment providers with long waiting lists, particularly for in-patient treatment beds (clients accepted into drug court are able to enroll immediately). Some in the community expressed concern that the lack of options creates a dynamic where people don't have options, and are required to stay with a provider even if the provider isn't able to help the person make progress (or when a provider

perceives that the person isn't making progress and the person wants the opportunity to achieve success with a different provider). Douglas County does not have a mental health provider for those needing in-patient services, and there are no local treatment providers available to serve individuals with co-occurring disorders.

The county is also challenged by recent turnover in all areas of the justice system. Over the course of the last several years, the county has adapted to a new presiding judge, three new judges, a new pro tem judge, a new district attorney (with a contested race for the position in the May election), a new juvenile director (though the new director was with the agency prior to assuming the director position), and a new adult parole and probation department director. The system also has many new attorneys, both in the District Attorney's office and within public defense. It is reported that everyone is adjusting well, and that the new attorneys are learning, but it is a process.

There was a change in contract providers with the start of 2012. One consortium provider no longer has a contract with OPDS. During interviews, several individuals commented that the Douglas County system would function more smoothly if there were more providers, and noted that there is a shortage of attorneys who have significant experience (specifically felony qualified attorneys, and attorneys with experience handling dependency and delinquency cases). Some system partners were very clear about their desire to have an additional, primary contract provider in Douglas County in order to diversify the work through a broader base of attorneys and to decrease the likelihood of conflicts. OPDS is in the process of building its provider base in Douglas County, and has several new attorneys providing services on an individual case basis.

Collaborative Efforts in Criminal and Juvenile Justice

Douglas County does not have a Criminal Justice Advisory Committee (CJAC), but there is a Local Public Safety Coordinating Council (LPSCC). The LPSCC meets at the call of the chair, which all report to be very infrequent (perhaps once a year) and only when there is a specific matter that requires a meeting. Issues within the criminal justice system tend to be addressed as they arise through individual conversations between those impacted or affected, and everyone reports a general satisfaction with this approach. System partners uniformly describe each other as approachable and open to proposed solutions when problems arise. Pro Tem Referee Julie Zuber does convene regular policy and procedure meetings for stakeholders in the juvenile delinquency and dependency systems; these meetings are generally reported to be helpful and productive.

The drug court in Douglas County is reported to be a tremendous success, and is reported to be a model program that enjoys participation and support from local families and the broader community. Graduation events are celebrated with

pizza (provided by Abby's Pizza) for graduates and their families, and the drug court team. County Commissioners, judges, and other important community figures usually attend graduation ceremonies. The drug court remains open to those who initially fail if they return with a commitment to engage, as the drug court team acknowledges that part of the process is failure, followed by a readiness to engage in services. This policy has yielded tremendously positive results, with wonderful success stories. There have been over 400 graduates, with 50 to 60 participants in the program at any given time. The program is available to those charged with drug offenses, as well as property offenders who are eligible as part of the Measure 57 drug court funding. The success of the program is, in very large part, due to the strong partnerships between the court, District Attorney, defense providers, Adult Corrections and the Department of Corrections, and child welfare.

Procedure in Criminal Cases

Arraignments are held each day; out-of-custody arraignments at 8:30 a.m., and in-custody arraignments (by video) at 1:05 p.m. UVPD has an attorney present in the courtroom at the time of arraignment, and runs a conflict check before court when possible. The defendant is not given the name of the attorney who will handle the case, but is provided with written instructions to contact UVPD to find out which attorney has been assigned to the case. UVPD will then assign a UVPD attorney unless there is a conflict, in which case the client will be provided with an attorney from Arneson, P.C., Cremer, P.C., or an independent provider paid on an hourly basis.

At the time of arraignment, the court sets a status check hearing two to five weeks after the arraignment date. The status check date was originally intended to be the time at which a trial date was selected, but some judges now set a pretrial conference before setting a firm trial date.

When UVPD has a conflict and must assign the case to a different provider, UVPD contacts that provider on the day of arraignment, and that provider initiates contact with the client. For those clients assigned a UVPD lawyer, the office generates a letter, and sends it to the client at the address the client provided on the form submitted to the court requesting court appointed counsel. If the client does not contact UVPD as instructed, no further attempt is made by UVPD to contact the client. When clients call UVPD, an office visit is scheduled two or three weeks after arraignment. Discovery is usually received within two weeks, but sometimes takes up to five weeks, after arraignment. All contract providers indicate that they meet with in-custody clients within 24 hours of arraignment.

Most providers report that attorney caseloads have been high in 2012. This is a result of several factors, including a lack of felony qualified lawyers in the area,

and Douglas County's unknown budget future. If the District Attorney's office must absorb a cut and reduce its staffing, UVPD anticipates fewer cases being filed, and does not want to hire an additional attorney until they have some assurance that case filings will remain consistent. It is also a consequence of not having the MASH Consortium as a contract provider. There are attorneys available for appointment on a case-by-case basis, and these attorneys are reported to be doing good work. It is hoped that the caseload and provider challenges will be resolved over the course of the year.

Defendants convicted of felony crimes are placed on formal probation; defendants convicted of misdemeanor crimes are placed on bench probation. Douglas County Community Corrections is operated by the Department of Corrections, and is entirely state funded. The Adult Parole and Probation Department oversees 1,180 probationers, with 325 in "case bank." Low risk probationers are placed in case bank status based upon a risk determination made by the probation department. The department is currently using the Level of Service Case Management Inventory (LS CMI) and the Oregon Case Management System (OCMS) risk assessment tools. The probation department plans to start using the "public safety checklist," a risk analysis tool created by the Oregon Department of Corrections and the Oregon Criminal Justice Commission. Unlike the OCMS, no training is required in order to use the public safety checklist - it is automatically generated through an internet-based system that makes an analysis based upon specific static risk factors (rather than additional dynamic risk factors). The public safety checklist is reported to determine risk of reconviction with a 78% rate of accuracy.⁴

Each probation officer manages approximately 63 active probation cases, which is reported to be a manageable caseload. The probation officers are experienced - the least senior probation officer has been there for six years. The department uses administrative sanctions and probation violation proceedings depending upon the seriousness of the alleged violation, and reports a recidivism rate that is better than the statewide average. Funding for jail beds is limited and the probation department plans to further reduce spending on jail beds. Grant funds are used to supplement funding for treatment beds, but the county no longer receives subsidies that were used to provide mental health treatment and drug and alcohol outpatient treatment. Treatment options remain very scarce. The probation department does offer a cognitive restructuring program.

The district attorney's office and probation department report that they have a good working relationship with the defense bar, and that probation officers work well with all of the PDSC contract providers.

⁴ See *Community Corrections Service Request Implementation of the Public Safety Checklist*, available at:
<http://www.oregon.gov/DOC/TRANS/CC/popularity%20boxes/PSC%20Service%20Request.pdf>

Procedure in Juvenile Cases

Delinquency Cases

When law enforcement officers come into contact with a youth in need of placement, they call the court to get the case scheduled on the court's docket within thirty-six hours. There is a shelter facility with sixteen beds, as well as a thirty-two bed detention facility, which is currently running at a maximum capacity of twenty-four beds. The detention facility is also used to house detained youth from Coos and Curry counties. The Juvenile Department reports that kids are not usually held through disposition; that they use conditional release agreements. They also report that "most cases resolve at the first detention review" hearing.

In-custody shelter hearings are scheduled each day at 1:15 p.m.; out-of-custody hearings are held at 2:00 p.m. each Monday. UVPD is present at the hearings, and attorneys are appointed in most juvenile delinquency cases. Some youth hire attorneys, and others waive their right to counsel. The court reports that it does engage in a colloquy with the youth before accepting the waiver of counsel. The District Attorney has one deputy assigned to represent the state in all juvenile delinquency cases. Formal Accountability Agreements are used in Douglas County, but alternative dispositions are not familiar to juvenile system partners in Douglas County. There has been a significant decline (by almost 50 percent) in juvenile delinquency cases in Douglas County. Shackling is used in Douglas County on a case-by-case basis. The Juvenile Department is reported to assess each case individually, and must articulate to the court a substantial reason for safety concerns. Defense attorneys may contest the court's decision.

Drug and property crimes are reported to be the primary issues for juveniles in Douglas County. There is a residential juvenile treatment program available through ADAPT, as well as a thirty-day detention treatment program. The county also has a sex offender treatment program available through mental health services.

The District Attorney's Office and the Juvenile Department report a positive working relationship with the defense bar and PDSC providers.

Dependency Cases

Dependency shelter hearings are scheduled each day at 1:30 p.m. Attorneys are present to provide representation for parents and children at shelter hearings, but the attorneys do not always have an opportunity to meet with their clients before court. Shelter hearings are usually summary proceedings, but attorneys do sometimes request a contested hearing.

The District Attorney has one deputy district attorney (DDA) assigned to provide representation at the first shelter hearing and at uncontested jurisdictional and permanency hearings. Due to recent budget cuts, the DDA does not participate in dependency review hearings. Most involved in the system report that this has a negative impact on cases, but there seem to be very few options available given the budget situation in Douglas County.

Discovery in dependency cases is provided to attorneys and the state on a disc. DHS is developing a system that will allow discovery to be shared by email. The move to electronic dissemination has allowed discovery to be shared more quickly.

Douglas County DHS and system partners report that Douglas County has the highest number of children in care per capita than any other Oregon county, and that their children are in foster care longer than in other jurisdictions. DHS reports that this is starting to shift, but they also have very low re-abuse rates, and don't want that rate to increase.

DHS reports that primary triggers for DHS involvement are poverty problems and opiate addictions; many newborns are addicted to opiates. Most stakeholders report that today's cases present much more serious situations that are harder to address than those in past years. The county has significant problems getting treatment services for addicted parents. There are no opiate detoxification facilities for adults in Douglas County. Caseworkers try to be creative when locating services for parents, but there are significant limitations.

CASAs are appointed for approximately 55% of the children in the county's dependency system. This is an increase from past years, and is especially notable because the number of children in care has increased dramatically over the last few years.

CRB hearings are used regularly in Douglas County. There are three review boards. Though parties usually have someone from their lawyer's office present, it is rarely the lawyer, though there are a few exceptions.

Finding court docket time for dependency cases can also be a challenge. Strict statutory timelines for criminal cases are reported to cause delays in scheduling of dependency reviews.

Civil Commitment Cases

UVPD provides representation in civil commitment cases. This has become a larger challenge in recent months, as clients are sometimes being sent to facilities in Medford or Portland. There is a new investigator working on civil commitments; it is reported that he is very thorough, and that his work is resulting in an increased number of dismissals.

Public Defense Providers in Douglas County

PDSC contracts with three providers for non-death penalty cases in Douglas County: Umpqua Valley Public Defender, James A. Arneson P.C., and Richard Cremer, P.C. PDSC does not have a provider in Douglas County to provide representation in capital cases.

Umpqua Valley Public Defender is the primary contractor in Douglas County. A private non-profit since the mid-1980s, UVPD was founded in 1972. UVPD has an active board of directors, and a relatively new director, Dan Bouck, who serves at the pleasure of the board. There are ten attorneys handling a mixed caseload, though there are attorneys who specialize in the dependency area. The current contract includes 3,119 cases per year of all case types other than murder. Mr. Bouck hosts a monthly meeting for Douglas County public defense providers.

James A. Arneson, P.C., is a small firm including Mr. Arneson and three associates. Their current contract includes a mixed caseload with a total of 1,008 cases per year.

Richard Cremer, P.C. is also a small firm, with Mr. Cremer and one associate. This firm has a contract for 607 cases per year.

Comments from Douglas County Stakeholders Regarding Providers

Criminal Cases

Contract provider attorneys are described by their system partners as providing zealous representation in criminal cases. Some suggested that the representation provided in Douglas County is superior to what is provided in surrounding counties. Stakeholders report that they have a very positive working relationship with most public defense providers, and that while there are not differences in the quality of representation that are discernible based upon the law firm where the lawyer practices, there is a significant variation in the representation provided by each individual lawyer. Some attorneys are reported to work harder and fight harder for their clients, but no lawyers are described as providing inadequate representation. Attorneys are reported to file more motions in criminal cases than in other case types.

Representation of Parents

Attorneys providing representation to parents are described as providing very strong representation. They usually have someone from their office attend

Family Decision Meetings, Safety Team Meetings, and other events outside of court and CRB hearings. Some attorneys personally attend these meetings.

The DHS office reports frequent attorney contact, almost daily, with questions regarding cases and clients. They report a positive working relationship with PDSC providers. DHS often contacts attorneys by phone, and they usually receive a prompt reply call. While DHS caseworkers and client's attorneys do not always agree, the disagreement is reported to be "valuable" and important to the process.

Attorneys are pursuing contested hearings in dependency cases. Several attorneys, from both UVPD and the Arneson firm, were noted as "leaders" in this area. Cases are also settled, with positive results, out of court. An Assistant Attorney General (AAG) from the Attorney General's Eugene office represents the state in contested hearings. System partners report that motions are rarely filed in dependency cases, and that attorneys are rarely asking the court to make "no reasonable efforts" findings despite the fact that appropriate services are often not available for parents.

Representation of Children

Children in Douglas County are reported to receive zealous representation, with the attorney or a representative from the attorney's office present at most if not all Family Decision Meetings and Safety Team Meetings. Attorneys are described as taking their "responsibilities very seriously." Not only are attorneys held to a high standard by the court, but also by their peers. Tom Bernier, of James A. Arneson, P.C., is described as providing excellent representation and serving as a mentor for newer attorneys in the Roseburg area. Some expressed concern that many attorneys didn't seem to be visiting children in their homes. It was noted that those attorneys who do visit children in their substitute care environment are better able to advocate for the needs of their clients. It was also noted that attorneys who appear at CRB hearings (rather than sending someone from the office) tend to provide better advocacy for their clients. Some attorneys appear at CRB hearings by phone, which is better than not appearing, but is not as effective as appearing in person.

Delinquency Cases

Providers are reported to provide quality representation in juvenile delinquency cases. Attorneys do occasionally file motions in juvenile delinquency cases, but not often. Douglas County does not have experience with motions for alternative disposition in delinquency cases.

OPDS's recommendations for further inquiry at the PDSC Meeting on May 10, 2012

Based on the information provided to OPDS during meetings and telephone conversations with justice system stakeholders, OPDS recommends that the Commission consider the following in developing a service delivery plan for Douglas County.

Structure

Douglas County's current structure no longer includes a consortium provider. Cases with multiple parties needing representation do present a challenge, and though OPDS has worked to build a pool of attorneys who are available for appointment in these situations, it is sometimes necessary to use out-of-county providers. It is anticipated that over time, new conflict attorneys will become regular providers, but the county is still in a transition period. The Commission may wish to ask system participants for their thoughts regarding the current structure, and developments they would like to see in Douglas County's provider base. As part of this conversation, Commission members may wish to ask current providers about attorney caseloads and plans to manage those caseloads through the remainder of the biennium.

Douglas County also struggles with a lack of lawyers who are qualified to handle felony cases, and lawyers with significant experience practicing juvenile law. There are newer attorneys in the county who are developing, but it may be necessary to recruit additional lawyers. The Commission might want to ask providers for their thoughts regarding the need for targeted recruitment efforts.

The system of having UVPD present at arraignments and later assigning specific lawyers is reported to work well, but the Commission may wish to explore whether communication efforts with out-of-custody clients in Douglas County meet contract requirements:

7.1.4.2 Out-of-Custody Interviews

Within 72 hours of the appointment, Contractor shall arrange for contact with out-of-custody clients, including notification of a scheduled interview time or what client must do to schedule an interview time.

It is possible that both the client and the system would benefit from a greater effort on the part of the attorney to make contact with the client, but demands on public defense lawyers' time are already great, and the Commission will want to consider reports that the current system is working. The failure to appear rate in Douglas County is not known at this time.

Juvenile Delinquency Cases

Douglas County is a leader in its commitment to appointing counsel for youth in juvenile delinquency cases, and seems to have a strong commitment to rehabilitation and reduction of recidivism. The Commission may wish to explore the degree to which public defense providers are investigating cases, and pursuing motions challenging the shackling of youth, motions for alternative disposition, and trials in juvenile delinquency cases.

Collaborative Efforts

Douglas County has some very strong collaborative efforts exemplified by its drug court, regular meetings with system partners in juvenile dependency and delinquency proceedings, and regular meetings among members of the defense bar. The Commission might want to explore with Douglas County participants whether they believe there would be value in establishing some form of regular and consistent communication between all system partners in the criminal justice system. Such collaborative conversations could become more critical as Douglas County continues to manage the shrinking budget and resulting lack of resources.

Testimony at May 10, 2012, PDSC Meeting in Roseburg, Oregon

Nancy Cozine provided a brief summary of the Report Regarding Service Delivery in Douglas County.

Richard Cremer, a practitioner in Douglas County for almost 37 years and a former OCDLA president who served on the OCDLA board for almost eight years, began his testimony by describing the impact that reduced drug and alcohol services is having in Douglas County, noting the large number of probation violations involving continued use of substances when abstinence is a condition of probation. Mr. Cremer devotes about 85% of his practice to contract work, and 15% to retained work; 90-95% of his overall caseload is criminal law, everything but murder, and the other portion is domestic relations. He has one associate whose practice is almost 100% contract work - 85 to 90% criminal, and the balance dependency.

Chair Ellis asked about the coordination between the three contract providers, and Mr. Cremer indicated that the current system, with UVPD attending arraignments and assigning cases, is working very well. Commissioner Welch asked about motions for "no reasonable efforts" findings in juvenile dependency cases. Mr. Cremer indicated that his associate does make those motions, and also clarified that his comments about lack of treatment resources were limited to the criminal context. Chair Ellis asked whether there were adequate resources to handle conflict cases in Douglas County. Mr. Cremer said that the elimination of the MASH Consortium did make it more difficult because counsel must sometimes be appointed from outside the county. He also noted that there are three lawyers in Roseburg who have expressed a willingness to accept

appointments on an hourly basis, but one of those lawyers is not very experienced - he has some concern about that, as he is not sure that lawyer would be able to handle serious felony cases, or maybe not even felonies at all. He said that there are another two lawyers who are more experienced, but they are still relatively inexperienced, which also causes some concern. Chair Ellis asked whether Mr. Cremer was concerned about a shortage of felony qualified attorneys, and he indicated that he was, to some extent. Mr. Cremer's suggestion for the Commission was to consider the formation of a new consortium to handle conflict cases. Commissioner Potter asked about regular meetings with the defense bar, and Mr. Cremer explained that there are monthly meetings where they discuss issues of common interest, and there are often speakers from various agencies that are involved in criminal justice. Commissioner Potter asked whether it would be helpful to have regular Criminal Justice Advisory Committee meetings, or something similar, to get members of the criminal justice community together to discuss issues on a regular basis. Mr. Cremer said that he thought it might have value, but that he hadn't given it much thought.

Dan Bouck, the Executive Director of UVPD, started by noting that he had read the report, and that he felt the Sheriff's Office should have been included in the report, as they run the jail. The Chair asked whether there was a problem with access to clients. Mr. Bouck indicated that only four attorneys can visit at one time, but they are usually able to work it out. He went on to note that he is not concerned about eCourt, but would rather see the attention go to fixing OJIN because it is a horribly written program that they need to access constantly, and the data being put into OJIN is not valid. Mr. Bouck went on to explain that he doesn't have any shortage of felony qualified attorneys right at the moment - he has two new attorneys that have been there about six months. They are doing misdemeanor work - and he has one that just started doing felony work. His recent postings have generated a significant amount of interest. He hires people who do not have experience because that allows him to move some of the other people up, and he can "teach [the new attorneys] our way of doing things." UVPD has pretty good retention - losing about one person per year. They just hired because they expanded the size of the firm's contract - they now handle about 60% of the caseload, an increase from about 225 cases to around 300 cases per month. Mr. Bouck will delay further hires until more is known about cuts to the DA's office. UVPD just lost two attorneys who went into private practice (mentioned earlier by Mr. Cremer), and Mr. Bouck would like to see them be a part of a consortium; he notes that they are both Measure 11 qualified. It is harder for Mr. Bouck to find people who can do dependency work. Mr. Bouck noted that in civil commitments, the pre-commitment investigator is doing a better job, which has reduced filings (as opposed to increasing dismissals), and those that are filed have a more reasonable basis. They are using the civil commitment diversion procedure a bit more often, which is good, but it can be challenging because of the short deadline for submission of signed paperwork. Mr. Bouck explained that the biggest problem in civil commitments is that

following the closure of Mercy Health, clients who aren't in the VA could be anywhere in the state. Typically they are in Medford, although UVPD staff travel as far as Portland to see their clients. Mr. Bouck also explained UVPD's compliance with contacting out of custody clients within 72 hours, and future plans to explore automated electronic reminders for clients. They will hold off on implementing anything until eCourt is installed to ensure that any new UVPD computer systems can interface with the new court system.

Chair Ellis asked about UVPD's board. Mr. Bouck explained that it includes two attorneys who are in private practice, a businessman who just became a minister, and a government employee who helps manage a VA facility. Mr. Bouck inherited all but one of them from Mr. Tower (the former UVPD Director). Mr. Bouck recruited one of the attorneys - he had been in the DA's office and then went into private practice. The Board meets quarterly, and all but one are good about attending regularly. The Board is aware of the affidavit issue. Mr. Bouck provided additional detail regarding the situation, specific concerns, and current attempts to resolve the issues. He noted that the Commission's visit has been very helpful in moving the conversation forward. Chair Ellis asked some additional clarifying questions, and noted that the Commission would like to see the matter addressed, and that it will continue to monitor the situation until it is resolved.

Mr. Bouck provided information regarding UVPD's training and supervision. New attorneys are given new cases, and a more senior attorney is assigned as a mentor. Mr. Bouck and mentors meet with the attorneys every other week, go over specific cases with them, and review what they are doing. In opposite weeks the attorneys all meet as a whole. New attorneys start with the most routine misdemeanor cases and work up to more complex cases. Mr. Bouck meets monthly with more senior attorneys. The day before, he pulls a whole bunch of their files and asks what they are doing in the cases. Mr. Bouck also completes quarterly reviews, where he solicits input from the court, the DAs, and court staff. He ensures that attorneys meet qualifications before handling more serious cases, and noted that different attorneys progress at different paces.

Mr. Bouck explained the case assignment procedure, and noted that he would like to see a new consortium, as it would just be a bit easier in assigning out cases for conflicts. Right now, with three contractors, there are cases with four or five parties, and UVPD must spend a lot of time trying to find someone to take those cases.

Commissioner Potter asked whether there would be value in having something like a Criminal Justice Coordinating Counsel. Mr. Bouck responded that it would be helpful because, though everyone talks now, it is not with everyone in the same room.

Mr. Arneson provided information regarding collaborative efforts headed by the court to bring juvenile dependency and delinquency system partners together for quarterly meetings. He also noted that Mr. Bouck has been good about organizing meetings for the defense bar. Chair Ellis asked about Mr. Arneson's practice of soliciting client feedback. Mr. Arneson indicated that twice a year - April and October - a questionnaire is sent to the client in every case that is closed that month. He explained that he would like to do it more frequently because it really is good feedback for lawyers. The information is generally very, very positive. The feedback also helps them identify any areas of weakness in a lawyer's communication.

Mr. Arneson has four associates, and has had significant turnover recently for a variety of generic reasons. The quality of applicants has been very high, and Mr. Arneson plans to hire two of four very qualified finalists. Mr. Arneson shared that he plans to retire in the three to four year range, and has therefore been clear with candidates that he is looking for people who are interested in putting their roots down in Roseburg and staying with the law firm long term, and hopes that with quality folks in the office at that point, they would be able to negotiate a contract with PDSC.

When asked what PDSC could do better, Mr. Arneson commended the very swift service provided by OPDS, and emphasized the need for increased rates for Measure 11 cases in Douglas County. He explained that in Douglas County, unlike other jurisdictions, the cases typically do not have more than one Measure 11 charge, and are therefore worth only one credit.

Mr. Potter asked whether PDSC should add a consortium in Douglas County. Mr. Arneson guessed that it could make case assignment easier for the PD's office, but noted he had not seen anything either locally, or in his experience as Chair of the Quality Assurance Committee, indicating that consortia are a more effective way of delivering quality services. Chair Ellis echoed Mr. Arneson's observation, noting that effective training and mentoring in a consortium is rare.

Judge Garrison provided an update regarding the affidavit issue, and noted that everyone is committed to doing their best to resolve the situation. Chair Ellis asked what Judge Garrison thought about the current service delivery model in Douglas County. Judge Garrison indicated that the court would like to see more providers, not less, and that his understanding is that there are lawyers willing to enter into contracts with PDSC when that opportunity becomes available.

Chair Ellis inquired of the court's practice regarding waiver of counsel in juvenile cases. Judge Garrison explained that he heard Judge Welch's report at the presiding judges meeting, and that in Douglas County the debate is really eaten up by the practice, where 99% of the cases have appointed counsel. Judge Garrison indicated that for the most part, without exception, competent counsel is appointed in all case types, and that there is a wonderful group of public

defenders that are a part of the community. The public defender's office is energetic and very competent. The same can be said for Mr. Arneson and Mr. Cremer's office; both highly competent attorneys - the best in that regard.

Commissioner Potter asked whether there is a need for quarterly meetings organized of criminal and juvenile law providers and support folks. Judge Garrison said that he is not opposed to the idea, but that no one wants to have a meeting for the sake of having a meeting, offering that perhaps one time per year would be a sufficient schedule. Commissioner Welch asked about the portion of the report indicating that "most cases resolve at the first detention review" hearing. Judge Garrison and others offered the view that kids often want out of custody, and the first detention review hearing is a time that many cases resolve, with credit for time served. Mr. Cremer said this is accurate, but also noted that part of what they do is find acceptable resources for the child to go to while the case is pending.

Jesse Larner, the Trial Court Administrator in Douglas County since 2003, offered information about court staff shortages, explaining that with the last reductions court staff has gone from 50 to 36. She commented that sometimes it is hard to find counsel for civil commitment cases, especially now that individuals are held in facilities outside of Douglas County, and noted the efforts of Billy Strehlow in addressing those situations.

Commission members discussed the lack of a consortium for conflict cases in Douglas County, and the possibility of establishing one. Billy Strehlow explained that OPDS is only using a handful of out-of-county lawyers, and appointing them to multiple cases, so that they can cover more than one case when coming to Douglas County, and estimated that it is only happening five or six times per year. Commissioner Lazenby questioned the need for a consortium if there are so few cases handled by out-of-county lawyers each year. Commissioner Stevens noted the advantage of channelling money into a struggling county if PDSC can use in-county providers. Commissioner Potter noted that if any changes were made, he would want to see the local providers very involved in the process. Chair Ellis noted the cooperative nature of the current providers, and their ability to work together without fighting over the caseload. Kathryn Aylward noted that during the last contract negotiations serious effort and consideration was put into the possible formation of a consortium, but in the end, no one wanted to have the administrative responsibilities. Commission members expressed an interest in letting the current system build for a bit longer, with further consideration in the future.

Developments Since May 10, 2012, PDSC Meeting

The court and public defender office have been engaged in a dialog to address issues that contributed to the public defender office's decision to file a blanket affidavit against one judge. The process has been moving along, and is

expected to resolve in the near future. One positive outgrowth of the process appears to be discussion of regular CJAC meetings to bring the county into compliance with ORS 1.851.

1.851 Local criminal justice advisory councils. (1) The presiding judge of each judicial district shall establish a local criminal justice advisory council, unless one already exists, in each county in the judicial district. Membership of the council shall include, but is not limited to, representatives of the following:

- (a) The presiding judge;
- (b) The district attorney;
- (c) The local correctional administrator;
- (d) Public defense service providers;
- (e) The county bar association;
- (f) Local law enforcement; and
- (g) State law enforcement.

(2) In addition to the persons listed in subsection (1) of this section, the judge may invite the participation of any other persons involved in the criminal justice system whose participation would be of benefit.

(3) The local criminal justice advisory council shall meet regularly to consider and address methods of 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.

(4) To assist the council in these efforts, council participants shall provide the council with proposed budget information and caseload and workload projections.

It is hoped that the addition of regular CJAC meetings will provide a regular forum for resolving issues of concern to all entities in the criminal justice system.

A Service Delivery Plan for Douglas County

The current service delivery system in Douglas County appears to be working satisfactorily, with a non-profit public defender as the primary provider handling about 60% of the cases, and two law firms handling the majority of the remaining 40%. The county would benefit from having additional contract providers, preferably attorneys who are familiar with, and reside in, the county, to handle conflict cases. The elimination of a consortium provider at the start of 2012 was a necessary change, but one that warrants further examination and consideration. The Commission will let the current structure continue to build and mature, and reevaluate contracting options during the next contract cycle.

Attachment 3

Summary of 2013-15 Biennium Budget

Public Defense Svcs Comm
Public Defense Svcs Comm
2013-15 Biennium

Agency Request Budget
Cross Reference Number: 40400-000-00-00-00000

<i>Description</i>	<i>Positions</i>	<i>Full-Time Equivalent (FTE)</i>	<i>ALL FUNDS</i>	<i>General Fund</i>	<i>Lottery Funds</i>	<i>Other Funds</i>	<i>Federal Funds</i>	<i>Nonlimited Other Funds</i>	<i>Nonlimited Federal Funds</i>
2011-13 Leg Adopted Budget	76	75.40	223,717,479	222,524,924	-	1,192,555	-	-	-
2011-13 Emergency Boards	-	-	2,654,431	16,931	-	2,637,500	-	-	-
2011-13 Leg Approved Budget	76	75.40	226,371,910	222,541,855	-	3,830,055	-	-	-
2013-15 Base Budget Adjustments									
Net Cost of Position Actions									
Administrative Biennialized E-Board, Phase-Out	-	0.39	2,758,174	2,712,250	-	45,924	-	-	-
Estimated Cost of Merit Increase			428,788	421,087	-	7,701	-	-	-
Base Debt Service Adjustment			-	-	-	-	-	-	-
Base Nonlimited Adjustment			-	-	-	-	-	-	-
Capital Construction			-	-	-	-	-	-	-
Subtotal 2013-15 Base Budget	76	75.79	229,558,872	225,675,192	-	3,883,680	-	-	-
Essential Packages									
010 - Non-PICS Pers Svc Vacancy Factor									
Vacancy Factor (Increase) Decrease	-	-	-	-	-	-	-	-	-
Non-PICS Personal Service Increase (Decrease)	-	-	159,934	157,679	-	2,255	-	-	-
Subtotal	-	-	159,934	157,679	-	2,255	-	-	-
020 - Phase In Out Pgm One-time Cost									
021 - Phase-in	-	-	1,485,000	-	-	1,485,000	-	-	-
022 - Phase-out Pgm One-time Costs	-	-	-	-	-	-	-	-	-
Subtotal	-	-	1,485,000	-	-	1,485,000	-	-	-
030 - Inflation Price List Adjustments									
Cost of Goods Services Increase (Decrease)	-	-	60,288	60,288	-	-	-	-	-
State Gov't Services Charges Increase (Decrease)			11,406	11,406	-	-	-	-	-

Summary of 2013-15 Biennium Budget

**Public Defense Svcs Comm
Public Defense Svcs Comm
2013-15 Biennium**

**Agency Request Budget
Cross Reference Number: 40400-000-00-00-00000**

<i>Description</i>	<i>Positions</i>	<i>Full-Time Equivalent (FTE)</i>	<i>ALL FUNDS</i>	<i>General Fund</i>	<i>Lottery Funds</i>	<i>Other Funds</i>	<i>Federal Funds</i>	<i>Nonlimited Other Funds</i>	<i>Nonlimited Federal Funds</i>
Subtotal	-	-	71,694	71,694	-	-	-	-	-
040 - Mandated Caseload									
040 - Mandated Caseload	-	-	23,489,759	23,489,759	-	-	-	-	-
050 - Fundshifts and Revenue Reductions									
050 - Fundshifts	-	-	-	2,150,000	-	(2,150,000)	-	-	-
060 - Technical Adjustments									
060 - Technical Adjustments	-	-	-	-	-	-	-	-	-
Subtotal: 2011-13 Current Service Level	76	75.79	254,765,259	251,544,324	-	3,220,935	-	-	-

Summary of 2013-15 Biennium Budget

**Public Defense Svcs Comm
Public Defense Svcs Comm
2013-15 Biennium**

**Agency Request Budget
Cross Reference Number: 40400-000-00-00-00000**

<i>Description</i>	<i>Positions</i>	<i>Full-Time Equivalent (FTE)</i>	<i>ALL FUNDS</i>	<i>General Fund</i>	<i>Lottery Funds</i>	<i>Other Funds</i>	<i>Federal Funds</i>	<i>Nonlimited Other Funds</i>	<i>Nonlimited Federal Funds</i>
Subtotal: 2011-13 Current Service Level	76	75.79	254,765,259	251,544,324	-	3,220,935	-	-	-
070 - Revenue Reductions Shortfall									
070 - Revenue Shortfalls	-	-	-	-	-	-	-	-	-
Modified 2011-13 Current Service Level	76	75.79	254,765,259	251,544,324	-	3,220,935	-	-	-
080 - E-Boards									
081 - May 2012 E-Board	-	-	-	-	-	-	-	-	-
Subtotal Emergency Board Packages	-	-	-	-	-	-	-	-	-
Policy Packages									
100 - Juvenile Dependency Caseload Reduction	-	-	3,818,237	3,818,237	-	-	-	-	-
101 - Employee Commensurate Compensation	-	-	279,155	279,155	-	-	-	-	-
102 - Public Defense Provider Compensation	-	-	4,862,411	4,862,411	-	-	-	-	-
Subtotal Policy Packages	-	-	8,959,803	8,959,803	-	-	-	-	-
Total 2013-15 Agency Request Budget	76	75.79	263,725,062	260,504,127	-	3,220,935	-	-	-
Percentage Change From 2011-13 Leg Approved Budget	-	0.50 □	16.50 □	17.10 □	-	-15.90 □	-	-	-
Percentage Change From 2011-13 Current Service Level	-	-	3.50 □	3.60 □	-	-	-	-	-

Attachment 4

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 5

Office of Public Defense Services Customer Service Survey
2008, 2010 , 2012 Results Comparison

A total of 886 contract attorneys, private bar attorneys, and service providers were invited to complete OPDS's 2012 Biennial Customer Service Survey. The survey was opened May 21, 2012 and closed June 4, 2012. There was a 29% response rate (255 responses) to the survey. Questions 1 through 6 required a response. Question 7 was optional. There were 196 responses to Question 7.

Summary of Results

Question 1. How do you rate the timeliness of the services provided by OPDS?

Answer Option	2008 Response Percent	2010 Response Percent	2012 Response Percent
Excellent	63.00%	72.90%	74.10%
Good	33.50%	25.00%	22.70%
Fair	1.50%	0.90%	2.00%
Poor	0.50%	0.00%	0.40%
Don't Know	1.50%	1.20%	0.80%
Excellent & Good (w/o Don't Know)	98.00%	99.10%	97.63%

Question 2. How do you rate the ability of OPDS to provide services correctly the first time?

Answer Option	2008 Response Percent	2010 Response Percent	2012 Response Percent
Excellent	63.00%	70.50%	61.60%
Good	31.50%	28.00%	31.00%
Fair	3.00%	0.60%	5.90%
Poor	0.50%	0.00%	0.40%
Don't Know	2.00%	0.90%	1.20%
Excellent & Good (w/o Don't Know)	96.40%	99.40%	93.65%

Question 3. How do you rate the helpfulness of OPDS employees?

Answer Option	2008 Response Percent	2010 Response Percent	2012 Response Percent
Excellent	63.50%	75.60%	72.50%
Good	29.00%	20.80%	20.80%
Fair	2.00%	1.80%	5.10%
Poor	1.00%	0.30%	0.40%
Don't Know	4.50%	1.50%	1.20%
Excellent & Good (w/o Don't Know)	96.90%	97.90%	94.44%

Question 4. How do you rate the knowledge and expertise of OPDS employees?

Answer Option	2008 Response Percent	2010 Response Percent	2012 Response Percent
Excellent	54.00%	64.20%	58.00%
Good	36.00%	29.20%	33.30%
Fair	3.00%	1.50%	3.90%
Poor	0.50%	0.00%	0.40%
Don't Know	6.50%	5.10%	4.30%
Excellent & Good (w/o Don't Know)	96.30%	98.40%	95.49%

Question 5. How do you rate the availability of information at OPDS?

Answer Option	2008 Response Percent	2010 Response Percent	2012 Response Percent
Excellent	38.00%	47.60%	48.20%
Good	40.50%	39.80%	41.60%
Fair	9.00%	6.30%	6.30%
Poor	1.00%	0.60%	0.40%
Don't Know	11.50%	5.70%	3.50%
Excellent & Good (w/o Don't Know)	88.70%	92.70%	93.09%

Question 6. How do you rate the overall quality of services provided by OPDS?

Answer Option	2008 Response Percent	2010 Response Percent	2012 Response Percent
Excellent	60.50%	66.00%	64.30%
Good	33.00%	32.20%	29.80%
Fair	2.50%	0.90%	4.70%
Poor	2.00%	0.00%	0.00%
Don't Know	2.00%	0.90%	1.20%
Excellent & Good (w/o Don't Know)	95.40%	99.10%	95.24%

Question 7. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

Please see attached summary

What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

	Response Count
	196
answered question	196
skipped question	59

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

1	They are prompt and efficient in handling administrative matters as well as legal issues that arise in court appointed cases.	Jun 4, 2012 6:49 PM
2	Staff are always available to answer a variety of questions. They are also courteous and helpful, and seem to understand how valuable their services are to practitioners. They also always provide a timely response to questions and requests.	Jun 4, 2012 12:46 PM
3	OPDS has helped me provide my client a high level of representation.	Jun 4, 2012 12:42 PM
4	Responses are quick and efficient and staff's actions are quite professional.	Jun 3, 2012 9:08 PM
5	we are never paid enough on a case count basis; it encourages a quick settlement and costs me money when i set it for trial; we should get approval of more resources when we need it	May 31, 2012 10:54 AM
6	I have worked with OPDS for many years, primarily with Lorrie Railey and Billy Strehlow over the past several. The services by Ms. Railey and by Mr. Strehlow have been outstanding. They are well qualified, knowledgeable, professional, and very responsive. They are also both personable, and make it a pleasure dealing with OPDS.	May 31, 2012 10:48 AM
7	OPDS service is always excellent. They respond promptly and if you have questions they are easy to work through any problem.	May 30, 2012 1:24 PM
8	Prompt responses to my questions. Answers I can rely on. Fast payment of expenses. Easy to work with.	May 30, 2012 8:24 AM
9	The quality can REALLY vary between employees! Some I would rate excellent, many fair or good, and a couple poor.	May 29, 2012 1:52 PM
10	Information requested is honest and prompt. Accessability is key to our working relationship	May 29, 2012 7:14 AM
11	Helpful, responsive, and caring staff.	May 26, 2012 11:36 PM
12	Friendliness and competence of staff.	May 26, 2012 6:12 PM
13	With every case I've had with OPDS ---- 3 so far -- the lawyers have been remarkably helpful with related aspects of my case, and the legal assistant is on top of everything. Plus the attorneys are so knowledgable I stand in awe. Really.	May 25, 2012 2:44 PM
14	responses to my request for expenses/services on behalf of my client are quick. if they are denied, specific questions are asked. PDS system questions are answered quickly and professionally. topic discussions are knowledgeable and productive.	May 25, 2012 2:08 PM
15	both positive and negative experiences with services and employees.	May 25, 2012 1:34 PM
16	Have limited-moderate experience interacting with OPDS, but have always received good service. Sometimes their billing requirements seem to be inconsistent depending on who reviews the bill. I find everyone I've spoken to at	May 24, 2012 10:54 AM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

OPDS to be helpful in resolving my issues when I have them.

17	Extremely helpful and understanding regarding the issues facing clients and lawyers	May 24, 2012 10:54 AM
18	My only real experience with OPDS is doing extraordinary expense requests. My experience has been that these have been processed quickly and efficiently.	May 24, 2012 10:51 AM
19	I am a PI and 4 years ago, new to the practice. My mistakes were corrected by staff and an explanation given so I learned. Any question I have asked of OPDS has been immediately answered. Staff is professional and really go the extra mile for the provider. Excellent work at OPDS is being completed every day.	May 24, 2012 10:03 AM
20	Everyone is always very helpful and easy to work with. I've never had any issues come up that couldn't be resolved promptly.	May 24, 2012 8:15 AM
21	Not all the time do need to access OPDS and it is usually done through the attorney firms first. In the beginning it was often I would request info, etc and the staff were all usually prompt and informative. Now, I am aware of how things are done so most of requests flow directly from attorneys and are mainly...about 99% accurate. Thank You.	May 23, 2012 11:39 PM
22	Given that Christine Bathke is the sole person I deal with for the majority of my issues, she knows me, and I her. She has never failed to answer a question, fix a problem, or have total command of the situation when contacted with a question. My experience with OPDS, then, is largely my opinion of Ms. Christine, and as you can see, that couldn't be much higher. Simply put, Ms. Christine Bathke is worth more than she's getting paid, whatsoever that number may be, and I can honestly say that for such a consummate professional, she makes it look easy, and she makes me feel both valuable and important in this industry. In short, Del Lucas thinks the world of Ms. Bathke. I've had conversations with Lorie Reily on several different issues, and she's also deeply intelligent, well informed, personable and accomodating. It's quite easy to see that the overall 'tone' of the office is well established as 'comfortable-professional customer service' based. My hat is off to them all.	May 23, 2012 6:40 PM
23	OPDS is easy to work with and even when forms are not filled out correctly they always seem to understand and help in getting things right.	May 23, 2012 5:22 PM
24	I always feel helped without any unnecessary hassle by OPDS.....	May 23, 2012 4:55 PM
25	I'm always payed in more than a timely fashion, my travel arrangements are generally good, and I am almost always able to contact someone at OPDS with any questions I might have.	May 23, 2012 2:51 PM
26	Never had a real problem with OPDS. Any issue I have had was handled fairly and to my satisfaction. If any employee did not have the answer, they figured it out and called me back.	May 23, 2012 1:49 PM
27	I have only been practicing law in Oregon since March 1, 2012. It is difficult for me to rate OPDS, but I don't have any complaints.	May 23, 2012 10:39 AM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

28	I am able to talk to a staff member almost immediately when I call. They know the service providers, are able to authorize necessary services very quickly, and are willing to consider new providers with specialized skills to further the defense of very serious cases. OPDS deserves the highest rating of any governmental agency for doing it's job well.	May 23, 2012 10:24 AM
29	Just as soon as I email a request for preauthorization, I get a response email immediately, and then within hours I get an email letting me know whether or not it is authorized. Also, when we send a letter requesting payment for services, it is paid in a timely manner.	May 23, 2012 10:00 AM
30	You as providers know what you're doing.and generally you do it quickly and well.	May 23, 2012 9:26 AM
31	You are all amazing. Thank you.	May 23, 2012 5:43 AM
32	I have always received first class and prompt service from OPDS. When there was a time that something was somewhat different than I expected I received immediate and excellent service. Dennis A. Beyer	May 22, 2012 9:07 PM
33	I am always greeted with a friendly helpful person who is always willing to do or answer what I need. They work hard at helping me. Thank you	May 22, 2012 5:56 PM
34	Over the years, I've figured out how OPDS does things and approach them with that knowledge. If I didn't have that knowledge, it would be much more difficult for me to deal with OPDS.	May 22, 2012 3:46 PM
35	What ever area they have assisted us with, the answers are extremely prompt. Whether it is a question regarding services or approval of a request. If there is any reason that one person does not know an answer they will find it or refer you to where you can find it. Always a pleasure!	May 22, 2012 3:42 PM
36	Everyone at OPDS knows their information, are very timely in getting back with an answer when asked a question, are very helpful, and so this impacts my impression of their overall quality of service...they are extremely knowledgeable folks.	May 22, 2012 3:01 PM
37	While I don't always understand the decisions reached by OPDS I can usually get a reason behind the decision.	May 22, 2012 2:57 PM
38	Based on my experiences	May 22, 2012 2:40 PM
39	The "fair" responses reflect more a lack of activity than performance. It seem difficult to get in touch with and have personal conversations with OPDS employees.	May 22, 2012 2:07 PM
40	They are on their game. No complaints.	May 22, 2012 12:42 PM
41	The documents necessary to submit claims are somewhat less than easy to find on the website. The codes to enter into the form are REALLY difficult to find on the website.	May 22, 2012 11:55 AM
42	There is always room for improvement in any organization.	May 22, 2012 11:32 AM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

43	Fee statements are paid quickly. Requests for non-routine expenses are acknowledged and processed quickly. Staff are courteous and professional. Thanks	May 22, 2012 11:30 AM
44	GOOD LEGAL KNOWLEDGE ON A TIMELY BASIS.	May 22, 2012 11:13 AM
45	Our interaction with OPDS has been positive and professional.	May 22, 2012 10:39 AM
46	Becasue I have only had positive experience interacting withthe OPDS	May 22, 2012 10:37 AM
47	The timeliness of request for authorizations.	May 22, 2012 10:02 AM
48	I have worked with other PD agencies in the past.	May 22, 2012 9:59 AM
49	I have most always had good to excellent response time, accuracy and responses to questions or concerns when requesting approved monies for services to aid in my clients' defenses. On some occasions though, primarily while faxing multiple requests for the same client at the same time, where at least one of those requests was considered a "duplicate" and was over looked and not initially processed until I submitted a "2nd" request for the same.	May 22, 2012 9:50 AM
50	My interactions with OPDS have always been very satisfactory. Their staff is routinely cooperative, helpful, fair and timely.	May 22, 2012 9:35 AM
51	Once I became a state-appointed attorney, all of my interactions with numerous employees at OPDS have been positive and professional. Getting started as a provider was much more difficult and not always pleasant.	May 22, 2012 9:29 AM
52	No other answer is appropriate. I do my part and justify my requests and they are granted in a very timely manner. When something goes wrong I am contacted immediately and if I need help it is there. Thank you.	May 22, 2012 9:25 AM
53	The service is very good. Response to requests is generally very prompt and questins about requests are clearly presented.	May 22, 2012 9:15 AM
54	OPDS has the ability to manipulate our case assignments and to terminate our contract.	May 22, 2012 8:38 AM
55	We have good rapport with Shelley Winn. Very cooperative and helpful.	May 22, 2012 8:28 AM
56	I have been doing the investigations for several years and have never had a problem getting my hours or being paid for my hours or expenses. I have not had a single complaint and I have made some mistakes and they have been caught by OPDS staff and corrected without a long drawn out ordeal. It has to be hard dealing with all the different people all over the state by phone and e-mail and I just think you do an excellent job.	May 22, 2012 8:25 AM
57	I averaged three goods + three excelents and came out with a better than good but not quite excellent. (Perhaps 7 Likert questions would have broken the tie) Since OPDS is not perfect in all things, I chose good. Please note that as someone who has seen the administrative changes that have taken place since 1985, I'm very impressed with the administrative end concerning processing of payments and availability of information, not to mention improved communication	May 22, 2012 8:14 AM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

on changes now forwarded to non-attorneys. However, fatal but perhaps non-administrative flaw: all-but-stagnant pay rates still need more serious review and legislative persuasion. Challenge legislators. Ask them to freeze their earnings for 25 years, then get a 10% upward adjustment, followed by a 20% hours reduction, and ask them if they can pay their mortgage and still buy groceries. Even returning the 20% doesn't pay medical insurance now mandated by law.

58	Everybody I have talked to at OPDS is always very helpful and friendly.	May 22, 2012 8:08 AM
59	My experience with calling in for information or assistance	May 22, 2012 7:55 AM
60	Truth. Opds responses have been accurate, timely, and professionally rendered on EVERY occasion.	May 22, 2012 5:54 AM
61	Well, I have to say in all my years of working with OPDS that overall---the employees try very hard to get you what you need---in the time that you need it. Especially when traveling---they really go out of their way to help you when plans and circumstances change. There are exceptions, but they are rare. 98 percent of the time this agency goes out of its way to be helpful. Overall, a grade of A.	May 22, 2012 3:28 AM
62	I have always had all my questions answered promptly and the turn around for funding has always been timely.	May 21, 2012 11:11 PM
63	Great support except for Aylward..	May 21, 2012 11:09 PM
64	I can always count on Lorrie to give consideration to a question before answering and is always open to new ideas. I also appreciate Kelly as she is right on the spot.	May 21, 2012 10:20 PM
65	Because it is all true. I have been a PI in Salem since 1994. I was a HS administrator prior to this career. I know good organization when I work with it. All of the people I have been associated with since the beginning of OPDS are excellent in their positions! I THANK EACH AND EVERY ONE OF THEM FOR THEIR DEDICATION!	May 21, 2012 9:57 PM
66	OPDS employees are dependable and easy to work with.	May 21, 2012 9:54 PM
67	Timlieness, helpfulness & accuracy. You run a good ship. In a hard business life you are an encouraging beacon rick r	May 21, 2012 9:36 PM
68	Always have had great service, genuine and caring.	May 21, 2012 8:30 PM
69	The assistance I receive from OPDS is exceptional in every way. Every person I've dealt with over the past 12 years has been willing to go above and beyond to assist me with any and all requests or questions I've ever posed. They are all respectful, knowledgeable, professional and extremely courteous and I appreciate knowing that I will receive a prompt, honest answer each time I call.	May 21, 2012 7:18 PM
70	I have been doing defense work for over 15 years in our area and find OPDS people are always helping me to do the work assigned by attorneys. Thanks Michael J. Padilla	May 21, 2012 6:16 PM
71	Whenever I call and ask Margaret a question she is very helpful and very	May 21, 2012 6:07 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

knowledgable - she deserves a raise!!

72 I do not work with OPDS much but every time I have the people have been friendly and knowledgable. May 21, 2012 5:45 PM

73 It took nearly two weeks for me to receive payment after submitting an invoice. While this isn't a horrible turn-around time, it seems a bit excessive for 2012. May 21, 2012 5:23 PM

74 OPDS is very quick about getting us paid quickly. I wish that I would receive an email or a notice to why the payment amount is sometimes different than my bill. I always have to go back to my Quickbooks and make adjustments and never really know why the amounts are different. May 21, 2012 5:11 PM

75 Unfortunately, bean counters have replaced people familiar with the duties and needs of attorneys doing the hardest of all possible legal jobs. For too long the "justice" system has coasted financially on the willingness of lawyers to accept woefully inadequate remuneration solely because of their dedication to principal and their unwillingness to put money (and their families) over principle. It has only gotten worse as time goes on. May 21, 2012 5:10 PM

76 I feel that OPDS is succeeding in providing support rather than interference in allowing me to defend my clients efficiently. May 21, 2012 5:09 PM

77 I have been retired for about 18 months and have not been receiving OPDS services during this time period. Hence, I have not responded to survey. May 21, 2012 5:09 PM

78 The services are good but could stand some improvement. May 21, 2012 5:05 PM

79 Never had a problem. Everyone seems competent to me. Seems like a well run organization May 21, 2012 4:54 PM

80 Shelly Winn is very helpful and working with her is a pleasure. I look forward to continuing to work with her in improving quality of service for our clients, and increasing the work-place satisfaction for our attorneys. May 21, 2012 4:49 PM

81 I choose the answer to Question 6, because I have always received fast, efficient, knowledgable service from OPDS. They go out of their way to be helpful and answers any and all questions that may come up. May 21, 2012 4:47 PM

82 I have never been "wowed" by anyone or any service I've received from OPDS, so I think "good" is as high as I can rate my experiences. If I could point to an instance where someone provided a service, information, response, etc. in a noteworthy or impressive manner, that made me think "wow, that was fabulous," I would give an "excellent" rating, but that hasn't happened. Still, good is good enough. May 21, 2012 4:42 PM

83 Always responsive to questions and clarifications. May 21, 2012 4:35 PM

84 The quality of service is good and often even excellent. Unfortunately, this survey does not ask about the many cumbersome procedures which hamper public interest attorneys who are essentially subsidizing the delivery of indigent legal services in this state. Less red tape and more appreciation for the people on the front lines, please. May 21, 2012 4:35 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

85	The employees attitudes and willingness to help or problem solve whenever there is an issue that needs to be resolved.	May 21, 2012 4:33 PM
86	In our experience, OPDS employees are always ready to assist in answering questions, providing feedback and approval on request for funds quickly and offering suggestions for improvement in our day-to-day operations. Their knowledge, efficiency and overall professionalism helps us do our job better.	May 21, 2012 4:33 PM
87	I've gotten consistently helpful and prompt responses. I disagree with your decisions on occasion (I'm an attorney; it's my job to argue) but I understand the process and your expectations. I have no complaints.	May 21, 2012 4:18 PM
88	It seems that not all of the employees are always on the same page. I have been told that it was ok to drive to ontario, or on work when I was assigned one worker and then when I submitted my bill it was rejected for not checking again, seemed new worker had a different view on the travel. Was told I should have checked for the most cost effective route, flying over driving. Gas continues to go up, and we are still only being paid \$0.51 per mile. Awhile back when gas was not as expensive we were paid \$0.58. We are asked to save money and our travel is restricted. It seems that the workers have no clue as to what it takes to work a case, they "automatically" reduce every request by 1/2. The attorneys DO NOT want to try and explain why we need more funds because they themselves don't really understand what it takes to do an investigation. PDSC is easy to deal with about this issue from my point of view, however, I believe the attorneys are intimidated or their assistants are, cause they balk at wanting to send in another request. Overall, I like PDSC and the way things go, but there could be more in house talking about what each one does regarding their authorization criteria.	May 21, 2012 4:17 PM
89	Everyone is great, especially Margaret Barnard. I'm not sure I spelled her last name correctly. Thanks.,	May 21, 2012 4:13 PM
90	I am overall satisfied.	May 21, 2012 4:10 PM
91	As an attorney, I often need funding to hire other professionals for client evaluations, investigations, and the like. Frequently my requests for funds are denied or awarded only in part with only a vague explanation for the denial or partial award (even when I have clearly spelled out why the funds are being requested, and crafted that request in accordance with OPDS' own rules.) Overall I am satisfied with OPDS service, but when I am denied NRE funds, a specific explanation for *why* those funds have been denied or partially awarded in the first response from you guys would be appreciated. A long explanation isn't necessary. Just a sentence or two will usually suffice.	May 21, 2012 4:03 PM
92	I have always found the services to be very prompt and professional. Billy Strehlow is a pleasure to work with!	May 21, 2012 4:03 PM
93	All of my answers related to requests for money. The Appeals group is a very helpful bunch of folks. It is really not helpful to simply get a denial to a request for money without an explanation. A moment or two spent explaining why the denial was issued would be appreciated.	May 21, 2012 4:00 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

94	Not to be crass, but simply when I need something for a case, when I explain the need, OPDS delivers. Occasionally, there are iterations to a request, but on reflection each time, I can't say further inquiry was inappropriate. Although I do not have a contract, I can say that I have never been denied a request for assistance or funding for an expert.	May 21, 2012 3:58 PM
95	Always room for improvement	May 21, 2012 3:57 PM
96	Consistently good service. Always willing to explain why and help resolve a no. Quick turnaround for NREs. Inconsistent turnaround for paying bills.	May 21, 2012 3:31 PM
97	excellent assistance with information concerning providers, always answer questions promptly and always willing to take a call and a question or two.	May 21, 2012 3:22 PM
98	Efficient, quick responses to my questions. Friendly& knowledgable assistance.	May 21, 2012 3:13 PM
99	Overall, I am very happy with how requests and invoices are processed and how questions are answered. Sometimes, however, there have been serious glitches in getting monies approved during trial when unanticipated expenses arise and the "system" grinds to a halt regarding additional monies for experts, etc. Cases and trials are dynamic and so are the defenses' needs. I understand the need to contain costs. Sometimes I think that there needs to be frank discussions about what the expectations are from counsel and OPDS before things get crazy in trial. How extenuating and changing circumstances/needs will be addressed and handled. We owe to our clients and the taxpayers.	May 21, 2012 3:12 PM
100	The OPDS people that I have dealt with either over the telephone, by email or in person have always been responsive, courteous and helpful. What more can I ask for...	May 21, 2012 3:09 PM
101	As a genenal rule, I get prompt qualtiy service from OPDS. The only complaint that I have is the fairly recent difficulty in getting funds approved for a polygraph. I never ask for absurd, execessive or unnecessary sevices so I am often shocked when my request is denied. As a sole practitioner with no legal assistants or secretary, to have to reapply is time consuming and takes time away from my other duties to my clients.	May 21, 2012 2:43 PM
102	Based on my answers to Questions 1 - 5.	May 21, 2012 2:43 PM
103	I feel that with investigators they should have a little more freedom to work with the attorneys that they work best with - not to just control the jurisdiction - I feel that having travel/distance/time should not control a working relationship and not doing the best that one can for their client.	May 21, 2012 2:36 PM
104	It is very easy to reach the right person dealing with any of my OPDS issues and people there are wonderfully timely about answering phone calls and emails.	May 21, 2012 2:35 PM
105	Every experience I have had dealing with OPDS has been profession, timely, informative, and very friendly. You guys and gals do an extraordinary job. It is a pleasure to be an Oregon criminal defense attorney, and OPDS makes it even better.	May 21, 2012 2:33 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

106	If I have a question, I get an answer and Handling of invoices is prompt!	May 21, 2012 2:31 PM
107	Generally, this is due to timely responses to requests for assistance and / or authorizations of expenses.	May 21, 2012 2:28 PM
108	Because I remember the old indigent defense office and they were slow, unresponsive, not near as workable as PDSC. I have to imagine the quality of defense has risen because of this change.	May 21, 2012 2:22 PM
109	Most of my experiences with OPDS in getting needed information or funding for cases have gone smoothly and without too much hassle.	May 21, 2012 2:19 PM
110	Zach is great!	May 21, 2012 2:15 PM
111	Anytime I have called for information, I was always given a response, or given a referral to someone who could respond. That is all I can ask.	May 21, 2012 2:07 PM
112	Overall, it's really pretty good. When I call I am always able to speak to somebody, and for the most part, I am able to get help regarding the issue I am having at the time. Being in Southern Oregon, our resources are less than up North, and as is typical, I think the service we are able to provide is effected by that.	May 21, 2012 2:07 PM
113	I have found the staff have helpfulness as their primary objective. I have also found the office willing to adapt to new technologies, such as paperless NRE requests.	May 21, 2012 2:03 PM
114	I've found everyone to be easy to work with, very informative, and very responsive, even when I'm not getting all that I've asked for. I'm very impressed with OPDS	May 21, 2012 1:59 PM
115	Prompt approval of expense requests; when there is a denial, staff are helpful explaining reasons and, after discussion, offering suggestions to improve the expense request so it will qualify. Expense requests are my main dealing with OPDS	May 21, 2012 1:58 PM
116	Friendly people doing a good job.	May 21, 2012 1:57 PM
117	I don't like it when the mileage rate is on the 1/2 cent. My software dosen't accept 1/2 cents and splitting pennies seems silly to me. I also think there is a problem with the rules for compensation of copies. I never know beforehand how much some agency is going to bill me for copies. I usually have to order them in advance and if the charges exceed \$75 and I pay for them, I have had trouble getting compensated.	May 21, 2012 1:54 PM
118	The rate of compensation for capital litigation is well below the national standard. There is frequent denial of funding for the experts we desperately need to fight these capital cases. There are very few highly qualified experts in capital defense in Oregon. Very few. Often times funding for these out of state experts is ultimately approved but it doesn't need to be such a struggle.	May 21, 2012 1:53 PM
119	Since working with OPDS, I've been nothing but impressed.	May 21, 2012 1:51 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

120	I never feel like I want for anything as a public defender.	May 21, 2012 1:48 PM
121	I find the employees are always quick to respond to any requests I have except for cases on appeal. Those cases typically take significantly longer to obtain information on or for the client to receive information.	May 21, 2012 1:47 PM
122	They are great at sending out news regarding rate changes and their turn around on payment is excellent	May 21, 2012 1:40 PM
123	I have had several contacts with OPDS staff, and in every instance the response has been timely, professional, and informative. Excellent "customer service!"	May 21, 2012 1:40 PM
124	Professionalism, knowledge, enthusiasm	May 21, 2012 1:36 PM
125	MY CONTACTS AND OVERALL DEALINGS WITH OPDS HAVE BEEN EXCELLENT. THANKS FOR A JOB WELL DONE.	May 21, 2012 1:36 PM
126	Fast response to inquiries and help when funds may be asked for but turned down	May 21, 2012 1:35 PM
127	All staff have been very helpful in all of my interactions with them throughout the years working with OPDS.	May 21, 2012 1:32 PM
128	Billing processing is very prompt. I'm quickly notified of any problems receiving the statement via fax or e-mail or math errors on my part. Margaret Barnholdt does an excellent job of assisting with any problems, is always courteous and pleasant, and is a joy to deal with as an OPDS representative. Lynn McKinney Vendor# 3963810001	May 21, 2012 1:30 PM
129	I have never had any trouble with submitting bills and when I have had questions they were answered.	May 21, 2012 1:29 PM
130	When I call with a question about services, billing or "how to" I get immediate assistance and information. I am very grateful to the OPDS staff and OPDS services.	May 21, 2012 1:28 PM
131	I have found the OPDS staff to be informed, professional and helpful. I think they do a great job.	May 21, 2012 1:27 PM
132	I have always had quick, efficient and thoughtful service from OPDS in all matters.	May 21, 2012 1:25 PM
133	At times the communication between OPDS and its contractors, is not as clear. Especially the rate difference between the investigators and mitigators.	May 21, 2012 1:25 PM
134	The people who work for OPDS are professional and administer in an efficient and expeditious manner	May 21, 2012 1:24 PM
135	I have always found OPDS employees to be very helpful.	May 21, 2012 1:22 PM
136	When I call with a question, I am almost always able to get an answer the same day. If I reach someone who is not able to help me with my question, they are good about transferring me to someone else who can help. I appreciate these	May 21, 2012 1:19 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

	things. Thank you	
137	Always done right	May 21, 2012 1:17 PM
138	I've had need to speak to the staff directly and my concerns are always addressed in a timely and friendly manner. If desire some input I'd like to suggest that newly hired employees that submit requests to OPDS for services have some kind of training to assist them in understanding the process and what information needs to accompany the requests.	May 21, 2012 1:17 PM
139	Each time I have ever had a question or issue the person who is helping me has always been understand and extremely helpful.	May 21, 2012 1:15 PM
140	I HAVE BEEN A 1099 SERVICE PROVIDER FOR COURT APPOINTED CRIMINAL CASES IN THE STATE OF OREGON SINCE 1985. I HAVE, FOR THE MOST PART, FOUND THAT PAYMENT HAS BEEN PROMPT AND STAFF VERY COURTEOUS, INFORMATIVE AND WILLING TO WORK WITH VENDORS.	May 21, 2012 1:15 PM
141	I have rarely had problems with OPDS. When denied a request, I can easily contact someone and explain it and rectify the problem, and questions are readily answered with great detail.	May 21, 2012 1:14 PM
142	I email my requests for authorizations, I always have a response normally that same day or first thing in the morning if I am late getting the request it to them. I have emails from staff explaining how I could make procedures easier and more efficient on my end and they are always very courteous with their suggestions. Very nice to work with.	May 21, 2012 1:11 PM
143	I have had no problems dealing with OPDS and/or it's employees. I have made billing mistakes, and they were courteous and responsive in helping me make it right. My questions have always been handled quickly and courteously. Thanks.	May 21, 2012 1:11 PM
144	Bills paid promptly and correctly; NRE requests only real issue--too much "justification" necessary for obvious case needs; otherwise--great!	May 21, 2012 1:10 PM
145	I recently had a measure 11 case where I was trying to get my client's statement translated and transcribed. The inital request was denied and I spent HOURS re-submitting and calling before it was approved...the person approved charged more than my original request. That was wrong and very frustrating.	May 21, 2012 1:10 PM
146	Because when I need an answer on some issue, I generally get it immediately, or soon after immediately. I can get hold of people easily, and they are always helpful, polite, and upbeat. Thanks. Mary Goody	May 21, 2012 1:08 PM
147	When I have a question I get an informed response; employees seem to go beyond the minimum routinely to help people and make the system work.	May 21, 2012 1:07 PM
148	The opds/dpsst website is unwieldy to work with and has the usual governmental esoteric approach to giving information. Otherwise I would rate the opds closer to "excellent"	May 21, 2012 1:07 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

149	Always very helpful in solving any issues that may arise.	May 21, 2012 1:05 PM
150	I am generally surprised by the OPDS turn around on my payments, which tend to be very quick. Also, I have made mistakes a few times and I am really thankful that they find them, correct them, and let me know. Sorry about that!	May 21, 2012 1:05 PM
151	OPDS staff members are totally responsive to any issues. The turn around time from billing to payment is fast and efficient. I have NO complaints and could not be more pleased with OPDS quality of service.	May 21, 2012 1:04 PM
152	Employees are always helpful and friendly when I contact with questions.	May 21, 2012 1:04 PM
153	You have a difficult job and usually I don't have problems getting funds to help my clients. That said, Paul Levy is arrogant and condescending and frankly, I am at the point where I won't even deal with him any more.	May 21, 2012 1:04 PM
154	I am sometimes frustrated with the appellate attorneys' lack of experience in the every day practice of law. This sometimes causes them to assume things about the handling of a case that just aren't realistic.	May 21, 2012 1:01 PM
155	OPDS Employees are always friendly and efficient.	May 21, 2012 1:00 PM
156	I've had good experiences personally with OPDS and getting requests authorized. The rare event of a phone call from Paul has given me the opportunity to provide additional information to OPDS and gotten me the results I wanted.	May 21, 2012 1:00 PM
157	You pay - on time. You're always accurate. You always answer the phone or return calls promptly. You give public agencies a good name. Elizabeth	May 21, 2012 1:00 PM
158	Lorrie Railey is the best.	May 21, 2012 12:59 PM
159	Quick payments	May 21, 2012 12:58 PM
160	Every time I have needed anything, OPDS is there to help.	May 21, 2012 12:58 PM
161	quick service; immediate answers; always available to providers	May 21, 2012 12:51 PM
162	The staff always seems willing to discuss or recommend possible options when a funding request doesn't meet their parameters.	May 21, 2012 12:49 PM
163	Fast, efficient, fair response to attorney requests/needs.	May 21, 2012 12:48 PM
164	Responses to NRE's are timely and reasonable. Staff is always knowledgeable, helpful, and (most importantly) patient on the phone. Great job, your work is very appreciated! Thank you.	May 21, 2012 12:45 PM
165	The folks I have dealt with do a great job - and it is not an easy one. I get the funds I request almost always right away, and even rejections can be fixed with a fuller explanation. Thanks for what you do!	May 21, 2012 12:43 PM
166	I rate excellent as near perfection. As that is a high bar to reach, I have selected good.	May 21, 2012 12:41 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

167	You keep cutting amounts authorized for investigation expense. You are making it more difficult to employ investigators.	May 21, 2012 12:41 PM
168	All of my contacts have been very positive.	May 21, 2012 12:38 PM
169	The office is very fast in responding to funding requests.	May 21, 2012 12:37 PM
170	Empoyees are accessible and responsive via phone and email. The website is excellent. However, I have noticed over the last year or so that my investigation requests are routinely approved for 30% less than the amount of hours I request. I often spend what I think is too much time submitting additional requests, after having to consult with the investigartor and make a list of all the tasks that the unfunded inital request hours did not cover. It is annoying and an unneccesary waste of my (and sometimes PDSC) time. And it feels as if PDSC does not trust that my intitial request is valid.	May 21, 2012 12:35 PM
171	We work primarily as court-appointed counsel in appeals and juvenile dependency cases. When we have questions or have provider fund requests, OPDS staff are always prompt, polite and very helpful with our requests.	May 21, 2012 12:30 PM
172	Everyone at OPDS is extremely knowledgeable, efficient and helpful, which aids us in providing the best possible defense for our clients. Thank you all so much!	May 21, 2012 12:28 PM
173	Quick turn around of request and funds. Please look into allowing expenses for referrals to immigration attys when the Def is not a US citizen.	May 21, 2012 12:27 PM
174	Overall it is good but I find it very frustrating when trying to submit pre-authorization for non-routine expenses that the fax number seems only to take one page at a time, if it goes through at all, so my requests get bounced because the fax maching did not accept page 2 the justification. I have recently tried submitting it via email but my request was bounced back as if I had not submitted the justification though it too was attached to the email. If there is some specific way it is to be submitted it would be helpful if that was made clear on the website.	May 21, 2012 12:18 PM
175	Billy Strehlow is the person we deal with, and he is outstanding at his job.	May 21, 2012 12:18 PM
176	Web site + telephone	May 21, 2012 12:17 PM
177	When dealing with OPDS, the staff have been helpful and pointed me in the correct direction multiple times.	May 21, 2012 12:16 PM
178	I have dealt with Vicki Shill for thye past 5 years and have always had the most excellant of service in every matter.	May 21, 2012 12:10 PM
179	Last year I rated alot lower on #3 and #6. This year I am impressed with improvement in attitudes and response. I will admit that I have sought to improve things on my side, also. Thanks. Suzanne Taylor	May 21, 2012 12:09 PM
180	The quality of the lawyers in the capital areas is questionable. There are few great lawyers, a few average lawyers, and a number of lawyers who are terrible. The problem, I think, is there is not a qualified capital lawyer in a position of responsibility in the administration. Without a qualified professional "minding the	May 21, 2012 12:05 PM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

ship" incompetent lawyers do substantial damage to the clients. Jeff Ellis is great, but as I see it, he is not in a position of responsibility. He is simply a resource.

181	I was amazed at how fast and efficient the service was. I always enjoyed working through OPDS, and I was upset that the change in structure changed the program to exclude conflicts list appointments to the private bar.	May 21, 2012 12:05 PM
182	They are fast and available when needed.	May 21, 2012 12:00 PM
183	To me as an attorney provider, OPDS seems to place most emphasis on cost-efficiency and information constructs and lacks in providing service to attorney attempting to provide the end-goal: legal product.	May 21, 2012 11:57 AM
184	The MAIN reason... If I have questions I will communicate with Kelly Ashton. She never fails to be polite, patient, cheerful, helpful, knowledgeable, and informed. Over many years it has been a pleasure to work with her. She has made my job easier. I believe that she and people like her are a critical component in making the OPDS function as efficiently as it does.	May 21, 2012 11:55 AM
185	Every request is met with a quick response. The OPDS members are helpful, knowledgeable and kind.	May 21, 2012 11:55 AM
186	Caroline Meyer	May 21, 2012 11:53 AM
187	The responses to my requests for expenses generally are amazingly quick. Payment of my atty fees is also amazingly prompt. My only complaint is that now that we can email expense requests, how come i can't digitally sign the form? This requires me to print and sign and scan. Kind of defeats the purpose in a way and requires more equipment.	May 21, 2012 11:53 AM
188	Overall service is good and prompt. I do wish, however, that when payment for services is denied that the denial would come with some kind of explanation so that I do not have to waste time, calling in and "fishing" for the WHY of it to be resolved.	May 21, 2012 11:43 AM
189	Each of my cases gets individualized attention and If my request causes a problem or concern that is explained and my options are made very clear.	May 21, 2012 11:41 AM
190	Experience with requests for services for my clients.	May 21, 2012 11:36 AM
191	They are very, very helpful and come up with solutions that i did not even think of.	May 21, 2012 11:34 AM
192	A rating of excellent suggests not much need for improvement. There were one or more instances where I felt employees would tend to "pass-the-buck". Also, there were at least two instances where an employee demonstrated a lack of understanding or knowledge about a subject. There seems to be general inconsistency about policy at times. Prompt service.	May 21, 2012 11:30 AM
193	overall quite good, but delays at times that cause frustrations with cases and policy of using contractors over non-contractors is troublesome.	May 21, 2012 11:29 AM

Q1. What is the main reason for selecting the answer you gave to Question 6 about the quality of our overall service?

194	Denial of requested services because the person as OPDS does not think it is "reasonable." The trial attorney should be the one making the decision. I have also had a refusal because the charge was a misdemeanor (although the client had no previous criminal history and ended up paying nearly \$30k in restitution).	May 21, 2012 11:13 AM
195	Denial of requests for services that are obviously well-warranted, which I just do not understand but for tough economic times.	May 21, 2012 11:13 AM
196	Payment for attorney services is quick and efficient.	May 21, 2012 11:09 AM

PUBLIC DEFENSE SERVICES COMMISSION

Annual Performance Progress Report (APPR) for Fiscal Year (2011-2012)

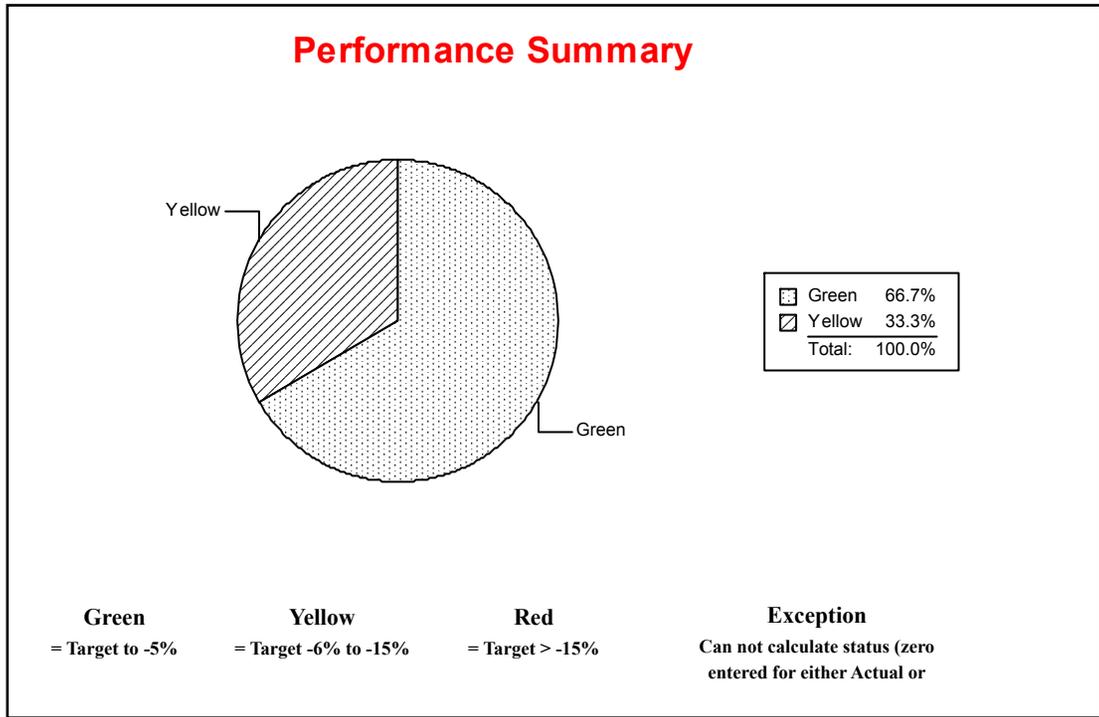
Original Submission Date: 8/8/2012

Finalize Date: 8/8/2012

2011-2012 KPM #	2011-2012 Approved Key Performance Measures (KPMs)
1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.
2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.
3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.

New Delete	Proposed Key Performance Measures (KPM's) for Biennium 2013-2015
	Title: Rationale:

PUBLIC DEFENSE SERVICES COMMISSION		I. EXECUTIVE SUMMARY	
Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.			
Contact: Kathryn Aylward			Contact Phone: 503-378-2481
Alternate: Peter Gartlan			Alternate Phone: 503-378-2371



1. SCOPE OF REPORT

Key performance measures address all agency programs.

2. THE OREGON CONTEXT

The Public Defense Services Commission is responsible for the provision of legal representation in Oregon state courts to financially eligible individuals who

have a right to counsel under the US Constitution, Oregon's Constitution and Oregon statutes. Legal representation is provided for individuals charged with a crime, for parents and children when the state has alleged abuse and neglect of children, and for people facing involuntary commitment due to mental health concerns. In addition, there is a right to counsel in a number of civil matters that could result in incarceration such as non-payment of child support, contempt of court, and violations of the Family Abuse Prevention Act. Finally, there is a statutory right to counsel for petitioners seeking post-conviction relief.

3. PERFORMANCE SUMMARY

The agency is making progress in all of its Key Performance Measures.

4. CHALLENGES

The primary challenge for the agency is that public defense in Oregon has been chronically underfunded. Prior to fiscal year 2008, the hourly rate for an attorney appointed on a non-Aggravated Murder case was \$40 per hour (the rate established in 1991). Over time, the skills, abilities, and experience-level of the attorneys willing and able to work at that rate had steadily declined. Although the 2007 Legislature provided funding to increase that rate to \$45 per hour, this still represents a decline in real dollars based on Consumer Price Index increases over the 17-year period. Contractors who are paid a flat rate under a contract are assigning excessively high caseloads to their attorneys in order to cover operating expenses. This combination of being either over-worked or under-paid, and in most cases both, prevents attorneys in some cases from being able to provide an acceptable level of representation.

Another challenge for the agency is that workload is driven by a variety of factors outside the agency's control. The enactment of laws that create new crimes or increase penalties for existing crimes impact the agency's expenditures and workload. Federal requirements have shortened the timelines and increased the complexity of cases involving abuse and neglect of children. If additional funding is not provided to address such changes, the quality of representation is further eroded.

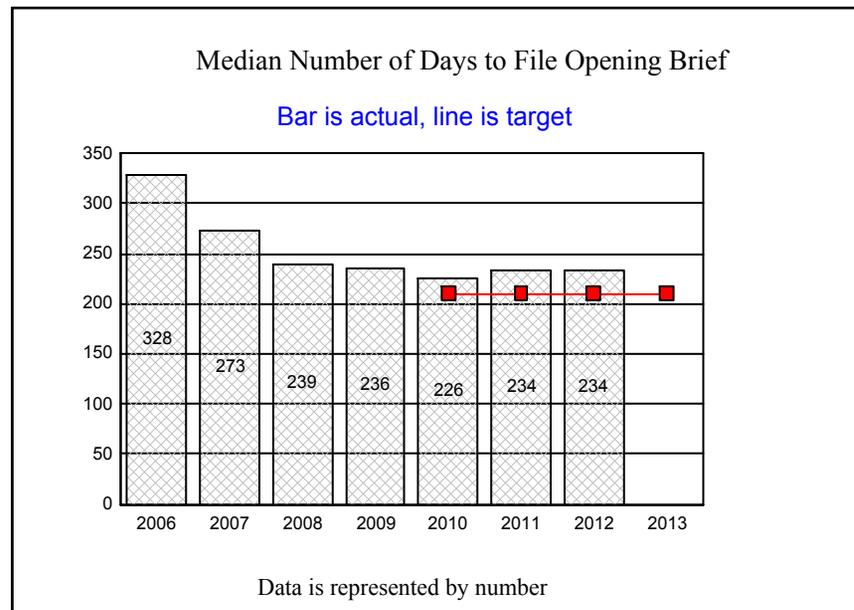
5. RESOURCES AND EFFICIENCY

The agency's 2011-13 Legislatively Adopted Budget was \$223,717,479.

Within existing resources, the agency continues to convert to electronic storage and retrieval of documents; has further automated document production with improvements to the case management database; and has expanded use of email instead of regular mail.

With the implementation of e-filing, the agency continues to move toward a largely paperless office. In addition to saving paper and file storage costs, it saves attorney and staff time by having files instantly available at the click of a button.

KPM #1	APPELLATE CASE PROCESSING - Median number of days to file opening brief.	2009
Goal	GOAL 1: Reduce delay in processing appeals. GOAL 2: Ensure cost-efficient service delivery.	
Oregon Context	Mission Statement.	
Data Source	Case Management Database Reports.	
Owner	Appellate Division, Peter Gartlan, (503) 378-2371.	



1. OUR STRATEGY

Our goal is to reduce the delay in the appellate system. Reducing the number of open cases in the pre-briefing stage enables Appellate Division attorneys to address and resolve cases more efficiently, instead of "managing" – without resolving – an excessive caseload.

2. ABOUT THE TARGETS

The Appellate Division wants to file the opening brief within 210 days of record settlement. The 210-day target addresses several considerations. First, the agency considers it intolerable that an individual would have to wait more than seven months for an appellate attorney to advise the client concerning the viability of an appellate challenge to his conviction and/or sentence. Second, past budget reductions in the Attorney General's Office caused the Solicitor General to slow its briefing schedule in criminal cases, which causes additional delay in the appellate process and additional delay for the client. Third, federal courts have intervened when a state appellate system routinely takes two years to render decisions in criminal appeals. The 210-day target represents a reasonable attempt to meet various systemic considerations.

3. HOW WE ARE DOING

The agency has made significant progress. In 2006, the median number of days to file the opening brief was 328; in 2012 it was 234. The agency anticipates reaching the target by 2014 assuming adequate resources.

4. HOW WE COMPARE

Appellate Division attorneys significantly exceed national caseload standards. Nationally, the appellate public defender workload ranges from 25 to 40 cases annually. For example, Georgia, Indiana, and Washington set the maximum annual appellate caseload at 25 cases per attorney; Nebraska sets the maximum annual appellate caseload at 40 cases per year. US Department of Justice, Compendium of Standards for Indigent Defense Systems, vol. IV, C 1-5 (2000). The average annual caseload for an Appellate Division attorney in fiscal year 2012 was 51 case assignments per year, well above recommended standards and actual practices nationwide.

5. FACTORS AFFECTING RESULTS

Clearly the ability to meet and exceed the target correlates positively to the number of attorneys and negatively to the number of cases. The agency experienced a significant increase during 2009 and 2010 in the number of appeals being referred to the office. The 2011-13 Legislatively Adopted Budget includes the addition of six attorney positions and one support staff position. These positions are intended to keep pace with new caseload and were not provided based on reducing the time to file an opening brief. If the positions cannot be filled due to reduced funding, then the agency would expect to see an increase in the median number of days to file an opening brief.

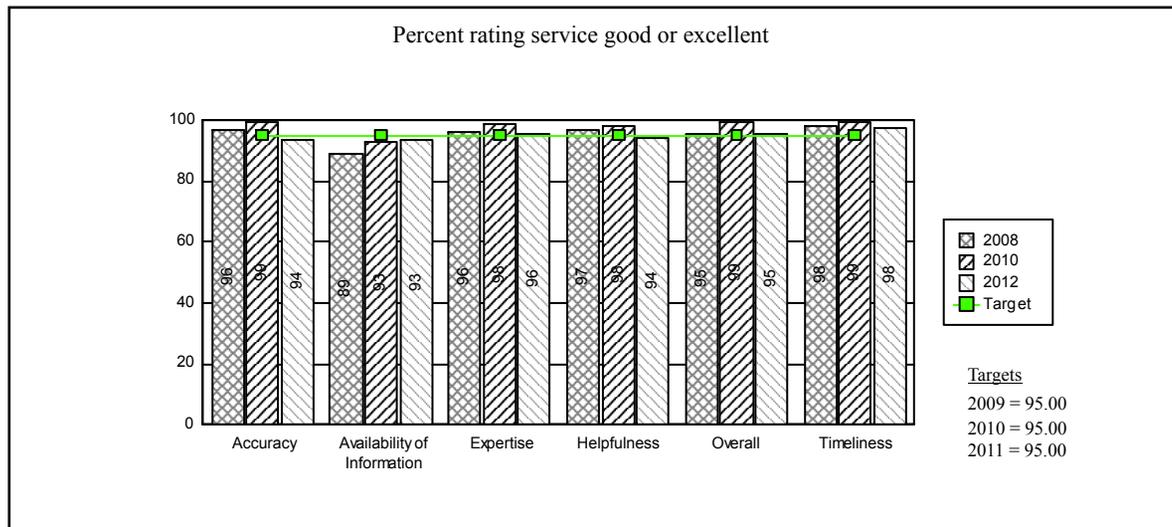
6. WHAT NEEDS TO BE DONE

The agency has nearly completed its conversion to a paperless file system which will improve case management, case tracking, and document production. The agency's brief bank is now sufficiently populated to improve research and writing capabilities. The agency continues to work closely with the appellate courts and the Attorney General's Office to identify lead cases with recurring issues for more efficient treatment of categories of cases.

7. ABOUT THE DATA

The data is derived from the agency's case management database. The strength of the data lies in historical comparison with prior years. The weakness is attributable to the inherent difficulty in quantifying appellate caseloads. The agency continues to refine caseloads based on case type, transcript length, and issues presented.

KPM #2	CUSTOMER SERVICE - Percent of customers rating their satisfaction with the agency's customer service as "good" or "excellent": overall customer service, timeliness, accuracy, helpfulness, expertise and availability of information.	2007
Goal	To provide greater accountability and results from government by delivering services that satisfy customers.	
Oregon Context	To maintain and improve the following category ratings of agency service: overall quality of services, timeliness, accuracy, helpfulness, expertise and availability of information.	
Data Source	Customer Service Surveys (survey and results stored on SurveyMonkey).	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481.	



1. OUR STRATEGY

The general strategy is to utilize feedback to address cited problems and improve the general level of service provided by the agency.

2. ABOUT THE TARGETS

Targets for 2011-13 have been set at 95% of respondents rating the agency as good or excellent.

3. HOW WE ARE DOING

The survey results indicate a high level of customer satisfaction with the agency. Service was rated as good or excellent by more than 93% of the respondents in all categories. Although the standard reporting measure for state agencies groups both "good" and "excellent" into one category, the more telling aspect of the agency's results is the percentage of respondents who rated the service as excellent. In the categories of Timeliness and Helpfulness, over 70% of respondents rated the agency's service as excellent.

4. HOW WE COMPARE

Services and customers differ greatly among state agencies, so a direct comparison to other state agencies may lack validity. Similarly, comparisons to public defense systems in other jurisdictions would not be useful due to variations in the survey questions, the survey pool, and the types of services provided. Given the high percentages of positive ratings received by the agency, we would likely compare favorably were such a comparison possible.

5. FACTORS AFFECTING RESULTS

The ratings are somewhat lower this year than in prior surveys. The agency believes that the lower ratings are a reflection of cost-cutting measures the agency implemented. For example, in order to reduce the costs associated with processing payments, the agency grouped some categories of vendors so that payments were processed for that group one day per week rather than being processed throughout the week as submitted. Although this added an average of three days to the time in which payments were processed, the agency still processes payments within 10 days and did realize a savings as a result of this procedural change.

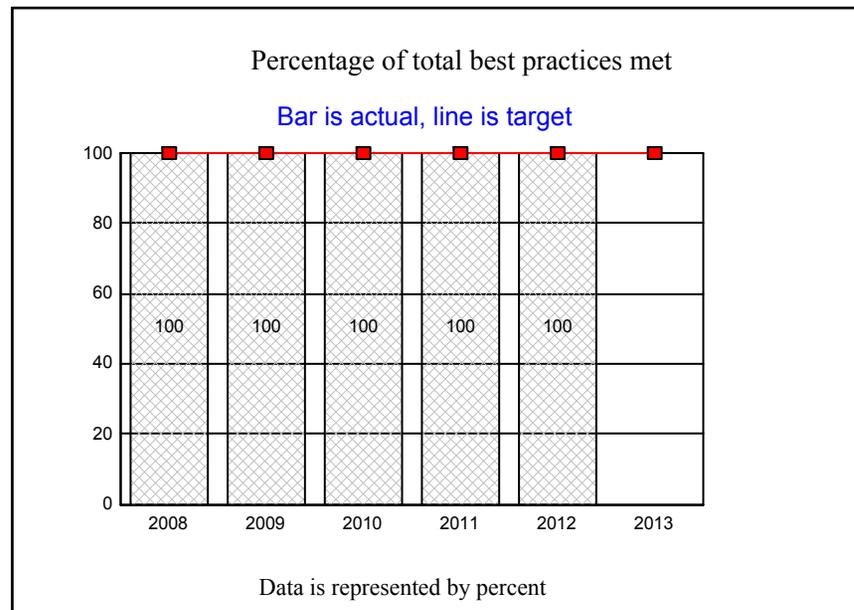
6. WHAT NEEDS TO BE DONE

In the 2008 survey, the agency's lowest satisfaction rating (89%) was in the category of Availability of Information. In order to improve this rating, the agency restructured its website so that information is better organized and easier to locate. The agency is pleased that the 2012 survey results show that 93% of the respondents now rate the Availability of Information as good or excellent. The agency will continue to make improvements in this area.

7. ABOUT THE DATA

A total of 886 contract attorneys, private bar attorneys, and service providers were invited to complete the agency's Customer Service Survey. The survey was administered in June 2012 as a snapshot for fiscal year 2012. There was a 29% response rate (255 responses) to the survey. The agency administers the customer service survey every two years to coincide with its two-year contract cycle. The next survey will be conducted in June 2014.

KPM #3	BEST PRACTICES FOR BOARDS AND COMMISSIONS - Percentage of total best practices met by Commission.	2007
Goal	Best practices as a pathway to improved performance and accountability.	
Oregon Context	Required KPM for all Oregon boards and commissions.	
Data Source	Commission agendas and minutes.	
Owner	Contract and Business Services Division, Kathryn Aylward, (503) 378-2481.	



1. OUR STRATEGY

The agency's commission currently follows all of the best practices.

2. ABOUT THE TARGETS

The agency anticipates meeting all of the best practices for boards and commissions.

3. HOW WE ARE DOING

The Commission's minutes provided in the materials for its September 2012 meeting included the discussion of the self assessment confirming that the agency met all of the best practices for boards and commissions.

4. HOW WE COMPARE

The agency assumes that most boards and commissions will be able to implement all best practices.

5. FACTORS AFFECTING RESULTS

There are no factors that would prohibit the agency from meeting all of the best practices.

6. WHAT NEEDS TO BE DONE

No change is needed.

7. ABOUT THE DATA

The Commission continues to meet all of the best practices as documented in the Commission meeting minutes.

PUBLIC DEFENSE SERVICES COMMISSION	III. USING PERFORMANCE DATA
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Agency Mission: Ensure the delivery of quality public defense services in Oregon in the most cost-efficient manner possible.

Contact: Kathryn Aylward	Contact Phone: 503-378-2481
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Alternate: Peter Gartlan	Alternate Phone: 503-378-2371
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The following questions indicate how performance measures and data are used for management and accountability purposes.

1. INCLUSIVITY	<p>* Staff: The agency's Management Team drafted initial performance measures.</p> <p>* Elected Officials: The Joint Legislative Audit Committee and the interim Judiciary Committee assisted the agency in refining and finalizing its performance measures. After five years of data collection, it was apparent that some performance measures were not providing useful information and were eliminated by the Legislature during the 2009 session.</p> <p>* Stakeholders: Input was received from the agency's Contractor Advisory Group comprised of public defense service providers.</p> <p>* Citizens: The agency developed, discussed and revised its performance measures during two public meetings.</p>
2 MANAGING FOR RESULTS	<p>The agency's lowest customer service rating in 2008 (89% good or excellent) regarding availability of information caused us to restructure our website so that more information is available and is easier to locate. As a result, the rating for 2012 improved to 93%.</p>
3 STAFF TRAINING	<p>The agency has advised staff of the goals outlined in the performance measures and staff is directly involved in the data collection and/or direct daily implementation of the measures. The performance measures serve as important tools for the agency's managers as they identify and develop necessary staff skills as well as determine the best use of overall resources in order to attain the goals enumerated in the measures.</p>
4 COMMUNICATING RESULTS	<p>* Staff: The Annual Performance Progress Reports are available to staff online. The results and future plans are discussed at staff meetings.</p> <p>* Elected Officials: The agency communicates results to the Legislature through the Executive Director's biennial report to the Legislature, and by the inclusion of the APPR in the Agency Request Budget binder.</p>

* **Stakeholders:** Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.

* **Citizens:** Performance results are communicated through the agency's website and DAS's website as well as being provided in the materials distributed at public meetings.

Attachment 6



Oregon

Public Defense Services Commission

1175 Court Street NE

Salem, Oregon 97301-4030

Telephone (503) 378-3349

FAX (503) 378-4462

www.oregon.gov/OPDS

RECOMMENDATIONS TO THE PUBLIC DEFENSE SERVICES COMMISSION REGARDING CONTRACTING FOR REPRESENTATION IN DEATH PENALTY CASES FOR 2012-2013 AND BEYOND

Submitted by Paul Levy
General Counsel
August 16, 2012

At its meeting on September 15, 2011, the Public Defense Services Commission (PDSC) reviewed and approved a plan to contract with attorneys to provide representation in death penalty cases for 2012-2013 biennium. The plan provided for PDSC to approve 22 contracts for the two-year period and approve five contracts for one year, with the Office of Public Defense Services (OPDS) to conduct a review of those five contractors to determine whether their contracts should be extended for the second year. This report provides a description of that review, the recommendation of OPDS regarding the extension of the one-year contracts, and additional recommendations for future review of contractors and others who wish to provide representation in death penalty cases.

I. BACKGROUND

The American Bar Association (ABA) *Guidelines for the Performance of Defense Counsel in Death Penalty Cases* (Revised 2003)[hereafter *ABA Guidelines*] call for every jurisdiction with a death penalty to establish a Legal Representation Plan that, among other things, identifies a Responsible Agency that will ensure that each capital defendant in the jurisdiction receives high quality legal representation. The Responsible Agency is charged with the duty to recruit and certify attorneys as qualified to be appointed in death penalty cases; publish certification standards; publish a roster of certified attorneys and periodically review the roster to withdraw certification for any attorney who fails to provide consistent high quality representation; monitor the performance of all attorneys in death penalty cases; assign the attorneys who will represent the defendant at each stage of a death penalty case except where the defendant has privately retained counsel; conduct or approve specialized training in death penalty cases; and investigate, take corrective actions and maintain records concerning complaints about the performance of attorneys in death penalty cases. *Standard 3.1.*

Pursuant to its statutory obligation to provide public defense services consistent with constitutional obligations and state and national standards of justice, ORS 151.216(1)(a), and its duty to adopt guidelines, policies and procedures for fulfilling that obligation, ORS 151.216(1)(f), in 2007 the PDSC adopted a *Legal Representation Plan for Death Penalty Cases*

that embraced the dictates of the *ABA Guidelines*.¹ The PDSC's Legal Representation Plan identifies itself as the Responsible Agency, and directs OPDS to perform the duties described above and to fulfill and enforce other performance standards described in the *ABA Guidelines*.

The Office of Public Defense Services seeks to fulfill its obligations under the Commission's Legal Representation Plan through a number of initiatives, including administration of the qualification standards for appointment of counsel in death penalty cases, periodic consultation with a standing panel of well regarded capital defense attorneys (the "death penalty peer panel"), participation at seminars and other meetings of Oregon capital defense attorneys, scrutiny of requests for case expenses in capital cases, statewide management of attorney assignments to new capital cases, contracting with an expert resource attorney (Jeff Ellis) to assist counsel in all phases of a capital case, investigation of complaints concerning attorneys assigned to capital cases, and distribution of a statewide survey of prosecutors, judges and others regarding the performance of appointed counsel in death penalty cases. Generally, OPDS receives very few complaints about the performance of counsel in death penalty cases, and the annual survey shows a high level of satisfaction with the overall level of representation statewide in these cases.

Until recently, OPDS had not undertaken a systematic review of the attorneys with whom it contracts for representation in death penalty cases. Although OPDS is generally familiar with the work of its contractors through conversations and meetings with them and others concerning their cases and other issues regarding death penalty representation, OPDS has not conducted a structured inquiry into the quality of their representation. As described more fully below, the review of the five contractors who are the subject of this report has provided both valuable information about their work and important lessons for how to implement a broader review of all contractors providing representation in death penalty cases.

II. REVIEW PROCEDURE

Following the decision to undertake this review, OPDS informed the five contractors under review that the Commission had decided to contract with them for one year, with an extension of the contract for the second year of the usual two-year contract period subject to a performance review. The contractors were told that they would receive further written information regarding the procedure for the review. OPDS staff also met with the death penalty peer panel to discuss the review and seek their assistance with it. On November 15, 2011, OPDS General Counsel sent each contractor a letter describing the review in detail and asking that they describe in what ways their practice fulfills the requirements of the ABA standards for "high quality" representation and "extraordinary efforts on behalf of the accused." The letter also asked that the contractors review the Commission's qualification standards for appointed counsel in death penalty cases

¹ The PDSC Legal Representation Plan for Death Penalty Cases (2007) is available at <http://www.oregon.gov/OPDS/PDSCsDPRepresentationPlan.page>.

and describe how the contractor meets each of the requirements stated there.² The letter also sought information about participation in training, specific information about recent cases, and names of references to contact concerning the contractors' work in recent cases.

One contractor, Ralph Smith, provided a prompt response to the November letter. The other four, in a letter dated January 25, 2012, expressed dissatisfaction with the review process, questioning how and by whom their work would be evaluated and raising other concerns about the fairness of the review. Acknowledging that the peer panel was not an appropriate body to assist with the review, both because it included some attorneys subject to the review and because its members could be viewed as competitors to those under review, OPDS obtained the services of Dennis Balske to assist in the review. Mr. Balske, who does not provide public defense representation, is a widely recognized national expert in death penalty practice and has testified a number of times in post-conviction relief proceedings on the standards of practice for attorneys in death penalty cases.³ In a letter dated March 5, 2012, General Counsel described Mr. Balske's role in the review and addressed other concerns raised by the contractors.⁴ General Counsel followed up that letter with an email to each contractor on March 9, 2012, that described issues specific to each contractor under review. Thereafter, the four contractors worked with General Counsel to agree upon a date to submit their responses that did not interfere with obligations to current clients.

As responses from contractors and other documents were received by OPDS, they were shared with Mr. Balske. Where appropriate, either Mr. Balske or General Counsel contacted references and other collateral sources concerning the services provided by each contractor. After completing his review, Mr. Balske shared his opinion with General Counsel. A draft of this

² Specifically, the letter asked that contractors describe how they met the requirements described in section IV(5)(g) of the PDSC Qualification Standards for Court-Appointed Counsel in death penalty cases in the trial courts, which requires that counsel "[h]as demonstrated to persons with direct knowledge of his or her practice:

- (1) a commitment to providing zealous advocacy and high quality representation in the defense of capital cases;
- (2) substantial knowledge and understanding of the relevant state, federal, and international law, both procedural and substantive, governing capital cases;
- (3) skill in the management and conduct of complex negotiations and litigation;
- (4) skill in legal research, analysis, and the drafting of litigation documents;
- (5) skill in oral advocacy;
- (6) skill in the use of expert witnesses and familiarity with common areas of forensic investigation, including fingerprints, ballistics, forensic pathology, and DNA evidence;
- (7) skill in the investigation, preparation and presentation of evidence bearing upon mental status;
- (8) skill in the investigation, preparation, and presentation of mitigating evidence; [and]
- (9) skill in the elements of trial advocacy, such as jury selection, cross-examination of witnesses, and opening and closing arguments[.]

³ Additional information about Mr. Balske is available at his firm's website: <http://www.post-conviction.com>.

⁴ The March 5, 2012 letter also reiterated that the criteria for review would be, generally, the attributes of counsel set forth above in Footnote 2.

report, including proposed sections on findings and recommendations, was shared with the contractors, inviting corrections and a response prior to preparation of this final report. Steve Gorham submitted a written response, which is appended to this report.

III. REVIEW FINDINGS

As related above, OPDS is generally familiar with the work and reputation of its contractors, and in many cases is aware of specific achievements and criticism that have arisen from their work. This is true of the five contractors under review, each of whom has provided representation in death penalty cases for many years. The review has served, however, to make clear the depth of commitment, training and experience each contractor enjoys, and the high opinion that their peers have of each of them. Overall, the review has shown that OPDS, the courts and individual clients have benefitted from the high quality representation provided by each of the contractors discussed below.

Ralph Smith

Ralph Smith's submission was received on November 25, 2011. He described a career beginning more than 50 years ago in which he has handled over 40 aggravated murder cases with no trial level clients ending up on death row. Of particular significance, since 1989 he has attended (at significant personal expense) the highly regarded National Legal Aid and Defender Association (NLADA) *Life in the Balance* program for at least 14 years, in addition to other national or regional seminars in California, Idaho and Oregon. He was also a founding member of the Oregon Criminal Defense Lawyers Association (OCDLA) Capital Defenders group, and has attended nearly every one of its annual seminars. He has served on the OPDS death penalty peer panel advisory group since its inception.

After receiving Mr. Smith's submission, General Counsel began contacting persons knowledgeable about his recent work. However, in March 2012 Mr. Smith contacted OPDS and announced that he did not intend to seek an extension of his current one-year contract. He is currently working on one case and intends to retire when that case is concluded. General Counsel agreed with Mr. Smith that further review of his performance is no longer necessary. (General Counsel has reviewed pleadings and other case documents, observed court proceedings, and spoken numerous times with co-counsel and with Mr. Smith about the complex and challenging case he is currently working on and is confident that the client is being well represented.)⁵

⁵General Counsel has reviewed pleadings and other case documents, observed court proceedings, and spoken numerous times with co-counsel and with Mr. Smith about the complex and challenging case he is currently working on and is confident that the client is being well represented.

Mark Rader

Mark Rader's submission was received April 12, 2012. He described his work handling death penalty cases that began in 1989. As with Ralph Smith, in addition to regular attendance at OCDLA death penalty defense programs, Mr. Rader has also attended the NLADA *Life in the Balance* program, the highly regarded *Capital Case Defense Seminar* in Monterey, California, and the *Death Penalty Trial College* in Wyoming. He has also received specialized training in Boulder, Colorado in the Colorado Method for jury selection in capital cases, which is regarded as a key component to receiving a non-death verdict in capital cases that go to trial. He intends to take further training in the Colorado method this year and attend the University of Santa Clara Law School's *Death Penalty Trial College*, which is also a recommended national training program.

As requested, Mr. Rader provided detailed information about cases handled in the past two years, which includes an aggravated murder case in which the prosecutor agreed to not seek the death penalty. The client was acquitted after a bench trial.

OPDS received letters from seven people whom Mr. Rader asked to contact us regarding his work. Three of the letters came from Circuit Court judges who were familiar with his work in murder and aggravated murder cases. Other letters came from a mitigation expert, a senior assistant attorney general who has served as opposing counsel in several aggravated murder cases handled by Mr. Rader, and from two lawyers who have served as co-counsel with him on aggravated murder cases. In addition to providing strong praise for his work, the letters described a commitment to client contact, skill in plea negotiations, good use of expert witnesses, and mastery of essential trial skills.

Mr. Rader's submission also addressed two concerns about his practice that were raised by General Counsel. One matter concerned issues that arose in several requests for case expenditures, which was satisfactorily explained. The other involved concerns about the post-conviction work of Mr. Rader's firm in non-capital cases. He detailed a number of initiatives that he and his firm members had undertaken to remedy those concerns.

Mr. Rader's submission and the letters received concerning his work were provided to Dennis Balske for his review. After reviewing those materials and speaking with several people familiar with Mr. Rader's work, he concluded that PDSC should continue to contract for Mr. Rader's services in death penalty cases.

Ken Hadley

Ken Hadley's submission was received May 3, 2012. He described a legal career beginning in 1967 that has included four years with the Oregon State Public Defender, the creation of a public defender office in Baker County, eight years as the elected district attorney and county counsel for Baker County, and work as a death penalty defense contractor since 1989. In addition to regular participation (and presentation) at Oregon death penalty training programs, Mr. Hadley

has also attended several *Life in the Balance* programs and received some training in the Colorado method. He has been a member of the OPDS death penalty peer panel since its inception.

Mr. Hadley's submission did not address a concern about his practice raised by General Counsel that involved two cases, both of which he handled with Steve Krasik, in which clients pleaded guilty to aggravated murder without agreement from the State concerning the death penalty and in which the clients received a death sentence. However, Mr. Hadley informed General Counsel in other communications that he believed ethical obligations to the clients prohibited him from fully addressing the matters. He also did not submit, as requested, any legal memoranda written by him. When requested to do so, he responded that in recent years he has obtained the expert services of Laura Graser, a master of written advocacy in capital cases, to research and write memoranda.

Mr. Hadley requested in his submission that contact be made with Matt Rubenstein, who formerly served under contract with PDSC as its death penalty resource attorney, and with Tim Thompson, the Union County District Attorney. Mr. Rubenstein has provided assistance to Mr. Hadley and Mr. Krasik in an aggravated murder case that went to trial in Multnomah County, helping with several aspects of the case, including the Colorado method, for which Mr. Rubenstein is an instructor on the national level. Mr. Thompson prosecuted a triple homicide aggravated murder case in 2009 that was defended by Mr. Hadley and Mark Rader.

Dennis Balske contacted both Mr. Rubenstein and Mr. Thompson after he received Mr. Hadley's submission. Mr. Thompson described a very difficult case in which Mr. Hadley worked with extraordinary skill and sensitivity, especially in meetings with the victim families, which helped achieve a negotiated life sentence. Mr. Balske concluded that PDSC should continue to contract with Mr. Hadley but also agreed that he and his clients would be best served by ensuring that someone with strong skills in legal research and writing is either on the defense team or available to it. After General Counsel informed Mr. Hadley of this preliminary recommendation, he informed General Counsel that he wishes to have his contract extended for the remainder of the normal two-year period but intends to retire at the end of 2013.

Steve Gorham

Steve Gorham's submission was received May 9, 2012. As he has done with other communication concerning this review, Mr. Gorham copied PDSC members with his 35-page letter and with letters concerning his practice written by two Circuit Court judges. He also submitted hundreds of pages of appellate briefs and trial memoranda. OPDS later received letters from four other judges. All of this material was provided to Dennis Balske.

Mr. Gorham's letter provided detailed information about his professional development, training and experience, beginning with his graduation from college in 1971, and with particular attention paid to his years as a Legal Aid attorney where he developed expertise in handling cases involving mental health issues and in undertaking litigation that challenged conventional wisdom

and practices. He lists or chronicles many “important cases and issues,” at both the trial and appellate level, that he handled before his years providing representation in death penalty cases. He also provided detailed information about each of the death penalty cases he has handled. He provided a listing of death penalty related seminars attended which include many OCDLA programs, including one on the Colorado method, and the NLADA program on the Colorado method held in Portland in 2009, as well as the 2009 Death Penalty Trial Lawyers College in Wyoming (the “Jerry Spence Ranch CLE”).

Mr. Gorham specifically addressed several issues raised by General Counsel concerning his practice in death penalty cases. First, in the course of discussing how he manages the work of the defense teams that he gathers when appointed to a capital case, he quotes and discusses a comment from General Counsel questioning the use of a legal research and writing clerk in every death penalty case and a belief, that arose in the course of addressing a request for such services in a case, that Mr. Gorham relied heavily upon the clerk for issue identification. Gorham explains that he requests the assistance of a law clerk in every case because he expects legal issues to arise in every case. He also says that General Counsel misunderstood how he uses his law clerk, explaining that issues are identified and addressed in a collaborative fashion by any team member.

He also addressed a concern that was expressed to him in terms that questioned whether he might be failing to continue to develop his death penalty practice, handling cases more or less in the same way as he has for years. He responded that with the “team approach” that he employs with Steve Krasik, with whom he often handles cases, he had established a standard of practice before the *ABA Guidelines* were formulated to recommend that approach in every case. He also says that he has been a pioneer in using experts on “future dangerousness,” which now is the norm for representation. In other words, if he is “set in his ways,” it’s only because he’s been doing the job well in many ways and for many years before most others have.

Mr. Gorham also addressed an issue concerning his recent involvement in the Gary Haugen case. General Counsel had previously told Mr. Gorham that it was inappropriate for Mr. Gorham, who served as trial counsel for Mr. Haugen, to serve as co-counsel for Mr. Haugen at a stage in the proceedings where Mr. Haugen was weighing whether to waive his post-conviction remedies when one of the primary issues likely to be litigated in a post-conviction petition concerned the adequacy of trial counsel.⁶ Mr. Gorham responded that, first, he had researched his responsibilities in connection with death penalty “volunteers” in 1993 when a client said he wanted to receive the death penalty and concluded then that a lawyer has an obligation to follow the wishes of a competent client in this regard “while also trying to convince the defendant to allow a death penalty defense.” Since Mr. Haugen signed a waiver of any potential conflict of interest that might exist by virtue of Mr. Gorham’s service as trial counsel, Mr. Gorham felt

⁶ The PDSC Legal Representation Plan for Death Penalty Cases makes clear that OPDS has the duty and responsibility to assign both lead and co-counsel in capital cases. After the Marion County Circuit Court appointed Mr. Gorham as co-counsel in the recent proceedings without approval by OPDS, General Counsel notified the court and counsel that OPDS did not approve of the appointment, and would not have assigned Mr. Gorham. OPDS acknowledged, however, that it did not have the authority to dismiss Mr. Gorham from the case.

obliged to offer his services to the assigned lead counsel because he had maintained a good relationship with Mr. Haugen over the years since the trial and was in a good position to assist lead counsel in honoring Mr. Haugen's wishes while also attempting to persuade Mr. Haugen to pursue further challenges to his conviction and sentence. Mr. Gorham sees this position as consistent with the *ABA Guidelines*, from which he quotes a relevant passage.

Dennis Balske, after reviewing all of the materials received from Mr. Gorham, recommended that PDSC continue to contract with Mr. Gorham, noting the strong recommendations concerning his work and that he has done good work, especially in settling difficult cases. However, Mr. Balske believes that Gorham should not have undertaken his recent representation of Mr. Haugen because, notwithstanding any waivers that may have been signed, the client was in need of conflict-free representation by attorneys who were committed to addressing the underlying causes of the client's suicidal intentions. In this regard, Mr. Balske does not agree with an opinion expressed by General Counsel to Mr. Gorham (and others), that "there is a legitimate division of opinion in the capital defense community, both here in Oregon and nationally, about the role of counsel with regard to a client who seeks to be executed." According to Mr. Balske, that may have been true some years ago, but that the norm now has been best articulated by Professor Sean O'Brien, who spoke on this subject at the 2011 OCDLA Death Penalty CLE in Pendleton, Oregon. Mr. O'Brien, who has written extensively on death penalty representation and was a drafter of the *ABA Supplementary Guidelines For the Mitigation Function of Defense Teams in Death Penalty Cases* (2008), says the appropriate view of death-seeking clients is not as "competent volunteers" but as mentally disturbed suicidal persons reacting to oppressive and coercive circumstances. The obligations of counsel are not merely to try to talk such a client out of suicide but to undertake active efforts to ameliorate circumstances that contribute to the client's suicidal behavior.

Mr. Balske specifically recommended "that Mr. Gorham should provide assurances to OPDS that, in the future, if he is faced with a suicidal client either in a trial or post-conviction case, he will consult and *follow the recommendations of* the Oregon Capital Resource Center and Professor O'Brien or a similarly recognized expert [emphasis in original message]." While OPDS concurs with the recommendation to obtain the advice of experts familiar with current approaches to suicidal clients and understands Mr. Balske's further emphasized recommendation, we do not precondition assignment of cases upon an attorney's agreement to follow particular strategic or tactical recommendations from other attorneys.

Steve Krasik

Mr. Krasik's submission was received June 8, 2012. His submission included a 36-page response to the November 2011 request for information, along with an additional 47 pages of sample case motions and memoranda, materials he had prepared for CLE presentations, and a juror data sheet that he uses in conjunction with the Colorado method of jury selection. In addition, he submitted a 43-page "study" by Cynthia Hogan, a "non-practicing" attorney who is used frequently by Mr. Krasik and Mr. Gorham to assist them with legal research and writing. The "study," which Mr. Krasik says he "commissioned" for this review, addresses the wisdom of pleading a client guilty

to aggravated murder without an agreement from the state concerning forgoing the death sentence, which is a concern about his practice in two cases that he handled with Ken Hadley. These materials were provided to Dennis Balske for his expert opinion.

The submission highlighted Mr. Krasik's recognized expertise regarding scientific and technical evidence, describing occasions when he has addressed such evidence in his cases, lectured or taught courses on the subject, and listing a variety of scientific journals to which he subscribes and reads regularly. His recent CLE experience includes the death penalty programs offered by OCDLA, the Federal Defender and the Oregon Capital Resource Center (Jeff Ellis), as well as the 2009 Jerry Spence Death Penalty Trial Lawyers College and the 2009 NACDL training in Portland on the Colorado method.

Mr. Krasik also provided detailed case information about each of the death penalty cases he has handled, which included, along with identifying the personnel involved and outcome of the representation, something he calls "case metrics." This data set out, among other things, the number of defense team conferences and the total hours for those conferences, the number of his in-person meetings with the client and the total hours for those meetings, the number of telephone conferences with the client and the total hours for those meetings, and the estimated number of hours other team members met with the client. This data, along with the narrative descriptions, show an attorney thoroughly engaged with his cases and clients.

The "study" that Mr. Krasik "commissioned, however, was less helpful. Although its author purported to undertake a literature review on the propriety of guilty pleas in capital murder cases when the state will not make sentencing concessions, the author goes to some length to praise the work of counsel, including Mr. Krasik, in cases where this has occurred. This is of doubtful utility from a person who is not an expert on the subject but is presumably being paid by Mr. Krasik for her work. The fact that the author can point to cases where courts have upheld sentences of death following such guilty pleas does not diminish the directive of the *ABA Guidelines*, which the author cites but does not heed, that counsel should be "extremely reluctant" to enter into such an arrangement and should "do everything possible" to avoid it. *ABA Guidelines*, Standard 10.9.2, Commentary.

Dennis Balske, following his review of the materials submitted by Mr. Krasik, recommended that PDSC continue to contract with Mr. Krasik, noting that he is a smart, experienced and knowledgeable capital defense attorney. Mr. Balske thought the concern about guilty pleas in cases without sentencing concessions would have been better addressed by a frank discussion of the factors Mr. Krasik took into consideration and the reasons he proceeded in the manner in which he did. Mr. Balske also recommended that Mr. Krasik attend the Santa Clara death penalty college, which other Oregon capital defenders have also attended, in order to ensure that he is exposed to colleagues who know and use the best practices in capital defense.

IV. RECOMMENDATIONS

Based upon the information gathered in connection with the review of the five attorneys that are the subject of this report, OPDS has the following recommendations for the PDSC:

1. Contract Extensions. The one-year contracts with Mark Rader, Ken Hadley, Steve Gorham and Steve Krasik should be extended until the end of 2013. Although the contract with Ralph Smith should not be extended, he will be paid at his current contract rate for any work required in 2013 for completion of representation in the one case he is currently handling.
2. Enhanced Case Assignment Protocols. As noted above, OPDS and others have been critical of Mr. Gorham's recent involvement in the Haugen case. However, it is also true that OPDS has received criticism for its own handling of attorney assignment in the matter and, in particular, in the assignment of a firm (Metropolitan Public Defender) that had little or no experience in post-conviction litigation and no experience with the type of challenges counsel would face in this case. OPDS has been urged to seek input from its Capital Resource Attorney when assigning counsel in certain "high risk" cases. OPDS has already implemented this recommendation and has also strengthened its own internal processes for identifying appropriate counsel for capital case assignment by enhancing communication between the OPDS contract analyst whom the courts contact for attorney assignment and General Counsel and other members of the agency executive administration.
3. Professional Development Incentives. OPDS, in contracting with attorneys for representation in death penalty cases, has always expected that the business expenses associated with legal representation in death penalty cases, such as costs of equipment, staff, insurance, rent, as well as the costs of continuing education, be paid for out of contract proceeds. At the same time, OPDS and the Commission have been informed on several occasions that we compensate our attorneys significantly below what the Federal government and many other states pay for similar work. And while OCDLA presents excellent CLE programs designed for death penalty attorneys, it is also true, as attested by members of the death penalty peer panel, that the NLADA Life in the Balance program and the death penalty college in Santa Clara, with their "bring your case" format, present exceptional learning opportunities for Oregon death penalty defense attorneys. Thus, it is recommended that OPDS establish a fund to provide financial assistance for reimbursement of registration costs for these and similar out-of-state programs and that OPDS recommend that contractors attend them.
4. Revised Attorney Certification Procedures. Although, as stated earlier, OPDS staff is well acquainted with its contractors, this current review has helped staff learn much more about the qualifications of the contractors under review. Yet the review process sought little more than the information provided for in the PDSC Qualification Standards for Court-Appointed Counsel. However, the current attorney qualification procedure requires only that attorneys certify that they have read the qualification standards, check boxes for those case types, including death penalty cases, for which they self-certify qualification, and complete a short questionnaire about their experience and references. General Counsel, who reviews attorney qualification certificates

for all case types, occasionally encounters counsel who have certified themselves as qualified without having read the standards or actually met the qualifications.

OPDS recommends that the Commission adopt a revision to its attorney qualification procedures that require attorneys seeking approval for court-appointment to any case type to provide detailed information, on their certificate of attorney qualification, from which OPDS may make a meaningful determination whether the attorney meets the qualification requirements. In this regard, OPDS was referred to rules adopted by the Louisiana Public Defender Board in 2010. The Louisiana qualifications for capital defenders are remarkably similar to those in Oregon, but their “application for certification” is very different. Unlike our current process, the Louisiana application requires attorneys to set forth the information from which the staff of its Board can determine whether to approve an attorney for appointment to death penalty cases.⁷ OPDS recommends that the Commission direct General Counsel to present a proposed revision to its certification forms that is modeled on the Louisiana process.

5. Further Contractor Reviews. The review of the five contractors named in this report is the first phase of an ongoing OPDS review of the public defense attorneys providing representation in death penalty cases. OPDS proposes to require the submission of the enhanced certification form recommended above as part of the response to the next Request for Proposals for contracts for representation in death penalty cases for the 2014-2015 contract cycle. In addition, OPDS proposes to require use of the enhanced form by all non-contract attorneys seeking to provide representation in death penalty cases. OPDS believes that it may continue its current practice of utilizing its peer panel to assist in an advisory capacity with the review of non-contract attorney submissions. OPDS will continue to assess the extent to which it may require a separate advisory body to assist with the review of responses to Requests for Proposals for capital cases.

V. CONCLUSION

The PDSC has devoted significant attention to representation in death penalty cases, reflecting the critical importance of ensuring high quality and fiscally sound services. Beginning with its earliest planning sessions in August 2000, the Commission has focused its attention on the death penalty during at least 10 meetings. The attention of the Commission and its staff to the review of its contract providers in these cases is part of a longstanding commitment to ensuring representation that meets national standards of practice in capital cases.

Fortunately, this review has provided information that the contractors we looked at are providing satisfactory representation and we are recommending that the Commission continue to utilize their services. We look forward to continuing our review of attorneys providing public defense services in death penalty cases as recommended above, and reporting further to the Commission on the implementation of the recommendations that it approves.

⁷ The Louisiana Public Defender Board capital certification application, and related documents, is available here: <http://lpdb.la.gov/Supporting%20Practitioners/Capital%20Defense/index.php>.

STEVEN H. GORHAM

ATTORNEY AT LAW
341 STATE STREET
SALEM, OREGON 97301
grumpy@teleport.com

STEVEN H. GORHAM
FAX (503) 364-4773

TELEPHONE
(503) 364-6494

August 1, 2012

Paul Levy
General Counsel
Office of Public Defense Services
Contract and Business Services Division
1175 Court Street NE
Salem, Oregon 97301-4030

Re: PDSC Death Penalty Contractor Review

Dear Paul:

Please consider this letter my response to your "Recommendations Regarding Contracting For Representation in Death Penalty Cases."

Your recommendations are basically divided into a general review, recommendations for the PDSC/OPDS, and a specific section for each individual.

I will discuss them in reverse order. I would be honored to have my contract extended. I believe that my contract should be extended for more than the one year that you have recommended. I believe we (myself and the other two other contractors [Mr. Krasik and Mr. Rader] who have been through this evaluation process and wish to continue contracting for more than another year) should be given new contracts until the end of 2015. This would be a three year extension. We have passed this evaluation and have in essence completed the process that is recommended for all new contractors. It makes no sense just to renew us for one year.

I also believe that my rate of compensation should be increased to meet the criteria expressed by Kathryn Aylward at the PDSC meeting in October of 2011.

"Ms. Aylward explained that some providers are paid \$97 an hour because they have more of an emphasis on post conviction relief, capital cases. The \$91 rates reflect a small increase for providers who maintain an office with employees, and that though it should be much higher, there aren't the funds to do it." PUBLIC DEFENSE SERVICES COMMISSION, Official Minutes Friday, October 21, 2011, 12:30 p.m. – 4:00 p.m.

I have an office and have had the same office since 1977. I have part time staff. I am also appointed, as one of my current cases, to a death penalty post conviction. Thus my rate should at the least be increased to \$91 or somewhere between \$91 and \$97 under Kathryn's criteria.

If these requests are not granted, I would still like to continue to do this work even under the same terms as they currently exist. I wish to continue to be a PDSC/OPDS death penalty contractor.

I do want to comment on the discussion in the specific part of the report that concerns my evaluation on page 5 and 6. Mr. Balske's comments that, "the client was in need of conflict-free representation by attorneys who were committed to addressing the underlying causes of the client's suicidal intentions." and "the appropriate view of death seeking clients is not as 'competent volunteers' but as mentally disturbed suicidal persons reacting to oppressive and coercive circumstances. The obligations of counsel are not merely to try to talk such a client out of suicide but to undertake active efforts to ameliorate circumstances that contribute to the client's suicidal behavior." I agree that counsel should undertake active efforts to ameliorate circumstances that contribute to the client's behavior. If one looks at the history of my representation of my death penalty and other clients as set forth in my initial response to this review, it should be clear that I do just that. Primarily these conditions deal with the actual conviction of the client, isolation, and the conditions of confinement that they find themselves subjected to. I work tirelessly to avoid conviction and if convicted try to ameliorate the isolation and the adverse conditions of confinement. I have kept in communication with many of my "death penalty" clients over the years.

I do not agree with what is obviously the political proposition that by definition, one who seeks to "volunteer" is "a mentally disturbed suicidal person". I also want to assure you that in representing Mr. Haugen (and for that matter my other clients) I did and do seek the advice of experts in this and other areas that come up during the representation. I want to commend you and your decision to not precondition assignment of cases upon an attorney's agreement to follow another attorney's theories. Each case and client is different and our ethical obligation is to the client and the law.

My further comments concerning the specific section that refers to my evaluation are more a matter of style than substance and it will not be productive to set them forth here. I did want to thank you for the work that you put into this review. I know from my years as Executive Director of MCAD that it is never easy to undertake this part of one's administrative duties, especially when at times your personal and professional views may conflict with either the "expert's" or the "subject's" opinions.

I also wanted to make a few comments concerning the "Recommendations" section of your report. While it may be true that OPDS received criticism for its decision to assign the Metropolitan Public Defender to help Mr. Haugen, the choice of the attorneys (and their representation) for whom Metro substituted was also not without criticism. How did they or have they "undertake[n] active efforts to ameliorate circumstances that contribute to the client's suicidal behavior?"

In the end, Mr. Haugen received the best of all worlds. He received the full range of advice from many very experienced capital defense attorneys who at

times disagreed with each other. That left Mr. Haugen to choose what advice to follow, which seems to be, at least in my opinion, his right.

Receiving as much input as possible in deciding who should be assigned to any case as well as “high risk” cases is a good idea. Allowing the political views of anyone, even the capital resource attorney, to override other considerations is not. It is unclear if this is what is going to happen in the future, as it seems might be the case in Recommendation Number 2, Enhanced Case Assignment Protocols. Matching the attorney’s experience and competence with the nature of the case, not their political views should be the goal. I hope that it is.

Recommendation No. 3 encourages us to attend the NLADA Life in the Balance and/or the Santa Clara death penalty college programs, I wanted to note that I attended the week long 2009 Death Penalty Trial Lawyers College in Wyoming and this had amongst other methods the “bring your case” format. I do intend to attend one if not both of these other programs in the future. Any added financial incentive is just an extra bonus to what can be learned in these CLEs.

Recommendation No. 5 is a bit unclear as to whether or not OPDS is going to continue this or a similar evaluation process with other death penalty contractors in the future. This recommendation makes it clear that future contractors will have to go through an enhanced certification process but it does not state that the intensive evaluation that was conducted on the five (5) initially selected individuals will continue. If it does not, it tells us something about why this process was conducted in the first place. If it does, I hope that our input has helped clarify what the evaluation actually should contain and how it should be conducted.

If you have any questions please feel free to contact me.

Sincerely yours,



Steven H. Gorham
Attorney at Law

cc. via email PDSC Commissioners, Kathryn Alward, Nancy Cozine

Sent via email and hand delivered to Paul Levy